

The ASCAP-BMI Feud, Status Panic, and the Struggle for Cold War Consensus

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Abstract

By the 1950s, ASCAP and its associated songwriters and composers seemed out of touch with contemporary musical tastes and industry trends. With the introduction of competition in the form of BMI in 1939, many members of ASCAP were experiencing a sense of status anxiety, an anxiety exacerbated by the many cultural, social, political, and economic changes that swept across postwar US society. Rather than adapt to the changing musical landscape of the 1950s, some members argued that ASCAP's fading cultural prestige and diminished influence within the music industry were the result of a conspiracy perpetrated by the broadcast networks and BMI. This article examines how, in an attempt to reassert the status and prestige they had enjoyed before the war, ASCAP and its supporters exploited contemporary Cold War anxieties as part of their ongoing feud with BMI. In congressional hearings from 1956 and 1958, individuals and organizations sympathetic to ASCAP portrayed BMI as part of a coordinated conspiracy that not only threatened free market practices through the establishment of an alleged "electronic curtain," but also sought to foist an inferior product on audiences who were being manipulated by "hidden persuaders." I suggest that the rhetoric that dominated both of these hearings reflects ideological debates that were being fought at the height of the Cold War, debates involving the culture of consensus and the image of the "American Way."

On November 9, 1953, a cadre of prominent American songwriters and composers including Arthur Schwartz, Dorothy Fields, and John Jacob Loeb participated in a press conference at the Waldorf-Astoria Hotel in New York City. Representing a professional advocacy group identified as the Songwriters of America (SOA), they had convened to announce an antitrust suit against many of the most powerful individuals, corporations, and organizations in the entertainment industry, including the broadcast networks (NBC, CBS, ABC, and Mutual), their affiliated record companies (RCA Victor and Columbia Records), the National Association of Radio and Television Broadcasters (NARTB), and the performing rights organization, Broadcast Music, Incorporated (BMI). The suit, identified as *Schwartz v. BMI*, was filed on behalf of thirty-three plaintiffs including Ira Gershwin, Samuel Barber, Virgil Thomson, and other prestigious songwriters and composers, all of whom were members of the SOA. As described by attorney John Schulman, counsel for the SOA, the suit alleged that the defendants had conspired to "dominate and control the market for the use and exploitation of musical compositions."¹ More specifically, Schulman noted, BMI was established by the broadcasters to "enlarge and maintain a music pool conducted for their joint use and benefit and as a means of controlling and monopolizing the market for the exploitation and utilization of musical compositions and particularly the performance rights thereof, and

¹ John Schulman quoted in Russell Sanjek, *Pennies From Heaven: The American Popular Music Business in the Twentieth Century*, updated by David Sanjek (New York: Da Capo Press, 1996), 328.

to restrain trade and commerce therein.”² Along with the plaintiffs, Schulman suggested that nearly three thousand other unidentified songwriters and composers had also suffered as a result of the alleged conspiracy. *Schwartz v. BMI* sought damages in the amount of \$150 million and called for the broadcasters to divest themselves of all stock interests in BMI. The plaintiffs were also requesting to present their arguments as part of a jury trial.

In much of the press coverage devoted to the proceedings, reporters often noted that the SOA plaintiffs were also members of the American Society of Composers, Authors, and Publishers (ASCAP), the most powerful performing rights organization in the world. Given these shared affiliations, many people in the entertainment industry viewed the suit as the latest skirmish in a long-running feud between ASCAP and BMI.³ When the suit was announced in November 1953, ASCAP was involved in contentious renegotiations with the networks over the renewal of television broadcasting licenses that were set to expire at the end of the year. Given the newly-acquired bargaining power of the networks, some commentators speculated that the SOA’s suit was inspired by ASCAP in an effort to pressure the networks to break off negotiations and to renew the agreements at the present (exorbitantly high) rates. In a statement responding to the suit, Carl Haverlin, president of BMI, highlighted the connections between ASCAP and the SOA, explaining that “ASCAP most recently set forth these charges in a 100-page affidavit filed in the same court in which this new action is brought.” Furthermore, Haverlin explained, “the baseless conspiracy charges made in the complaint are a rehash of charges which ASCAP has been making for years and has never been able to substantiate.”⁴

While it was true that more songs licensed by BMI were appearing at the top of the charts by the 1950s, figures and percentages relating to ASCAP’s revenue and market share appear to confirm Haverlin’s claim that the charges advanced by the SOA were “baseless.” Approximately one month before *Schwartz v. BMI* was announced, ASCAP reported that its earnings for 1953 were expected to exceed \$17 million dollars, an increase of nearly one million dollars over the previous year.⁵ Given this potential windfall, all of the plaintiffs in *Schwartz v. BMI* stood to gain financially as a result of ASCAP’s most profitable year. Even by 1955, over 84 percent of the music heard on radio and close to 90 percent of music

² IS Horowitz, “\$150,000,000 Suit Asks Broadcaster-BMI Divorce,” *Billboard*, November 14, 1953, 17, 45.

³ On the combative relationship between the two organizations at midcentury, see Marc Hugunin, “ASCAP, BMI and the Democratization of American Popular Music,” *Popular Music and Society* 7, no. 1 (1979): 8–17; John Ryan, *The Production of Culture in the Music Industry: The ASCAP-BMI Controversy* (Lanham, MD: University Press of America, 1985); and John C. Hajduk, *Music Wars: Money, Politics, and Race in the Construction of Rock and Roll Culture, 1940–1960* (Lanham, MD: Lexington Books, 2018).

⁴ “Songwriters’ Suit Seeks End to NARTB, \$150 Million,” *Broadcasting Telecasting*, November 16, 1953, 34. Although ASCAP was not identified as a plaintiff in *Schwartz v. BMI*, it was widely reported that much of the financial support provided to the SOA came from percentages deducted from royalties of ASCAP members. See Horowitz, “\$150,000,000 Suit Asks Broadcaster-BMI Divorce,” 17; “Songsmiths Do Solo on \$150,000,000 Suit; Touch Off Music-Radio Discord,” *Variety*, November 11, 1953, 50.

⁵ “ASCAP May Boost Revenue by \$1 Million This Year,” *Broadcasting Telecasting*, October 12, 1953, 44.

heard on television was licensed by ASCAP.⁶ Such percentages would contradict composer and lyricist John Jacob Loeb's assertion that "the works of non-BMI writers are seldom heard on the radio or recorded anymore."⁷ In the absence of verifiable facts or figures to back up their claims of a coordinated conspiracy, Haverlin suggested that the SOA were "being used" by ASCAP, the "very people who still yearn for the old days of monopoly."⁸

In their former capacity as the nation's musical gatekeepers, ASCAP had accrued a significant amount of prestige and notoriety within the entertainment industry. As Haverlin was sure to emphasize, much of the prestige and power ASCAP previously enjoyed was due to the fact that, for much of its existence, the society had operated as a monopoly. With the introduction of competition in the form of BMI in 1939, however, many members of ASCAP seemed to be experiencing a sense of status anxiety, an anxiety exacerbated by the many cultural, social, political, and economic changes that swept across postwar US society. As described by sociologist Paul DiMaggio, ASCAP had previously existed as a "status group that administered [the market] for its own benefit, according to its own tastes." By the 1950s, DiMaggio continues, they were "no longer a monopolistic gatekeeper but became merely a monitor and collection agency."⁹

ASCAP was not alone in experiencing some form of status anxiety in the postwar era. In his examination of the rapidly expanding middle class and the explosion of white collar jobs that flourished in the United States after the war, sociologist C. Wright Mills described a "status panic" within the nation as traditional "bases of prestige, the expressions of prestige claims, and the ways these claims are honored, are now subject to a great strain."¹⁰ Indeed, many of the nation's most prominent cultural critics, historians, and social scientists recognized that status anxieties emerged during periods of intense social change and economic prosperity.¹¹ Battles over status—who was losing it and who was acquiring it—were being fought throughout postwar US society as a host of conservative ideologies sought to contain many of the progressive tendencies of the era. Describing the contemporary cultural and political landscape of the United States in the mid-1950s, Seymour Lipset detailed the rise of the "radical right," an ultra-conservative political and nationalist ideology that had been influenced, in large part, by the virulent anti-communist rhetoric and red-baiting of Senator Joseph McCarthy.¹² In the same volume that includes Lipset's essay, historian Richard Hofstadter developed Theodor

⁶ These figures are reported in "ASCAP's War on BMI," *Broadcasting Telecasting*, September 9, 1957, 60–62, 64–66, 68.

⁷ "Songwriters' Suit Seeks End to NARTB," 34, 38.

⁸ "Songsmiths Do Solo on \$150,000,000 Suit," 50.

⁹ Paul DiMaggio, review of *The Production of Culture in the Music Industry: The ASCAP-BMI Controversy*, by John Ryan, *Administrative Science Quarterly* 32, no. 4 (December 1987): 608.

¹⁰ C. Wright Mills, *White Collar: The American Middle Classes* (New York: Oxford University Press, 1951), 240.

¹¹ On the contemporary preoccupation with matters relating to status and prestige, see the essays collected in the massive tome compiled by Reinhard Bendix and Seymour Martin Lipset, eds., *Class, Status, and Power: A Reader in Social Stratification* (Glencoe, IL: Free Press, 1953).

¹² Seymour Martin Lipset, "The Sources of the 'Radical Right,'" in *The New American Right*, ed. Daniel Bell (New York: Criterion Books, 1955), 166–233.

Adorno's diagnosis of the "pseudo-conservative" to describe the reactionary cultural and political tendencies of individuals and organizations who were desperately seeking to maintain positions of status in the 1950s. Of the pseudo-conservative, Hofstadter recognized those that "for one reason or another have lost their old objective positions in the life of business and politics."¹³ Along with Lipset, Hofstadter considered the contemporary pseudo-conservative impulse "as a response, however unrealistic, to [contemporary] realities." "We do live in a disordered world," Hofstadter explained, "threatened by a great power and a powerful ideology. It is a world of enormous potential violence, that has already shown us the ugliest capacities of the human spirit. . . . There is just enough reality at most points along the line to give a touch of credibility to the melodramatics of the pseudo-conservative imagination."¹⁴

In this article I will examine how the status politics that motivated the radical conservative movements and ideologies described by Lipset and Hofstadter also shaped and guided ASCAP's feud with BMI during the 1950s. As an organization traditionally associated with Tin Pan Alley songwriters and composers of concert music, ASCAP, by the 1950s, seemed out of touch with contemporary musical trends, especially compared to the increasingly popular rhythm and blues, Latin, and country songs that were licensed by BMI. Rather than adapt to the changing musical landscape of the era by opening up its ranks to include songwriters and publishers associated with R&B, country, and rock 'n' roll, some members of ASCAP argued that their fading cultural prestige and diminished influence were the result of a conspiracy perpetrated by the broadcast networks and BMI. Echoing the rhetoric of the "radical right" and the associated "pseudo-conservative" ideology, ASCAP sought to reassert its former status and prestige by exploiting contemporary Cold War anxieties and fears.

As part of two congressional hearings from 1956 and 1958, groups and individuals sympathetic to ASCAP depicted BMI and the broadcast networks as part of a coordinated conspiracy that not only threatened free market practices but also sought to foist an inferior product on an unsuspecting and, perhaps, manipulated US public. In the hearings from 1956 on "Monopoly Problems in Regulated Industries," composer, lyricist, and longtime ASCAP member Billy Rose offered testimony regarding an "electronic curtain" that had been established by BMI and the broadcasters.¹⁵ As described by Rose, the electronic curtain was implemented and enforced by the broadcasters to promote songs licensed by BMI at the exclusion of songs licensed by other performing rights organizations, notably ASCAP. While the image of an "electronic curtain" dominated the hearings from 1956, hearings from 1958 on proposed changes to the Communications Act of 1934 were shaped by the testimony of Vance Packard, a popular cultural critic who had recently gained

¹³ Richard Hofstadter, "The Pseudo-Conservative Revolt," in *The New American Right*, ed. Daniel Bell (New York: Criterion Books, 1955), 45.

¹⁴ Hofstadter, "The Pseudo-Conservative Revolt," 51–52.

¹⁵ *Monopoly Problems in Regulated Industries. Hearings Before the Antitrust Subcommittee (Subcommittee No. 5) of the Committee on the Judiciary, House of Representatives, Eighty-Fourth Congress, Second Session, Serial 22* (Washington, DC: US Government Printing Office, 1957). Hereafter referred to as "Celler Hearings."

national recognition as the author of *The Hidden Persuaders*.¹⁶ Developing the book's themes of subliminal advertising and corporate manipulation in the United States, Packard's testimony evoked contemporary Cold War fears of "mind control" and "brainwashing" as he systematically described the coordinated manipulation of musical taste by BMI and the broadcasters.

Of course, the conspiratorial claims and provocative rhetoric that prevailed during the hearings reflect the extent to which contemporary discourse had been shaped by a variety of Cold War anxieties in the years immediately following the fall of Joseph McCarthy. At the same time, the Cold War-inspired strategy employed by ASCAP and its defenders can also be understood in relation to contemporary debates on consensus and the attempt to forge an image of the "American Way." Wendy L. Wall has demonstrated how midcentury debates on consensus operated as a "political project" that was "strongly shaped by the conscious activities of multiple groups" all of whom "sought to define [consensus] in ways that furthered their own political and social agendas."¹⁷ Reflecting what historian John Higham described in 1959 as a "conservative temper with a liberal state of mind," the version of the "American Way" that developed during the 1950s emphasized the economic opportunities offered by free enterprise and, at the same time, promoted an image of the country as tolerant, diverse, and respectful of individual liberty and freedom.¹⁸ Throughout the hearings, critics of BMI presented themselves as defenders of various "freedoms," including the opportunity for businesses to compete in a free market (impossible under an alleged monopoly) and for audiences to hear the music they desire (impossible because of the "electric curtain" and/or "hidden persuaders"). By the 1950s, the on-going feud between ASCAP and BMI enacted and rehearsed many of the ideological debates that shaped the culture of consensus and the image of the "American Way" that was being promoted throughout the world at the height of the Cold War.

The Celler Hearings and the "Electronic Curtain"

In 1956, the US House of Representatives conducted hearings as part of an investigation into improprieties in the airline, television, and telephone industries. During the course of the proceedings, the chairman, Representative Emanuel Celler (D-NY), and the other members of the House subcommittee expanded the investigation to include the radio industry. "There are other related antitrust problems that will command the attention of the committee," Celler remarked in his opening

¹⁶ *Amendment to Communications Act of 1934 (Prohibiting Radio and Television Stations from Engaging in Music Publishing or Recording Business). Hearings before the Subcommittee on Communications of the Committee on Interstate and Foreign Commerce, United States Senate, Eighty-Fifth Congress, Second Session, on S. 2834* (Washington, DC: US Government Printing Office, 1958). Hereafter referred to as "Smathers Hearings."

¹⁷ Wendy L. Wall, *Inventing the "American Way": The Politics of Consensus from the New Deal to the Civil Rights Movement* (New York: Oxford University Press, 2008), 5.

¹⁸ See John Higham, "The Cult of the 'American Consensus': Homogenizing Our History," *Commentary* 27, no. 2 (February 1959): 99–100. Similarly, Godfrey Hodgson has examined the peculiar "liberal-conservatism" of consensus culture in *America in Our Time: From WWII to Nixon, What Happened and Why* (New York: Vintage Books, 1978), 67–98.

statement. "Popular song hits," he continued, "have become valuable properties as well as important program material for radio and television use. It is necessary for the subcommittee to examine their use in the television industry and to hear testimony bearing upon the joint activities of broadcasters in the song licensing and publishing business."¹⁹

On September 17, the subcommittee reconvened to hear testimony on possible improper and deceptive practices involving the networks, the major recording companies, the NARTB, and BMI. In particular, the subcommittee heard arguments that songwriters and publishers affiliated with BMI had an unfair advantage over those represented by competing performing rights organizations. A statement released by the Songwriters Protective Association (the SPA, yet another advocacy group for songwriters that, like the SOA, was comprised of ASCAP members) outlined many of the concerns regarding a possible conspiracy. As described in the statement, an "active and powerful combination of interests in the broadcasting industry has interfered with the free development and expression of American music. The national networks, CBS, NBC, ABC, and Mutual, together with other broadcasters jointly own and control Broadcast Music, Inc., known as BMI."²⁰ Through a campaign of "extensive propaganda," the statement continued, there was "no doubt that the broadcasters decide what music the public will hear."

But NBC and CBS have an even greater power than broadcasting alone. They dominate the recording field as well. CBS through Columbia records and NBC through RCA Victor decide what songs will be recorded on phonograph records. They are individually the largest recording companies and together represent an enormous portion of the recording business. Since broadcasting and recording are the most vital stages of a song's introduction and exploitation, the broadcasters, by their ownership and operation of BMI, have closed the gates to a free and open market for songs.²¹

Since most of the arguments presented by the SPA echoed those put forth in 1953 in *Schwartz v. BMI*, many of the plaintiffs identified in the earlier suit were eager to testify before the Celler subcommittee. On September 17, Stanley Adams (former president of ASCAP) and Jack Lawrence (a composer and lyricist affiliated with ASCAP and a plaintiff in *Schwartz v. BMI*) appeared before the subcommittee. In their testimonies, Adams and Lawrence repeatedly emphasized that a song has no chance of becoming a "hit" or achieving any degree of popularity if the public cannot hear it on radio or television. Deprived of an entire catalog of songs and songwriters, Adams and Lawrence argued, audiences were unfairly (and possibly illegally) deprived of the opportunity to freely choose what they wished to hear. Furthermore, their suspicions and fears appeared to be confirmed by documents distributed by BMI. In a promotional pamphlet entitled "The ABC of BMI" that was supplied to broadcasters and members of the entertainment industry in

¹⁹ Celler Hearings, 3968.

²⁰ Celler Hearings, 4217. The charges of ownership and "control" in the SPA's statement concern the percentages of BMI stock held by CBS, NBC, and ABC. As of 1957, the percentage of BMI stock held by CBS was 8.9 percent, 5.8 percent by NBC, and 4.5 percent by ABC. See "ASCAP's War on BMI," 65.

²¹ Celler Hearings, 4218.

1940, it was noted that “the public selects its favorites from what it hears and does not miss what it does not hear.”²²

Along with Adams and Lawrence, Billy Rose, a producer and lyricist (who was best known, perhaps, for cowriting the song “Does the Spearmint Lose its Flavor on the Bedpost Overnight?”) was also scheduled to testify. For many people who followed the hearings, Rose’s appearance before the subcommittee seemed odd given the fact that, by his own admission, he had been out of the music business since 1930. It soon became clear that Rose’s appearance had more to do with his rhetorical abilities promoting and defending ASCAP and not his knowledge of the contemporary music industry.

On September 17, Rose sent a telegram to the committee informing them that he would be unable to attend until the following day at which time he would speak to them regarding the “inequities of [an] electronic curtain which has been set up . . . to keep the music of America’s best songwriters away from the public.”²³ Evocative of common Cold War metaphors like the “Iron Curtain” and the “Bamboo Curtain,” the phrase “electronic curtain” may have been familiar to Chairman Celler as a way of describing methods by which the Soviet Union “jammed” radio transmissions in an attempt to restrict news, opinions, and analyses from sources that were critical of Communist regimes.²⁴ Eager for clarification concerning the presence of an “electronic curtain” within the entertainment industry, Celler turned to Jack Lawrence for an explanation:

MR. LAWRENCE. Well, to best explain the electronic curtain, I would say that this was a technique perfected by the Communists because they managed to jam the airwaves and keep American words of hope away from the freedom-loving peoples behind the Iron Curtain. Now, the networks have adopted this

²² This pamphlet is reproduced in the Celler Hearings, 4156–4175. Opponents of BMI referred to this quote many times throughout the hearings. In its original context, however, the statement was clearly a reminder to broadcasters about the state of the industry in 1936 when, after failing to reach an agreement with the NAB during contract and licensing negotiations, ASCAP withdrew a significant portion of its catalog from radio broadcast, including songs by George Gershwin, Rodgers and Hart, and other prestigious Tin Pan Alley songwriters and composers. As described in the “ABC of BMI”:

Remember! The broadcasters’ revolt against the music monopoly does not carry the industry into entirely uncharted territory. The industry remembers the instance of those publishers who withdrew their music in 1936. This experience taught broadcasters that they could make the air a free medium in the field of music. It proved that the public selects its favorites from the music which it hears and does not miss what it does not hear (Celler Hearings, 4159).

²³ Celler Hearings, 4141.

²⁴ In 1952, Foy D. Kohler, director of The Voice of America and a vociferous anti-communist, used the phrase to describe how Soviet technology was being used to create a “weakened signal, audio distortion, and static” at the receiving end of radio transmissions. See Foy D. Kohler, “This Is the Voice of America. . .,” *Cathode Press* 9, no. 3 1952: 11. A description of Soviet jamming techniques as an “electronic curtain” also appears in “Anchored VOA ‘Courier’ Programs Begin,” *Broadcasting Telecasting*, September 15, 1952, 76.

technique of jamming the airwaves with exactly what they feel should and should not be heard.

THE CHAIRMAN. You are not implying any invidious connotations there?

MR. LAWRENCE. No, sir; not for [one] second. All I am trying to explain is that the networks control the airwaves, the networks control their own recording companies, the networks control BMI and its entire organization of today, over 1,300 music publishers of the [*sic*] BMI are financed by the networks' money, and so I would say in this instance that an electronic curtain could be defined as the networks' control of music in America, to a large extent.²⁵

Although Lawrence denied any "invidious connotations" to the phrase "electronic curtain," his repeated use of the word "control" seems to suggest otherwise.

Appearing before the subcommittee on the following day, Billy Rose described the extent to which the electronic curtain had effectively transformed the music industry and, as a result, US musical culture. "I spent the summer in five communist countries, and almost everywhere I went I heard American music," Rose explained. "At a restaurant in Moscow one evening I listened to a band who were playing songs for several hours. Were they playing bebop and rock and roll? They were not, gentlemen." Instead, Rose continued:

The Soviet orchestra played the memorable melodies of Gershwin, Berlin, Kern, Rodgers, and Cole Porter. I heard sounds I had not heard in the air in a long time. In other words, our best musical talent seemed to be having an easier time crashing through the Iron Curtain than through the electronic curtain which the broadcasting companies have set up through their three-way control of the airwaves, the outfits which publish and the companies which make the phonograph records.²⁶

Of course, the inverted state of affairs detailed by Rose—that people living behind the Iron Curtain had greater access to the nation's "best musical talent" than those living in a supposedly free and open society—suggested that the electronic curtain was more than just a metaphor to describe a possible monopoly within the broadcast industry. While Rose's story emphasizes the sinister implications of the electronic curtain, it also reflects his biases regarding the assumed prestige associated with ASCAP composers and lyricists, a prestige so obvious that, as he emphasized, even Soviet musicians recognized the enduring quality and intrinsic worth of songs by George Gershwin, Irving Berlin, Jerome Kern, and other ASCAP-affiliated songwriters.

The rhetorical effect of Rose's testimony was strengthened by another Cold War narrative that hovered over the proceedings: containment. Indeed, when read from the perspective of the nation's dominant strategy for controlling the spread of

²⁵ Celler Hearings, 4196. Lawrence's rather articulate explanation of what was implied by the "electronic curtain" is curious given that he was being asked to respond to a statement by Billy Rose who, when Rose testified on the following day, claimed that the expression was of his own invention (Celler Hearings, 4425).

²⁶ Celler Hearings, 4426.

communism, the hearings appear less like an inquiry into possible antitrust violations and more like a strategy designed to protect Americans from an imagined threat that seeks to transform the business practices and musical tastes of the nation.²⁷ Former ASCAP president Stanley Adams described how the presence of an “artificial barrier” posed “a most dangerous threat, not only to the songwriter’s craft, but to the Nation’s cultural interest.”²⁸ For the members of the subcommittee and the ASCAP-affiliated songwriters who provided testimony, the only available remedy would be the complete divestiture of the networks interests in BMI.

As part of their arguments supporting divestiture, witnesses described a variety of terrifying scenarios and grim futures if the electronic curtain remained in place. In an exchange between Chairman Celler, Samuel Pierce, Jr. (Assistant Counsel for the Antitrust Subcommittee), and James Quigley (D-PA), Jack Lawrence described the recent acquisition of an ASCAP publishing company by two of the major networks.

MR. PIERCE. You say that . . . CBS and NBC now have ASCAP publishing firms?

MR. LAWRENCE. That is true.

MR. PIERCE. Would it be possible for [network representatives] to become members of the board of directors of ASCAP?

MR. LAWRENCE. I should say that if [the networks] continue developing their ASCAP firms . . . there would be nothing to prevent these gentlemen from then sitting on the board of ASCAP and directing our activities as board members. . . .

MR. PIERCE. And in your opinion do you think that [the networks] . . . may be able to virtually control all music?

MR. LAWRENCE. Well, if it goes that far I should say they would have complete control. . . .

MR. QUIGLEY. Mr. Lawrence, are you suggesting then that it is within the power of NBC and CBS to take over and control ASCAP?

MR. LAWRENCE. I don’t know whether this is in their minds, but it would seem to me that the trend indicates something along that line. . . .

MR. CHAIRMAN. So by quiet infiltration of composers and publishers who are affiliated with the chains, [the networks] can conceivably get representation on your board, and if they are not stopped . . . they would probably get control.

MR. LAWRENCE. That is rather theoretical, but it is entirely possible.²⁹

²⁷ On the manner by which strategies of domestic containment were being enforced within contemporary US society and culture, see Elaine Tyler May, *Homeward Bound: American Families in the Cold War Era*, rev. ed. (New York: Basic Books, 2017); and Alan Nadel, *Containment Culture: American Narratives, Postmodernism, and the Atomic Age* (Durham, NC: Duke University Press, 1995). As a topic of foreign policy, see John Lewis Gaddis, *Strategies of Containment: A Critical Reappraisal of American National Security Policy During the Cold War*, rev. and expanded ed. (New York: Oxford University Press, 2005).

²⁸ Celler Hearings, 4185.

²⁹ Celler Hearings, 4211–4212.

Celler tries to imagine the history of US popular music if the electronic curtain had been in effect just a few decades earlier. “If the electronic curtain had been lowered against [George Gershwin],” Celler inquired of Rose, “would he have achieved any degree of standing such as he has today?” “I doubt it,” Rose responded, “unless BMI were licensing his music.”³⁰ Characterizing the position and influence of BMI and the broadcasters, Rose, using language that could have been the plot of a contemporary science fiction film, explained how “the story of power is very much like the story of fungus—it just never stops growing; once it tastes blood it keeps wanting more.”³¹

The antitrust hearings made for great political theater but accomplished very little as far as ASCAP was concerned. Although the report urged the Department of Justice to undertake an extensive investigation into all areas of the music industry, it was ultimately concluded that a decision in the *Schwartz v. BMI* civil suit should be reached before the matter was turned over to the Department of Justice.

The “public selects its favorites from what it hears and does not miss what it does not hear.” Throughout the hearings, witnesses and subcommittee members interpreted this oft-cited refrain to mean that, by limiting access to an entire catalog of musical works represented by ASCAP, the electronic curtain had the ability to transform the musical tastes and preferences of the nation. “If this electronic curtain continues to be lowered,” Chairman Celler asked Billy Rose, “then that would be tantamount, would it not, to domination of the public musical taste?” “Very definitely,” Rose replied, “and as it is working it would not only be dominating but lowering of [*sic*] the public taste.”³² Documents submitted by ASCAP attorney Herman Finkelstein reveal that this was not a new argument in ASCAP’s long-running feud with BMI. Writing in 1952, Otto Harbach, former president of ASCAP, explained that the “predominance of BMI hits can only be explained by the concerted drive of the broadcast industry to mould the public taste by constant repetition of songs controlled by the broadcaster-BMI combination.” “This is particularly obvious,” Harbach continued, “when one considers that the membership of ASCAP is composed of the nation’s outstanding writers and publishers of musical works—men and women who have devoted their whole lives to music. It is not possible that they have suddenly lost their ability to write and publish meritorious compositions. Rather, merit has ceased to be the controlling factor.”³³

Of course, there is a certain irony in the claim that the musical tastes and preferences of the US public had been “molded” as a result of the electronic curtain; the same thing could also be said of life under the ASCAP monopoly. Furthermore, ASCAP’s claim that the public will eagerly accept any sort of musical product with which they are presented would seem to include not only the “musical monstrosities” associated with BMI (under the electronic curtain) but also the

³⁰ Celler Hearings, 4430.

³¹ Celler Hearings, 4429. Of course, Rose’s spine-tingling analogy is essentially the plot of at least two well-known science fiction films of the era: Irvin Yeaworth’s *The Blob* (1958) and Roger Corman’s *Little Shop of Horrors* (1960).

³² Celler Hearings, 4428.

³³ Celler Hearings, 4649.

“meritorious” songs of Tin Pan Alley composers and lyricists (under the ASCAP monopoly). Either way, the arguments set forth by supporters of ASCAP portray the public as a passive, conforming “mass” whose tastes and preferences are “molded” by anything and everything that comes through speakers or appears on screens.³⁴ As ASCAP and its supporters continued their Cold War-inspired crusade against BMI, however, they began to depict contemporary audiences, not as unthinking, uninformed consumers of any and all products of mass culture but, instead, as victims of an ominous and sinister conglomerate of “hidden persuaders.”

The Smathers Bill and the Threat of “Hidden Persuaders”

Citing a “conspiracy of the broadcasting networks, their affiliates, and their recording companies,” five ASCAP composers representing the SPA descended upon Washington, DC in the winter of 1957. Along with attorney John Schulman, the group consisted of former president and charter member of ASCAP, Otto Harbach, Arthur Schwartz, ASCAP director Douglas Moore, Dorothy Fields, and Stanley Adams. (Except for Harbach, the members of the group were all plaintiffs in *Schwartz v. BMI*.) In their meetings with politicians, the group argued for new legislation that would forbid the granting of broadcast licenses to individuals or groups who had business ties with other areas of the music industry, including publishing, record production, and distribution. Such legislation, they suggested, would “restore the freedom of music to the listening public.”³⁵

Swayed by the SPA’s claims, Senator George Smathers (D-FL) introduced a bill in August 1957 to revise the Federal Communications Act of 1934. According to Smathers’s proposed bill (S. 2834) licenses for radio or television stations “shall not be granted to, or held by, any person or corporation engaged directly or indirectly in the business of publishing music or of manufacturing or selling musical recordings.”³⁶ Emphasizing the pressing need for an amendment to the Communications Act, Smathers cited many of the claims described in the Celler Report. In particular, Smathers explained that, as a result of the business interests of the major broadcasting networks, their radio and television affiliates, associated record labels, and BMI, the “American people have been deprived of the opportunity to hear over radio and television all the music they may like to hear.”³⁷

Introducing his legislation, Smathers described how a “practice of controlled music” had taken hold of the public airwaves and that Americans were a “captive audience” who were being “force-fed a brand of music not always to its liking.”³⁸ To underscore his point and to divert attention away from the dubious premises underlying the proposed bill, Smathers concluded his speech by suggesting that the restrictions imposed upon musical creativity and the public’s limited access to

³⁴ On how the narrative of containment shaped contemporary theories and debates regarding “the masses” and “mass culture,” see Andrew Ross, *No Respect: Intellectuals & Popular Culture* (New York: Routledge, 1989), 42–64.

³⁵ Mildred Hall, “SPA Cleffers Chant ‘Conspiracy’ Charge,” *Billboard*, March 9, 1957, 22.

³⁶ Bill S. 2834. Senate, 85th Congress, 1st Session (1957).

³⁷ *Congressional Record*, Senate, 85th Congress, 1st Session, August 21, 1957, 15499.

³⁸ *Congressional Record*, August 21, 1957, 15500.

all varieties of music were analogous to what had taken place under Communist regimes. "Behind the Iron Curtain," Smathers explained, "we have been able to observe the stultifying effect on the creative arts produced by arbitrary control. The works of the inspired composers and literary figures of pre-Communist days in Russia and all the satellite countries have never been equaled under the tightly censored and manipulated regimes of today. Such control and censorship are repugnant to the American spirit. We must not permit broadcasters or any other power group to chain that spirit."³⁹

Chaired by John Pastore (D-RI), hearings on S. 2834 opened in March 1958. The Cold War rhetoric adopted by Smathers when introducing his proposal suggested that the discursive strategy employed during the Celler hearings would also be utilized in the hearings devoted to S. 2834. Indeed, this proved to be true. In a letter submitted to the subcommittee, Edward Laska, a composer and charter member of ASCAP, explained that, if changes were not made to the Communications Act, "ASCAP and its writers will simply evaporate, and no future writers, working in a free, democratic economic atmosphere, will develop." "ASCAP writers," Laska continued, "would no more think of writing for BMI than Hungarians relish their Red domination. It is just as the Soviet Union plans a slow, patient but eventual killing off of the free nations, that the slow eroding work of the BMI monstrosity is working."⁴⁰

In an attempt to convince the subcommittee that the current arrangement between BMI and the broadcasters did not serve the public interest, the SPA arranged for Vance Packard to testify. Packard had recently gained widespread recognition in 1957 with the publication of *The Hidden Persuaders*, a best-selling book in which he sought to expose the "large-scale efforts being made, often with impressive success, to channel our unthinking habits, our purchasing decisions, and our thought processes" by powerful advertising firms, marketing agencies, and political organizations.⁴¹ Through advances in "motivational research" and the "mass use of psychoanalysis," Packard's book describes how "Madison Avenue ad men" and "professional persuaders" have developed "intensive and effective ways to sell us their wares—whether products, ideas, attitudes, candidates, goals, or states of mind."⁴² Recognizing that the alarming (and popular) claims made in *The Hidden Persuaders* might provide an explanation as to *how* the electronic curtain functioned to manipulate the musical taste of Americans, the SPA provided financial support for Packard as he conducted research and prepared his testimony in support of S. 2834.

Packard opened his statement before the subcommittee by describing a larger "context for concern" regarding his testimony. Specifically, Packard expressed his belief that "Americans are being standardized, homogenized, hypnotized, and sterilized" and, as a result, they are "losing ground in several key tenets of our American creed cherished by our Founding Fathers."

³⁹ *Congressional Record*, August 21, 1957, 15500.

⁴⁰ Smathers Hearings, 946.

⁴¹ Vance Packard, *The Hidden Persuaders* (New York: David McKay Company, 1957), 3.

⁴² Packard, *The Hidden Persuaders*, 3.

In particular, I think of such tenets as respect for the dignity of the individual, freedom from conformity, and freedom of choice. At every hand, privacy of our mind is being invaded by playing upon our weaknesses, manipulating small children through television and other means, and by trying to slip sales messages to us past our consciousness in the motion-picture and television messages at a whisper level or a level below our visual level so that we cannot ascertain them at the conscious level, but do ascertain them at the subconscious level. . . . It is within this context of concern about the growing manipulation of the American people that I became interested in investigating charges that the . . . taste of millions of Americans is being manipulated to suit the business interests of the Nation's broadcasters.⁴³

According to his research, Packard determined that, in the “process of developing and selling their [music], the major broadcasters have found it to their advantage to use their control of the public airways to reshape the musical tastes of Americans to suit their own commercial interests.”⁴⁴ More specifically, Packard explained how “rock and roll, hillbilly, and Latin American movements were largely engineered” by the networks and that the “public was manipulated into liking rock and roll [and] into liking hillbilly.”⁴⁵ This manipulation is occurring, Packard continued, through the constant repetition of songs that are “drummed into the mind” of the public via radio, television, and records.⁴⁶ Packard cited numerous documents that, in his opinion, suggest a deliberate and coordinated attempt on the part of BMI, disc jockeys, the NAB, and the networks to manipulate musical taste by restricting and controlling the public's access to all forms of music. Whereas in the Celler hearings the public was depicted as a mass of “dupes” willing and eager to accept any form of music, Packard portrayed audiences as victims of a scheming and manipulative cabal of advertisers and media executives.

Packard's *Hidden Persuaders* was one of many books published in the 1950s that considered how people were being manipulated, molded, and controlled by a nefarious (yet vaguely-defined) organization or system. In *The Lonely Crowd*, David Reisman, Nathan Glazer, and Reuel Denney argue that the conformist personality that emerged within postwar US society—what they termed the “other-directed” social character—is the result of “shadowy entanglements” involving the media, corporations, and politicians.⁴⁷ At the same time, the “organization man” described by William Whyte is the creation of “The Organization,” a large-scale (yet never fully explicated) group of social manipulators.⁴⁸ In the same year that *The Hidden Persuaders* was published, market researcher James Vicary announced the formation of the Subliminal Projection Company and, quite quickly, “subliminal messages” came to represent a new frontier for advertisers. Although numerous studies cast doubt on the efficacy of Vicary's projector (not to mention the underlying premise of “subliminal perception”), many people were shocked and outraged

⁴³ Smathers Hearings, 107.

⁴⁴ Smathers Hearings, 108.

⁴⁵ Smathers Hearings, 119.

⁴⁶ Smathers Hearings, 111.

⁴⁷ David Reisman, Nathan Glazer, and Reuel Denney, *The Lonely Crowd: A Study of the Changing American Character* (New Haven, CT: Yale University Press, 1950).

⁴⁸ William Whyte, *The Organization Man* (New York: Simon and Schuster, 1956).

at the prospect that advertisers had access to their subconscious minds and could possibly influence and manipulate their behaviors, beliefs, and tastes.⁴⁹

Within the dominant Cold War ideology of the time, the nation's fears regarding mass manipulation and subliminal advertising were symptoms of a more insidious threat. In the early 1950s, Edward Hunter, a journalist and propaganda specialist for the Office of Special Services (OSS) described how Chinese Communists had perfected a form of "psychological warfare" he described as "brainwashing." In his book *Brainwashing in Red China* published in 1951, Hunter described how Communists were able to manipulate people into accepting the tenets and principles of communism through "indoctrination courses," courses designed to rid the victim's mind of any beliefs and values that do not correspond to Communist doctrine and ideology.⁵⁰ In 1953, Hunter's claims regarding brainwashing appeared to be confirmed when twenty-one American prisoners of war denounced the United States and refused to participate in a prisoner swap.⁵¹

Other people who testified in support of S. 2834 employed language that suggested that BMI and the broadcasters were engaged in some form of "mind control." Attorney John Schulman, for example, described how "there is this thought control [in the music industry]" whereby the public's taste is "conditioned by the menu which the broadcasters choose to give [them]."⁵² Ultimately, by portraying the broadcast networks as a sinister entity that was capable of infiltrating the minds and altering the preferences of the US public through radio and television, supporters of the legislation argued that S. 2834 was about freedom. At stake was not only the freedom for organizations and corporations to compete in a free marketplace, but also the freedom for broadcasters to play the music they wanted to play, freedom of expression on the part of songwriters and composers to create the music they wanted to create, and the freedom of Americans to have access to all forms of music all while being free from manipulation and thought control.

While Packard could have focused on *how* various organizations were manipulating the public's taste, much of his testimony also consisted of gratuitous praise directed towards ASCAP songwriters alongside disparaging remarks of songs and

⁴⁹ On Vicary, subliminal advertising, and "mind-probing admen," see Charles R. Acland, *Swift Viewing: The Popular Life of Subliminal Influence* (Durham, NC: Duke University Press, 2012), esp. 91 ff.

⁵⁰ Edward Hunter, *Brain-Washing in Red China: The Calculated Destruction of Men's Minds* (New York: Vanguard Press, 1951).

⁵¹ See Virginia Pasley, *21 Stayed: The Story of the American GI's Who Chose Communist China—Who They Were and Why They Stayed* (New York: Farrar, Strauss and Cudahy, 1955). Susan L. Carruthers considers the "allegories of captivity" that underpin many contemporary anxieties in her *Cold War Captives, Imprisonment, Escape, and Brainwashing* (Berkeley: University of California Press, 2009).

On the brainwashing scare in the 1950s, see David Seed, *Brainwashing: The Fictions of Mind Control* (Kent, OH: Kent State University Press, 2004); and Matthew W. Dunne, *A Cold War State of Mind: Brainwashing and Postwar American Society* (Amherst: University of Massachusetts Press, 2009). Timothy Melley describes how existential fears involving autonomy and agency enabled fears of mind control to take hold in the 1950s. Arising alongside the various "status panics" that emerged in the 1950s, Melley develops a theory of "agency panic" in his *Empire of Conspiracy: The Culture of Paranoia in Postwar America* (Ithaca, NY: Cornell University Press, 2000).

⁵² Smathers Hearings, 1185, 1194.

styles associated with BMI. "I find that the broadcasters," Packard explained, "[and] what they choose to call public demand for certain types of music is actually often the use of the airways to generate that demand. The broadcasters, in order to avoid using professional composers of the caliber of Cole Porter, Richard Rodgers, Irving Berlin, and Arthur Schwartz, have created a fantastic machinery to generate public acceptance of their own music."⁵³ In Packard's opinion, the "commercial interests" of the broadcasters "lie in the direction of assuring a demand for bargain-counter music, since that is the only kind of music they can develop and care to develop in bulk from their own sources. Three of the cheapest types of music available to the broadcasters from their own sources are rock and roll, hillbilly music, and Latin American music."⁵⁴ According to Packard, the inability to "lure reputable songwriters in any number and [the] preoccupation with obtaining music cheaply led BMI to search the fringes for its music."⁵⁵

Although Packard may have believed that, by criticizing BMI's songwriters and musical catalog, he was helping to promote the cultural and musical prestige of ASCAP, his strategy backfired.⁵⁶ When referring to the "economically cheap" and "fringe" style of country music, for example, Packard suggested that songwriters of country music are "more apt to be pleased by a few hundred dollars as payment for a nationwide hit tune than would be a professional songwriter who is thinking of the long haul of supporting a family."⁵⁷ Outside of the hearings, Governor Frank Clement of Tennessee, a fan of country music, was alerted to Packard's testimony and submitted a telegram that was read into the record by Tennessee Senator Albert Gore, Sr. Referring to Packard's suggestion that country music was "intellectually and economically cheap," Governor Clement wrote that "such testimony if offered, is a gratuitous insult to thousands of our fellow Tennesseans, both in and out of the field of country music. . . . I would not like to see all of this music branded as . . . cheap. . . . I must express regret that such sentiments have been expressed and hope that upon careful reflection, those sentiments will be modified."⁵⁸ Prompted by Packard's comments regarding country music, Governor Clement also offered testimony opposing the bill and, in doing so, effectively sealed the fate of S. 2834. The bill never moved passed the hearings stage.

ASCAP vs. BMI, Good Music vs. Bad Music, and the Struggle for Consensus

In September 1957, the editors of *Broadcasting Telecasting* magazine published an editorial entitled "ASCAP's War on BMI" in which they systematically debunked and refuted many of the specious claims regarding an alleged conspiracy involving

⁵³ Smathers Hearings, 109.

⁵⁴ Smathers Hearings, 108.

⁵⁵ Smathers Hearings, 133.

⁵⁶ It is interesting to consider Packard's testimony regarding prestige and quality in light of the book he was writing at the time of the hearings: *The Status Seekers* (New York: David McKay Company, 1959).

⁵⁷ Smathers Hearings, 135.

⁵⁸ Smathers Hearings, 141–42.

BMI and the broadcasters. After detailing ASCAP's steadily rising profits and continued dominance in the radio, television, and film markets, the editors suggested that what really "galls ASCAP is that its music now must face up the competition of other music—'new' music which had little or no chance of public performance until BMI came along." Unwilling to "face the music" and adapt to contemporary musical tastes and trends, ASCAP and its supporters, the editorial continued, employed a variety of "diversionary tactics, seeking to brainwash Congress and the public by associating themselves with good music and BMI with bad [music], [and] by painting BMI and the broadcasters as conspirators and villains."⁵⁹ As examples of such diversionary tactics, the claim of an "electronic curtain" and allegations of "hidden persuaders" served to demonize BMI and its songwriters by exploiting fears and anxieties that consumed many people during the Cold War. Among contemporary observers, it seemed far-fetched that ASCAP was in any position to take down the entire recording and broadcast industry, even with the support of sympathetic politicians such as Representative Celler and Senator Smathers. However, it was much easier (and just as effective, perhaps) to disparage and cast aspersion upon BMI and its associated songs, songwriters, and musical styles, a strategy that, if successful, could elevate the image of ASCAP.

Although the presence of ASCAP hovered over the Celler and Smathers hearings, the SOA and the SPA served to distance the society from the proceedings and thereby focus the attention on the affected songwriters. Over the course of both hearings, however, ASCAP became metonymically linked with the many bereaved songwriters who, it was claimed, were suffering as a result of the industry-wide conspiracy. Along with the compositions of "serious composers" such as Samuel Barber, Virgil Thomson, and Gian Carlo Menotti, Chairman Celler expressed his opinion that a significant "part of our great history [as a country] is wrapped up in music, and the popular songwriters have made a very, very wonderful contribution."⁶⁰ Speaking before the Smathers committee, composer and music professor Arlan Coolidge lamented the quality of the music that currently dominated the airwaves, noting that the "almost complete absence of the fine tunes by [Irving] Berlin, Jerome Kern, Cole Porter, and many other gifted composers in the area of musical comedy [is] regrettable because it is a natural step from music of this kind to much concert music of high quality."⁶¹ Oscar Hammerstein II—admittedly a biased witness—asserted that "there is no question about the value of ASCAP's catalog and the permanent value of their songs and their great composers as compared to BMI."⁶²

By 1958, ASCAP had made significant strides towards rehabilitating and restoring its reputation. It was no longer the old-fashioned, "out-of-touch" organization that had formerly wielded its monopolistic power throughout the entertainment industry before finally being reined in by a federal consent decree in 1941. Instead, as representatives of some of the finest songs, songwriters, and composers of music in the United States, ASCAP now came to stand for "tradition" and "quality." Soon their

⁵⁹ "ASCAP's War on BMI," 68.

⁶⁰ Celler Hearings, 4203.

⁶¹ Smathers hearings, 24.

⁶² Smathers Hearings, 21.

catalog would be referred to as the “Great American Songbook” and many of the songs they licensed were increasingly referred to as “standards” of popular music.

As ASCAP gradually came to symbolize “tradition” and an earlier “golden” era of popular song, supporters of BMI sought to defend the organization by promoting an image that emphasized the myriad industrial, economic, and cultural benefits they provided. As an organization open to amateur and professional songwriters from a variety of backgrounds and traditions, BMI, it was suggested, epitomized the nation’s commitment to diversity. In his prepared testimony delivered during the Smathers hearings, Sydney Kaye, chairman of BMI, emphasized the “extraordinary prosperity, growth, and diversity of opportunity in the field of music which has come about since BMI was founded.”⁶³ Reading a statement on behalf of Nat King Cole and offering her own testimony in opposition to S. 2834, Maria Cole emphasized the positive social and cultural advantages provided by a diverse music industry. At the conclusion of her testimony, Cole provided an impassioned patriotic defense of the current state of affairs in the music industry. “We who have had the good fortune of being successful,” she explained, “feel it very important in the public interest that opportunity be extended to as many young Americans as possible to write music, publish music, and perform music, because it is only through this process that we can arrive at what is our ultimate ambition in the United States, which is truly equal opportunity for all people.”⁶⁴

By the end of the Smathers hearings, ASCAP and BMI were engaged in a struggle over which organization was “more American.” Poised between a nostalgic past and a utopian future, the narratives of consensus that were being developed around the two organizations reinforced the image of the United States as a nation that encouraged competitive enterprise, embraced diversity, and demanded tolerance. At the same time, however, Trent Hill has drawn attention to the various “complicated signifiers” that were being assembled around both organizations. In particular, Hill notes how ASCAP became a “coded expression for cultural elitism” while BMI represented the “cultural depravity” of contemporary popular musical styles, especially rhythm and blues and rock and roll.⁶⁵ Indeed, it is easy to recognize how, in the hearings and in much of the contemporary press, the numerous smears and demeaning remarks directed at BMI and its musical catalog reflected the volatile racist beliefs and classist attitudes that motivated the various “status panics” rippling throughout US society during the 1950s.

While it is certainly possible to discern the underlying racial and class antagonisms that motivated ASCAP during the Celler and Smathers hearings, they emerged most clearly in 1959 as part of the investigations and hearings devoted to payola.⁶⁶

⁶³ Smathers Hearings, 406.

⁶⁴ Smathers Hearings, 542.

⁶⁵ Trent Hill, “The Enemy Within: Censorship in Rock Music in the 1950s,” in *Present Tense: Rock & Roll and Culture*, ed. Anthony DeCurtis (Durham, NC: Duke University Press, 1992), 61. Emily Abrams Ansari has detailed how ideological battles involving prestige and consensus were also playing out in contemporary concert music. See Ansari, “Musical Americanism, Cold War Consensus Culture, and the U.S.-USSR Composers’ Exchange, 1958–60,” *Musical Quarterly* 97, no. 3 (Fall 2014): 360–89.

⁶⁶ Brian Ward also uncovers the racist discourse that animates the Smathers hearings in *Just My Soul Responding* (Berkeley: University of California Press, 1998), esp. 116–22.

Although the payola investigations were originally prompted by Burton Lane—a renowned composer and lyricist, longtime ASCAP member, and president of the American Guild of Authors and Composers (formerly the SPA)—no representatives of BMI or ASCAP (including “front groups” such as the SOA or the SPA) provided testimony during the subsequent hearings. In fact, there are very few direct references to either organization in the entire transcript of the payola hearings suggesting that, as Steve Lawson has noted, “much of the discussion [had] shifted away from private rivalries in the music business and [now] centered on the decline of standards of public morality.”⁶⁷

The sweeping Cold War rhetoric that dominated the Celler and Smathers hearings is almost entirely absent from the payola hearings as the charges of a monopolistic conspiracy and corporate manipulation were reformulated as acts of commercial bribery involving disc jockeys, independent record labels, and distributors. With reformulated charges and a new target, the hearings did not require the sweeping, ominous backdrop of the Cold War to convince politicians and the public of possible malfeasance. For those people who already questioned the value and worth of almost everything associated with contemporary popular music (especially those forms associated with BMI), the scenario of disc jockeys engaging in shady business agreements with independent record label owners probably seemed obvious.

Still, however, many industry insiders recognized the continued influence of ASCAP in the proceedings. Referring to an unidentified group of “has-beens” that included many “artists, songwriters, publishers and record manufacturers,” an editorial published in *Billboard* in November 1959 described how many “frustrated music men—out of step with current song and recording trends—see in the present goings-on a chance to return to a position of eminence.”⁶⁸ Just as the culture of consensus sought to conceal the glaring social and economic inequalities of the United States, the Cold War rhetoric that dominated the Celler and Smathers hearings served to cover up the entrenched racism and classism that motivated ASCAP in its ongoing feud with BMI, a campaign by which ASCAP sought to return to a “position of eminence” by politicizing musical style and popular taste.

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⁶⁷ Steven F. Lawson, “Race, Rock and Roll, and the Rigged Society: The Payola Scandal and the Political Culture of the 1950s,” in *The Achievement of American Liberalism: The New Deal and Its Legacies*, ed. William H. Chafe (New York: Columbia University Press, 2003), 223. For critical and historical accounts of the payola scandal, see Hill, “The Enemy Within”; Sanjek, *Pennies From Heaven*, 439–52; and Kerry Segrave, *Payola in the Music Industry: A History, 1880–1991* (Jefferson, NC: McFarland, 1994), 100–58.

⁶⁸ “Editorial: Lame, Halt & Blind,” *Billboard*, November 30, 1959, 2.

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