

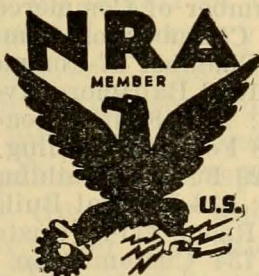
NATIONAL RECOVERY ADMINISTRATION

CODE OF FAIR COMPETITION

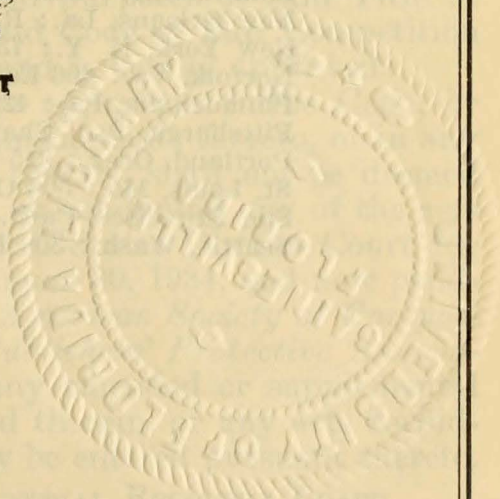
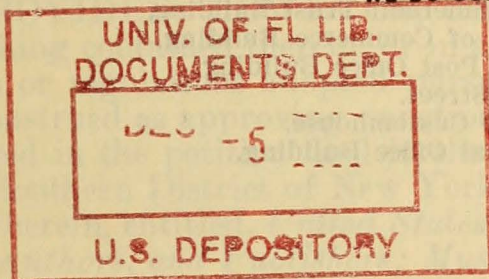
FOR THE

MUSIC PUBLISHING
INDUSTRY

AS APPROVED ON MARCH 4, 1935



WE DO OUR PART



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1935

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Approved Code No. 552

CODE OF FAIR COMPETITION

FOR THE

MUSIC PUBLISHING INDUSTRY

As Approved on March 4, 1935

ORDER

APPROVING CODE OF FAIR COMPETITION FOR THE MUSIC PUBLISHING INDUSTRY

An application having been duly made pursuant to and in full compliance with the provisions of Title I of the National Industrial Recovery Act, approved June 16, 1933, for approval of a Code of Fair Competition for the Music Publishing Industry, and hearings having been duly held thereon and the annexed reports on said Code of Fair Competition, containing findings with respect thereto, having been made and directed to the President:

NOW, THEREFORE, on behalf of the President of the United States, the National Industrial Recovery Board, pursuant to authority vested in it by Executive Orders of the President, including Executive Order No. 6859, dated September 27, 1934, and otherwise; does hereby incorporate by reference said annexed report and does find that said Code complies in all respects with the pertinent provisions and will promote the policy and purposes of said Title of said Act; and does hereby order that said Code of Fair Competition for the Music Publishing Industry be and is hereby approved:

PROVIDED, HOWEVER, that the approval of this Code, or anything contained therein, or in any amendments thereto, or in any rules or regulations adopted pursuant thereto, shall not be deemed or construed as approving, sanctioning, or condoning any of the acts alleged in the petition filed in the United States District Court for the Southern District of New York, August 30, 1934, and now pending therein, entitled, *United States vs. American Society of Composers, Authors, and Publishers; Music Publishers' Protective Association, et al.*, Equity No. 78-388, or in any amended or supplemental petition or petitions which may be filed therein, or any acts forbidden in any decree or decrees which may be entered pursuant thereto.

NATIONAL INDUSTRIAL RECOVERY BOARD,
By W. A. HARRIMAN, *Administrative Officer.*

Approval recommended:

JACK B. TATE,
Division Administrator.

WASHINGTON, D. C.,
March 4, 1935.

REPORT TO THE PRESIDENT

The PRESIDENT,
The White House.

SIR: This is a report on the proposed Code of Fair Competition for the Music Publishing Industry. A public hearing was held on this proposed Code on July 26, 1934, and full opportunity was given to all interested parties to appear.

The proposed Code covers two separate and divisional industries, namely, Standard Music Publishers and Popular Music Publishers, and consists of hour, wage, and general labor provisions, administrative provisions and fair trade practice provisions.

EXTENT OF THE INDUSTRY

The Music Publishing Industry is a relatively small one insofar as number of employees, annual sales, or invested capital, are concerned, but its product probably touches the lives of more people than the product of any other industry in this country. It is hard to figure in the life of the average man or woman, a day in which at some time they are not in contact with music.

Music is one of the most universally used commodities on the market today. It is becoming increasingly popular all the time, but even with this growing popularity there is still little known by the general public of the comparatively few men and women who are currently and constantly adding to our reservoir of music. Music is the "raw material" which makes possible the commercial operation of huge business enterprises; it is the keystone in the arch of the structure that supports the entire amusement and entertainment industry, which annually derives from the American public a revenue of billions of dollars.

During the years 1928 to 1930, according to the President's Committee on Recent Social Trends, the American people spent annually \$2,214,725,000 for commercial amusements. Each of these commercial enterprise groups,—motion pictures, radio, theaters, concert and dance halls, night clubs and cabarets, and even restaurants, are to a very large degree dependent for their existence upon music. Yet for every dollar paid by the American people for commercial amusements, the creators receive less than one-tenth of 1 per cent.

The commodities which the Industry vends are divided into two sharply defined classes. These two classes of music are produced by a substantially different group of publishers, known in the trade, as Popular Music Publishers and Standard Music Publishers. It is estimated that there are about 75 music publishers in the United States, divided approximately into 30 Standard Music Publishers, and 45 Popular Music Publishers. The bulk of the total dollar volume is represented, however, by less than one half of the total number of establishments.

Popular music, is made up of a constant procession of selections which "click" to a greater or less degree; are whistled and sung during a brief period by stars of the radio, stage, and private citizens; and then are more or less forgotten. In distributing them timeliness is the essence. Margins of gross profit are narrow, but the volume of any one number is large, and the turnover is very rapid. Popular music sales normally are from one-fourth to one-third of the total sales of all music.

Standard music, is composed of numbers of more enduring popularity, many of them classical pieces and grand opera, together with exercise books, song-books, certain types of religious music, etc. Demand for them is constant. Turnover is comparatively slow. Volume on any one number is small. Gross profit margins are high. Standard music sales usually are two-thirds to three-fourths of the sales of all music.

In geographical distribution the Music Publishing Industry is heavily concentrated in New York City, which alone normally accounts for about two-thirds of the total amount of music published. Massachusetts and Pennsylvania are next in importance, each representing about 17 and 7 percent respectively of the total. The principal other states are, California, Ohio, and Illinois. New York City represents about 86 per cent of the total of popular music published, and about 51 per cent of the total of standard music.

AVENUES OF DISTRIBUTION

Both types of music, popular and standard are sold to ultimate consumers by the same groups of retail stores; shops specializing in sheet music and musical instruments (these are tending to become less important), radio and music shops, variety stores, department stores, gift shops, drug stores in certain sections of the country, book stores, cigar stores, mail order houses, sport shops, and other miscellaneous types of retailers. It is estimated that between one-third and one-half of the total retail sales of the products of this Industry are made through variety stores, stores specializing in musical instruments and sheet music, and radio and music stores. Publishers sell in considerable amounts direct to ultimate consumers and to commercial and institutional users—teachers, schools, orchestras, glee clubs, etc. Most standard publishers also perform a wholesaling function.

VOLUME OF SALES

The Music Publishing Industry reported sales of \$9,500,000 in 1929. (There is probably an additional million in sales represented by firms who did not report.) During the period from 1929 to 1933, the aggregate annual sales in dollar volume decreased from 9.5 million to 5 million, representing a decrease of about 46 per cent. It is estimated that the total sales for 1934 will exceed 6 million, representing at least a 16 per cent increase in 1934 over 1933.

EMPLOYMENT

The Music Publishing Industry is essentially a "white collar" business with no machine workers, and comparatively few manual

workers of any sort. The employees of a music publisher are practically confined to executives, editorial staff, clerical workers of various types, salesmen, song pluggers, etc.

In March 1929 there were more than 1,139 wage earners employed in the Music Publishing Industry. In March 1933 and March 1934 there were 770 and 793 respectively. The total for 1933 was 33 per cent under that of 1929, and even though employment had increased about 7 per cent between March 1933 and March 1934, it was still 30 per cent less than March 1929. It is estimated that the average for 1934 will be about 850.

In 1929 only 21 per cent of these employees worked 40 hours or less. About 72 per cent worked between 40 and 45 hours, and 9 per cent between 45 and 50 hours. In other words more than 90 per cent worked 45 hours or less per week. In March 1933, 50 percent of all the reported employees worked 40 hours or less, and in 1934, 84 per cent worked 40 hours or less. For the last two yearly periods those working 45 hours or less, were 92 per cent and 96 per cent respectively, of the total. The average work week in March 1929 was less than 42 hours, and about 39 hours in March 1933.

WAGES

The figures submitted by the Industry show that for the corresponding week in March 1929, 1933, and 1934, those working below the codal minimum of \$15.00 per week, were 10.5, 18.5, and 7 percent respectively of the total. In other words although there was a material decrease in the weekly wages between 1929 and 1933 in the lower brackets, there was a decided increase between 1933 and 1934. Those employees who appear in the upper wage brackets did not experience decreases to the same degree as those in the lower brackets between 1929 and 1933. Their status, therefore, remained about the same after the President's Reemployment Agreement was adopted.

The average weekly wage in 1933 was \$23.92, or 20 per cent less than the 1929 average of \$30.40. The average weekly wage for 1934 of \$32.55 was not only an increase of about 25 per cent above the 1933 average, but was also about 6 per cent above the 1929 average. It is estimated that total wages decreased 40.4 per cent between 1929 and 1933, and increased about 30 percent between 1933 and 1934. For the year 1929 and 1933 the average per cent that the total wages were of the gross income, was about 20 per cent. During 1934 this per cent increased to about 25 per cent.

FINDINGS

The Deputy Administrator in his final report to us on the proposed Code of Fair Competition for the Music Publishing Industry, having found as herein set forth, and on the basis of all the proceedings on this matter:

We find that:

(a) The said Code is well designed to promote the policies and purposes of Title I of the National Industrial Recovery Act including the removal of obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof, and will provide for the general welfare by promoting the organization

of industry for the purpose of cooperative action among trade groups, by inducing and maintaining united action of labor and management under adequate governmental sanction and supervision, by eliminating unfair competitive practices, by promoting the fullest possible utilization of the present productive capacity of industries, by avoiding undue restriction of production (except as may be temporarily required), by increasing the consumption of industrial and agricultural products through increasing purchasing power, by reducing and relieving unemployment, by improving standards of labor, and by otherwise rehabilitating industry.

(b) Said Industry normally employs not more than 50,000 employees; and is not classified by us as a major Industry.

(c) The Code complies in all respects with the pertinent provisions of said Title of said Act, including without limitation, Subsection (a) of Section 3, Subsection (a) of Section 7 and Subsection (b) of Section 10 thereof; that the groups submitting this Code are truly representative of the aforesaid Industry and the divisions thereof, and that the applicant groups impose no inequitable restrictions on admission to membership therein.

(d) The Code is not designed to and will not permit monopolies or monopolistic practices.

(e) The Code is not designed to and will not eliminate or oppress small enterprises and will not operate to discriminate against them.

(f) Those engaged in other steps of the economic process have not been deprived of the right to be heard prior to approval of said Code.

We believe the Code to be fair to labor, to the consumer, and to the Industry, and for these reasons, therefore, we approve this Code.

For the National Industrial Recovery Board:

W. A. HARRIMAN,
Administrative Officer.

MARCH 4, 1935.

CODE OF FAIR COMPETITION FOR THE MUSIC PUBLISHING INDUSTRY

ARTICLE I—PURPOSES

To effect the policies of Title I of the National Industrial Recovery Act, this Code is established as a Code of Fair Competition for the Music Publishing Industry and its provisions shall be the standards of fair competition for such Industry and shall be binding upon every member thereof.

ARTICLE II—DEFINITIONS

1. The term "Music Publishing Industry" as used herein includes all persons, firms, partnerships, associations, corporations, or other entities engaged in the business of editing and preparing for publication and publishing musical works in printed or other form; and all such persons or entities also engaged in the business of importing musical works in printed form; provided, however, that the term "Music Publishing Industry" shall not be construed to include the renting or licensing activities of any person, firm, partnership, association, corporation, or other entity pertaining to public performance or mechanical reproduction rights.

2. The term "Standard Music Publishing Division", as used herein includes any person, firm, partnership, association, corporation, or other entity engaged in the business of editing and preparing for publication and publishing in printed or other form, musical works (whether copyrighted or not) of the character generally designated in the Industry as standard, or educational, or classical music; and all such persons or entities also engaged in the business of importing such musical works in printed form.

3. The term "Popular Music Publishing Division" as used herein includes any person, firm, partnership, association, corporation, or other entity engaged in the business of editing and preparing for publication and publishing in printed or other form, musical works (whether copyrighted or not) of the character generally designated in the Industry as "Popular Music"; and all such persons or entities also engaged in the business of importing such musical works in printed form.

4. The terms "member of the Industry" and "member of the Division" as used herein include, but without limitation, any individual, partnership, association, corporation, or other form of enterprise engaged in the Industry or in a Division thereof, either as an employer or on his or its own behalf.

5. The term "employee" as used herein includes any and all persons engaged in the Industry however compensated, except a member of the Industry.

6. The term "employer" as used herein includes any person or any entity by whom such employee is compensated or employed.

7. The term "Song Plugger" as used herein shall designate any individual solely employed by any member of the Industry whose principal business is to induce performers to include in their repertoire the songs published by his employer, or himself to perform such songs on occasion.

8. The term "Code Authority" as used herein is defined to mean the Administrative Agency of each Division.

9. The term "Music Publishers' Coordinating Committee" or "Committee" as used herein is defined to mean the Coordinating Agency of the Music Publishing Industry.

10. The terms "President", "Act", and "National Industrial Recovery Board" or "Board" as used herein mean respectively, the President of the United States, Title I of the National Industrial Recovery Act, and the National Industrial Recovery Board, or its successors in office.

ARTICLE III—HOURS

SECTION 1. *Maximum Hours*.—(a) No employee shall be permitted to work in excess of thirty-eight (38) hours in any one week, or seven (7) hours in any twenty-four (24) hour period, (beginning at midnight), except as herein otherwise provided.

(b) A tolerance period not to exceed forty (40) hours in any one year, shall be allowed for each employee indispensably necessary to the conduct of business during peak periods, during which time such employees may be permitted to work not exceeding forty-six (46) hours per week; provided, however, that for any hours or fraction of hours worked in excess of seven (7) hours in any twenty-four (24) hour period, or thirty-eight (38) in any one week, any such employee shall be paid at the overtime rate of time and one-half.

SECTION 2. *Exceptions as to hours*.—The provisions of this Article shall not apply to outside salesmen and such representatives known in the Industry as "song pluggers", to employees engaged in emergency repair, or emergency maintenance work, or to persons employed in a managerial or executive capacity who are paid regularly thirty-five dollars (\$35.00), or more per week; provided, however, that employees engaged in emergency maintenance and/or emergency repair work shall be paid at one and one-half (1½) times their normal hourly rate for all hours worked in excess of eight (8) hours per day or forty (40) hours per week.

SECTION 3. *Standard Week*.—No employee shall be permitted to work more than six (6) days in any seven (7) day period, except those employees mentioned in the foregoing Section 2.

SECTION 4. *Employment by Several Employers*.—No employer shall knowingly permit any employee to work for any time which, when added to the time spent at work for another employer or employers in this Industry, (or otherwise), exceeds the maximum permitted herein.

ARTICLE IV—WAGES

SECTION 1. *Minimum Wages*.—Except as hereinafter provided, no employee shall be paid in any pay period less than at a rate of fifteen dollars (\$15.00) per week.

SECTION 2. No employee engaged in part-time employment, shall be paid at a rate less than forty-two cents (42¢) per hour.

SECTION 3. Office boys, office girls, and messengers under 18 years of age may be employed at a rate not less than eighty (80) per cent of the minimum wage provided in Section 1. No more than twenty (20) per cent of the total number of employees of any member of the Industry shall be in this category at any one time; provided, however, that each member of the Industry shall be entitled to employ at least one such employee.

SECTION 4. The foregoing provisions are intended to establish only minimum and not maximum wage requirements.

SECTION 5. Female employees performing substantially the same work as male employees shall receive the same rate of pay as male employees.

SECTION 6. A person whose earning capacity is limited because of age, physical or mental handicap, or other infirmity, may be employed on light work at a wage below the minimum established by this Code, if the employer obtains from the State Authority designated by the United States Department of Labor, a certificate authorizing his employment at such wages and for such hours as shall be stated in the certificate. Each employer shall file monthly with the Code Authority a list of all such persons employed by him, showing the wages paid to, and the maximum hours of work for, such employee.

SECTION 7. This Article establishes minimum rates of pay which shall apply, irrespective of whether an employee is actually compensated on a time rate, piece-work, or other basis.

SECTION 8. No employer shall make any reduction in the full-time weekly earnings of any employee because his normal full-time weekly hours are reduced by the provisions of Article III of this Code. In no event shall hourly rates of pay be reduced because of the provisions of this Code, irrespective of whether compensation is actually paid on an hourly, weekly, or other basis, nor shall any wages be at less than the minimum rates herein provided.

Within thirty (30) days of the effective date hereof (unless such adjustment has been made theretofore), each employer shall adjust the schedule of wages of his employees in such an equitable manner as will conform to the provisions hereinabove set forth, and still preserve wage differentials reasonably proportionate to those in effect prior to the effective date of this Code, except that this paragraph shall not apply to employees earning thirty-five dollars (\$35.00) per week or more.

SECTION 9. No employer shall modify his or its established practices as to vacation periods, leaves of absence, and/or temporary absences from work with the purpose and effect of reducing such privileges heretofore granted employees.

SECTION 10. An employer shall make payment of all wages due, at least every two weeks, and salaries at least at the end of every month in lawful currency or by negotiable check therefor, payable on demand. If wages are paid by check, the employer shall provide reasonably accessible facilities for cashing checks at face value without expense to the employee. The employer shall also provide such

identification as is necessary to utilize these facilities. These wages shall be exempt from any charges, fines, or deductions; or payment of pensions, insurance or sick benefit other than those voluntarily paid by the wage earners or required by State law.

Employers or their agents shall not accept directly or indirectly rebates on such wages or salaries, or give anything of value or extend any favor to any person for the purpose of influencing rates of wages or working conditions of their employees.

ARTICLE V—GENERAL LABOR AND OTHER PROVISIONS

SECTION 1. *Child Labor*.—On and after the effective date of this Code, no person under sixteen (16) years of age shall be employed in the Industry. In any State any employer shall be deemed to have complied with this provision as to age if he shall have on file a certificate or permit, duly signed by the Authority in such State empowered to issue employment or age certificates or permits, showing that the employee is of the required age, except that persons under the age of sixteen (16) may be employed solely as performers, subject to the local laws, and regulations of the Code Authority.

SECTION 2. (a) *Provisions from the Act*.—Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

(b) No employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing, and

(c) Employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

SECTION 3. *Evasion Through Subterfuge*.—No employer shall reclassify employees or duties of occupation performed or engage in any other subterfuge so as to defeat the purposes or provisions of the Act or of this Code.

SECTION 4. No employee now employed at rates in excess of the minimum shall be discharged and reemployed at a lower rate for the purpose of evading the provisions of this Code.

SECTION 5. *Standards for Safety and Health*.—Every employer shall provide for the safety and health of employees during the hours and at the places of their employment. Standards for safety and health shall be submitted by the Code Authority to the National Industrial Recovery Board within sixty days after the effective date of the Code. After approval, such standards shall become the minimum standards of safety and health for all members of the Industry.

SECTION 6. *State laws*.—No provision in this Code shall supersede any State or Federal Law which imposes on employers more stringent requirements as to age of employees, wages, hours of work, or as to safety, health, sanitary, or general working conditions, or insurance, or fire protection, than are imposed by this Code.

SECTION 7. *Posting*—All employers shall post and keep posted copies of the full labor provisions of this Code in conspicuous places readily accessible to all employees. Every employer shall comply with all rules and regulations relative to the posting of provisions of Codes of Fair Competition which may from time to time be prescribed by the National Industrial Recovery Board.

SECTION 8. No employee shall be dismissed or demoted for making a complaint or giving evidence with respect to an alleged violation of any of the provisions of any Code.

ARTICLE VI—ORGANIZATION, POWERS AND DUTIES OF THE CODE AUTHORITIES

SECTION 1. *Organization*—(a) A Code Authority consisting of five (5) members is hereby established for the Standard Music Publishing Division. The members of the Code Authority for this Division shall be selected in the following manner, subject to the approval of the National Industrial Recovery Board.

Four (4) members of the Code Authority, not more than one (1) of whom shall be from any one member of the Division, including subsidiaries or affiliates thereof, shall be elected by the members of the Music Publishers' Association of the United States within sixty (60) days after the effective date of this Code.

One (1) member of the Code Authority shall be elected by the members of the Division who are not members of the Music Publishers' Association of the United States. The manner of electing such member shall be as follows:

The Code Committee of the Standard Music Publishers shall within thirty (30) days after the effective date of this Code, select a Nominating Committee of not less than three (3) non-Association members, which shall cause ballots to be prepared containing the names of three (3) nominees, not more than (1) of whom shall be from any one (1) member of the Division, including subsidiaries or affiliates thereof, and all of whom shall be non-Association members, with a blank space for one (1) additional nominee. Said nominees shall be fairly representative of large and small publishers and all other groups in the Division.

Upon the selection of the three (3) nominees, the Code Committee shall transmit within fifteen (15) days thereafter, a notice of election and ballot containing the names of the three (3) nominees and a blank space for one (1) additional nominee, to all ascertainable members of the Division who are not members of the Music Publishers' Association of the United States, at least fifteen (15) days before the election, to be held at a time and place designated by the Code Committee, not to be later than sixty (60) days from the effective date of this Code. Each such member, voting either by registered mail, by proxy, or in person, shall have one vote for the one member of the Code Authority to be elected by the non-Association members. The nominee receiving the largest number of the votes cast shall become the non-Association member of the Code Authority.

The term of office of the members of the Code Authority shall be one year or until their successors are duly elected and qualify.

Vacancies in the membership of the Code Authority for unexpired terms occasioned by death or resignation, shall be filled by selection

made by the remaining members of the Code Authority from the Industry group in which the vacancy occurred.

Subsequent elections shall be conducted in the same manner as above described, except that the Code Authority of the Standard Music Publishing Division shall act in place of the Code Committee, unless the National Industrial Recovery Board shall otherwise decide.

(b) A Code Authority consisting of five (5) members is hereby established for the Popular Music Publishing Division. The members of the Code Authority shall be selected within sixty (60) days after the effective date of this Code, in the following manner, subject to the approval of the National Industrial Recovery Board:

The Code Committee of the Popular Music Publishing Division shall cause ballots to be prepared containing the names of seven (7) nominees, not more than one of whom shall be from any one member of the Division, including subsidiaries or affiliates thereof, and not more than three (3) of whom may be members of the Music Publishers' Protective Association, with blank spaces for four (4) additional nominees. Said nominees shall be fairly representative of large and small members and of other groups in the Division.

The Code Committee shall transmit a notice of election and the ballot above provided for, to all ascertainable members of the Division at least fifteen (15) days before the election, to be held at a time and place designated by the Code Committee.

Each member of the Division, voting either by registered mail, by proxy, or in person, shall have one vote for each member of the Code Authority. The five (5) nominees receiving the largest number of the votes cast shall constitute the Code Authority.

The term of office of the Industry members of the Code Authority shall be one year or until their successors are duly elected and qualify.

Vacancies in the membership of the Code Authority for unexpired terms occasioned by death or resignation, shall be filled by selection made by the remaining members of the Code Authority from the Industry group in which the vacancy occurred.

Subsequent elections shall be conducted in the same manner above described, except that the Code Authority of the Popular Music Publishing Division shall act in place of the Code Committee, unless the National Industrial Recovery Board shall otherwise decide.

SECTION 2. In addition to the membership as above provided, there may be one member, without vote and without cost to the Industry, for each of the Code Authorities established in accordance with Section 1 of this Article, to be known as Administration Member, to be appointed by the National Industrial Recovery Board to serve for such term as the Board may specify.

SECTION 3. The Code Committee of the Standard Music Publishers and the Code Committee of the Popular Music Publishers, are hereby designated as temporary Code Authorities and authorized to perform the necessary administrative functions for their respective Divisions until the Code Authorities hereinabove provided for shall have been selected.

SECTION 4. Each trade or industrial association directly or indirectly participating in the selection or activities of the Code Au-

thority shall (1) impose no inequitable restrictions on membership, and (2) submit to the National Industrial Recovery Board true copies of its articles of association, by-laws, regulations, and any amendments when made thereto, together with such other information as to membership, organization, and activities as the National Industrial Recovery Board may deem necessary to effectuate the purposes of the Act.

SECTION 5. In order that both Code Authorities shall at all times be truly representative of the Industry and in other respects comply with the provisions of the Act, the National Industrial Recovery Board may prescribe such hearings as the Board may deem proper; and thereafter if the Board shall find that a Code Authority is not truly representative or does not in other respects comply with the provisions of the Act, may require an appropriate modification of the Code Authority.

SECTION 6. Nothing contained in this Code shall constitute the members of a Code Authority partners for any purpose. Nor shall any member of a Code Authority be liable in any manner to anyone for any act of any other member, officer, agent or employee, of the Code Authority. Nor shall any member of a Code Authority, exercising reasonable diligence in the conduct of his duties hereunder, be liable to anyone for any action or omission to act under this Code, except for his own willful malfeasance or nonfeasance.

SECTION 7. If the National Industrial Recovery Board shall at any time determine that any action of a Code Authority or any agency thereof may be unfair or unjust or contrary to the public interest, the National Industrial Recovery Board may require that such action be suspended to afford an opportunity for investigation of the merits of such action and further consideration by such Code Authority or agency, pending final action which shall not be effective unless the National Industrial Recovery Board approves or unless the Board shall fail to disapprove after thirty (30) days' notice to the Board of intention to proceed with such action in its original or modified form.

SECTION 8. *Powers and Duties.*—Subject to such rules and regulations as may be issued by the National Industrial Recovery Board, each Code Authority shall have the following powers and duties, in addition to those authorized by other provisions of this Code:

(a) To insure the execution of the provisions of this Code and to provide for the compliance of the Industry with the provisions of the Act.

(b) To adopt by-laws and rules and regulations for its procedure.

(c) To obtain from members of its Division through a confidential agency such information and reports as are required for the administration of the Code. In addition to information required to be submitted to the Code Authority, members of the Industry subject to this Code shall furnish such statistical information as the National Industrial Recovery Board may deem necessary for the purposes recited in Section 3 (a) of the Act to such Federal and State agencies as the Board may designate; provided that nothing in this Code shall relieve any member of the Industry of any existing obligations to furnish reports to any Governmental agency. No individual report shall be disclosed to any other member of the Industry or any other

party except to such other Governmental agencies as may be directed by the National Industrial Recovery Board, and to the Coordinating Committee upon its request pursuant to Article VII, Section 2 (b) of this Code.

(d) To use such trade associations and other agencies as it deems proper, subject to the disapproval of the National Industrial Recovery Board, for the carrying out of any of its activities provided for herein, provided that nothing herein shall relieve the Code Authority of its duties or responsibilities under this Code, and that such trade associations and agencies shall at all times be subject to and comply with the provisions hereof.

(e) 1. It being found necessary in order to support the administration of this Code, and to maintain the standards of fair competition established hereunder, and to effectuate the policy of the Act, each Code Authority is authorized:

(a) To incur such reasonable obligations as are necessary and proper for the foregoing purposes and to meet such obligations out of the funds which may be raised as hereinafter provided and which shall be held in trust for the purposes of the Code:

(b) To submit to the National Industrial Recovery Board for the Board's approval, subject to such notice and opportunity to be heard as the Board may deem necessary, (1) an itemized budget of its estimated expenses for the foregoing purposes, and (2) an equitable basis upon which the funds necessary to support such budget shall be contributed by members of the Industry within their respective divisions:

(c) After such budget and basis of contribution have been approved by the National Industrial Recovery Board, to determine and obtain equitable contributions as above set forth by all members of the Division, and to that end, if necessary, to institute legal proceeding therefor in its own name.

2. Each member of the Industry shall pay his or its equitable contribution to the expenses of the maintenance of the Code Authority for his Division, determined as hereinabove provided, and subject to rules and regulations pertaining thereto issued by the National Industrial Recovery Board. Only members of the Industry complying with the Code and contributing to the expenses of its administration as hereinabove provided, (unless duly exempted from making such contribution), shall be entitled to participate in the selection of members of the Code Authority, or to receive the benefits of any of its voluntary activities, or to make use of any emblem or insignia of the National Recovery Administration.

3. Neither Code Authority shall incur or pay any obligation substantially in excess of the amount thereof as estimated in its approved budget, and shall in no event exceed the total amount contained in the approved budget, except upon approval of the National Industrial Recovery Board; and no subsequent budget shall contain any deficiency item for expenditures in excess of prior budget estimates except those which the National Industrial Recovery Board shall have so approved.

(f) To recommend to the National Industrial Recovery Board any actions or measures deemed advisable, including further fair trade practice provisions to govern members of the Industry in their

relations with each other or with other industries; measures for industrial planning, and stabilization of employment; and including modifications of this Code which shall become effective as part hereof upon approval by the National Industrial Recovery Board after such notice and hearing as the Board may specify.

(g) To appoint a Trade Practice Committee which shall meet with the Trade Practice Committees appointed under such other codes as may be related to the Industry for the purpose of formulating fair trade practices to govern the relationship between employers under this Code, and under such other codes, to the end that such fair trade practices may be proposed to the National Industrial Recovery Board as amendments to this Code and such other codes.

(h) To provide appropriate facilities for arbitration, and subject to the approval of the National Industrial Recovery Board, to prescribe rules of procedure and rules to effect compliance with awards and determinations.

(i) Any interested parties shall have the right to appeal to the National Industrial Recovery Board under such rules and regulations as the Board may prescribe in respect to any rule, regulation, or other course of action issued or taken by the Code Authority or those to whom it may delegate any part of its powers, provided, however, that appeals on questions involving the provisions of the Code relating to hours, wages, and conditions of employment shall be made in the first instance to the Music Publishing Coordinating Committee, pursuant to such rules as said Committee, with the approval of the National Industrial Recovery Board, may prescribe.

ARTICLE VII—ORGANIZATION, POWERS AND DUTIES OF THE MUSIC PUBLISHING COORDINATING COMMITTEE.

SECTION 1. *Organization.*—(a) There is hereby established a National Coordinating Committee to be known as the Music Publishing Coordinating Committee.

(b) The Music Publishing Coordinating Committee shall consist of five (5) members to be selected as follows:

Each Code Authority shall within fifteen (15) days after its election as hereinbefore provided and annually thereafter, designate two (2) members of the Coordinating Committee, and alternate members, and in the absence of any member of the Committee his designated alternate shall be entitled to sit upon said Committee. The fifth member of the Committee shall be selected by the four members so chosen and an alternate for such fifth member shall be designated in the same manner. In the event of any resignation or termination of membership on the Committee of any member for any cause, the Code Authority originally designating such member shall designate his successor and alternate.

The members of the Committee for the Divisions and their alternates shall be subject to recall and replacement by the respective Code Authorities designating such members.

(c) Each member of the Committee shall have an equal vote upon all questions, motions, resolutions, or issues coming before said Committee.

(d) In addition to membership as above provided, there may be one member, without vote and without cost to the Industry, to be known as the Administration Member, appointed by the National Industrial Recovery Board to serve for such term as the Board may specify.

SECTION 2. *Powers and duties.*—Subject to such rules and regulations as may be issued by the National Industrial Recovery Board, the Music Publishers' Coordinating Committee shall have the following powers and duties:

(a) To decide questions involving the provisions of this Code relating to hours, wages, and conditions of employment upon appeal from either Code Authority.

(b) To obtain from the Code Authority such information and reports as are required for the administration of the powers and duties specified in paragraph (a) above. All such information and reports shall be kept confidential and shall not be disclosed except to a Governmental agency entitled thereto.

(c) To adopt by-laws and rules and regulations for its procedure.

(d) To adjust differences that may arise between Code Authorities, or between a member of a Division and a Code Authority to which such member is not subject.

(e) To represent any Code Authority and/or member of the Division before the National Recovery Administration, upon the request of a Code Authority.

(f) To authorize the payment of its reasonably necessary expenses of administration, which are to be prescribed in an annual budget not to exceed five hundred (\$500.00) dollars, which shall be submitted to the National Industrial Recovery Board for the Board's approval.

(g) To determine and collect its cost of administration, as provided herein, from the several Code Authorities, or in default thereof, from the respective members of the Divisions within their particular jurisdiction. Said costs of administration shall be assessed against the respective Code Authorities on the basis of the number of employees in their respective Divisions for the preceding calendar year.

(h) To bring to the attention of the National Industrial Recovery Board provisions of other codes which apparently conflict with the provisions of this Code, or which create unfair competitive conditions, and to make recommendations with respect thereto.

(i) To bring to the attention of the proper Code Authorities questions arising as to jurisdiction out of the definition set forth in Article II, and to recommend to such Code Authorities the action to be taken with respect thereto.

(j) To recommend to the National Industrial Recovery Board any amendments to, additions to, or eliminations from this Code necessary to correct any such questions of jurisdiction or discrepancies, and any such amendment, addition, or elimination shall become effective upon approval by the National Industrial Recovery Board after such notice and hearing as the Board may prescribe.

(k) To make recommendations to the National Industrial Recovery Board for the coordination of the administration of this Code with such other codes, if any, as may be related to or affect members of the Industry.

(l) To use such agencies as it deems proper for the carrying out of any of its activities provided for herein, subject to the disapproval of the National Industrial Recovery Board, provided that nothing herein shall relieve the Coordinating Committee of its duties or responsibilities under this Code and that such agencies shall at all times be subject to and comply with the provisions hereof.

(m) If the National Industrial Recovery Board at any time shall determine that any action of the Coordinating Committee or any agency thereof may be unfair or unjust or contrary to the public interest, the National Industrial Recovery Board may require that such action be suspended to afford an opportunity for investigation of the merits of such action and further consideration by the Coordinating Committee or agency pending final action which shall not be effected unless the National Industrial Recovery Board approves or unless the Board fails to disapprove after thirty (30) days' notice to the Board of intention to proceed with such action in its original or modified form.

(n) The powers, authority, and duties of the Music Publishers' Coordinating Committee relating to the administration and enforcement of this Code shall be strictly limited to those hereinbefore specifically granted or imposed.

(o) Any interested parties shall have the right to appeal to the National Industrial Recovery Board under such rules and regulations as the Board may prescribe in respect to any ruling, regulation, or other course of action issued or taken by the Coordinating Committee, or those to whom it may delegate any part of its power.

ARTICLE VIII—TRADE PRACTICE RULES

1. No member of the Industry shall pay or give, directly or indirectly, or in any other manner present to any performer, singer, musician, or orchestra leader, employed by or otherwise performing under contract for another, or to their agents or representatives, any sum of money, gift, rebate, royalty, favor, or any other thing or act of value, when the purpose is to induce such person to sing, play, perform, or to have sung, played, or performed, any works published, copyrighted, owned, and/or controlled by such member of the Industry.

2. No member of the Industry shall furnish without charge to any performer, singer, musician, orchestra leader, or other professional person, any copies other than regular professional copies of musical compositions published by such member or regularly published orchestrations of such musical compositions; it being intended that no member of the Industry shall furnish special arrangements of such professional copies or such orchestrations to any performer, singer, musician, orchestra leader, or other professional person, or to any one designated by, or representing, or associated with such persons, nor pay such persons for the making of any such arrangements. If, however, any member of the Industry permits such persons to make a special arrangement, then no member of the Industry shall extract parts or otherwise copy such special arrangement thus made, either in whole or in part, nor pay for such extractions or copying; but nothing contained herein shall be deemed to limit the transposition of any musical work from one key to another.

3. No member of the Industry shall: (a) purchase tickets, or pay for any advertisement in the program, for any benefit, performance, dance, or similar function, if the purchase is in effect a gift to, or a favor for, any performer; (b) pay for any advertisement in a catalogue of a mail-order house; (c) pay for any advertisement in a dealer's and/or distributor's catalogue or house-organ; (d) insert advertising in any trade paper, or other like periodical, if the advertisement is intended to "puff", flatter, compliment, or exploit any performer, singer, or orchestra leader.

4. No member of the Industry shall pay, present, or otherwise give any money, service, favor, or thing or act of value, to any owner, lessee, manager, employee, or other person in control of or interested in, any talking machine company, radio broadcasting company or station, electrical transcription company, motion picture company, or any place of public entertainment, for the privilege of performing, recording or reproducing, or having performed, recorded or reproduced, in such places, any works published, copyrighted, owned and/or controlled by such member of the Industry. Any member of the Industry may engage the facilities of a broadcasting studio or hire any theatre or other place of public entertainment for the purpose of having performed therein any of the musical compositions published, copyrighted, owned and/or controlled by such member, provided however, that a public announcement is made at such performance that the performance is at the expense of such member and for the purpose of exploiting the said musical compositions of such member.

5. No member of the Industry shall pay, or contract to pay any compensation, of any nature whatsoever, either as royalties or otherwise, to any performer, singer, actor, musician or orchestra leader, or any agent or representative thereof, either directly or indirectly, in connection with the publication in printed form of any song or other musical composition, unless such person shall be the bona fide composer, arranger, or writer of the words and/or music of such song or musical composition.

6. No member of the Industry shall give, permit to be given, or offer to give, anything of value for the purpose of influencing or rewarding the action of any employee, agent, or representative of another in relation to the business of the employer of such employee, the principal of such agent or the represented party, without the knowledge of such employer, principal or party. This provision shall not be construed to prohibit free and general distribution of articles commonly used for advertising except so far as such articles are actually used for commercial bribery as hereinabove defined.

7. No member of the Industry shall give away, directly or indirectly, or through any subsidiary or associated company, or through any person employed by such member, copies of music or other musical material except for the bona fide purposes of "sampling", either to the trade or to professional performers. All such copies of music and musical material given away under the provisions of this Article must be plainly marked in some appropriate manner to indicate that they are not for resale. Each member of the Industry shall keep in some appropriate manner an accurate account of the merchandise thus given away.

8. No member of the Industry shall publish advertising (whether printed, radio, display, or any other nature), which is misleading or inaccurate in any material particular, nor shall any member of the Industry in any way misrepresent any services, policies, values, credit terms, products, or the nature or form of the business conducted.

9. No member of the Industry shall publish or sell any book of songs, pamphlet, song sheet, or other compilation of songs, or the lyrics of songs, without the special written permission of the several copyright owners whose works appear in such compilation.

10. No member of the Industry shall pay, furnish, bestow, or in any other manner, directly or indirectly, present to any customer, teacher, or any person, firm, or corporation whatsoever, or to their agents, or any one representing them, any sum of money, gift, bonus, refund, rebate, royalty, service, or any other thing or act of value in excess of published rates and discounts, as a bribe, secret rebate, or other inducement to acquire any business or custom from such person, firm, or corporation.

11. No member of the Industry shall pay transportation charges in any form whatsoever upon any musical works sold, consigned, or otherwise designated for shipment to a purchaser or prospective purchaser, except in instances where musical works are sold for cash or where delivery is to be made within the recognized local delivery limits of the city within which such member is situated.

12. No member of the Industry shall wilfully induce or attempt to induce the breach of existing contracts between competitors and their customers or sources of supply, either foreign or domestic, or otherwise interfere with or obstruct the performance of any such contractual duties or services, with the purpose and effect of hampering, injuring, or embarrassing competitors in their business.

ARTICLE IX—OPEN PRICE FILING AND COSTS

SECTION 1. When the Code Authority for either Division by a majority vote shall deem it desirable, each member of the Division concerned shall file with a confidential and disinterested agent of the Code Authority, or, if none, then with such an agent designated by the National Industrial Recovery Board, identified lists of all of his prices, discounts, rebates, allowances, and all other terms or conditions of sale, hereinafter in this article referred to as "price terms", which lists shall completely and accurately conform to and represent the individual pricing practices of said member. Such lists shall contain the price terms for all such standard products of the Industry as are sold or offered for sale by said member, and for such non-standard products of said member as shall be designated by the Code Authority. Said price terms shall in the first instance be filed within ten (10) days after the Code Authority for such Division shall have voted to establish this price filing system. Price terms and revised price terms shall become effective immediately upon receipt thereof by said agent. Immediately upon receipt thereof, said agent shall by telegraph or other equally prompt means notify said member of the time of such receipt. Such lists and revisions, together with the effective time thereof, shall upon receipt be

immediately and simultaneously distributed to all members of the Division and to all their customers who have applied therefor, and have offered to defray the cost actually incurred by the Code Authority in the preparation and distribution thereof, and be available for inspection by any of their customers at the office of such agent. Said lists or revisions or any part thereof shall not be made available to any person until released to all members of the Division and their customers, as aforesaid; provided, that prices filed in the first instance shall not be released until the expiration of the aforesaid ten (10) day period. The Code Authority shall maintain a permanent file of all price terms filed as herein provided, and shall not destroy any part of such records except upon written consent of the National Industrial Recovery Board. Upon request the Code Authority shall furnish to the National Industrial Recovery Board or any duly designated agent of the Board, copies of any such lists or revisions of price terms.

SECTION 2. When any member of the Division has filed any revisions, such member shall not file a higher price within forty-eight (48) hours.

SECTION 3. No member of the Division shall sell or offer to sell any products of the Division, for which price terms have been filed pursuant to the provisions of this Article, except in accordance with such price terms.

SECTION 4. No member of the Division shall enter into any agreement, understanding, combination or conspiracy to fix or maintain price terms, nor cause or attempt to cause any member of the Industry to change his price terms by the use of intimidation, coercion, or any other influence inconsistent with the maintenance of the free and open market which it is the purpose of this Article to create.

SECTION 5. The standards of fair competition for the entire Industry with reference to pricing practices are declared to be as follows:

(a) Wilfully destructive price cutting is an unfair method of competition and is forbidden. Any member of either Division of the Industry or of any other Industry or the customers of either may at any time complain to the Code Authority of the Division that any filed price constitutes unfair competition as destructive price cutting, imperiling small enterprise or tending toward monopoly or the impairment of code wages and working conditions. The Code Authority of the Division concerned shall within five (5) days afford an opportunity to the member filing the price to answer such complaint and shall within fourteen (14) days make a ruling or adjustment thereon. If such ruling is not concurred in by either party to the complaint, all papers shall be referred to the Research and Planning Division of NRA which shall render a report and recommendation thereon to the National Industrial Recovery Board.

(b) When no declared emergency exists as to any given product, there is to be no fixed minimum basis for prices. It is intended that sound cost estimating methods should be used and that consideration should be given to costs in the determination of pricing policies.

SECTION 6. *Cost Finding*.—Each Code Authority shall cause to be formulated methods of cost finding and accounting capable of use by all members of their respective Divisions, and shall submit such methods to the National Industrial Recovery Board for review.

If approved by the National Industrial Recovery Board, full information concerning such methods shall be made available to all members of the Division concerned. Thereafter, each member of the Division shall utilize such methods to the extent found practicable. Nothing herein contained shall be construed to permit either Code Authority, any agent thereof, or any member of the Music Publishing Industry to suggest uniform additions, percentages or differentials or other uniform items of cost which are designed to bring about arbitrary uniformity of costs or prices.

ARTICLE X—EXPORT TRADE

SECTION 1. No provision of this Code relating to prices or terms of selling, shipping, or marketing, shall apply to export trade or sales or shipments for export trade. "Export Trade" shall be as defined in the Export Trade Act adopted April 10, 1918.

ARTICLE XI—MODIFICATION

SECTION 1. This Code and all the provisions thereof are expressly made subject to the right of the President, in accordance with the provisions of Sub-Section (b) of Section 10 of the Act, from time to time to cancel or modify any order, approval, license, rule, or regulation issued under Title I of said Act.

SECTION 2. Such of the provisions of this Code as are not required to be included herein by the Act may, with the approval of the National Industrial Recovery Board, be modified or eliminated in such manner as may be indicated by the needs of the public, by changes in circumstances, or by experience.

ARTICLE XII—MONOPOLIES, ETC.

No provision of this Code shall be so applied as to permit monopolies or monopolistic practices, or to eliminate, oppress, or discriminate against small enterprises.

ARTICLE XIII—PRICE INCREASES

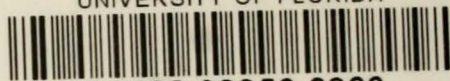
Whereas the policy of the Act to increase real purchasing power will be made more difficult of consummation if prices of goods and services increase as rapidly as wages, it is recognized that price increases, except such as may be required to meet individual cost, should be delayed, and when made such increases should, so far as possible, be limited to actual additional increases in the seller's costs.

ARTICLE XIV—EFFECTIVE DATE

This Code shall become effective on the second Monday after its approval by the National Industrial Recovery Board.

Approved Code No. 552.

Registry No. 509-02.



If approved by the National Industrial Recovery Board, information concerning such methods shall be made available to all members of the Division concerned. Thereafter, each member of the Division shall utilize such methods to the extent found practicable. Nothing herein contained shall be construed to permit either Code Authority, any agent thereof, or any member of the Music Publishing Industry to engage in any practice, advantages or differentials or other unfair methods of competition designed to bring about unfair trade or monopoly.

Article X—Export Trade

Section 1. No provision of this Code shall be construed to prohibit or restrict the sale, distribution, or export of goods or services, or the sale or shipment of goods or services for export trade. Export Trade shall be as defined in the Export Trade Act adopted April 30, 1938.

Article XI—Modification

Section 1. This Code and all the orders and the rules and regulations issued under the Code are subject to the right of the President, in accordance with the provisions of Sub-Section (b) of Section 10 of the Act, from time to time to cancel or modify any order, approval, license, rule or regulation issued under Title I of said Act.

Section 2. Such of the provisions of this Code as are not required to be included herein by the Act may, with the approval of the National Industrial Recovery Board, be modified or amended in such manner as may be indicated by the needs of the industry by changes in circumstances, or by experience.

Article XII—Monopolies, Etc.

No provision of this Code shall be so applied as to permit monopolistic or monopolistic practices, or to discriminate against small enterprises.

Article XIII—Price Increases

Whereas the policy of the Act to remove and prevent price controls will be made more difficult if prices of goods and services increase as rapidly as expected, it is recognized that price increases, except such as may be required to meet individual cost, should be delayed and when made such increases should, so far as possible, be limited to actual additional increases in the seller's costs.

Article XIV—Effective Date

This Code shall become effective on the second Monday after its approval by the National Industrial Recovery Board.

Approved Code No. 521

Recovery No. 300-42