

listener or indirect payment as by a hat checking charge when no admission fee is required, or a general commercial advantage as by advertising one's name in the expectation and hope of making profits through the sale of one's products, be they radio or other goods.

In *Pastime Amusement Co. v. M. Witmark & Sons* (C. C. A. 4), decided November 13, 1924, affirming 289 Fed. 470; *Jerome H. Remick & Co. v. General Electric Co.*, S. D. N. Y., decided September 30, 1924; *M. Witmark & Sons v. L. Bamberger & Co.*, 291 Fed. 776, the courts have reached this same result. Cf. *Kalem v. Harper*, 222 U. S. 55.

There is nothing in *White-Smith v. Appollo*, 209 U. S. 1, that effects our conclusion. There the question was whether a perforated music roll was a publishing or copying of music that had been copyrighted. The court expressly stated that the question whether the manufacturers of such perforated music rolls, when sold for use in public performance, might be held as contributory infringers, was not involved. The question as to what constituted a public performance did not arise.

Reversed and remanded.

(Copy)

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS
56 WEST-45TH STREET, NEW YORK CITY

APRIL 23rd, 1925.

V. CLOUTIER, Esq.,
Clerk, Committee on Copyright,
House of Commons,
Ottawa, Canada.

Dear Mr. CLOUTIER,—I am taking the liberty of sending you herewith an English translation of a decision rendered in Germany, upholding the right of a copyright owner of music to restrict broadcasting stations from giving unauthorized performances.

This decision may be useful to your Committee as it contradicts the statement made by a witness, to the effect that broadcasting was permitted in all other countries and that Canada should enact similar legislation.

I trust that you will understand that my purpose in sending this opinion is to furnish your Committee with information regarding the facts as they exist, and if you wish additional copies for other members of the Committee, I will be very happy to send them to you.

Very truly yours,

J. C. ROSENTHAL,
General Manager.

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Translation.

LANDGERICHT IN HAMBURG

Civil Division 3

PUBLISHED DECEMBER 30, 1924,
CLERK OF COURT, IHLOFF,
CHIEF JUDICIAL SECRETARY.

In the matter of

Director Hugo Bryk, as general representative of (a) the Society of Authors, Composers and Music Publishers in Vienna, a registered limited liability association; (b) of the Society for the Exploita-