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RADIO FOR DINERS BACKED BY COURT

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Justices Bar Copyright Fee for Broadcast Composers

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WASHINGTON, June 17—A restaurant owner can entertain his customers with radio music without paying any license fees to the composers of copyrighted songs that are broadcast, the Supreme Court ruled today.

Dividing 7 to 2, the Justices held that the operator of a fast-food chicken shop in Pittsburgh can tune in programs that include the playing of "Me and My Shadow" and "The More I See You" without paying $5 a month for a license from the American Society of Composers, Authors and Publishers.

The lawsuit was brought by the copyright holders of the two long-popular ballads against the owner and operator of George Aiken's Chicken, a restaurant that provides carry-out service, and seats 40 at its counter and booths.

The society had contended that a ruling such as that made today would cost it about $250,000 a year that it receives in current license fees. The ruling will put considerable pressure ASCAP to reduce the $2-million in fees now paid by Muzak and other companies that pipe background music into stores, offices and restaurants.

Effect on 1931 Ruling

The majority said that the decision did not overrule a 1931 Supreme Court holding that a hotel owner was subject to license fees if he piped radio music into his guests' rooms.

Attempting to apply copyright law by maintaining that every receipt of a broadcast song constituted a "performance" would be "wholly unenforceable and highly inequitable," Associate Justice Potter Stewart wrote for the majority in the case (No. 74-452, Twentieth Century Music v. Aiken.)

"One has only to consider," he said, "the countless business establishments in this country with radio or television sets on their premises—bars and beauty shops, cafeterias and car washes, dentists' offices and drive-ins—to realize the total futility of any evenhanded effort on the part of copyright holders to license even a substantial percentage of them."

The music ruling conformed to Supreme Court decisions of 1968 and 1974 involving cable television, which held that cable stations rebroadcasting a program were not "performing" and thus were not subject to any license fees.

In a dissent in which Associate Justice William O. Douglas joined, Chief Justice Warren E. Burger suggested that it was up to Congress to bring the copyright laws up to date to cover the broadcast media situation.

Mr. Burger protested that in the current case the high court "must attempt to apply a statute created for another era to a situation in which Congress has never affirmatively manifested its view concerning the competing policy considerations involved."

The Federal District Court had found for the copyright holders, awarding them a statutory penalty of $250 for the unlicensed performance. But the United States Court of Appeals for the Third Circuit reversed, largely on the basis of the Supreme Court cable television rulings that intercepting a broadcast did not constitute a performance.

THREAT TO NIXON

In another decision, the Justices unanimously reversed the conviction for threatening the President of a Louisiana man who was arrested in 1972 for announcing in a motel coffee shop that he was going to Washington to beat up President Nixon.

The high court noted that the judge in the case had informed the jury privately that he would accept its proposed verdict of guilty with a recommendation for mercy, without informing the defendant or his lawyer or giving them an opportunity to be heard.

In this case (No. 73-6336, Rogers v. United States) Chief Justice Burger said that these actions were "so fraught with potential prejudice" as to require reversing the conviction, even though the defendant, George H. Rogers, had never raised the issue on appeal.