

While Solomon could not recall refusing to distribute Caedmon records (Tr. 3869), Marianne Mantell, president of that company, could (Tr. 6911).

Solomon had a master licensing agreement with Vanguard, but never pressed any records under it (Solomon 3867).

He did not claim at the trial that he wanted or was unable to obtain records of Cameo-Parkway.

He did not claim at the trial that he sought to deal with Verve before, during or after the cancellation of its agreement with Columbia.

Kapp had refused to deal with Solomon early in 1959 (Solomon 3845-47; Kapp 5774-75)—more than a year-and-a-half before its contract with Columbia.

Warner Bros. refused to enter into any agreement with Solomon early in 1959 (Solomon 3855), long before its first contract with Columbia, but was willing to sell records to his club on an individual basis (Friedman 6107; Conkling 6199; Solomon 3792). But, over the next few years, he ordered only a few records, some of which he improperly returned, and became a credit problem (Friedman 6107-08; Solomon 3945-47).

Solomon's hearsay testimony (Tr. 3796) that Warner Bros. stopped selling to him early in 1961 because of "an exclusive arrangement" with Columbia was flatly denied by Joel Friedman, merchandising director of that company, and James Conkling, former president of Warners Records and now head of the Mormon Church's short-wave radio network (Friedman 6107-08; Conkling 6199-200). Solomon's claim, moreover, is dubious on its face since, at the date of the alleged cutoff, Warner had granted Columbia rights with respect to only three records.

While Solomon claimed that he did not even bother to offer UA a contract in 1959 because they "weren't a factor in the record business at that time" (Tr. 3848), Mael of UA recalled that a contract had been offered, and rejected (Tr. 7458-59). In any event, UA was willing to sell individual records to Solomon. But, over the next two years, he ordered small quantities of only two records (Mael 7459-60; Solomon 3848). And UA finally had to sue the Diners' Record Club in order to collect its bill (Mael 7460)—a lawsuit Solomon had difficulty recalling on cross-examination (Tr. 3850-51).

Although Government counsel did not question Solomon on direct examination about his ability to obtain Mercury and Liberty merchandise, it was shown on cross-examination that, after Liberty's contract with Columbia, the Diners' Record Club had in

fact offered more Liberty merchandise than ever before (RX 48; Solomon 3829-33).

When confronted with that fact, Solomon explained that some Liberty records "might have filtered" into his record club because he obtained a supply of such records in his role as a fulfillment agent for "various" Liberty mail-order and premium programs (Solomon 3829-33). But the fact, later developed through Bohanan of Liberty, was that Solomon had acted as a fulfillment agent for only one Liberty program involving a single Liberty LP (Bohanan 6385)—an LP not used in the Diners' Record Club (RX 48). It finally was disclosed that Solomon had an interest in a distributorship that purchased records from Liberty (Solomon 3841-42); that the entire Liberty catalog was available to that distributorship (Bohanan 6383; also see Bennett 6529); and that the distributorship did not pay higher prices as Solomon belatedly claimed (Bohanan 6383-84).

Cross-examination also disclosed that, after Mercury's agreement with Columbia, Solomon offered more Mercury records than ever before (RX 47; Solomon 3819). Solomon reluctantly conceded that in November 1961—about 1½ years after Mercury's licensing arrangement with Columbia—he purchased at one clip more than 100,000 Mercury LPs covering 27 different titles at approximately 50¢ per record—a rather "favorable" price and quite a "substantial" quantity for a club with only about 10,000 members (Solomon 3816-19, 3942-43).

Solomon then "explained" that only 4 of the 27 titles were current (including Mercury's "1812 Overture" and records by Brook Benton, the Piatters and the late Dinah Washington) and that the other 23 were cutouts (Solomon 3816-27, 3952). But he did not advertise the 23 records as cutouts.

Following Solomon's testimony, a Mercury employee checked the company's inventory control cards as to when records were cutout. Based on her testimony, the fact is that 23 of the records were current and only 4 were cutouts at the date of Solomon's purchase (Broun 10,491-93; RX 47). Solomon (a CPA) thus had simply reversed the numbers (Solomon 3871). Indeed, the Mercury order form in use almost a year later still listed 20 of those 27 records as current (CX 398; also see Broun 10,498). It is difficult to believe Solomon bought 100,000 LPs without knowing what he was buying. (See RPF 387 and footnotes.)

(For more detail concerning the Diners' Record Club, compare CPFs 63-64, RPFs 367-87; respondents Exceptions, pages 41-49; Government counsel's Reply, pages 71-77.)

In a field where there are many clubs and other direct mail-order sellers of phonograph records, the fact that the Government must rely solely on the Diners' Record Club as illustrative of a club that allegedly suffered competitive injury underlines the weakness of its proof in that regard.

Comparison of Introductory Offers—Any study of the state of competition among record clubs must take pricing into account. Here the position of the Government shows some ambivalence.

Contrary to the position they take elsewhere in their proposed findings (CPF 413), Government counsel, in their zeal to prove a separate club market, assert (CPF 440) that Columbia "responds in pricing and in other ways to other record clubs—which are the *Club's major competitors*," and that in their advertisements, respondents "compare *their* offers to offers of *other* clubs." That proposed finding, taken together with the evidence, is hardly consistent with the Government's contention of an oligopolistic, non-competitive industry.

A comparison of the various club offers is illuminating.

The Government's proposed finding (CPF 440) that the RCA Victor Record Club "sells its records on the basis of 5 for \$1.87 with the commitment to purchase an additional 5 at \$3.98 and \$4.98" is an oversimplification that does violence to the record. That particular offer (RX 154) was in effect during part of 1961 and the first few months of 1962. It resulted in a total price of \$21.77 for 10 \$3.98 LPs over the first year—or an average price of about \$2.18 per LP (exclusive of mailing and handling charges, the amount of which is not reflected in the record).

The record indicates that throughout most of 1962, the RCA Record Club used a variety of different offers, generally resulting in lower average prices. It appears that the most common offer was one record for 10¢ to keep, plus four records on a trial basis that could be purchased for \$1 upon a commitment to buy five additional records at list (RXs 15, 157, 162, 176, 178, 592). That offer resulted in a total price of \$21 for 10 \$3.98 LPs over the first year of membership—or an average price of \$2.10 per LP, exclusive of mailing and handling charges. (See also RXs 613 and 631 for closely similar variations; *cf.* RX 630.)

Under another 1962 offer, the RCA Club advertised one record free with no obligation to purchase any additional records at all, and an additional four free records if the consumer accepted a trial membership and purchased four additional records (RXs 606, 612). If the full offer were accepted, the result was a total purchase

price of \$15.92 for nine LPs over the first year, or an average price of \$1.77, again excluding mailing and handling charges.

Special offers extended by the RCA Club in 1962 to members of the Reader's Digest Family (RXs 189, 632) resulted in average prices of \$2 and \$1.78, respectively, for \$3.98 list LPs.

Thus, the RCA Club had prices lower than indicated by CPF 440—and lower than average prices of the Columbia Club.

CPF 440 takes a curious twist in its proposed finding that Capitol Record Club prices are "identical" with those of the RCA Club "except for the introductory offer."

It is the introductory offer that establishes the average price per record for the first year of membership. And the Government has stressed the importance of the introductory offer as a competitive weapon (CPFs 325-27). Thus, Government counsel include the introductory offer in their computation of the average prices of the Columbia Record Club, and no reason appears for ignoring the same factor in referring to the prices of the Capitol Record Club.

In considering the competitive picture, and also in connection with allegations made elsewhere by the Government, it is worth noting that the Capitol Record Club advertisement (RX 179) cited in CPF 440 contains an introductory offer markedly different from that of either the RCA or the Columbia Club.

The Capitol ad offers up to seven records for 97¢, with a commitment to purchase five additional records. This results in a total purchase price of \$20.87 for 12 records over the first year, or an average price of \$1.74 per record, exclusive of mailing and handling charges. This is lower than Columbia's average price.

Other Mail-Order Sellers—The discussion of club competition would be incomplete without some reference to the growth of numerous other companies selling a great variety of recorded material through the mails on a nonclub basis, including various outside labels and outside artists. The evidence indicates the great success enjoyed by many new entrants into that type of merchandising.

Records are sold to consumers through the mail, not only by record clubs, but by a whole host of record dealers, department stores, mail-order houses, book clubs, magazines, record companies and others. As shown in detail by respondents (RPFs 246-79), all those mail-order sellers compete with record clubs and other channels of distribution.

Like clubs, they generally stress the convenience of armchair buying, assistance in record collecting and convenient credit installment arrangements. Like Clubs, they seek to cater to a broad

consuming public by media advertising and direct-mail solicitation. They offer consumers the same records that are available over-the-counter and through clubs or, sometimes, specially prepared records similar to those distributed at retail and by clubs. Those mail-order vendors sometimes offer consumers individual records. In other cases they offer "packages" containing a collection of records programmed with a repertoire in a particular musical category.

The evidence establishes that many record dealers, department stores and other retail outlets sell records both over-the-counter and through the mail (*e.g.*, Adler 4919; Stolon 1260; Maggid 859-60; Leonard 5960-61; Prince 5502-07; Brigati 890-92; Bialek 1377; Collins 3003-04; RXs 6, 9-14, 144, 264, 268, 285, 287, 546).

Government witness Sam Goody initiated large-scale mail-order selling of records at discount prices in about 1950. He was soon joined by certain other retailers, including The Record Hunter, which, along with Goody, was circulating low-price ads in Chicago as early as 1953 (Gallagher 8856; Stolon 1290-91; Inden 5544; also see Ackerman 4222, 4240). In August 1955, before the Columbia Record Club began operations, *Billboard* noted "the competition of large mail-order discount houses at local levels thruout the country" (RX 113a).

Goody, with mail-order operations all over the world, runs daily and weekly advertisements soliciting mail-order sales of individual records and packages. Goody derives between \$500,000 and \$750,000, or 10% to 15% of his sales, from mail-order sales (Stolon 1255-61; RXs 6, 9-14, 144, 264, 285, 287, 546). Others with fairly substantial mail-order business include The Record Hunter (Maggid 859-60; also see RX 268); the Harvard Co-op, which circularizes as many as 150,000 alumni located all over the nation (Leonard 5960-61, 5974-75); the Yale Co-op, distributing holiday catalogs containing as many as 200 selections at \$1.98 per LP (RX 266); and Doubleday, selling at list price and featuring mail-order record buying in 25,000 monthly mailings and 100,000 special mailings (Prince 5502-07).

Unlike record clubs, dealers generally do not obligate their mail-order customers to buy a definite quantity of records (*e.g.*, Brigati 892). But, like clubs, they rely heavily on media advertising and direct-mail solicitations; they use this method of promotion to create consumer interest in records (Leonard 5973-74) and to satisfy the preferences of some consumers for the convenience of mail-order buying (Collins 3004; Bialek 1377; Brigati 890); they generally charge for mailing and handling (*e.g.*, RXs 266-67, 264, 285; Brigati 891); often sell on credit (*e.g.*, RXs 266-67); and

sometimes even have organized fulfillment operations (Stolon 1260-61).

In addition, mail-order sales of records are made by large general catalog companies like Montgomery Ward, Spiegel, Aldens and Sears, Roebuck (Adler 4919; Hitesman 10157; Pierce 5747-49; RX 54c). Specialty mail-order houses, such as Spencer Gifts (with a mailing list of over 1,500,000), and others also sell through the mails the same records that are available at retail and through record clubs (*e.g.*, RXs 54b,c, 66, 67; Solomon 3830, 3902, 3915-16).

Hi Fi, a magazine in which the Columbia and RCA record clubs advertise (CX 47a; RX 386b), reviews new record releases and selects top records of the month, which it then sells at list price to readers "who have told us of difficulties experienced in securing new releases" (RX 693, pages 55-98).

Other companies advertise mail-order sales of individual records, either at list price or discount, sometimes with bonus records for every two or three records purchased (*e.g.*, RXs 256-57).

Records are also sold through the mail as premiums in conjunction with the sales of other consumer goods (*e.g.*, RXs 259-61).

Some record manufacturers sell by direct mail. Witness Pierce of Starday, for example, has been successful in selling both 45 r.p.m. and 33 $\frac{1}{3}$ r.p.m. records, individually and in packages, by radio mail-order since 1950 (Pierce 5747-50).

The catalogs of record companies generally contain, in addition to individual records, "packages" containing a collection of anywhere from two to a half-dozen or more records featuring repertoire in a particular musical category (Kavan 10,623-28; *e.g.*, CX 307a, pages 48-49, 53, supplement page 8; CX 247, pages 9, 12, 13, 30, 34-36, 43; RX 297, pages 47, 49, 140, 142-43). Such packages are available at retail and often through record clubs (Kavan 10, 623-28; *e.g.*, RXs 121d, 150, 151; CXs 97, 99, 106, 115). Similar—and, in some cases, identical—packages are offered by direct-mail sellers on a non-club basis. RCA and Reader's Digest constitute the largest factor in that type of mail-order selling.

RCA presses packages of records for Reader's Digest and engages in joint marketing of those packages through the mail. Although Reader's Digest-RCA began selling such packages less than four years ago (Hitesman 10,111), they have achieved a substantial sales volume (RX 700 *in camera*) and are now the largest direct package mail-order sellers of records in the industry (Hitesman 10,145; also see RX 450). By 1962, the Reader's Digest-RCA non-club mail-order package sales accounted for almost 20%

of all records sold via mail, including the volume generated by both club and non-club sellers (RX 450).

In achieving this success in such a brief period of time, Reader's Digest-RCA had the benefit not only of the resources of RCA, but of subscriber lists of the Reader's Digest magazine, which has a circulation of almost 14 million, and a mailing list of the Reader's Digest Condensed Book Club, the largest book club in the world with about 3 million members (Adler 5008).

Like record clubs, Reader's Digest-RCA promotes direct package sales by media advertising and direct-mail solicitation (*e.g.*, RXs 386, 514-26, 535, 554-58; Hitesman 10,128-36). The package operation and the RCA Victor Record Club, which the Reader's Digest also operates, both advertise in some of the same consumer media and apparently take turns in the gate-fold position in the Reader's Digest magazine, from which the Columbia Club complains it was evicted (Hitesman 10,130-36; RX 535). They also exchange mailing lists (RXs 386, 647; Hitesman 10,079-80, 10,128-29, 10,156; also see RX 518). Thus, Reader's Digest-RCA solicits members and ex-members of the RCA Victor Record Club for package sales; and the RCA Victor Record Club, in turn, solicits present and former purchasers of Reader's Digest-RCA packages for club membership.

The two organizations rent almost identical mailing lists from outside sources for their mail-order selling activities (RXs 386, 647; Hitesman 10,079). The Columbia Record Club rents some of the same mailing lists (CX 48) and advertises in the magazines whose subscribers are included in such lists (CX 47).

From the inception of its package operation in 1959 until the end of 1962, Reader's Digest-RCA had "major mailings" of seven different packages (RX 386a). In addition, the record shows that during, and since that time, Reader's Digest-RCA has marketed at least two other direct-mail packages (Kavan 10,610-11; RXs 514, 516-20, 522-24, 535, 554-58).

Each of those nine packages—with such titles as "Music of the World's Great Composers," "Popular Music That Will Live Forever," "The Nine Symphonies of Beethoven," and "Music of Faith and Inspiration"—contains a collection of material in a particular musical category (RXs 514, 516-20, 522-24, 535, 554-58).

Three of the packages contain 3 LPs, and the other six packages contain anywhere from 7 to 12 LPs. The prices for the packages (exclusive of mailing and handling) run from about \$7.00 for the smallest packages up to about \$19.00 for the largest packages. On a per LP basis, the prices (exclusive of mailing and handling

charges, the amount of which is not shown by the record) range from \$1.33 up to \$2.40 with five of the nine packages selling for \$2 or less per record (RXs 514, 516-20, 522-24, 535, 554-58).

Most of the advertisements and mailing indicate that a consumer "might expect" to pay higher prices for each record, generally with references to prices of \$3.98 and \$4.98. Those references to higher prices are intended to refer to the suggested retail list prices of RCA records available over-the-counter and through the RCA Victor Record Club (RXs 514, 516-20, 522-24, 535, 554-58; Hitesman 10,151-55). The public is advised, for example, that the "huge" audience for good music and "the great resources of RCA" allowed "substantial economies" so that the records can be offered "at *far* below normal cost" (RX 514).

Reader's Digest-RCA sells the packages under a system of dual pricing. Reader's Digest generally charges those customers whom it refers to as members of the "Reader's Digest Family" about \$1 less per package than outsiders (RX 386b-c). The "Family" includes, not only about 14 million subscribers to the Reader's Digest Magazine and about 3 million members of the Reader's Digest Condensed Book Club, and cancelled members thereof, but also active and cancelled members of the RCA Victor Record Club (RX 386; Hitesman 10,079; Adler 5008).

Like a record club, Reader's Digest-RCA sells most package records on a credit basis—with monthly installments averaging about \$3.50 to \$5.00 (Hitesman 10,141), the range of the periodic payments made by a record club member when he orders through a club. Reader's Digest-RCA, like record clubs, sometimes offers "free" bonus records (Hitesman 10,142; Kavan 10,617; *e.g.*, RXs 557-58, 517, 535).

The records in the packages are equal in quality to regular \$3.98 and \$4.98 RCA records (Hitesman 10,146; RXs 516, 518, 523).

While the records are all pressed by RCA (RX 698), the repertoire is planned and the packages are created jointly by RCA and the Reader's Digest—a fact stressed in all the advertisements and direct-mail solicitations (RXs 514, 516-20, 522-24, 535, 554-58).

The packages feature prominent recording artists (see RPF 265). Many of the artists on the packages have records in the RCA catalog available at retail and/or through the RCA Victor Record Club. Other artists featured on the packages record for London, Capitol, Angel and other outside labels (see RPF 266).

The musical repertoire contained in the packages is virtually identical to works available on RCA records distributed at retail

and through the RCA Victor Record Club (Adler 4916-17, 5085-86; Kavan 10,610-17; RXs 518, 519).

Stanley Kavan, Director of Development for Columbia who has been testing mail-order packages (Kavan 10,606-10), compared the records appearing in seven of the Reader's Digest packages with records offered by the RCA Victor Record Club in its monthly magazines for January, February and March 1963. Of the 500 titles contained in those packages, over 200 appeared in those magazines during that period of only three months.

The similarity between the performances which appear on records in the Reader's Digest-RCA packages and on records distributed by the RCA Record Club was dramatically illustrated by a courtroom demonstration.

Thomas Shepard, a producer in the Masterworks Department of Columbia Records, examined a discography of the selections appearing in the Reader's Digest-RCA packages and in RCA Club albums and chose eight works which he believed represented examples of the most popular repertoire, including, for example, the "1812 Overture," "The Nutcracker Suite," "The Third Man Theme" and "Capriccio Italien." He then taped excerpts of the same passages in those compositions from records in the packages and from records distributed by the RCA Club and prepared a demonstration record (RX 697), about 20 minutes in length, that juxtaposed the two selections of each composition (Shepard 10,653-58). The record was played in the hearing room, and Mr. Shepard appeared as a witness (Tr. 10,643-75). The performances of the excerpts taken from the two different sources sounded strikingly similar.

Mr. Shepard also spliced together, and included in the demonstration record (RX 697), excerpts taken from a Rene Leibowitz performance of Beethoven's Fifth Symphony, which had been offered in a Reader's Digest-RCA package (RX 519), and excerpts taken from that work performed by Toscanini, contained in a record offered through the RCA Victor Record Club (RX 150). The small excerpts taken from the two different records were spliced one after the other to make a continuous, harmonious performance of a passage of that Symphony.

In addition to the nine packages specially created for the Reader's Digest-RCA program, Reader's Digest Music Inc. offered a package entitled "RCA-Victor Lifetime Treasury of the World's Best Loved Operas," which contains 10 complete recordings of "the most popular operas ever written" on 28 separate LPs at "the amazing bargain price of \$69.95"—or about \$2.50

per record (plus mailing and handling) (RX 521). Those records, featuring top operatic stars, are all RCA Victor Red Seal records, currently in the RCA catalog at suggested list price of \$4.98 per record as part of multiple record sets (CX 307, pages 50-52).

Walter Hitesman, Reader's Digest vice president, testified that Reader's Digest Music Inc. offered this package to the public in its role as sales agent for the RCA Victor Record Clubs (Tr. 10,089-90). But, as the offer shows on its face (RX 521), it was open to the general public and not limited to club members.

Against that background, although he testified to differences between club sales and mail-order sales of record packages, Walter Hitesman, vice president and director of the Book and Record Division of Reader's Digest, conceded that the record packages compete with every other form of distribution of records; that they are "competing with everybody else" for the amount of money that consumers are willing to spend for phonograph records (Tr. 10,140). Norman Adler had previously testified that the packages compete with the Columbia Record Club (Tr. 4915-20). Music publishers regard Reader's Digest (and *Life* which also sells RCA packages) in the same light as record clubs.

Because they sell records through the mail with extensive advertising, publishers charge them the same royalty rate as are charged on sales via clubs (Starr 1692-93; Berman 8377-88).

At one point, Government counsel contended that RCA was merely a "custom presser" for Reader's Digest and that there was "no proprietary connection" between the two companies (Tr. 8057-58). But the record shows more than a mere custom-presser relationship. It shows that RCA and Reader's Digest operate the package business jointly—and apparently do so without even a formal agreement (Hitesman 10,097; see RPF 272).

In 1962, RCA further expanded its activities in the mail-order package field by producing a 5-LP set for *Life Magazine* entitled "The Music of Life," containing 60 best-selling popular performances pressed by RCA from original masters that had originally appeared in singles and LPs released at retail (RXs 509a, b, 510a-d; Kavan 10,623-24). Many of the individual selections still appear in the active RCA catalog (Kavan 10,623-24).

The package features prominent artists such as Harry Belafonte, Benny Goodman, Vaughn Monroe, Peter Nero, Bing Crosby and Dinah Shore. The set sells for \$14.95—or less than \$3 per LP (plus mailing and handling)—"just about half what they would cost * * * through the usual channels" (RX 510c). The package was first marketed by regular mailings in November

1962 and achieved a very high sales volume by the end of the year (RX 508 *in camera*). *Life* has also sold records in conjunction with books and anthologies (RX 506; RX 507 *in camera*) and realized substantial record sales in such a program in 1963 (Schnitzer 10,035-36).

There also has been the entry—or, more properly the re-entry—of still another firm into the record-package mail-order business in recent years. BOMC, which had marketed mail-order record sets from 1955 to 1957, “retired” from this activity for almost four years when it became the operator of RCA’s record clubs (RPFs 59-62; RX 496; RX 502 *in camera*).

Once it stopped operating the RCA record clubs, BOMC began selling packages again in the latter part of 1961. It offered ten packages the following year at prices ranging from about \$6 to \$12 and achieved sizeable sales in that one-year period (RX 496; RX 502 *in camera*). The packages were primarily classical, including Handel’s “Messiah” and a waltz set by the Vienna State Opera Orchestra (RXs 498, 501). BOMC also offered a package of folk songs by well-known artists like Pete Seeger, Joan Baez, The Weavers and Odetta that was widely advertised and highly successful (Adler 5006; Kavan 10,624-25; RXs 591, 499, 501). BOMC has offered records on various outside labels, including Kapp, Caedmon, Vanguard, Vox, Westminster, Unicorn and Weston Woods (Stipulation, Tr. 9989-90), most or all of which are also available at retail (Adler 4919; Kavan 10,624-25; H. Brown 10,006-07; RXs 497-501, 591). When BOMC operated record clubs on its own account, prior to its association with RCA, it offered some of its packages to members of its record club as well as to the general public (H. Brown 10,006-07).

The Capitol Record Club has also offered a series of packages, generally 10-record sets selling for \$17.98—or less than \$1.80 per LP (plus shipping charges) (RXs 695-96; Kavan 10,618-23). Capitol offered those packages, not only to members and former members of its record club, but also to the general public, sometimes as enrollment offers to its club or with solicitations to join the club (Kavan 10,618-23; RXs 695-96). The Capitol packages are basically similar to those sold by Reader’s Digest-RCA (RXs 695-96; Kavan 10,618-23).

Others marketing mail-order packages include Golden Records (Miller 7136; Kavan 10,626; RX 513); Pickwick (RX 538; Kavan 10,626); Disneyland (Kavan 10,626); Artia-Parliament (RX 258); The Record Library (RX 540); Concert Hall Society (RX

541) ; Lexington Records (RX 545) ; and Sheraton Records (RXs 262-63). (See RPFs 276-78.)

Columbia has developed two direct-mail packages, entitled "The World's Most Beautiful Music" and "The World's Greatest Popular Music." The construction of the packages is similar to offerings by the Columbia Record Club; and comparable merchandising techniques were utilized, with installment payment arrangements and an emphasis on the factors of guidance and the convenience of armchair buying. Market tests showed that members of the Columbia Record Club were three to four times more interested in these packages than nonmembers. Columbia, thus far, has sold those packages only as part of limited market tests (Adler 4917-18; Kavan 10,608-10).

Benefits to Industry and Public

To the extent that record club operations would be hampered, the evidence indicates that the restrictions sought by the Government would adversely affect the record industry as a whole, particularly the smaller record manufacturers, songwriters, music publishers, musicians and artists. They also would adversely affect record buyers, especially record club members. All those groups have benefited as a result of club operations.

Since the advent of record clubs, new competition has been injected into the record industry and other important benefits to the entire industry have materialized. There is no convincing evidence that club operations, including the practices challenged in the complaint, have hampered the growth of any segment of the industry. Since the organization of the Columbia Record Club in 1955, every segment of the record industry has grown. As shown in more detail elsewhere in these findings,

1. There has been a marked increase in the sale of records through all channels of distribution.
2. The percentage of the population purchasing records has increased.
3. There has been an increase in the number of independent record manufacturers, and their share of the market has steadily risen.
4. There has been an increase in the variety of product offered to the public.
5. New artists, new publishers, new songwriters and new fads in music have appeared.
6. There has been a tenfold increase in the number of outlets selling records at retail to the public.

