COLLEGES AND UNIVERSITIES
EXPERIMENTAL LICENSE AGREEMENT
(One Tier)

THIS AGREEMENT made and entered into this 28 day of May, 1981, by and between
AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS, with its principal offices located at One Lincoln
Plaza, New York, New York 10023, hereinafter referred to as SOCIETY, and SANTA BARBARA COMMUNITY
COLLEGE DISTRICT
721 Cliff Drive, Santa Barbara, CA 93109
hereinafter referred to as LICENSEE;

WITNESSETH:

WHEREAS, SOCIETY’s writer and publisher members have authorized SOCIETY to license, on a non-exclusive basis, nondramatic public performances of their copyrighted musical compositions; and

WHEREAS, LICENSEE is an institution of higher education and desires to perform publicly and nondramatically the copyrighted musical compositions in SOCIETY’s repertory during the period hereof; and

WHEREAS, the parties hereto agree that this Agreement is being entered into on an experimental and nonprejudicial basis, shall apply for the term of this Agreement only, and shall not be binding upon or prejudicial to any position taken by either of the parties for any period subsequent to the termination of this Agreement.

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. Definitions
   (a) The term “LICENSEE” as used herein shall include the named institution and any of its constituent bodies, agencies or organizations.
   (b) The term “premises” as used herein shall include LICENSEE’s campus(es) and any site located off LICENSEE’s campus which has been engaged for use by an organization referred to in Paragraph 1(a) above.
   (c) The term “full-time student” as used herein shall include all graduate and undergraduate “full-time equivalent students” as such term is used in the Higher Education General Information Survey as conducted annually by the Department of Health, Education, and Welfare or the Department of Education.
   (d) The term “musical attractions” shall mean concerts, shows, recitals, dances and other similar performances.
   (e) The term “school year” shall mean the twelve month period commencing September 1 of any calendar year during the term hereof.

2. Term of License
   The term of this Agreement shall be for three and one-half (3½) years commencing on the first day of January 1980 and terminating on the last day of June, 1983.

3. Grant of License
   SOCIETY hereby grants to LICENSEE for the term of this Agreement a non-exclusive license to perform publicly, or cause the public performance, on LICENSEE’s premises, of nondramatic musical compositions now or hereafter during the term hereof in the repertory of SOCIETY, and of which SOCIETY shall have the right to license such performing rights. Such performances shall include performances presented under the auspices of LICENSEE, including performances by faculty, staff, students or alumni of LICENSEE while performing under the auspices of LICENSEE.

4. Limitations on License
   (a) This license is not assignable or transferable by operation of law or otherwise, and is limited to the LICENSEE and to the premises.
   (b) This license does not authorize the broadcasting, telecasting or transmission by wire or otherwise, of renditions of musical compositions in SOCIETY’s repertory to persons outside of the premises.
   (c) This license does not authorize any performance by means of a coin-operated phonorecord player (jukebox) otherwise covered by the compulsory license provisions of 17 U.S.C. §116.
   (d) This license is limited to nondramatic performances, and does not authorize any dramatic performances. For purposes of this Agreement, a dramatic performance shall include, but not be limited to, the following:
      (i) performance of a “dramatico-musical work” (as hereinafter defined) in its entirety;
      (ii) performance of one or more musical compositions from a “dramatico-musical work” (as hereinafter defined) accompanied by dialogue, pantomime, dance, stage action, or visual representation of the work from which the music is taken.

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(iii) performance of one or more musical compositions as part of a story or plot, whether accompanied or unaccompanied by dialogue, pantomime, dance, stage action, or visual representation;

(iv) performance of a concert version of a "dramatico-musical work" (as hereinafter defined).

The term "dramatico-musical work" as used in this Agreement, shall include, but not be limited to, a musical comedy, oratorio, opera, play with music, revue, or ballet.

(c) SOCIETY reserves the right at any time to restrict the first American performance of any composition in its repertory and further reserves the right at any time to withdraw from its repertory and from operation of this license, any musical work as to which any suit has been brought or threatened on a claim that such composition infringes a composition not contained in SOCIETY's repertory, or on a claim that SOCIETY does not have the right to license the performing rights in such composition.

5. License Fees, Reports and Payments

(a) In consideration of the license granted herein, LICENSEE agrees to pay SOCIETY the following license fees:

(i) For the period January 1—June 30, 1980, 4 cents per full-time student or $35, whichever is greater, based upon the number of full-time students during the previous fall, payable upon execution of this Agreement.

(ii) For the period July 1, 1980—June 30, 1981, 9 cents per full-time student or $76, whichever is greater, based upon the number of full-time students during the fall of 1980, payable on the first day of February, 1981;

(iii) For the period July 1, 1981—June 30, 1982, 10 cents per full-time student or $87, whichever is greater, based upon the number of full-time students during the fall of 1981, payable on the first day of February, 1982; and

(iv) For the period July 1, 1982—June 30, 1983, 11 cents per full-time student or $98, whichever is greater, based upon the number of full-time students during the fall of 1982, payable on the first day of February, 1983.

(b) LICENSEE agrees to report to SOCIETY, on forms supplied free of charge by SOCIETY, simultaneously with payment of said license fees, LICENSEE's total full-time student enrollment.

(c) LICENSEE agrees to furnish to SOCIETY quarterly, copies of all programs of musical works performed by LICENSEE in each of its musical attractions presented during the previous calendar quarter, which are prepared for distribution to the audience or for the use or information of LICENSEE or any department thereof. Such copies of programs shall include all encores to the extent possible. LICENSEE shall be under no obligation to furnish such programs when they have not been otherwise prepared.

6. Reservation of Rights

The parties hereto expressly reserve all rights and privileges accorded by the Copyright Act of 1976, decisions of the Copyright Royalty Tribunal and other applicable laws.

7. Breach or Default

Upon any breach or default of the terms and conditions of this Agreement, SOCIETY may terminate this Agreement by giving LICENSEE thirty days notice in writing to cure such breach or default, and in the event such breach or default has not been cured within said thirty days, this Agreement shall terminate on the expiration of such thirty-day period without further notice from SOCIETY. The right to terminate shall be in addition to any and all other remedies which SOCIETY may have. In the event of such termination, SOCIETY shall refund to LICENSEE any unearned license fees paid in advance.

8. Interference in Society's Operations

In the event of:

(a) Any major interference with the operations of SOCIETY in the state, territory, dependency, possession or political subdivision in which LICENSEE is located, by reason of any law of such state, territory, dependency, possession or political subdivision; or

(b) Any substantial increase in the cost to the SOCIETY of operating in such state, territory, dependency, possession or political subdivision, by reason of any law of such state, territory, dependency, possession or political subdivision, which is applicable to the licensing of performing rights,

SOCIETY shall have the right to terminate this Agreement forthwith by written notice, and, in the event of such termination, shall refund to LICENSEE any unearned license fees paid in advance.

9. Indemnity Clause

SOCIETY agrees to indemnify, save and hold harmless and to defend LICENSEE from and against all claims, demands and suits that may be made or brought against it with respect to the non-dramatic performance under this Agreement of any compositions in SOCIETY's repertory which are written or copyrighted by members of SOCIETY.
LICENSEE agrees to give SOCIETY immediate notice of any such claim, demand or suit and agrees immediately to deliver to SOCIETY all papers pertaining thereto. SOCIETY shall have full charge of the defense of any such claim, demand or suit and LICENSEE shall cooperate fully with SOCIETY in such defense. LICENSEE however shall have the right to engage counsel of its own at its own expense who may participate in the defense of any such action. SOCIETY agrees at the request of LICENSEE to cooperate with and assist LICENSEE in the defense of any action or proceeding brought against it with respect to the performance of any musical compositions contained in the SOCIETY's repertory, but not copyrighted or written by members of SOCIETY. This Paragraph 9 shall not apply to performances of any works that may be restricted under Paragraph 4(c) of this Agreement.

10. Availability of Other License Agreements

In the event SOCIETY offers any other type of license agreement to colleges or universities, LICENSEE may elect to enter into such other type of license agreement. Such election shall be prospective only, shall be effective at the beginning of the school year, and shall be accomplished by serving written notice on SOCIETY of such election at least thirty days prior to the commencement of said school year.

11. Notices

All notices shall be given in writing by United States certified mail sent to either party at the address stated above. Each party agrees to inform the other of any change of address.

12. Modification of Agreement

This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof. This Agreement cannot be waived or added to or modified orally, and no waiver, addition or modification shall be valid unless in writing and signed by the parties. LICENSEE recognizes that SOCIETY must license all similarly situated users on a nondiscriminatory basis. LICENSEE agrees that any modifications of this Agreement by SOCIETY, which are required by local, state or federal law for other colleges or universities, shall not constitute discrimination between similarly situated users. Examples of such modifications are statements of equal employment opportunity or nondiscrimination on the basis of race, creed, color, sex, or national origin.

IN WITNESS WHEREOF, this Agreement has been executed in duplicate original by the duly authorized representatives of SOCIETY and LICENSEE all as of the date first above written.

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS

BY __________________________

Title

LICENSEE:

Santa Barbara Community College District

BY __________________________

Charles L. Hanson,
Business Manager

Title
1980—1981
COLLEGE AND UNIVERSITY STUDENT ENROLLMENT REPORT

Name of college or university: Santa Barbara Community College District
Address: 721 Cliff Drive
         Santa Barbara, CA 93109

Total student enrollment in Fall, 1980
(including all undergraduate and graduate
full-time equivalent students):

7125

ASCAP License Fee: 9¢ per student: $641.25 [x] (Check higher amount)
or: $76 [ ]

I hereby certify that the foregoing statement is
true and correct this 28 day of May, 1981.

Santa Barbara Community College District
LICENSEE

By

Charles L. Hanson,
Business Manager

TITLE
THIS AGREEMENT made and entered into on May 28, 1981, between BROADCAST MUSIC, INC., a New York corporation with its principal offices located at 320 West 57th Street, New York, N. Y. 10019, hereinafter referred to as BMI, and

Santa Barbara Community College District

(Legal Name of LICENSEE and Name of Institution)

a college or university with its principal offices located at

721 Cliff Drive

City of Santa Barbara, State of California Zip No. 92109

hereinafter referred to as LICENSEE;

WITNESSETH:

WHEREAS, BMI has entered into agreements with various writers, publishers and other organizations, whereby public performance rights to various musical compositions which have vested in and/or are controlled by said writers, publishers and organizations have been either assigned, transferred and/or granted to BMI; and

WHEREAS, BMI is empowered to license the public performance of those musical compositions contained in its repertoire on a non-exclusive basis; and

WHEREAS, LICENSEE is an institution of higher education generally referred to as a college or university and desires the right to publicly perform those musical compositions as BMI may, during the period hereof, have the right to license;

WHEREAS, BMI and LICENSEE desire to enter into an agreement on an experimental and nonprejudicial basis which shall apply for the term of this Agreement only and shall not be binding upon or prejudicial to any position taken by either of the parties for any period subsequent to the termination of this Agreement;

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. DEFINITIONS.

(a) "LICENSEE" as used herein shall include the named institution and any of its constituent bodies, agencies, or organizations which within the specific context to which this license is to apply maintain a substantial nexus to the named institution and/or over which the named institution has control or authority.

(b) "Premises" shall include LICENSEE'S campus(es) and any site located off LICENSEE'S campus(es) which has been engaged for use by an organization referred to in paragraph 1(a). However, in the event LICENSEE has a pecuniary interest in an establishment or property for investment purposes which is not directly related to LICENSEE'S educational purposes at which establishment or property musical compositions are being performed publicly, it is specifically understood and agreed to by LICENSEE that this Agreement shall not apply to such other establishment or property.

(c) "Full-time students" as used herein shall include all graduate and undergraduate "full time equivalent" students as such term is used in the Higher Education General Information Survey as conducted annually by the Department of Health, Education and Welfare.


(e) "Musical attraction" shall mean concerts, stage shows, variety shows, symphonies, recitals, chamber music and other similar performances presented by or under commitment to LICENSEE.

2. BMI hereby grants to LICENSEE for the term of this Agreement a non-exclusive license to perform or cause the public performance of musical compositions, to which BMI shall have the right to grant public performance licenses for public performances of musical compositions, presented by or under commitment to LICENSEE.
This license is not assignable, and no rights other than those mentioned are included in this license. This license does not include:

(a) dramatic rights or the right to publicly perform dramatico-musical works in whole or in substantial part, or;

(b) the right to broadcast, telecast, or otherwise transmit a licensed musical attraction except within other campus buildings owned or controlled by LICENSEE.

3. In consideration of the license granted herein, LICENSEE agrees to pay BMI as follows:

(a) LICENSEE shall pay BMI for each Contract Year for all uses of music, including but not limited to, campus radio broadcasting stations where said station’s gross income derived from the sale of air time is less than $10,000 annually, the fee set forth in Schedule “A” which is included and made a part of this Agreement. This fee will be based upon the number of full time students as defined in paragraph 1(c) which are reported in accordance with paragraph 3(b).

(b) For the First Contract Year the number of full time students as defined in paragraph 1(c) shall be reported for the Fall 1979 academic term upon execution of this Agreement. The fee due BMI pursuant to this Agreement for the First Contract Year shall be paid by LICENSEE to BMI on or before April 25, 1980. LICENSEE represents that the number of full time students as defined in paragraph 1(c) for the Fall, 1979 academic term totals 6177 (Fall '79), 7125 (Fall '80) and that the fee due BMI for the First Contract Year will be $6177 (Fall '79), $7125 (Fall '80). On or before November 1, 1980, November 1, 1981, and November 1, 1982, LICENSEE shall report to BMI, on forms to be supplied by BMI, the number of full time students as defined in paragraph 1(c) for the Fall academic term of the contract year, which will establish the fee for the Second, Third and Fourth Contract Years in accordance with Schedule “A”. The fee due BMI pursuant to this Agreement for the Second, Third, and Fourth Contract Years shall be paid by LICENSEE to BMI on or before the 20th day of January, 1981, 1982, and 1983.

4. All campus radio broadcasting stations licensed pursuant to this Agreement shall, upon written request from BMI made on not less than two (2) weeks notice specifying the prospective period to be covered by the request, agree to furnish BMI weekly lists of station’s performances of all musical works, indicating the compositions performed by title and composer or by such other convenient method as may be designated by BMI, but such lists need not be furnished for more than two (2) weeks of each contract year of the term of this Agreement.

5. BMI, upon giving reasonable notice to LICENSEE in writing, shall have the right to examine the books and records of account of LICENSEE which pertain solely to this Agreement and which may be necessary to verify any statements rendered and accountings made hereunder.

6. The parties hereto reserve all rights and privileges accorded pursuant to the Copyright Act of 1976, effective January 1, 1978.

7. In the event that BMI, at any time during the term of this Agreement, shall, for the same class and category as that of LICENSEE, issue licenses granting rights similar to those in this Agreement on a more favorable basis, BMI shall, for the balance of the term, offer LICENSEE an agreement containing the same terms. The election restrictions contained in paragraph 11 of this Agreement shall not apply to any offer and acceptance pursuant to this paragraph.

8. BMI agrees to indemnify, save harmless, and defend LICENSEE, its officers, and employees from and against any and all claims, demands or suits that may be made or brought against them or any of them with respect to the performance of any material licensed under this Agreement. Such indemnity shall be limited to works which are licensed by BMI at the time of LICENSEE’S performance, and to works which are, pursuant to a written request by LICENSEE, specifically represented in writing by an Officer of BMI in answer to said written request by LICENSEE, to be licensed by BMI at the time of LICENSEE’S performance. LICENSEE agrees to give BMI immediate notice of any such claim, demand, or suit, to deliver to BMI any papers pertaining thereto, and to cooperate with BMI with respect thereto, and BMI shall have full charge of the defense of any such claim, demand or suit.

9. Upon any breach or default of the terms and conditions of this Agreement BMI may, at its sole option, cancel this agreement with not less than sixty (60) days notice in writing to LICENSEE. The right to cancel
shall be in addition to any and all other remedies which BMI may have. No waiver by BMI of full performance of this Agreement by LICENSEE in any one or more instances shall be deemed a waiver of the right to require full and complete performance of this Agreement thereafter or of the right to cancel this Agreement in accordance with the terms of this paragraph. In the event of such cancellation, BMI agrees to refund to LICENSEE any unearned license fees paid in advance to BMI by LICENSEE.

10. In the event LICENSEE ceases to operate as an institution of higher education, or where LICENSEE ceases the public performance of music licensed by BMI, and where LICENSEE does not intend to resume the public performance of music licensed by BMI, LICENSEE may cancel this Agreement upon giving sixty (60) days notice in writing to BMI. The right to cancel shall be in addition to any and all other remedies which LICENSEE may have. In the event of such cancellation, BMI shall refund to LICENSEE any unearned license fees paid in advance to BMI by LICENSEE.

11. LICENSEE may at the beginning of a contract year and upon giving sixty (60) days written notice to BMI, elect to enter into and execute the College/University Two Tier License offered by BMI, and BMI shall comply with such election. This election may be exercised by LICENSEE only once during the term of this Agreement. If LICENSEE so elects, it is understood that no refund will be due LICENSEE from BMI for license fees.

12. All cancellation and election notices, if any, shall be given in writing by United States certified mail sent to either party at the address set forth above. Each party agrees to inform the other, in writing, of any change of address.

13. 
   (a) All disputes of any kind, nature or description arising in connection with the terms and conditions of this Agreement shall be submitted to arbitration in the City, County, and State of New York under the then prevailing rules of the American Arbitration Association by an arbitrator or arbitrators to be selected as follows: Each of the parties shall, by written notice to the other, have the right to appoint one arbitrator. If, within ten (10) days following the giving of such notice by one party, the other shall not, by written notice, appoint another arbitrator, the first arbitrator shall be the sole arbitrator. If two arbitrators are so appointed, they shall appoint a third arbitrator. If ten (10) days elapse after the appointment of the second arbitrator and the two arbitrators are unable to agree upon the third arbitrator, then either party may, in writing, request the American Arbitration Association to appoint the third arbitrator. The award made in the arbitration shall be binding and conclusive on the parties and judgment may be, but need not be, entered in any court having jurisdiction. Such award shall include the fixing of the costs, expenses, and attorney's fees of arbitration, which shall be borne by the unsuccessful party.

   (b) In the event LICENSEE elects to waive the terms set forth in paragraph 13(a), LICENSEE must cross out paragraph 13(a) and initial the space provided to the left of paragraph 13(a).

14. This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof. This Agreement cannot be waived or added to or modified orally and no waiver, addition or modification shall be valid unless in writing and signed by the parties.

IN WITNESS WHEREOF, this Agreement has been executed in duplicate originals by the duly authorized representatives of BMI and LICENSEE all as of the date first above written.

BROADCAST MUSIC, INC.

By: ........................................
   (Signature)

........................................
   (Print Name of Signer)

........................................
   (Title of Signer)

Santa Barbara Community College District
LICENSEE (Legal Name)

By: ........................................
   (Signature)

Charles L. Hanson
   (Print Name of Signer)

Business Manager
   (Title of Signer)
SCHEDULE A

LICENSEE shall pay to BMI the following Student Fee:

First Contract Year (January 1, 1980 through June 30, 1980):
Seven (7¢) cents per full time student (multiplied by .5), or $37.50, whichever sum is greater.

Second Contract Year (July 1, 1980 through June 30, 1981):
Seven (7¢) cents per full time student or $75.00, whichever sum is greater.

Third Contract Year (July 1, 1981 through June 30, 1982):
Eight and one half (8.5¢) cents per full time student or $90.00, whichever sum is greater.

Fourth Contract Year (July 1, 1982 through June 30, 1983):
Eight and one half (8.5¢) cents per full time student or $90.00, whichever sum is greater.

INSTRUCTIONS: Complete applicable white areas on pages 1, 2 and 3.