February 18, 1948.

Mrs. John V. N. Dorr,
1040 Park Avenue,
New York City 28.

Dear Mrs. Dorr:

You have asked me to advise you whether Mr. David Smart could legitimately assert a claim to ownership of an interest in the film which you have produced under the title "The Singing Earth."

On the basis of the information which you have disclosed to me and particularly of the facts hereinafter recited, I am of the opinion that the answer to your question should be in the negative.

I understand that as a result of seeing some photographs made by you, Mr. Smart, publisher of "Esquire" magazine and "Coronet" magazine, became interested in your work and acquired and published a number of photographs made by you; that some time in the latter part of 1939 or early in January 1940, he suggested that you come to Chicago and make experimental movies in a studio which he had constructed there; that under date of January 9, 1940, he wrote to Mr. Dorr as follows:

> ".....Therefore, wouldn't it be possible to have her make the trip to Chicago right at that time for, say ten days or two weeks, during which time I am quite positive she could test out her abilities in color sound motion pictures by using the Kurt Graffs' dance sequence

as a vehicle.

> Of course I'd be perfectly willing to pay the actual expense of her trip to Chicago and back, And I believe if results justify my claim that Mrs. Dorr has marked producing and directing ability, we can then work out a plan whereby she could participate from a profit standpoint in one or more ways. In other words, there's nothing to lose. I personally am taking the complete experimental gamble, and I'm sure in the mean time that Mrs. Dorr would really enjoy trying her hand at the experiment."

I understand that you accordingly went to Chicago and directed and produced the initial Kodachrome footage of the picture which, in the form in which you have now completed it, has been given the abovementioned title; that the conception and direction of the picture was wholly yours and in no way attributable to Mr. Smart; that you defrayed your own considerable costs at the Drake Hotel and traveling expenses for yourself and daughter, in addition to arranging for the services of Grace and Kurt Graff, the artistes who appear in the film with their company of dancers, but that Mr. Smart did pay approximately $125.00 for the services of the dancers.

I understand that earlier discussions between you and Mr. Dorr and Mr. Smart had indicated that you would have virtually carte-blanche to develop your unusual ideas, but that you actually found that you were not only restricted to a period of four days within which to make your first and only movie in his studio but

that Mr. Smart, instead of providing 35 m.m. film such as he stated he would furnish and as might have been of interest to Hollywood producers, furnished only 16 m.m.; that the lights-operator and the camera-man provided by Mr. Smart were uncooperative; that only one brief test-run was permitted; and that Mr. Smart was so displeased with the costumes of the dancers and with the film in general that he announced in disgust that he did not wish to have the film and would not spend any money finishing it, but that you were welcome to it.

In answer to a letter from Mr. Dorr requesting an explanation of your experience in Chicago, Mr. Smart wrote under date of March 27, 1940:

> ".....To date, the picture actually cost me $1515.52. The results to date as a picture are, in my opinion, completely worthless. In view of that it seems it would be rather ridiculous for me to add the additional expense of the sound track to a picture that I already know is a colossal failure. Nor do I think it would be to your own interest even if you volunteered to finish the picture yourself (I'd be more than willing to give you that which has been accomplished to date as I have no personal use for it at all)."

How Mr. Smart figured his costs at $1515.52 is not disclosed but from the fact that his out-of-pocket disbursements appear to have been limited, in so far as you are aware, to approximately $125 paid to the dancers and possibly another $125 for film, it is apparent that he must have charged up a

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considerable share of his overhead, as well as the salaries of his lights-man and his camera-man.

Under date of April 10, 1940, Mr. Smart wrote to Mr. Dorr as follows:

> ".....If you wish to finish the picture, I'll be more than happy to donate the film as it now stands in the hands of the Berndt-Maurer Company in New York. I can't resist stating, however, that in my opinion it would only be throwing good money after bad."

You informed me that the film was subsequently delivered to you by the Berndt Maurer Company and that you have subsequently expended in excess of $2,500 in cash to complete it in its present form (which includes specially written music) on both 35 m.m. and 16 m.m. sound tracks and that the total value of your contribution would be vastly greater if, in addition to your cash expenditures, you included a proper amount to repay the time and services contributed by Grace and Kurt Graff and others who have assisted you and an adequate amount for your services.

Title to personalty ordinarily passes by delivery and the possession by you of the film, coupled with Mr. Smart's statements orally and in the above-quoted documents, demonstrate clearly that you are the legal owner of the film and had been such owner since 1940 and that any claim that might now be

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asserted by Mr. Smart could successfully be resisted. Furthermore, I think it extremely doubtful that any reputable attorney would advise Mr. Smart to make any such claim. Eight years have passed since the film was made and it would be highly inequitable, in the face of the work and money you have expended in completing the film, if it were in the power of anyone to now interfere with your complete and undoubted ownership of it.

Faithfully yours,

Albert Chester Travis.