

Leave of Absence

Tuesday, January 15, 2008

SENATE

Tuesday, January 15, 2008

The Senate met at 1.30 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. President: Hon. Senators, I have granted leave of absence to Sen. Linus Rogers for the period January 11 to February 01, 2008. Hon. Senators, Miss Cindy Devika Sharma was, unfortunately, unable to attend the first sitting of the Senate and, therefore, has not made and subscribed to the Oath of Allegiance and she will do so today.

SENATOR'S APPOINTMENT

Mr. President: Hon. Senators, I have received the following correspondence from His Excellency the President, Professor George Maxwell Richards, T.C., C.M.T., Ph.D.:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL RICHARDS, T.C., C.M.T., Ph.D., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards
President.

TO: MR. FOSTER CUMMINGS

WHEREAS Senator Linus Rogers is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, FOSTER CUMMINGS, to be temporarily a member of the Senate, with immediate effect and continuing during the absence from Trinidad and Tobago of the said Senator Linus Rogers.

Senator's Appointment
[MR. PRESIDENT]

Tuesday, January 15, 2008

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 15th day of January, 2008."

OATH OF ALLEGIANCE

Senators Cindy Devika Sharma and Foster Cummings took and subscribed the Oath of Allegiance as required by law.

GREETINGS

Mr. President: Hon. Senators, I have received the following correspondence from the Clerk of the Assembly, Assembly Legislature Secretariat, Tobago House of Assembly:

“The Clerk of the Senate
Parliament Building
Red House
Port of Spain
Trinidad
Dear Sir,

The Tobago House of Assembly (2005—2009) at its Plenary Sitting (Thirty-ninth Meeting) held in the Tobago House of Assembly Chamber on Thursday December 20th, 2007, by resolve, directed that ‘the Season’s Greetings for a blessed Christmas and a Happy New Year be extended to the President of the Senate and his family and other Members of the Senate and their families.’

Yours faithfully,
Clerk of the Assembly”

PAPERS LAID

1. Annual audited financial statements of Community Improvement Services Limited for the financial year ended September 30, 2005. [*The Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne)*]
2. Annual audited financial statements of National Commission for Self Help Limited for the year ended September 30, 2005. [*Sen. The Hon. M. Browne*]

3. Annual audited financial statements of National Commission for Self Help Limited for the year ended September 30, 2006. [*Sen. The Hon. M. Browne*]
4. Annual audited financial statements of Telecommunication Services of Trinidad and Tobago Limited for the year ended March 31, 2007. [*Sen. The Hon. M. Browne*]
5. Audited financial statements of National Infrastructure Development Company Limited for the year ended September 30, 2006. [*Sen. The Hon. M. Browne*]
6. Audited financial statements for the Trinidad and Tobago Electricity Commission (T&TEC) for the year ended December 31, 2005. [*Sen. The Hon. M. Browne*]
7. Annual audited financial statements of Lake Asphalt of Trinidad and Tobago (1978) Limited for the year ended September 30, 2001. [*Sen. The Hon. M. Browne*]
8. Annual audited financial statements of Lake Asphalt of Trinidad and Tobago (1978) Limited for the year ended September 30, 2002. [*Sen. The Hon. M. Browne*]
9. Annual audited financial statements of Lake Asphalt of Trinidad and Tobago (1978) Limited for the year ended September 30, 2003. [*Sen. The Hon. M. Browne*]
10. Annual audited financial statements of Lake Asphalt of Trinidad and Tobago (1978) Limited for the year ended September 30, 2004. [*Sen. The Hon. M. Browne*]
11. Annual audited financial statements of Lake Asphalt of Trinidad and Tobago (1978) Limited for the year ended September 30, 2005. [*Sen. The Hon. M. Browne*]
12. Audited financial statements of Export Centres Company Limited for the year ended September 30, 2005. [*Sen. The Hon. M. Browne*]
13. Audited financial statements of Export Centres Company Limited for the year ended September 30, 2006. [*Sen. The Hon. M. Browne*]

14. Audited financial statements of the Trinidad and Tobago Solid Waste Management Company Limited for the year ended September 30, 2005. [*Sen. The Hon. M. Browne*]
15. Audited financial statements of the Trinidad and Tobago Solid Waste Management Company Limited for the year ended September 30, 2006. [*Sen. The Hon. M. Browne*]
16. Annual audited financial statements of National Quarries Company Limited for the year ended September 30, 2006. [*Sen. The Hon. M. Browne*]
17. Annual audited financial statements of Trinidad and Tobago National Petroleum Marketing Company Limited and its subsidiaries for the year ended March 31, 2004. [*Sen. The Hon. M. Browne*]
18. Annual audited financial statements of Trinidad and Tobago National Petroleum Marketing Company Limited and its subsidiaries for the year ended March 31, 2005. [*Sen. The Hon. M. Browne*]
19. Annual audited financial statements of Trinidad and Tobago National Petroleum Marketing Company Limited and its subsidiaries for the year ended March 31, 2006. [*Sen. The Hon. M. Browne*]
20. Annual audited financial statements of Trinidad and Tobago National Petroleum Marketing Company Limited and its subsidiaries for the year ended March 31, 2007. [*Sen. The Hon. M. Browne*]
21. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Cocoa and Coffee Industry Board for the year ended September 30, 1999. [*Sen. The Hon. M. Browne*]
22. Report of the Auditor General of the Republic of Trinidad and Tobago on the statement of recovery of expenses of the Ministry of Energy and Energy Industries for the year ended December 31, 2006. [*Sen. The Hon. M. Browne*]
23. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Institute of Marine Affairs for the year ended September 30, 2004. [*Sen. The Hon. M. Browne*]
24. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Eastern Regional Health Authority for the year ended September 30, 2001. [*Sen. The Hon. M. Browne*]

25. Second report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the National Housing Authority for the year ended December 31, 1997. [*Sen. The Hon. M. Browne*]
26. Central Bank of Trinidad and Tobago report on Insurance and Pensions for the year ended December 31, 2003. [*Sen. The Hon. M. Browne*]
27. Central Bank of Trinidad and Tobago report on Insurance and Pensions for the year ended December 31, 2004. [*Sen. The Hon. M. Browne*]
28. Central Bank of Trinidad and Tobago report on Insurance and Pensions for the year ended December 31, 2005. [*Sen. The Hon. M. Browne*]
29. Report of the Police Service Commission for the period January 01, 2006 to December 31, 2006. [*The Minister of National Security (Sen. The Hon. Martin Joseph)*]
30. Report of the Police Service Commission for the period January 01, 2006 to December 31, 2006. [*Sen. The Hon. M. Joseph*]
31. Ninth report of the Public Complaints Authority for the period October 01, 2004 to September 30, 2005. [*Sen. The Hon. M. Joseph*]
32. A Policy Framework for the expanded role of the nurse—The Establishment of Advance Practice Nurses in Trinidad and Tobago. [*The Minister of Health (Sen. The Hon. Jerry Narace)*]
33. Annual report of the Teaching Service Commission for the year 2006. [*The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill)*]
34. Annual report of the Judicial and Legal Service Commission for the year 2006. [*Sen. The Hon. C. Enill*]
35. Annual report of the Ministry of Public Administration and Information for the period October 2005 to September 2006. [*Sen. The Hon. C. Enill*]
36. Freedom of Information Act, 1999 annual report to Parliament for 2006. [*Sen. The Hon. C. Enill*]
37. ILO Convention 187—Promotional Framework for Occupational Safety and Health Convention, 2006. [*Sen. The Hon. C. Enill*]
38. ILO Convention 198— Employment Relationship Recommendation, 2006. [*Sen. The Hon. C. Enill*]

ORAL ANSWERS TO QUESTIONS

**Caribbean Industrial and Technological Services Limited
(Details of)**

2. Sen. Wade Mark asked the hon. Minister of Science, Technology and Tertiary Education:

Would the hon. Minister inform this Senate whether:

- (i) Caribbean Industrial and Technological Services Limited (CITSL) is a subsidiary of the University of Trinidad and Tobago (UTT) which is a non-governmental organization?
- (ii) If the answer is in the affirmative, would the Minister inform this Senate whether CITSL has a mandate to re-organize and/or restructure CARIRI and the IMA, two statutory agencies?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, questions Nos. 2, 3, 4, and 18 on the Order Paper for oral answers and written reply to question No. 1 are ready, but have not been approved and, therefore, we anticipate that the next time the Senate meets, we would be able to have approved answers to these questions.

Mr. President, in these circumstances, question No. 17 has been approved for today and we request Sen. Mark's understanding in this particular matter. I know that on the last occasion he raised concerns which we on this side intend to take into account.

Question, by leave, deferred.

The following questions stood on the Order Paper:

Chinese Immigrant Workers

3. Would the hon. Minister of Labour, Small and Micro Enterprise Development inform this Senate whether:

- A. Foreign companies which utilize the services of Chinese immigrant workers to execute a large number of Government's construction projects are subject to and governed by all relevant labour laws in effect in Trinidad and Tobago?
- B. Would the hon. Minister also inform this Senate of the measures used by the Ministry of Labour to ensure that all relevant labour laws are complied with by these foreign contractors/companies? [*Sen. W. Mark*]

**Licensing Authority
(Computerization of)**

4. Would the hon. Minister of Works and Transport inform this Senate when the Licensing Authority will be fully computerized in order to bring relief to the drivers of this country and particularly to protect against any fraudulent activities within the Authority? [*Sen. W. Mark*]

**Nelson Island Heritage Project
(Status of)**

18. Would the hon. Minister of Tourism advise the Senate on the status of the Nelson Island Heritage project? [*Sen. Dr. A. Nanan*]

Questions, by leave, deferred.

**Status of Fire Towers
(Northern Range)**

17. **Sen. Dr. Adesh Nanan** asked the hon. Minister of Planning, Housing and the Environment:

Would the hon. Minister advise the Senate on the status of the fire towers located in the Northern Range?

The Minister of Agriculture, Land and Marine Resources (Sen. The Hon. Arnold Piggott): Mr. President, the question was directed to the Minister of Planning, Housing and the Environment, but this item now falls under the Ministry of Agriculture, Land and Marine Resources. If the Member so wishes, the Minister of Agriculture, Land and Marine Resources would respond to the question.

Mr. President, I wish to advise this honourable Senate of the status of the fire towers located in the Northern Range.

The Forestry Division has constructed, and continues to manage, five towers on the Northern Range for the purpose of monitoring the outbreak of wildfires during the annual dry season. These have been erected over a period of time starting from the 1970s, and have been strategically located to provide a wide view of the Northern Range, which includes natural forest and plantations.

Mr. President, four of the five towers are located in the northwest conservancy at Cumberland Hill, Mount St. Benedict, St. Michael Agroforestry Station and at Lopinot, while the fifth is located at Saw Mill Road, Matura in the northeast conservancy.

1.45 p.m.

The fire towers are usually manned during the peak period of the dry season between March 01 and May 31. They are manned by staff equipped with radios, who communicate with ground patrols to alert them to the incidence of fires, in order to facilitate rapid response to such occurrences. A typical fire tower comprises a steel frame structure approximately 30 metres, 100 feet in height, with a wooden base platform averaging two metres square, six feet by six feet at the top.

These fire towers require annual maintenance work at the end of the rainy season to replace the wooden planks and the thatched roofs. This maintenance is done during the early half of the dry season between January and March. Checks are also made to ensure the structural integrity of the fire towers, and repairs are conducted accordingly in order to ensure the health and safety of the staff who are manning these fire towers.

Adequate funds have been provided in the 2007/2008 Budget to address the repairs and maintenance of the Forestry Division fire towers throughout the country in time for this year's fire season. The tower at Cumberland Hill has been recently built. It is in adequate condition and is suitable for use as a lookout tower for fire detection purposes in the western part of the Northern Range, covering areas such as Fort George, Maraval, St. Ann's, Port of Spain and Diego Martin.

The St. Benedict tower was refurbished in 2007 and is in good condition for use as a fire detection lookout point for areas such as Mount St. Benedict, St. Joseph, Champs Fleurs and Mount Hope. The tower at the St. Michael Agroforestry station is presently in need of minor repairs. Its foundation and structure are adequate; however, the steps and platforms need to be repaired.

Mr. President, I wish to advise this honourable Senate that the necessary repairs will be completed, allowing full use of this tower in time for the upcoming 2008 fire season. This tower is used to detect fires in the part of the Northern range that overlooks the St. Michael and Five Rivers areas. The Lopinot tower is also in need of repairs. Again, while the tower's foundation and structure remain in good condition, the steps and platform need to be refurbished. These repairs, when completed, will allow full use of the tower in time for the upcoming fire season. This tower is an ideal lookout point for the entire Lopinot Valley.

The Thomas Trace tower situated in Matura also needs to be repaired in the same manner as the St. Michael Agroforestry station and Lopinot tower, namely, refurbishment of the steps and platforms. Similarly, these repairs are expected to

be completed in time for the 2008 fire season. The Thomas Trace tower is an ideal lookout point for the pine plantations and mixed forest in the Matura Forest Reserve. Ensuring that these towers remain operational during the 2008 fire season is but one aspect of Government's thrust to safeguard Trinidad and Tobago's precious forest environment and is an indication of the Government of Trinidad and Tobago's continued commitment to maintaining our natural heritage.

In addition, Mr. President to the foregoing, the Forest Fire Protection Programme will be significantly enhanced through the acquisition of 40 new jeeps, trucks and heavy duty equipment over the last year and a half. The equipment will be manned by a cadre of workers from a newly formed permanent establishment that was approved in November 2007.

The Forestry Division's five fire towers in the Northern Range are but one component of a National Forest Fire Protection Programme which includes staff training, vehicular access, tooling and dynamic public educational programme to address the need for conserving our nation's forest reserves.

I thank you, Mr. President.

Sen. Dr. Nanan: Mr. President, can the Minister give the honourable Senate a definite period in terms of the repairs of standing fire towers, because what we are hearing now is that during the particular period, probably the first quarter of this year, that these fire towers would be repaired. It is unfortunate that we have a situation where we are in a dry season, so I want to ask the Minister if he has a definite time frame for the upgrade of these fire towers.

Sen. The Hon. A. Piggott: Mr. President, it is expected that the repair work would be completed before March 01, so as to be ready for the fire season of this year.

Sen. Prof. Deosaran: Mr. President, the response seems to focus on outing fires and possibly preventing the increase in fires, but is there any accompanying component that will detect who might be setting these fires illegally, so that they can be caught? Because fires on the Northern Range have become a nuisance and a grave detriment to our environment in that particular respect of wilful setting of fires.

Sen. The Hon. A. Piggott: Mr. President, it is expected that the Forestry Division staff would exercise vigilance at all times, monitoring and providing surveillance in the forest reserve areas. And the reason for these fire towers covering such wide areas in Trinidad and Tobago is exactly for that reason.

Copyright (Amdt.) Bill

Tuesday, January 15, 2008

COPYRIGHT (AMDT.) BILL

Bill to amend the Copyright Act, 2007 [*The Minister of Legal Affairs*]; read the first time.

Motion made, That the next stage be taken at a later stage of the proceedings.

Sen. Mark: Mr. President, may I crave your indulgence? I just want to ask you to note that the introduction of this Bill along with the two others that are noted here were procedurally incorrect, in that it ought not to have been set down on the Order Paper on December 17, when we met and it therefore violated Standing Order 47(3), as you are aware. In addition, now that the Bill is being properly introduced, you would know that under Standing Order 48(1), it provides that 15 days should elapse under normal circumstances before a debate commences.

Having considered the matter, we on this side are prepared to assist the Government, to enable swift passage of this Bill by giving what we would consider the appropriate time, critical support. So I want to put on record the procedural incorrectness of these two matters. Well, the matter that is now being addressed and the two others that are to come.

Question put and agreed to.

LEGAL PROFESSION (AMDT.) BILL

Bill to amend the Legal Profession Act, 1986 [*The Minister of Legal Affairs*]; read the first time.

CARIBBEAN COURT OF JUSTICE (HEADQUARTERS) BILL

Bill to provide for the implementation by the Government of the Republic of Trinidad and Tobago of the agreement establishing the seat of the Caribbean Court of Justice and the Offices of the Regional Judicial and Legal Service Commission between the Government of Trinidad and Tobago and the Caribbean Court of Justice and the Regional Judicial and Legal Service Commission [*The Minister of Foreign Affairs*]; read the first time.

WITHDRAWAL OF BILLS

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Thank you. Mr. President, in accordance with Standing Order 61(a), I seek the leave of the Senate to withdraw the following Bills, which were introduced in the Senate on Monday, December 17, 2007: the Copyright (Amdt.) (No. 2) Bill, 2007, the Legal Profession (Amdt.) (No. 2) Bill, 2007 and the Caribbean Court of Justice (Headquarters) (No. 2) Bill, 2007.

Bills, by leave, withdrawn.

COPYRIGHT (AMDT.) BILL

The Minister of Legal Affairs (Hon. Peter Taylor): Thank you, Mr. President. I beg to move,

That a Bill to amend the Copyright Act, 1997, be now read a second time.

Mr. President, the Copyright Act, 1997 was proclaimed on December 01, 1997, together with several other pieces of intellectual property legislation with the express intention of enabling Trinidad and Tobago to comply with its international obligations and to, at the very least, bring this country's copyright laws in line with the minimum requirements as stipulated by the Berne Convention, the Agreement on Trade-Related Aspects of Intellectual Property Rights commonly called the TRIPS Agreement, other treaty obligations and various standards as required by the World Intellectual Property Organization (WIPO).

The Act was also intended to extend copyright protection to new areas of law, for instance works of mas and computer databases. However, with the effluxion of time, the Act in its present form was found to be deficient in certain important respects. In this regard, in November 2004, Cabinet by Minute No. 3078, agreed to amend the Act to allow Trinidad and Tobago:

- (i) to accede to the World Intellectual Property Organization Treaty and the World Intellectual Property Organization Performances and Phonograms Treaty;
- (ii) to strengthen certain provisions which affect the work of the Government department responsible for the enforcement of the Act, such as the Police Service, Customs and Excise department and the Office of the Director of Public Prosecutions; and
- (iii) to improve the operation of the Act generally.

On December 17, 2004, in your then distinguished capacity as the hon. Minister of Legal Affairs, the Copyright (Amdt.) Bill, 2004 was introduced into the House of Representatives by your good self. However, you will recall that some Members on the other side expressed certain reservations about the Bill as it then existed, which necessitated its eventual referral to a special select committee of the House of Representatives for further consideration. That special select committee met on diverse occasions and issued a report to the House of Representatives on August 18, 2005.

The Committee recognizing that it would be unable to complete its deliberations before the prorogation of Parliament, recommended that the Bill be

Copyright (Amdt.) Bill
[HON. P. TAYLOR]

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reintroduced into the House of Representatives in the new session and be referred to a new committee, which would be mandated to continue consideration of issues and to adopt as part of its records the work undertaken and the written comments already received by the committee.

Mr. President, Cabinet by Minute No. 351 and dated February 16, 2006 agreed that the Bill be reintroduced into the Parliament together with recommendations of the special select committee.

The Bill was duly reintroduced in the House of Representatives on February 17, 2006 and was then referred to a new special select committee, then comprising Mrs. Camille Robinson-Regis, Chairperson; Mr. Roger Boynes; Mr. Hedwige Bereaux; Miss Gillian Lucky and Mr. Subhas Panday.

This committee was unable to complete its deliberations and report prior to the prorogation of Parliament on September 15, 2006. The Bill therefore lapsed as a result. The committee conducted an in-depth analysis of the pertinent issues raised during the debate on the Copyright Bill, as well as the submissions received from various interest groups and identified specific concerns as they relate to infringement of copyright and also to the prosecution of criminal offences.

2.00 p.m.

Mr. President, Cabinet then agreed that the Legislative Review Committee should consider the Bill, the legislation review committee has in fact reviewed the Bill and consultations have been held with various stakeholders, among them the Director of Public Prosecutions, the Copyright Music Organization of Trinidad and Tobago, Pan Trinbago, Trinbago Unified Calypsonians Association, the Video Club Owners Association and other users and owners of copyright works.

Mr. President, it is against this chronological and historical backdrop that I am pleased to report that the recommendations of that select committee have been incorporated into the Copyright (Amdt.) Bill that is tabled before you today. The Bill has been redrafted to incorporate the following amendments:

Clauses 1 and 2 of the Bill provide a short title and interpretation provisions.

Clause 3 of the Bill amends section 3 of the Copyright Act to ensure consistency and clarity in the meanings of several terms used in the Copyright Act. This clause also adds a definition of the terms “infringing copies” and “rights management information” to the Copyright Act. The existing Copyright Act, 1997 includes a definition of “infringement” but does not include a definition of “infringing copies”. As the Act presently exists, it is therefore necessary for a

prosecutor to extrapolate, as it were, a definition of “infringing copy” from the definition of “infringement”. The inclusion of the definition of the term “infringing copies” in the amended legislation removes all ambiguity as to what constitutes an infringing copy.

In addition, the definition of the term “rights management information” has been included since the Bill before you also provides remedies and sanctions for abuses with respect to rights management information pursuant to the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty or WPPT for short.

The term “rights management information” is defined as any information that may be used to identify an author, a performer, a work, et cetera or the terms and conditions of the use of that work, performance, sound recording or broadcast. For instance, when one purchases an item of software and thereafter installs that software on one’s computer invariably, a licence agreement would appear on the computer. That agreement outlines the terms and conditions of use of the software and a sequence of numbers and letters, all of which constitute rights management information.

Mr. President, clause 4 of the Bill seeks to amend section 18 of the Act to insert new subsections, namely, subsections (4), (5) and (6) to confer certain moral rights on performance of live oral performances and performances fixed in sound recordings. A moral right is described as the right of an individual to be identified as the performer of the copyright work and the right to object to any distortion or mutilation of the performances of that work in a manner that is prejudicial to the reputation of the performer. This provision ensures Trinidad and Tobago's performance and compliance with Article 5 of the WIPO Performances and Phonograms Treaty.

Therefore, with this amendment, our calypsonians and artistes of whom there are many, will now be able to demand that they be identified as a performer in any work in which they appear, a right which they do not now enjoy.

Clause 5 of the Bill seeks to amend the existing section 19 of the Act, that is to say, to reduce the duration of the protection afforded to the owner of copyright and moral rights in certain collective works, audiovisual works and works published anonymously or under a pseudonym. This would be reduced from 75 or 100 years, as the case may be, to 50 years from the making of the work or from the date of first publication or first lawful publication of that work. This amendment is consistent with Article 12 of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement in relation to collective works and audio-visual works

and in relation to works published anonymously or under a pseudonym, in accordance with Article 7(3) of the Berne Convention. Countries such as the United Kingdom and Canada also grant protection for 50 years. The existing provisions of our Act under section 19 were in essence TRIPS plus, which meant that based on the principles of reciprocity, our nationals received shorter terms of protection for their works overseas whilst non-nationals would receive longer terms of protection for their works in Trinidad and Tobago. The present amendment serves to cure that anomaly to ensure that the terms of protection for the prescribed works are consistent with international norms and that we do not grant more favourable terms of protection than that which would be granted in foreign countries.

Clause 6 of the Bill seeks to amend the existing Act to insert a new section 19A to provide for the duration of the moral rights of performers. Such rights would be protected for a period of 50 years from the year in which the performance was fixed in a sound recording or in the absence of a fixation, from the end of the year in which the performance took place. This amendment is pursuant to Article 17 of the WIPO Performances and Phonograms Treaty. This constitutes a significant improvement on the existing Copyright Act which did not provide a duration for the moral rights of performers.

Clause 7 of the Bill seeks to amend section 21(1) of the Act to extend the list of acts over which performers have an exclusive right to authorize or prohibit the use of their work. Such acts would now include the distribution or rental of a fixation of a performance or copies of that performance. This clause, would ensure Trinidad and Tobago's compliance with Articles 6, 8, 9 and 10 of the WPPT Treaty.

Mr. President, clause 8 of the Bill seeks to amend section 22(1)(e) of the Act to specify to whom the term "rental" applies.

Clause 9 of the Bill restructures section 26(1A) of the Act to render this section unambiguous as far as it is possible so to do.

Clause 10 will amend the heading in Part VII of the Act to clarify the contents of that part.

Clause 11 of the Bill inserts a new section 32A into the Act to permit infringements of copyright to be actionable by a non-exclusive licensee, that is to say, a person who holds a licence authorizing him or her to exercise a right that remains exercisable by an owner of copyright. Any non-exclusive licensee will be able to institute legal proceedings for copyright infringement provided that the licence agreement gives the licensee the authority to do so.

Mr. President, a non-exclusive licensee is akin to a non-exclusive distributor. Based on the proposed amendment, where the piracy is in relation to foreign works, non-exclusive licensees such as any of the collective management organizations, for example, the COTT or the TTCO may institute civil proceedings for copyright infringement instead of having to prevail upon the foreign copyright owners to do so.

Clause 12 of the Bill seeks to correct the deficiency in section 34(1) of the Act by removing the words “the making of which he knows or has reason to believe, constituted an infringement of copyright” and substituting the words “which is, and which he knows or has reason to believe, is an infringing copy of a work.”

This proposed amendment removes the requirement of having to prove that the making of the article was an infringement of copyright. What is required now is simple proof that the article in question is an infringing copy and that the accused person either knew or had reason to believe that the copy is in fact an infringing copy.

Clause 13 of the Bill inserts section 34A, the contents of which are in all aspects the same as the existing section 44, which treats with civil matters, that is to say infringements of copyright and neighboring rights. The existing section 44, which was misplaced in the present Act, would therefore be removed from its current position and replaced with a new section 44. This is simply a re-ordering of some of the sections of the existing Copyright Act, 1997 to ensure that the civil provisions are grouped together and not placed with criminal provisions. Clause 13 would also insert a section 34B dealing with rights management information, thus bringing the Act into compliance with Article 12(1) of the WIPO Copyright Treaty and Article 19(1) of the WPPT.

Clauses 14 and 15 of the Bill seek to delete the heading for Part VIII of the Act and substitute a different heading to clarify the contents of the part.

Clause 16 of the Bill would introduce a new section 41, one that describes the offences without ambiguity.

One difficulty, Mr. President, is that under the current legislation, the prosecution of criminal offences requires the simultaneous construction of several sections. There exists an all-embracing section, that is section 41 which provides that:

“A person who commits an infringement of a right protected under this Act for profit-making purposes, knowledge or having reason to believe that he is committing an infringement...”

is criminally liable.

In construing the existing section 41, one must have the recourse to all the rights in the existing Act, which are essentially civil in nature.

Mr. President, what the proposed amendments of section 41 seek to do therefore, is to create simple, clear provisions for the laying of charges and by extension, prosecution of offences. It is hoped that in doing so, the police, the prosecutors and the courts will find the legislation as amended easier to interpret. With easier interpretation of the relevant provisions, it is expected that there will be a much faster dispensation of justice throughout the courts of Trinidad and Tobago.

In the proposed prosecution of infringement of works created and produced outside of Trinidad and Tobago, for example, one of the specific problems encountered was the view that the legislation, as currently drafted, requires the prosecution to lead *viva voce* evidence for the makers of the film or current owner of the copyright. This presents an obvious practical difficulty, since it is both unrealistic and impracticable for the prosecution to prove copyright infringement by attempting to contact individual copyright owners irrespective of where they may be in the world.

The criminal provisions proposed by clause 16 under the new section 41(1) follows section 107(1) of the United Kingdom Copyright Designs and Patents Act, 1988.

2.15 p.m.

It creates offences that are constituted by the doing of an act without the licence of the copyright owner. In these cases, the accused person alleging a licence or consent will be raising an exception, exemption, proviso, excuse or qualification. This proposed amendment takes its cue from the United Kingdom where the provisions do not require prosecutorial arms of law enforcement agencies to contact the current owners of the copyright in a particular way.

Mr. President, for the offence to be proven, it must clearly be established that at the material time, copyrights subsisted in the said work and that the persons so accused did not have the permission of the copyright owner to copy the said work. The courts have held that the prosecution may prove that copyright subsists by calling licensees who are able to indicate that copyright exists.

The second limb of proving the offence that the defendant did not have permission to copy a particular work is a presumption that may be rebutted by the defendant. Therefore, licensees can be called upon to testify in court that copyright in the works subsists in a particular person or entity and that the defendant did not have permission from the copyright owner to copy the said work.

Mr. President, a new section 41A would also be inserted to create penalties in respect of the unauthorized public performances. The new section 41 would also provide for the destruction of infringing copies, articles, apparatus, implements or devices in the possession of a person at the time of his arrest or charge. The new section 41(1) is consistent with the relevant portions of section 107(1) of the United Kingdom Copyright Designs and Patents Act, 1988.

In particular, the new 41(5) would be of significant assistance to our police and it would enable a presiding magistrate to make an Order in respect of all infringing copies in the possession of the accused person, notwithstanding that charges may have been laid in respect of some and not all of the infringing copies. The new 41(5) is consistent with 108(1) of the United Kingdom Copyright Designs and Patents Act, 1988.

Clause 17 seeks to amend section 42 of the existing Act to provide a penalty for offences by bodies corporate. In the existing Act, there is no penalty stipulated in the section to address offences committed by bodies corporate.

Clause 18 of the Bill substitutes a new section 44 as amended, which states that for any offence, it is sufficient to examine 1 per cent or any 25 copies, whichever is the lesser of the entire number of infringing copies seized and where such examination establishes that the examined copies are infringing copies, it would be presumed until the contrary is proven that the entire number of copies are infringing copies.

Section 44(1) is drafted in a similar manner to section 55 of the Malaysian Copyright Act, 1987 which provides for the examination of 1 per cent or any five copies.

Mr. President, the new section 44 will also empower the presiding magistrate when deciding upon the severity of a sentence, to take the entire number of infringing copies seized at the time of arrest or charge into consideration.

Clause 19 seeks to amend section 45, to empower the police to seize any copies, apparatus, implements and devices used for transporting or marketing infringing copies of a work, a performance, a sound recording or a broadcast. Additionally, a police officer may tender such infringing copies, apparatus, implements or devices into evidence and apply for an Order from the magistrate for the destruction of same.

Clause 20 of the Bill inserts a new section 59 in the Act to provide for section 3 of the Limitation of Certain Actions Act, 1997 to apply to actions to recover any sums recoverable under the Act.

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Mr. President, whilst this Bill seeks to facilitate the prosecution of copyright offences, it will also permit Trinidad and Tobago's accession to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. Those treaties are otherwise known as the WIPO Internet treaties.

With the advent of the Internet, another layer of statutory protection of copyright has become necessary. For whereas national copyright laws have been concerned with protecting copyright infringement within the borders of a particular state using analog technology, the Internet now allows its users to infringe copyright, using digital technology from any location. Such ready access to information allows easy and anonymous copying, distribution and other exploitation of works without the permission of the copyright owner. It was therefore indispensable that the new binding international norms should be developed by the member states of WIPO to address copyright infringement in this digital era.

Mr. President, Trinidad and Tobago was represented at the Diplomatic Conference for the conclusion of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. At that time, the delegation was of the view that Trinidad and Tobago should not deposit instruments of accession, but should defer accession until the various stakeholders and interest groups were consulted, and a regional meeting to discuss the two treaties and possible accession was held. The Government of Trinidad and Tobago hosted this regional meeting.

In 2000, the then Government recommended accession to the two treaties, but deferred accession with the Director General of WIPO until the Copyright Act, 1997 was amended to ensure compliance with the said treaties. The views of the Secretary General of Caricom were also sought on Trinidad and Tobago's accession. It was agreed that accession by this country would not adversely affect other Caricom member states. The Government of Trinidad and Tobago has for years acknowledged the importance of the WIPO Internet treaties.

It was in fact members on the other side who initiated the move to make national copyright law compliant with the provisions of the WIPO Internet treaties. Trinidad and Tobago is, however, yet to be a signatory to the WIPO Copyright Treaties. To date, the WIPO Copyright Treaty has been signed by 64 states worldwide, with Jamaica and St. Lucia being the only Caricom signatories thus far. Also, the WIPO Performance and Phonograms Treaty has been signed by 62 states, with again, Jamaica and St. Lucia being the only Caricom signatories.

Mr. President, both the WIPO Copyright Treaty and the WIPO Performance and Phonograms Treaty make it incumbent upon member state to provide remedies for the alteration or removal of rights management information. Additionally, under article 8 of the WIPO Copyright Treaty, the right of communication to the public is the right to authorize any communication to the public, whether by wire or wireless means and I quote, "the making available to the public of works in a way that the members of the public may access the work from a place and at a time individually chosen by them." The quoted expression covered in particular, on-demand interactive communication through the Internet.

While the existing Copyright Act, 1997 provides an exclusive right to communication of a work to the public, the definition of the term "communication to the public" does not use the expression contained in the WIPO Copyright Treaty that covers on-demand interactive communication through the Internet. In this regard, the proposed amendment to the Copyright Act, 1997 as outlined in clause 3 of the Bill will catch communication to the public via the Internet. The existing Copyright Act, 1997 makes no provision for legal remedies against the circumvention of technological measures of the alteration or removal of rights management information.

Clause 13 of the Bill therefore provides for legal remedies against the circumvention of technological measures or the alteration or removal of rights management information as required under the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

Mr. President, what is particularly important, is that the WIPO Performance and Phonograms Treaty provides that performers and producers of phonograms enjoy the right to a single equitable remuneration for the direct or indirect use of phonograms published for commercial purposes, for broadcasting or for communication to the public. This is premised on the basis that each contracting party shall accord to nationals of other contracting parties, the very same treatment it gives to its own nationals. Accession to the WIPO Performances and Phonographs Treaty will ensure that our performers, when performing overseas, will receive the reciprocal standard of protection as is accorded nationals of other countries that are party to the WIPO Performances and Phonograms Treaty.

For example, the performer will be entitled to receive royalties for the broadcast of his sound recording. As you may be aware, Mr. President, our performers have been pleading the justice of their cause for quite some time for this country's accession to the WIPO Copyright Treaty and the WIPO Performance and Phonograms Treaty.

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In this regard, the proposed amendments contained in this Copyright Amendment Bill are timely and opportune and represent the culmination of the efforts of determined nationals of this country both within and outside of our Parliament.

Mr. President, in closing, I therefore wish to commend the members of the Special Select Committees, the staff of the Intellectual Property Office of the Ministry of Legal Affairs, the law enforcement agencies and the various stakeholder organizations who have spent a significant amount of time in reviewing and proposing the various amendments contained in this Bill.

Mr. President, the longest journey begins with a single step and it would be remiss of me not to remind the national community that it was under your astute stewardship as the then Minister of Legal Affairs that the fledgling steps of this Copyright (Amdt.) Bill were taken back in 2004. This Bill is a culmination of the tireless vigilance of the stakeholders in our creative industries and this Government's determination to ensure that Trinidad and Tobago pre-eminent stance among the nations of the world by ensuring that the rights of our performers, our artistes, indeed our creative human capital is recognized, is nurtured and is encouraged.

Mr. President, as we are in the midst of the Carnival season, the reintroduction of the Copyright (Amdt.) Bill at this time signals this Government's commitment to the achievement of its Vision 2020 goal of developing innovative people. This Government has been and will continue to be a sleepless guardian in its quest to ensure that the boundless creativity of our people is both recognized and rewarded.

Mr. President, I beg to move. [*Desk thumping*]

Question proposed.

Mr. President: Hon. Senators, allow me to extend a welcome to the honourable Minister of Legal Affairs to this Chamber and to congratulate him on what I suspect is probably his first contribution in the Parliament. [*Desk thumping*]

2.30 p.m.

Sen. Wade Mark: Mr. President, let me also join you in welcoming the hon. Minister of Legal Affairs to this Chamber. I also extend my best wishes to the hon. Attorney General. I am glad she is here today having regard to the scare that we got a few hours ago; so I am glad that she is back on her legs and is performing her public duties.

Let me also take this opportunity to welcome you again, Mr. President, as you occupy a very prestigious position. I will miss you enormously at this level, [*Laughter*] because I know that we engaged at all times very lively exchange of views; now you will have to sit and ponder as I proceed, but I welcome you in that position that you occupy today.

Let me also welcome all the new Independent Senators and my colleagues who were there with us in the last Parliament, but, more particularly, my colleague and erstwhile trade union comrade, Sen. Michael Annisette, to this honourable Chamber. I look forward to his very powerful contributions in the interest of the working class, the oppressed and the downtrodden in our Republic.

Mr. President, I am very happy to contribute to this very important piece of legislation on copyright, on the right of the people in the cultural industry to have protection of the law when they engage in the exercise of their creative genius and intellectual creativity in the production of music, songs and publications, among others. It was very interesting to listen to the hon. Minister when he sought to give us an appreciation of the genesis of this very important piece of legislation. It was under the UNC in 1997, as you would recall, that nine pieces of critical intellectual property legislation were piloted and supported by all parties in this Parliament. When this Bill was introduced in the other place, we made it very clear that we were in support of strengthening legislation and strengthening the provisions contained in the Copyright Act of Trinidad and Tobago to ensure protection for our artistes.

At that time, we had observed that the then Bill had certain provisions that would have infringed on sections 4 and 5 of our Constitution. The hon. Minister was correct when he pointed out that two special select committees were established; they did not complete their work. Therefore, the Opposition at that time, represented on these select committees did not have the opportunity to really add the kind of value that we would have liked, so a Bill coming to the Parliament today would have been able to have the input of the Opposition. Unfortunately, as the Minister indicated, we did not have that opportunity, because after the two select committees were unable to deliver, the Bill was then parachuted out of the Parliament and sent to what he described as a Legislative Review Committee.

So a matter that was supposed to be settled in the Parliament, because we had taken objection to certain provisions of the legislation and we wanted to give the Government our support in strengthening the legislation, was not to be. But we see some of these same provisions, in a new incarnation, being piloted and parachuted into

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this Bill. Again, Mr. President, we must never forget that the parent Act was passed in this Parliament with the requisite constitutional majority, because it infringed property rights.

If you look at this legislation, specifically at clause 19, you would realize that once again property rights, individual rights, are being infringed. That is why we offered, Mr. President, as you would recall when you were in another incarnation, that we then offered our support; we then indicated that the Opposition would be in support of providing the Government with the requisite constitutional majority to ensure that no smart music pirate, with well-paid lawyers, could take the matter to court and have the courts strike the legislation down as being unconstitutional. We would have defeated the purpose of the legislation and we would have failed our stakeholders in the industry.

We offered our support then and we offer our support now once again to ensure that this legislation passes the Parliament with the requisite constitutional majority, so there will be no attempt by anyone to challenge it in the event of infringements and persons being taken to the courts for prosecution.

If the Government in its wisdom determines that it has gotten the best legal advice and given the best legal advice obtained, it believes it requires a simple majority, we too will go along, but we put our caveat, we advance our reservation and indicate to the country that while we are supporting the legislation in the interest of the stakeholders in our country, we advise the Government as a matter of caution, safety and protection for our artistes in the industry and other stakeholders, we should have the requisite constitutional majority to have it almost watertight, ironclad, so that the people who are to benefit from this, would truly benefit. As I said, that is up to the Government. They would have to decide what they are going to do.

As the hon. Minister indicated earlier, both treaties, WPPT and the WCT, are designed to protect songwriters, composers, owners of song recordings, singers and musicians in a technological age and, most importantly, in an era of digital technology. Therefore, we have consulted with several stakeholders in the industry and they appear to be reasonably happy with the provisions as contained in the legislation.

The question that we have to address, and I hope the hon. Minister would be able to provide answers when he is winding up, is that we would like to get from the Minister a definitive time frame for accession to the treaties. Once the Bill is passed in both Houses of Parliament, is assented to and proclaimed as law, we

would like you to give this Parliament a time frame for accession, particularly when we take into account, as you mentioned earlier, the rights of performers to enjoy their property in the form of royalties, that they currently do not enjoy, because we are not a signatory to the WPPT Treaty.

With the passage of this Bill into law in the both Houses of Parliament, those stakeholders will now be able to enjoy royalties as they are entitled to and they are not currently so doing, in terms of enjoyment of their property.

I will like to raise the wider issue. I ask the hon. Minister: When we go to the WIPO Performances and Phonograms Treaty and we refer to the same Article 15 that he mentioned, I do not know if the hon. Minister has a copy of the Treaty before him, I will also like him, at the same time, to refer to the parent Act, if he could locate section 23. It must have been an oversight on the part of the drafters at that time. I should not say oversight, because this Treaty only came into effect, from my research, sometime around March of 2002, while the parent legislation came into effect in 1997. But there is need for correction, hon. Minister, in the legislation.

If you go to section 23(1) of the parent Act it reads:

"If a sound recording published for commercial purposes or a reproduction of such sound recording, is used directly for broadcasting or communication to the public, or is publicly performed, a single equitable remuneration for the performer and the producer of the sound recording shall be paid by the user to the producer."

2.45 p.m.

Now, Mr. President, if you go to the WIPO WPPT Treaty and you look under Article 15 of the treaty it reads as follows:

"Performers and producers of phonograms shall enjoy the right to a single equitable remuneration for the direct or indirect use of phonograms published..."

Mr. President, we are proposing an amendment to section 23 of the Copyright Act of 1997 and we would like the support of the Minister and the Government to ensure that persons who are entitled to royalties are not being short-changed as a result of a loophole in the law or legislation, and I would like the words to be inserted after the word "directly", "or indirectly broadcast or communicated".

I want to explain to the hon. Minister the rationale. Under the present section, the user broadcaster pays a single equitable remuneration to the producer whenever a commercial recording is used in a broadcast. However, if another user should communicate the broadcast to the public in a commercial environment, that user is not compelled under law to enter into any licensing agreement with, or pay the single equitable remuneration to the producer. And, therefore, the exclusion of the words “or indirectly” places the producer at a comparative disadvantage with composers and publishers by limiting the producers licensing capability and denying a substantial revenue-earning potential for those persons.

Therefore, I am suggesting and submitting to the hon. Minister an amendment to section 23 of the parent Act so we can capture that particular element that is now lacking in the legislation and that will be in the interest of the stakeholders in the industry. So I would like him to take that into consideration, and I will propose the amendment in writing and my colleagues will support me, and we will have it properly circulated.

Mr. President, I was waiting with some degree of anxiety and interest, nervously awaiting a statement from the Minister on several issues, but I will start on the first one that is uppermost at this time on my mind. This legislation, Mr. President, as I indicated, is to provide protection in an intimate or digital era to our stakeholders in the entertainment industry and particularly the music industry as an example.

There is a difference between free trade and fair trade and I would like the hon. Minister to go back to the records of his ministry and find a file that the former Minister of Legal Affairs in the UNC administration, the hon. Kamla Persad-Bissessar took to the Cabinet in the form of a Cabinet Note in September 2001 to have the Cabinet of Trinidad and Tobago consider for the first time local content regulations where our artistes and stakeholders in the cultural and creative industries would be able to have a fair chance of hearing, and allowing the people to experience their creativity through music on the airwaves of Trinidad and Tobago. There is a misguided view held by some Members on the Government Bench that there should be no protection for our local artistes when it comes to local content.

Mr. President, in Canada which is a democratic capitalist state which also believes in free trade, they are in NAFTA with the United States of America and Mexico, and 25 per cent is almost legislated in law in Canada as it relates to local content. You cannot have a situation where—and Mr. President, I will explain to you as I go on the critical value of the entertainment industry as we seek to diversify our economy. Oil and gas will run out one day and the entertainment industry, the

creative and cultural enterprises may be the answer to continued sustainable and equitable development in our country and economy and, therefore, we must now seek to promote our artistes in a serious way and I would like the hon. Minister to probably give us some undertaking that the Government of Trinidad and Tobago will undertake the appropriate regulations in our country to ensure, like the Canadians, a 25 per cent local content rate as it relates to music on our airwaves and other electronic media in our country. There should be a minimum of 25 per cent.

We should not have our artistes struggling to live in this country. Do you know that the Mighty Shadow is not producing any songs this year? I understand that after he spends \$200,000, apart from hearing the song—because people buy it—he does not get the royalties and the reason for it is that the content question is a critical one and the second one, which I will come to later on in my contribution, is the pirates in our country. And my understanding is that close to 60—70 per cent of all CDs produced in our Republic are illegally produced with no permission from the authors, the composers, the performers, the producers or the song writers. So 70 per cent of their CDs are being sold on the street corners of this country, they give no permission and they get no royalties for their music.

Mr. President, I understand at one extreme the pirate industry is \$200 million, to another extreme, it is \$1 billion. We understand that is the value of the pirate industry in Trinidad and Tobago today, \$200 million to \$1 billion, and I thought that the hon. Minister in piloting this measure would have come up with some kind of initiative to give us some kind of hope that when this legislation is passed, how is it going to be implemented. How are we going to enforce the provisions of the legislation? Because, Mr. President, you know we have a tendency, a propensity to pass legislation in this Parliament and it remains on the shelves. There is no enforcement or implementation and, therefore, one of the burning issues we would like the hon. Minister to give us is a definitive undertaking on—not for us in the UNC-A Opposition, the alternative government of Trinidad and Tobago, but for the people who are the stakeholders in the industry, those are the people who we in this Parliament collectively should be fighting to protect and advance in terms of their interests and we should collectively ensure that everything is done to defend and advance the interest of the artistes in the industry. Mr. President, I think that is a very critical matter that I would like the hon. Minister to take on board.

I would like the hon. Minister to also indicate to you and this honourable Senate that when we pass this legislation with the appropriate amendments, I would like him to tell us whether his Government is going to establish a

comprehensive anti-piracy programme, because it is all nice and good to bring these provisions in the legislation; it is good for us to access the Treaty; it is good for us to ensure that our stakeholders in the creative industry are properly remunerated as they are entitled to, but if you do not have the necessary infrastructure to effect these measures, then it will just be paper, we are just passing paper, but to effect the measures contained in the paper would not be possible because the infrastructure is not there.

I would like the hon. Minister to tell us whether he has taken steps to establish in the police service a special anti-piracy unit with trained officers who understand intellectual property legislation and who know what to look for when they go out. He must tell us this, because it makes no sense coming to fool us here by saying he is passing legislation. To fool who, Mr. President? How is it going to be effected? How is it going to be implemented? How is it going to be enforced?

3.00 p.m.

So I would like the hon. Minister to tell us whether he has taken steps, along with the Minister of National Security, who I know is very tired these days and might need to go home shortly—we would like to know whether the hon. Martin Joseph, the Minister of National Security, is in consultation with him with a view to having established a special anti-piracy unit.

You would recall that ACP Cooper was sent abroad and trained at taxpayers' expense on anti-piracy matters. He was trained, but where is he today? He has retired. So he “gone”! The institutional memory gone, because there is no established unit, as far as I am aware, within the police service to continue and to inherit the knowledge of Mr. Cooper in terms of intellectual property and how to go about dealing with that matter.

We do not want the police to just have sporadic raids because Carnival is around the corner; they go downtown and they raid and so on and get some CDs and whatever, and then it is a big “pappyshow”; after that everything goes out of existence. For us to deal with this issue it must be an ongoing and sustained effort. That is why we would like to submit to the hon. Minister that a special anti-piracy unit be established within the police service of this country. We have two police services now, one headed by Brigadier Peter Joseph and the other one by a retired Police Commissioner—I think he is on borrowed time right now. So I do not know which one would be responsible for establishing this special unit. But it is a

proposal that we are putting forward to the hon. Minister for his consideration. We hope that, for instance, he would take it in the spirit that we are advancing it, in the interest of the people and the stakeholders in the industry.

Not only do we need to train our police officers to understand the law, to enforce the law and to make sure that our cultural and creative artistes receive the rewards that they are entitled to because of their genius, we have to ensure that the customs officers are also trained. I understand right now—and I could be corrected by the new Minister in the Ministry of Finance, the hon. Mariano Browne—your name is now a household name in Barbados in the campaign. They almost say that you are a candidate in absentia. But I would like the hon. Minister to tell us—

Sen. Joseph: He will do better than you! [*Crosstalk*] [*Laughter*]

Sen. W. Mark: But I would like to ask the hon. Minister, what steps would he be taking to ensure that the customs officers are properly trained? I understand that CDs are imported into this country almost duty-free. I do not know; I am just trying to get clarification from the hon. Minister in the Ministry of Finance, whether he is aware of that. And if that is taking place, you understand how the anti-piracy industry is flourishing. I am not too clear and I need some clarification from the hon. Minister on this matter.

So we are saying the police have to be properly trained; we are saying that the customs officers must also be properly trained; we are saying the DPP and the prosecutors must also be properly trained to effect and to give force to this legislation. And you cannot escape the role of the Judiciary and the Magistracy in this matter, so the magistrates have to be trained to understand. This is technical and complex legislation, you know, and if people are not lettered and do not understand this thing properly, they would not be able to enforce it. So they must understand the technicality and the complexity and, therefore, training is required on a continuous basis in order for the authorities to properly effect this.

So the DPP's department needs to be upgraded and the personnel trained; the judges need to have the same experience, as well as the magistrates and, most importantly, the users. People in this country support piracy, because if 70 per cent of the CDs that are produced in this country are illegally produced, there must be a market. Who is buying those CDs? The question here is that the Government must embark upon a nationwide public education drive to sensitize the population on the importance of this legislation. If you do not educate the public; if you do not sensitize the public—and I am not talking about just the general public; you

have to start educating people at the level of the schools so that they can understand these things. If you do not do these things, how will this legislation really work, if you do not have public and nationwide education on this particular matter? It is going to be a waste of time. So you have to target both the vendors as well as the users—the end users; the consumers. You need to have them properly educated.

I am not too sure if the hon. Minister could tell us if he is aware that the protection offered to artistes and singers in the recording industry is 50 years. Therefore, I would like to ask the hon. Minister what steps the Government is taking to protect the Mighty Sparrow's "Jean and Dinah"? Fifty years have elapsed since it was first produced in the early '50s. We are in 2008. What I am asking the hon. Minister is whether he is aware that there is a lifespan of 50 years in terms of music produced by our artistes and what is he doing? Because in the United States they are passing legislation to protect their artistes so that royalties could continue to flow towards the inheritors in that instance.

There is a chap called Eddie Grant. Some years ago he came and bought out all our old music from the '50s and '60s and so on, and I understand all has disappeared. He has the rights for all and they must be in some basement about to crack up. But after 50 years he can then reproduce all of those; sell them as if they are his and make all the money. Now, I mean to say, he is an enterprising gentleman; he was seeing down the road. He understood the music industry and he knew that after 50 years "I will have the right", or you, Sir, or any one of us here, will have the right to reproduce the music and it is yours; you can sell it and get money and make profits.

So what is going to happen to our local artistes like Sparrow with "Jean and Dinah"? Fifty years have elapsed. So Eddie Grant is going to make money on Sparrow's head? Or are we going to take steps to extend that period from 50 to 100 years? I would like the hon. Minister, in the interest of the stakeholders in the industry, like Sparrow as an example, to take measures to ensure that legislation is introduced to amend whatever law has to be amended, to extend that period from 50 years to 100 years. I would like to suggest that to the hon. Minister.

I would like the hon. Minister to also share with us the question of what impact, if any, the recently concluded Economic Partnership Agreement between the European Union and CARIFORUM, which is Caricom and the Dominican Republic—there is a cultural protocol embedded in that recently concluded agreement, which I understand is for an indefinite period. I would like, on behalf of the UNC A, to find out whether the Minister could share with us the

implications of that agreement as it relates to our cultural artistes and our creative geniuses. We would like to know if he could share that with us, because I read some disturbing news in the newspaper—and let me, for the record, say it is the *Trinidad and Tobago Review*, January 07, 2008. The headline on page 26 is entitled: “Better to have postponed that aspect of the negotiations.”

They were arguing in this article that the recently concluded agreement between these two bodies, that CARIFORUM could have postponed the aspect of trading services; strike a deal as it relates to trade in goods. So that, for instance, what came out as a result of this hustle to sign this trade pact was that and I quote:

“On the face of what has been agreed, Lord Kitchener, Bob Marley, Beryl McBurnie; Jimmy Cliff, Eddy Grant, Len ‘Boogsie’ Sharpe, Winsford ‘Joker’ Des Vignes and Merchant...would be ‘ineligible’ under the EPA.”

to perform in 25 out of 27 European States.”

Do you know why? Because in the agreement, we understand, to perform in those countries, you have to be lettered. Do you know what that means? You must have a university degree to go to Europe as a cultural artiste, to perform. Now, you know in Europe, those cultural artistes, song writers, musicians and so on, are highly lettered, but they are making the point in this article that a man like Len ‘Boogsie’ Sharpe, who does not have a degree; if this is so—and I am just trying to get from the hon. Minister, how will this impact on the cultural and creative industries in Trinidad and Tobago? I am not concerned about Caricom right now; I am concerned about Trinidad and Tobago; how it will impact on our cultural professionals in our country.

We understand that there is going to be some certification. I do not know who is going to be responsible—

Mr. President: Hon. Senators, the speaking time of the hon. Senator has expired.

Motion made, That the hon. Senator’s speaking time be extended by 15 minutes. [*Sen. Dr. A. Nanan*]

Question put and agreed to.

3.15 p.m.

Sen. W. Mark: Thank you, Mr. President and I also thank my colleagues as well. I am asking the hon. Minister to share with us his knowledge on the implications for our cultural professionals and the persons involved in the cultural and creative industries. How will this measure impact on them? Will what has

happened impact negatively on the treaties we are now accessing? I will like him to clarify these areas for us. It is something we intend to pursue on another occasion. Whether it is sound groups, bands, orchestras, authors, composers, sculptors, entertainers and other individual artistes, all those persons would be affected as a result of this recently concluded agreement.

I was doing some enquiry because I believe that whilst we recognize the importance of the measure which is designed to protect and strengthen the rights of the individuals and stakeholders in the industry, I did some research on the issue of the potential economical impact on culture within the entertainment industry. At the end of the day, we are promoting our cultural and creative artistes with a view to ensuring that they get an equitable return on their efforts and intellectual exertions, as it relates to royalties. We know that the entertainment industry is a trillion dollar industry, internationally.

In our country, we recognize that the industry generates approximately \$352 million on an annual basis and it employs over 10,900 citizens of our Republic. The research has shown that for Carnival alone you get close to 4,000 persons being employed in that particular industry, generating a total of about \$154 million. In the music segment close to 6,000 persons are employed generating about \$169 million. It goes on to the visual arts, \$720 million; theatre, \$454 million and dance, \$474 million. Based on our research we are being told that our entertainment industry employs about 11,000 persons and generates around \$352 million.

The potential for expansion and growth of that industry is very promising. It is our view that if the music industry is properly nurtured, it could become a driver for economic growth, job creation and fantastic innovation in our country. I will like the hon. Minister to spare no effort whatsoever in seeking to prioritize the cultural and creative industry and give it the protection that it deserves. I also believe that there is need for better understanding and acceptance of the value of our creative and intellectual property driven industries. We need to have a better understanding and acceptance.

With the greatest respect, we do not believe that—the hon. Minister said that they are committed to the industry and they want to ensure that people are properly rewarded. We have not seen that kind of commitment in practice. We get that in lip service; “ol’ talk” but not serious action on the part of the regime.

Without the UNC-A the pan would not have been patented. In 1997, through legislation we patented pan and it was created by us in Trinidad and Tobago. We were never able to patent it. The PNM was in power for all those years and my

friend, the hon. Minister said that they are committed to ensuring, protecting, advancing and rewarding our artistes. “ol’ talk”, Mr. Minister! You are not serious.

I indicate to the hon. Minister that this Bill is about protection for the creative and cultural sectors of our country. When you go to section 45 of the parent Act you would see the kind of draconian powers that we gave to the police, whether inspector or ordinary constable, to ensure that the rights of the artistes are protected in this country. We gave sweeping powers to the police. The police could not have been given those powers without the requisite constitutional majority. In the parent Act, under section 45 the police had the power to enter and search any premises or place. Could any police do that ordinarily? The police must be protected when they are going to do these things. A policeman could stop, board and search any vessel other than a ship of war, any vehicle in which he reasonably suspects that they are infringing copies of works. It tells of the kind of power they have. A police officer can break open any outer or inner door of any place. He is empowered and authorized by this Act to enter and search.

The reason he could have forcibly boarded any vessel; remove by force any person or thing obstructing him; detain any person found in any place or detain any vehicle, is, he has sweeping powers. The reason for the sweeping powers is that we wanted to protect the artistes from infringement. To do so, you have to get the protection of the Constitution and the requisite majority was given. You were there. You supported it. The other Senators were there. “I eh seeing much nah because ah know de Prime Minister sweep the place. In fact, dey have a calypso call *Sweeping*. I thought he was talking about we, but is all yuh. He sweep the whole place clean.” [*Laughter*] Let me go back to the original Bill.

Section 45 of the Act is amended. The essence of section 45 remains but they are inserting the following paragraph:

“any apparatus, implements and devices used for transporting or marketing an article which appears to him to be an infringing copy of a work, performance, sound recording or broadcast;”

The police could do that. He could seize these things.

In section 19(d)(6):

“A police officer who has reasonable cause to suspect that—

- (i) copies of a work, performance, sound recording, or broadcast found in any premises or place, vessel, aircraft or vehicle are infringing copies;”

the police could deal with any apparatus, implements or devices found on any premises.

If I am at home on the Internet doing my work and a policeman who does not like me comes to my home and accuses me, because he reasonably suspects that I am engaged in downloading music, in other words, I am pirating; I am engaging in illegal activity, that is piracy, he can break open my place; invade my privacy and detain me. Under what? A Bill that passes with an ordinary majority? You cannot! If you are going to give the police that kind of power to do these things, you must have the requisite constitutional majority.

That is why we are saying to the Government of Trinidad and Tobago, through the hon. Minister, that if you want to pass this Bill and give the artistes the protection that they deserve, pass it with the requisite majority, so that tomorrow morning when it becomes law, no smart aleck can take the matter to the High Court and ask the court to rule on the constitutionality of the Bill, and they can then strike it down as illegal and unconstitutional. That will not be in the interest of the artistes. We would have defeated the purpose that we agreed collectively that we should have pursued.

In the interest of the artistes, I appeal to the Minister to try to study this. You have a very able Attorney General at your side. I hope that she is properly able to advise you. I do not agree with your advice that citizens of this country ought not to protect themselves if the police and your government are unable to protect them. Anyway, I will come back to you on another occasion.

Mr. President, I am winding down now. We indicate to you and the hon. Minister that we are giving support to the legislation because we want to protect, safeguard and advance the interests of our cultural and creative artistes, song writers and all those performers, whether they are producers of audio and audio-visual works, authors, composers or musical publishers. We will support the legislation. If the Government refuses to take our views on board about the constitutional majority, that is their business. We will still go along with the legislation. Do you know why? We want to support our artistes and give them the protection and advance their interests.

I thank you for allowing me to speak on this very important matter. It touches us very closely because we brought these pieces of legislation in the first instance. We were supported by the then opposition who is just in government temporarily. We will ensure that we give the Government the necessary support to ensure that this Bill is passed, the artistes are protected and their interests are advanced.

Thank you.

3.30 p.m.

Mr. President: Hon. Senators, I do not know what happened, but that was an excellent contribution by Sen. Mark, both in terms of content and conduct. It is worthy of very high marks indeed.

Sen. Basharat Ali: Mr. President, I wish to join with Sen. Mark in welcoming you to your new position. You come with excellent recommendations. I know your predecessor has said that you are an expert on the Standing Orders and you yourself said, in your little speech on being sworn in, that your job is to ensure that the Standing Orders are followed. I believe we are on a good footing and we should have easy times as we go along. If Sen. W. Mark's behaviour today is any measure of that, we should have very good times.

Mr. President, let me confess from the beginning that when it comes to copyright I am an absolute tyro. I have a better working knowledge of patents because in the business of chemical technology it is necessary and I have been through a few stages where I have had to sit and work out licensing agreements with providers of patents and know-how, so whatever I say is as a layman. I have taken time to spend on this Bill because it has been with us for some time. I was able to spend a fair amount of time on this, so I feel fairly comfortable in the views that I have, subject to what the experts may have to say.

The hon. Minister did give a little history of this Bill, but I think it fell short of what I would like to say. The forms of this Copyright (Amdt.) Bill have had a tortuous path through Parliament. I have a time line here which may be of interest to Senators. It starts on November 26, 2004 when the amendment Bill was laid. This Bill was debated on December 17, 2004. It was a relatively short debate and was sent to a special select committee. You, Mr. President, are well aware of this because you piloted that Bill. That special select committee consisted of five attorneys. We do not have five attorneys in the Senate so we could be in problems if we are going to set up a special select committee. The committee had a six-week deadline to report.

Between January 07, 2005 and August 16, 2005, the special select committee met a number of times—six meetings in fact—and it is well documented in the interim reports to Parliament. There was a significant amount of redraft of the Bill. I will come back to that.

On September 05, 2005, that report of the special select committee dated August 18 was laid before the House of Representatives with recommendations that the Bill, which was essentially redrafted, be referred to a new committee,

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mandated to continue work and that the new committee be authorized to adopt the work undertaken. September 08, 2005, the Bill lapsed due to the prorogation of Parliament.

So we get to 2006 and a Copyright (Amdt.) Bill was laid in the other place on February 17. This included the amendments proposed by that special select committee in the previous session. I do not recollect any major debate, but on May 05 it was referred to a new special select committee with one change in membership. Another attorney was in place. That Bill also lapsed on September 22, 2006 due to prorogation of Parliament.

On February 27, a Copyright (Amdt.) Bill, 2007 was laid in this House. On a number of sittings, this Bill appeared on the Order Paper from third place right up to top billing on September 13, 2007. Ironically, Parliament was dissolved on September 28, 2007 so that third bill also lapsed. Today, we are here, on January 15, 2008, for debate on a Copyright (Amdt.) Bill, 2008.

That is the history. It has taken us a long time: from a date in 2004 to now to get there. I wonder whether we should take that long on any bill where the major work was done in the first few months of 2005. I leave that for others to talk about. I was never satisfied that this has been so.

Mr. President, I believe the hon. Minister stated the objectives of the Bill, but for my own reason, I will summarize some of them. The first was to facilitate accession to the WIPO Copyright Treaty and Performances and Phonograms Treaty, which Trinidad and Tobago had not yet signed in 2004 and which appears to be still outstanding. This Bill, if it becomes an Act, will be an important step towards our accession to those treaties.

The second objective was to improve protection for performers and others by, for example, redefining neighbouring rights as they relate to performers, producers of sound recordings and broadcasters and generally extending the rights of performers and artistes. The third one, a very important one, is to make it easier for the police to prosecute offenders who pirate music, DVDs, films, et cetera.

If you ask me if the work done by Parliament to date has successfully addressed these problems, I would say, in my layman's view, yes, but with one reservation. As I said, most of the work of this committee had been done by the first special select committee when it submitted its report in September 2005. I pay tribute to the committee for the work done and if I had to make special mention of any member of that team, I would mention the former Member for Pointe-a-Pierre, Miss Gillian Lucky, whose sterling contribution and whose input

into the proceedings of the select committee were really outstanding in my view. That committee did an excellent job. I extend that also to the staff of the Intellectual Property Office and to the Ministry of Legal Affairs.

Mr. President, it would seem that in the review of minutes, there was still an outstanding issue on this Bill and that was, notwithstanding the provisions redrafted into the 2004 Bill, a three-fifths constitutional majority was still required. This seems to be a point which was not resolved.

It is interesting to note that the first committee was very optimistic that its work would be completed before Carnival 2005, which was on February 07 and 08. I had a note here that piracy in and out of costume was prominent. In the minutes of the meeting of the special select committee, they recognized the comment was made that Carnival was a season of piracy and even if the legislation was not passed, the media should be focusing on that issue. That was the feeling of the members of the committee.

The Copyright (Amdt.) Bill laid in the House of Representatives on February 17 missed Carnival days also—February 13 and 14. I have not cited any minutes of meeting of the new select committee before the Bill lapsed on September 22, 2006. Whether it met or not, I cannot say. However, the next Bill before us was Copyright (Amdt.) Bill 2007, which was laid in this House on February 27. That also followed Carnival on February 19 and 20.

Carnival 2008, February 04 and 05, also sees us without the amended legislation most likely because even if the Bills are passed here today—bearing in mind the Finance Bills to be passed before January 31, and the election of a President before February 15—there is little likelihood that we will have this in place before Carnival this year.

Once again, we will have gone through three or four Carnivals at a time when there is an increased piracy of one kind or another and so an increased loss of revenue to our artistes. I am hoping that soon we will get there.

The Bill offers all the amendments agreed by the 2005 special select committee and makes one important amendment to the 2004 and 2006 Bills. That is the withdrawal of a proposed new section 37A, which would have incorporated into the Act certain new presumptions about the use of premises for the purpose of carrying out activities, which would have been infringements of the law. I have here that the 37A that has been excluded was in the 2004 and 2006 drafts and it has disappeared from the 2007 and the 2008 drafts.

What is the rationale for that I do not know. It would appear that 37A was intended to strengthen the position of the Government and the law by laying the burden of proof on any perpetrator. I believe, if I may refer to your earlier piloting of this Bill, this proposed new section of the Act, 37A, came from the Dangerous Drugs Act. The question then arises: Why have we removed it? Is it because we felt that we would not be able to get the constitutional majority if we have it included? I surmise that to be one of the possibilities why it has been left out. If that is so, and the consensus seems to be that you really require the three-fifths majority, I would like to suggest that we do it today, put in those amendments so that the Bill, when passed, would be consonant with the parent Act, which was also passed with a three-fifths majority.

3.45 p.m.

Sen. Mark has said that the Opposition would be willing to support such special constitutional majority. I am sure that if we poll our Senators here, we will get that special majority. I understand that in the other place the Government does have a three-fifths majority. Would it not be saving time if we did not have to refer this to any other committee, if we make the amendments now and then send it down to the other place for debate, with the hope that it will be passed? Then, we would have made assurance double sure. I think that is the point that Sen. Wade Mark was making and we should really do it. Some people say that it is a draconian measure, but when you have a situation like we have—as with crime and other lawbreaking areas, this is one of them—then I think we have to take necessary measures.

I would like to address the question of piracy, which is a burning issue at the moment. It always crops up at Carnival time. It seems now that it is not only Carnival time. It would appear that it is now a year-round activity. As happened on Friday, December 28, there was a surprise crackdown by police—not in Port of Spain but Arima—on music and video pirates. This event elicited comments in the local media in the form of an editorial in the *Daily Express* of December 31. There were letters on both sides of the divide; those who were in favour of the illegal DVDs and those who were not. A reaction from the Copyright Organization of Trinidad and Tobago (COTT) was saying that these copies that are on sale openly are indeed illegal from the point of view of the current law.

The *Express* editorial said in part:

“To the weary entertainer, as well as to the officials of the Copyright Organization of Trinidad and Tobago, it looked like another case of lawlessness gone legitimate before their very eyes.

All over the capital city as well as in San Fernando, Arima and other towns, burgeoning teams of young men and women were setting up shop at every available street corner, spreading out their wares.

Or rather, it would be the private work of others, displaying them in open defiance against the copyright legislation and of the authorities.

Sporadic action of the sort which took place in Arima on Friday has done nothing to deter the mushrooming of this line of illegal activity.”

This editorial in the *Express* concludes:

“It is too blatant and callous an attitude against respect for the law to have been allowed to continue thus far.”

As regards the opinion in the letters to the editor, one person came out very strongly against piracy, branding it—I think many of us agreed that it is—as theft.

Another writer from Princes Town in the *Express* of December 31, 2007 had quite a different approach, railing against the DVD clubs, which had sprung up all over the country in the past 10 years, unchecked and in plain sight of everybody. He acknowledged that these clubs engage in piracy, something frowned upon by the US, but which is a multi-million dollar industry here, on which hundreds of people rely for their living. He had a question for the authorities: “What are these people to do after everything is seized and they are subjected to jail time or exorbitant fines”?

“With this so-called ‘crackdown’ what will happen to the crime situation when hundreds of people are left without a means to make a living?

...Our society is still a poor and developing one and DVDs costing TT \$120 are out of the reach of most citizens.”

It is evidently something essential to life. The writer says:

“I am no way trying to legitimize piracy. All I am saying is set policies for Trinidad by looking right here and not abroad.”

Mr. President, we must be living in a cocoon. There is some light at the end of the tunnel. A few months ago, I was reading a BBC music magazine, when I came across an article by an official of the EMI Classic recording label who was singing the praises of the performance of the Desperadoes Steel Orchestra, referring to one track of their recording, *Finlandia*, by the Finish composer Sibelius. I could not find this recording in the EMI catalogue.

Not long after, I was browsing in a local record shop and I came across a CD, *Steel in the Classics*, by Desperadoes Steel Orchestra, with this same track. The back cover indicated: “Final mix was done at the famous Abbey Road Studios of London.” Abbey Road Studios, for those who follow this industry must know, is where the Beatles did all their recording. The final remix was done there. It is a magnificent record. I would recommend it to anybody who likes steelband classical music. It is magnificent music, but there is no data on this record. If I show you the label on this liner, it is blank. There are no liner notes on it. [*Sen. Ali displays label to Members of the Senate*] Here it is, blank. I do not think it is a pirated CD. I bought it in a reputable shop and it has the right signs “P, C” and “Rituals”.

On the same occasion, I bought another CD, just to show how this happens. This one says “Mungal—Dreadlocks”. At the back they gave the tracks and it says “Rituals Music” but once again no words. If you did not know who Mungal was, you would not know from buying the CD. It is a blank sheet of paper. I wondered whether the producers are shortchanging our music, although they would be calling for more and more. They are short-changing our music which has great export potential. These are wonderful pieces of music with great export potential. Once again, blank liner notes.

Mr. President, I do not think that is the full story. Last Tuesday, January 08, 2008, a feature article by Mark Lyndersay in the *Guardian* threw some encouraging light on this matter.

Rituals Music Limited had got out of the record producing business, but the principals had restructured to provide sale of CDs at Piarco and to offer on-line, at trinidadmusicstore.com, some 500 albums of a wide range of local music, including these two CDs of Despers and Mungal Patasar. You would see who they are when you go on the website. Download of individual tracks is also offered at TriniTunes.com. Songs are encoded as unprotected MP3s with payments through PayPal. According to the article, COTT, the bank and PayPal get their cut first off each song's price, which is US \$0.99 per track, and the remainder is split 60/40 between the artiste and TriniTunes.com. Many technical details are outlined in the article, which is on page 25 of the *Guardian* under the heading “The beat in your box, legally”. These arrangements are confirmed in an amusing article the *Sunday Guardian* of January 13, provided by BBC on page 30.

I presume my colleague, Sen. Dana Seetahal SC, would have seen it because it is opposite her commentary on “A State of Emergency”, which is another

recommended piece of reading from last Sunday's paper. She may be interested in that and not in the copyright. I am giving her, nevertheless, some promotion on her article, which was well written and very interesting, indeed.

Those who wish to read about Crazy's new calypso on phone card and its rejoinder by a previously unheard of Silver and Impulse are referred to the BBC article "Local Pirates Loot Caribbean Music". You would indeed have a giggle but would be surprised what the contents of that are, as to how the pirating occurs, how there is a difference between pirating local and pirating foreign. The people out there sell it in separate bags, lots and everything else, for the simple reason that they can display foreign ones and the local ones they do not expose. Read it if you will. That article is also carried in Monday's *Newsday* under the same heading "Local Pirates Loot Caribbean Music".

Mr. President, my final comment on that is that this development is a step taken by a local producer, which could be a catalyst for further development of the music of the copyright industry.

Intellectual property is one thing I am very concerned about. I wonder how well placed we are, in terms of the administration and development of our intellectual property office (IPO). The Copyright Organization of Trinidad and Tobago is really for music. In fact, that is in their name. It does not say so in the abbreviation. It means Copyright Musical Organization of Trinidad and Tobago. If you look at the core of their duties, you will hardly see anything. If you look further you will see only, I believe, some publishing and mechanical licences granted on certain occasions but they are essentially for music.

What about the other aspects of copyright? If I go to section 5, which defines the areas of copyright, I wonder how are we administering/looking after that and ensuring that our creative people are getting what they should? I have heard of cases where people copy and the little artiste gets shafted because the others are too big for him. This is a view expressed to me. Under section 5(1) we have a whole list of items which are protected by copyright: items such as books, pamphlets, articles, computer programmes, stage production, audio visual works, architectural works, drawings, paintings, sculptures, photographic works, et cetera. Who is responsible? What organization do we have to ensure that these things are properly monitored and that the creative persons who produce these things are getting their just due?

Section 5(2) says that work shall be protected by the sole fact of their creation and irrespective of their mode or form of expression as well as their content,

quality and purpose. It is a wide definition for copyright other than music. It includes music. I do not know how well we concentrate on this matter.

Is IPO now geared to handle trademarks and patents, which are the other arms of intellectual property? I looked at the budget of 2008, to see what the establishment of the IPO was and there I found that—I am aware—there are two very senior positions, the Comptroller and Deputy Comptroller of Intellectual Property. Their remuneration, which is a measure of their expertise and qualification, is equivalent to that of the Chief Parliamentary Counsel and the Assistant Chief Parliamentary Counsel, respectively. There is one senior patent examiner and that person is at range 68, which is the range that is normally applicable to technical officers in ministries.

4.00 p.m.

Mr. President, then we go to one person on the establishment at range 60, and then a patent examiner at range 59D, and beyond that it would appear that we have gone way down below. I could not see that the persons who are in that establishment would have the experience to examine any form of patent or even any trademark with any degree of competence.

We need to do much more to boost up the Intellectual Property Office (IPO) because knowledge-based industries are the ones that we are looking towards in the future. If we do not have that in place, and if we cannot administer it and ensure that people get their just dues, then we will only be spinning top in mud with 2020 and beyond.

I would like to look briefly at patents. In patents, we are primarily receivers or importers, and this accounts for a large drain in foreign exchange in the form of licence fees and running royalties.

If we look at the energy sector, one project that is presently being implemented at Petrotrin is the gas-to-liquid (GTL) project which is essentially for the commercialization of a World GTL Inc. patent. World GTL Inc. is a foreign partner with 70 per cent holding in that project and the patent is for the conversion of idle methanol plants into GTL production. We do not have any of those plants. So, I ask the question: Has this corporation which has a US patent and a pending Canadian application applied for a local patent? Are we equipped to evaluate this patent in the context of our thriving methanol process industries?

Today, methanol prices are US \$830 per tonne. That is the quoted price for methanol in the international market. So, evidently, this project is not for us, unless we see that we would not have gas. I do not know who will then buy the

plant. That is how plants become idle. They become idle because they cannot pay for gas, and then they go to countries like ours where the gas price to them is low and to us is reasonable. That is what they do. We are not in that position, but we have encouraged World GTL Inc. to come here and to get all the necessary facilities, and that plant is going to be put up based on used methanol plants acquired within the United States of America—one part in Guatemala and one part in Mexico—to be put up as a plant. What are they doing? They are commercializing something which we will not use. What policy do we have when it comes to that?

Mr. President, a final point on that matter—I know I am probably going a bit out of the copyright business, but I feel the patent business is important and it is huge money.

Probably, one of the first patents that we are talking about is the G-Pan. I want to know whether a local patent has been registered. Has Trinidad and Tobago applied for any overseas patent? Let us not forget that one of the bases of the granting of a patent is that it is capable of industrial use or industrial application. That is a condition for the granting of a patent.

Mr. President, I was very disturbed to read in the *Trinidad and Tobago Review* dated December 03, 2007 an article written by a foreign-based son of the soil, Orville Wright, under the headline “The G-Pan: Bang or bust”. This whole article by Orville Wright, who himself is a musician, a steelpan aficionado, a lecturer, a well-respected adjudicator and a commentator of the steelband at Panorama and classical festivals, is very technical, and it is really way beyond my knowledge of music or of the steelpan. What he said at the conclusion of the article is what really disturbed me. He said:

“Sad to say, I do not see any musical future for the G-pan in its present instrumental configuration. The top steelbands in the country are not going to be breaking down doors clamouring for G-pans in their yards. Had the government sought the advice of some credible musicians with credentials about the musical ramifications in addition to the technological ramifications of the G-pan—and by extension the instrument; I would have been more ecstatic about the G-pan.

As far as I am concerned, musically, the G-pan is DOA.”

So, this is a telling statement. This has disturbed me and I went and talked to people that I know in the music industry.

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To date, there has been no reaction to this review by a person, who along with his colleagues from the University of Massachusetts, Boston Campus were given a tour of the lab that produced the instrument. I would have thought that there would have been a vigorous defence of the G-pan, and the deafening silence worries me after the euphoria and publicity of the launch which I hope was not done in haste prematurely.

Mr. President, as I said, I talked to certain persons in the steelband music industry. I wrote this on Sunday, January 13, 2008 and I had a call from Prof. Brian Copeland yesterday evening, who informed me that their initial legal advice was to ignore that article. Since then, he said that new advice is that the G-Pan should be tested to establish some credibility.

I was of the view that a point-by-point response to the technical aspects of Orville Wright's article was essential and Professor Copeland has assured me that such a response would be forthcoming. So, I am looking forward to that, because I think it is very important otherwise, as I said, the G-pan will fade away before we know it.

Mr. President, finally, I would like to refer to an email which all Senators have received from one Miss Mieres of the Related Rights Agency for Phonograms and Promoters—this is what Sen. Mark was talking about. They said that the Copyright Organization of Trinidad and Tobago (COTT) and the Related Rights Agency for Phonograms and Promoters have reviewed the final draft of the Copyright (Amdt.) Bill, 2007 and proposed the following amendments.

Mr. President, these are the amendments that Sen. Mark has brought forward: Section 23(1) of the Copyright Act, 1997, which is the parent Act, should be amended through the insertion of the words “or indirectly”. That looks to me compatible with the rest of the section, from my reading.

Mr. President, from my point of view, looking at this as a layman again, it seems to be a measure which was acceptable, and the proposed 50:50 sharing of fees between performer and producer seems to be okay. I hope that with Sen. Mark having raised that point that the hon. Minister would take it and look at it and see whether if and when we meet in the committee stage the Government will be willing to make that amendment.

One final comment on this email and it goes like this:

As the major stakeholders, we have attempted to express to our legislators in both Parliament and the Senate that the passing of the Copyright (Amdt.) Bill,

2007 is vital to our economic survival and development in this 21st Century digital age.

Additionally, we draw to your attention some other areas of concerns which cannot be left to be managed by the industry and must be addressed by our legislators.

- (1) Investigate and eradicate the practice of payola in broadcasting.
- (2) Implement a comprehensive ongoing national anti-piracy programme.
- (3) Introduce a national policy of increased broadcast of local music.

These are points that Sen. Mark has also made.

I would like to ask the Senate to agree with us that these amendments should be included. As I said before, I do not see why we cannot put in the two clauses and the recital that is required to give effect to this Bill with the required three-fifths majority.

Thank you very much. [*Desk thumping*]

Sen. Cindy Devika Sharma: Mr. President, before I begin my humble contribution to this debate on the Copyright (Amdt.) Bill, may I say that I am pleased to be able to participate at this level in a debate that has tremendous consequences for so many stakeholders, both creators of copyrighted material and consumers of such material.

I am also happy to contribute after two distinguished speakers who have outlined many of the issues that are in keeping with this important matter. My area of focus is on presenting the point of view of educating the youth in understanding how important this legislation is to them. My reason for saying so is that the age group that is most affected by such legislation is also the one that is least concerned with this matter. We need to ensure that information about this issue is disseminated to them through the appropriate agencies, not only the Copyright Organization of Trinidad and Tobago and the Related Rights Agency for Phonograms and Promoters, but also the Government.

In fact, I would suggest that the onus is on the Government to ensure that under a comprehensive anti-piracy programme that there is an educational component that addresses schools, universities and other learning institutions so that at that level, we can ensure that the message reaches a very wide and lucrative market as well, because they are also users of copyrighted material.

Unfortunately, in today's society, it is quite easy for a young person to make the decision between purchasing a CD for \$120 and to buy one for \$20 instead. At the heart of the matter is choice. We need to educate our young people into making the correct choice from a moral point of view, and also to learn to respect other people's property, something which has been diminishing quite literally at a fast pace in our nation today, as is evidenced by the burgeoning crime rate which we could address, if we are really serious about developing the potential of our youth, specifically, in the entertainment industry.

What incentives is the Government putting in place for our young people who, unfortunately, tend to be the ones most visible on the streets selling pirated products? What alternatives exist for them? What incentives are there for young people to choose a legitimate way of living their lives and making a decent earning so that they can contribute to the well-being of their lives as well as those persons affected by them?

4.15 p.m.

I want to make mention of how easy it is for young persons in particular, or any other user to be persuaded, I should say, to select the option of using illegally copyrighted material. Most people should be familiar with cellphones that have the capacity to store music in the form of an mp3 format, for example, and at no cost. These users are able to swap an mp3 file at no cost from one cellphone to another. That is infringing on copyright as well. To a student who has probably \$10 in his pocket, the choice is quite easy. The question is, how can we ensure that our students, young persons or consumers understand fully the impact of what they are doing and the unfortunate consequences it has for the author of that original production, or the musician, or the record producers who invested very heavily into that area?

This leads me to the point that perhaps—and I hope the Government will take up this suggestion—as part of a comprehensive educational anti-piracy programme, there should also be in the pipe works as well, some means by which our local talent, from the very young level, can be even more developed and honed to a very high level. I am looking not merely at having schools that currently have a music curriculum, I would like to see the establishment, at some point in time, of a music academy sponsored perhaps by the State, along with other major stakeholders, because I believe it is in their interest to ensure that our artistes—locally that is—are provided with a very good opportunity to educate themselves, as well as to do so in a regulated manner, under the watchful eyes of the Government and other stakeholders, perhaps like COTT and RERAP.

All of this I am suggesting to the Senate today, can provide excellent support for our young people, whilst also building a greater appreciation on their part for copyrighted material and the property of other persons.

In addition to that point, I want to suggest also that persons in this digital age who have easy access to such information through file swapping and file sharing—it is very difficult for monitoring of such activity to take place because of the nature of the Internet and Internet downloading. However, I would like to suggest that this becomes a source or a means by which we can take advantage of the entertainment industry in a very easy and accessible manner for our young people. I think they have already started that and I refer to an article taken from BBC News headlined: "Trinidad's music pirates of the Caribbean", I am sure it is no surprise why they chose that title, where it is outlined that currently there is a new site, for example:

“...trinidadtunes.com bears COTT's stamp of approval and offers more than 5,000 songs for download at 99 US cents each...”

which is a very minimal cost for the user. Something like this is a very viable way for our local industry to start channeling our music at a local level, so that it can also reach international level under a regulated or watchful eye again, of the industry.

I believe those are the two main points I wanted to make and I thank you for allowing me this opportunity.

Mr. President: Hon. Senators, I would certainly like to congratulate Sen. Sharma on her maiden contribution in the Senate; well spoken, well done. Do we have any other speakers? Sen. Seetahal.

Sen. Dana Seetahal SC: Thank you very much, Mr. President, and I only have two points as well to make. The first point is in relation to the suggestion by Sen. Ali as to the need for a special majority in this Bill. Now, one of the points that he made was that in the original parent Act there is that provision. The fact that in the original Act there is that provision would suggest that matters that are attended to in this Bill may very well, if they substantially impact on the original Act, also involve our sections 4 and 5 rights.

I also wish to point out on page 19, clause 18 amending section 44(1) in the current Bill, where there is a presumption that the remaining copies are infringing copies if you have five copies or 1 per centum—I think it was; yes, 1 per centum—if there are copies, then the shift now is to the accused to prove that it is

not. It does not say to the accused, but who else would it be, if you are dealing with an offence. So that might affect one of the sections 4 and 5 rights; the presumption of innocence. It would seem that if it is at all possible that the Government should move, in my respectful view, to amend the Bill to include the preamble, which is contained in the parent Act and also a section saying that this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution, there is nothing to lose and there is much to gain.

My other point is that in relation to proposed amendments in respect of offences, that is of section 41. Now, really it is an expansion of what is contained in section 41 and I agree with the hon. Minister that the proposed amendments make it easier to prosecute the offences. However, there is one point, which existed in the parent Act and still exists in the current Act. All of these offences are summary offences, which means they are only prosecutable and only will be prosecuted in the Magistrates' Court. That being so, the limitation time is six months unless there is a provision in the Act for an extension. Section 33 of the Summary Courts Act makes that provision.

It would seem to me in amending this Act, it would have been an easy matter to include a limitation time of 12 months or even two years, even though it is a summary offence, because it may take longer than six months for the police and other authorities to investigate and bring this matter to fruition, so that charges can be laid. Six months for the kind of complicated investigation I would envisage for the distribution, importation, broadcasting, communication to the public without authority of works, performance, recordings and all of the different matters and any of the offences you need to prove. There are many complicated elements that some of them—the Minister for example—infringing copies; what do you mean by that; how do you prove it; you might have very few investigators involved in this thing and they may be doing other things.

The short point is that I think the summary offence six months limitation in relation to normal summary offences; this is too short a time and there should be an extension of time in which to prosecute persons for breaching this Act. Or having regard to all of the suggestions, that it is such an important piece of legislation.

My final point, which I do not think that the Government would agree with, but I need to point out, I believe to give magistrates powers to sentence people to as much as 20 years, is in itself wrong fundamentally. This legislation and the parent legislation gave the magistrates powers to sentence up to 10 years and said that that penalty could be doubled for subsequent infringement within five years.

Magistrates are creatures who act without a jury and the original idea was that the maximum penalty, which a magistrate could sentence persons to, would be two years, when you are dealing with an indictable offence when you are prosecuting in summary, but here we are talking about a pure summary offence. So to say you can go up to 20 years for that is, in my view, rather unreasonable—I would not say ludicrous—and it is also an anomaly. It is an anomaly because—do you know what the maximum penalty for trafficking drugs is when it is tried in the Magistrates' Court? The maximum penalty is five years imprisonment.

Now some people might want to say that if you steal people's copyright and so on, it is as serious as trafficking drugs, but that is probably individual views. I still think that is a more serious offence and I do think if the maximum penalty for trafficking drugs when tried summarily, is five years and you compare it to the possibility of 10 or 20 years for these offences, that there must be some kind of balance. I also think you should increase the maximum penalty in the Magistrates' Courts from five to 10 years. Actually, it was 10 years and it was reduced in 2000 by some fluke, side-wind, by accident. So, I thought I would put that on the table just by demonstrating how unreasonable it is.

Those would be the matters that I want to talk about. Thank you very much, Mr. President.

Mr. President: Hon. Senators, it is 4.27 p.m. I think we should take the tea break at this time. Meeting is suspended for the tea break until 5.00 p.m.

4.28 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

Sen. Mohammed Faisal Rahman: Mr. President, fellow Members of the Senate, I rise to my feet for the first time in this honourable Senate and I would like to congratulate the speakers who have gone before me and particularly to make reference to some of the points which Sen. Seetahal SC, made in her contribution.

When I first saw the proposed amendments to the Act and I read them, bearing in mind that I am extremely new to all of this, I said to myself that this is fairly simple, the Government is proposing to make amendments to an Act which is already law and it is doing so to conform to international requirements in order to accede to the convention. But the more I looked at the matter and the more my colleagues and I discussed the matter the more complicated this thing has become. Particularly so, after hearing the contributions that have been given

Copyright (Amdt.) Bill
[SEN. RAHMAN]

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in the Senate today and I am wondering whether the Government realizes the enormity of the undertaking which they are embarking upon by pursuing this course of action. Not that I am opposing it in any way, bear in mind. It is a necessity if we are to progress in the digital age to protect the interest of our artistes, inventors and so on, so I am not thinking for one minute that we should not support, but I think it is necessary that I draw the attention of the Senate to some extremely important issues which are confronting us.

When Sen. Mark made his contribution he made reference to the need for policing, the need for customs work and the need for so many other areas of governance, and when we contemplate this is a law with which we are dealing and whenever there is law there is the other side of the coin—lawlessness—we immediately realize that we are extending ourselves in an area in which our good Government that has been so much praised by our Minister of Legal Affairs has failed so abysmally.

We have not been able to contain crime at any level. We have a diminished police force, undermanned I understand by almost 2,000; we have a police academy that is non-functional—

Sen. Manning: Irrelevant.

Sen. M. F. Rahman: I am afraid that the relevance is that we are dealing with law which has to be implemented, which has to be serviced in a situation where we are incapable of servicing current laws. [*Desk thumping*] So it is very relevant if I may say so myself. [*Desk thumping*]

We have, and I am saying we are going to support the Bill but I must point out the matter. And I know that the Government is extremely embarrassed about this whole matter of crime and I can well understand their reluctance for anyone to point out the dangers that are lurking in this area because they have already decided that they want to have no more discussion on crime. [*Interruption*] We here are saying that we are embarking upon an area where criminality has already burgeoned; we already have a billion-dollar industry where all of the revenues in the majority go to people who do not deserve it and who have not produced the works. I beg to submit that this is extremely relevant. It is embarrassing, but it is relevant! [*Laughter*] Now when we consider—

Sen. Dr. Kernahan: It is embarrassing but relevant.

Sen. M. F. Rahman: Yes. And when we consider that the Government regards copyright rights as more valuable than human blood, because as Sen. Seetahal SC pointed out, you are going to impose 20-year sentences for copyright

infractions when you are already imposing five-year sentences for criminal offences. So, clearly, you are embarking upon establishing a Bill that is four times greater in magnitude and significance than any of the criminal laws that we have in the country and you are saying to me that this is not relevant. I beg to say that I cannot see how, and this is why the Government continues to regard crime in the way it does, but this is a growing Achilles heel for the Government.

Because here we have a situation where we are not only seeking to regularize an industry that already in its potential is competing with the drug trade which is the source of all of our present problems, if we are to believe our Prime Minister. It is an industry that is already competing with the drug trade. And the 360-degree radar that we have will not help, because you will not be able to detect copyright violations with radar. You need leg work! You need manpower! And here we have a situation where our sociologists have been telling us, rightfully too, that we need to change things from the very beginning, from the infancy.

My colleagues and I attended a meeting with the Integrity Commission—very recently because we are new to this exercise—and one of the things that was made very clear to us is that the Integrity Commission is seeking to change the culture of this country and they are seeking to change the culture of this country by squeezing the top of it and hoping that the benefit filters down. We were told very clearly that we are responsible now for lawmaking, so if you will forgive me I think I have a vested interest in all of this. I am now partly responsible for what is going to happen in this country, so I have to be excused even if I am irrelevant because I have to express concerns.

We are saying, here we are, and my colleague Sen. Sharma has pointed out very properly and very correctly, but very innocently that we have to start to inculcate into the children a sense of value, a sense of propriety, a sense of proprietorship, the rights of proprietorship and respect for the property of others. How are we going to accomplish this? We are faced with more than a Herculean task. We are faced with an impossible task. So as Sen. Mark said, we are pushing paper. We are actually pushing paper, because this law which we are going to support, for whatever it is worth, is going to be impotent. There will be no possibility of implementation of penalties and laws in the absence of a police force and in the absence of all the ancillary areas in which we need to develop.

This is not a First World nation despite our 2020 vision. It is far from it. We are saddled with an administration that is back in the 19th Century when it comes to forward thinking. How are we going to inculcate into our little children a respect for an intangible? Nobody in Trinidad, when you hear children passing

down the road or passing by the neighbour mango tree or people mango tree, when mangoes fall on the ground will ever say no, this belongs to Miss Mary, we cannot eat it. You really believe that with the digital telephones and so on that we have today, we have any hope of stopping the—well, we have to call it piracy, we have criminalized everybody, we have to call it piracy—piracy of the young children, all of whom now for their own safety have to have their cellphones, from swapping their downloads of songs and music.

We have a serious situation. Perhaps we need to look at an aspect which I have not heard at all here, to decriminalize aspects of copyright infringement. Aspects of copyright infringement, because if you tell young people who are—

“Suffer the little children to come unto me, and forbid them not; for of such is the kingdom of God.”

We are speaking about innocents. Innocents who cannot understand, see or think that when they swap a little game programme or a bit of music that they are doing anything that is criminal and you are telling them, now we have to put you in jail because you have broken the law. Fortunately for them we will not have the police force to find that they broke the law. Nobody is going to know, so the children are going to grow up with convicted criminal minds knowing that they have been nurtured on criminality. So, maybe, and I am putting this to the Government, maybe we have to decriminalize aspects of this copyright law as we have it and we have to start to think about how do we deal with the present criminality that already exists.

We have heard here today that at every street corner there is a young fellow pushing a cart with his pirated music. You know in every street corner you have a “fella” on the block selling rocks, and that is what they are killing each other for because the money is involved. We are talking about a billion-dollar potential of wealth and you do not believe that people are going to go around killing each other for that as well. Where are we headed? If the Government is not—God, and when I think about it, it is very serious—prepared to deal with criminality in the established spheres and shuts down a debate that is of urgent national importance and this is to shroud it and keep it under wraps in the hope that it will somehow go away, but I do not know how it will go away when its programmes are fuelling the funds of the criminals; whether it is CEPEP and URP programmes and all of its business incentives for young ghetto entrepreneurs are geared towards fostering the criminality in our nation.

How are they going to forget that that is going on and treat with this copyright issue, as if this is the first bit of criminality we are going to be dealing with, we are starting from scratch, we have all the customs officers and we have all the blimps to listen to the secret recordings, we have all of the other infrastructure. How are we going to do this? My colleagues, we do have a very serious situation on our hands. There has been talk—and this is relevant; I will say so in advance—about collaboration between the Government and the Opposition to discuss the problems of crime in this country. Do not only let us stand on this side and give you our views, which you do not want to hear in fair debate.

The more you pretend that you do not have a problem the greater the problem will become and this has been happening in the industry of criminality in this country. And here we are setting up a brand new enterprise, a competitive field of industry to provide for more bloodshed, and then we are going to hear that you are not allowed to defend your property when the criminals come, that is vigilantism, because you are not supposed to defend what is yours.

5.15 p.m.

I do not know where we are heading. I seriously see that this is a—far from what I thought the first time I saw this Act, well what are we doing, we got to simply agree to validate changes that can also be conformed. No, no, we have opened a Pandora box's here, it seems to me. We have suddenly discovered that we are pretending that we are dealing in a nice ivory palace with new issues when there are foul sepulchres that have rotting corpses all over in the walls. We are in a serious position today, and this Copyright (Amdt.) Bill which may have been brought in to divert us from the crime and its discussion, has now provided a look into that very mirror that the Government had wished to veil.

I will not impose more upon this honourable Senate, I think I have said enough and I thank you. [*Desk thumping*]

Sen. Prof. Ramesh Deosaran: Mr. President, having listened to the last speaker and the one preceding him, I really feel obliged to underline some of the points raised in this honourable Chamber, because I think they are of critical importance, not only for public policy making, but more precisely, for certain elements in the Bill before us as well.

Sen. Seetahal SC expressed concern about the powers given to the magistrate to sentence someone committing offences as listed in the amendment to 20 years. This matter of sentencing has been raised in this Parliament several times, and I myself have expressed worry about the seemingly arbitrary nature of imposing

such sentences and in this case upon whom I suspect will be rather young people getting involved in the peddling of illegally taped or copied material. I think 20 years is, with due respect, inordinate. It is overwhelming and I wish the Government could give some consideration. If you want a suggestion, I have not moved a formal amendment, but I will bring that down to five years in the circumstances if I have read the offences carefully as I think I have done.

Sen. Rahman was right; we know what is involved in terms of copying and we also have rather fair ideas to the population which commits this offence proportionally. It is young people peddling their carts on Frederick Street and on the roadsides and to put them away for 20 years, if that happens to be an eventuality, is a bit overdone. I understand the need for a message to be sent. In making laws you want to increase the sentence so as to provide a deterrent effect, but in real terms and considering all aspects of the matter, I will suggest, Mr. President, a sharp reduction in this maximum penalty. I think Sen. Seetahal SC has alluded to some other reasons.

Mr. President, we had an example here in the previous Parliament with the Telecommunications Authority Bill where an amendment was brought forward and I was arguing that the amendment required a special majority. I was told by the person then acting as Attorney General, that in a case where the original Bill has been passed with a special majority, there will be no need for any subsequent amendments pertinent to that Bill to require a special majority. In my own layman understanding, I disagree with that because the logic does not pertain. I am making reference to the need for a special majority in this legislation and I am trying to as well agree with Sen. Seetahal's concern about the need. The logic does not fit, because if you pass the original Bill with a special majority and then you come and say that any subsequent amendments will not require a special majority, it means that you can put anything that violates or offends sections 4 and 5 in the Constitution and say, you can rely on the original passage. So the logic did not fit in my sense.

So to cut a long story short, Mr. President, I also agree; looking at the powers given to the police to enter and to seize goods that are not yet deemed illegal, but suspect of being illegal, I think certainly it requires a special majority in terms of the property, because perhaps the goods you suspect to be illegal may not really be illegal.

Overall, Mr. President, I would wish that the technology that provides the facility for copying/duplicity should be the same technology that should be used to block such offences. I am wondering why the technology, whether if it is

through the Internet, the copying of CDs and tapes cannot yet arrive to us to prevent what we are trying to solve by legislation. In my respectful view, we will end up and I say so, reluctantly, but with a realistic understanding of the relationship between legislation and crime prevention. A classic case that is worrying governments all over the world—I am quite sure our own Government—is how to get our laws to reduce drug trafficking and drug abuse to the point where as the last Senator said, many governments have been thinking very seriously about decriminalizing certain aspects of drug abuse and drug peddling because of the established incapability of the law as it is, to prevent both trafficking and usage.

I am speaking mainly about usage, not yet trafficking. Therefore, I suspect that given the way and the technology that facilitates the copying of the property that we are speaking about and the market for it, just as you have a market for drugs, you will create an underground economy. Now, while we are doing something that is dutiful as a parliament to pass legislation and with the implementation and policing of the law to prevent these offences, it is quite likely that if certain other provisions and infrastructure are not readily, properly and fully put in place, you will have another additional component to what we would call the underground economy, as we have with drugs, money laundering, PH taxis, vending illegally and squatting.

I will therefore urge the other agencies in the Government to take this piece of legislation and see the extent to which your Ministries: Social Development, Community Development, Education particularly, could inject a framework that will help ensure that this law is really effective, because it cannot be resting mainly on the police or on the Judiciary. There have to be other elements that will go into it and this brings me to another contribution by Sen. Sharma in terms of having alternatives for young people rather than having them using this copying and duplicity to make a living.

We really have to get a grip on creating alternative opportunities for young people who are so largely involved in this illicit, illegal activity, and that is a broader policy question that I was referring to earlier on. The larger question that bothers me as I sit listening to one Senator after another, is, if you know that legislation in its implementation and its alternate effect will really be of little or no value, why are you still making that legislation in a climate or in circumstances where it is so difficult to implement so many of our laws?

Mr. President, my own view—and this is a last question that I believe at the policy level—is that those responsible should ponder because the more laws you

make that are broken, statistically, it would be the more crimes that would be created. So when you say the policies for example are not solving crime because the figures have increased, it could very well be that you have increased a number of laws which have been broken because of the inability of the police to supervise and control and reduce crimes with respect to those laws.

Laws are important, but the criminological aspect of it is what I am trying to inject here. That is, the more laws you make that you do not supervise; the more laws you make that are not effective in the implementation, is the more crime you create statistically. That is why you have an illegal activity, for example, creating taxi driving all over the place. Every time a PH taxi picks up a passenger, that is a law that is broken, to the point where we have given up upon collecting statistics about such laws being broken.

We have given up on the number of people who vend illegally and I will hate to see that another law is brought upon the books. I believe if there is one aspect of Sen. Rahman's contribution that concerned me is the point he made—although he had other concerns—that we make laws dutifully as a parliament, we have to, but there are other agencies that must get involved rapidly, some of which I have called to support the legislation and to ensure that it works. Not only should the police be accountable in this case because this is a piece of social legislation, given the market for it and the people who peddle with illegal goods—

I encourage the Government to try to stop the piracy, of course. I think it is a good piece of legislation coming in a very timely manner. I want to support the Bill, but I still feel obliged to sound a few words of caution that I have just offered to this honourable Senate.

Thank you, Mr. President. [*Desk thumping*]

5.30 p.m.

The Attorney General (Sen. The Hon. Brigid Annisette-George): Mr. President, I rise to deal with three issues raised by the hon. Members on the other side. Firstly I will deal with the contributions with respect to the constitutional provisions.

An Act may require a special majority if it contains a provision or provisions that may be inconsistent with section 4 or 5 of the Constitution. It does not necessarily follow that an amendment of such an Act would require a constitutional or special majority. That would turn on whether the amending provisions themselves are inconsistent with sections 4 and 5 of the Constitution.

With respect to the amendments as proposed, and I refer specifically to clauses 19 and 18 which seem to raise the concern. Clause 19 sought to create a new section, which is section 45(6). That is intended to deal with unclaimed copies of a work, performance or sound recording. In those circumstances, because it provided for unclaimed copies and there was a due process for destruction by the obtaining of an order from the magistrate, it was felt on this side that there was no need for any special majority, as it had not infringed on section 4 or 5 of the Constitution. I will concede though that the clause 19 amendment as drafted may not be as precise as it should be; so that as far as section 45(6), which will be the new subsection, on this side we will seek to ensure that the language is more precise, to ensure that it conveys that it is intended to relate only to unclaimed copies.

As far as clause 18 and the new section 44, which seeks to shift the burden of proof where the 1 per cent or, at least, five copies are found to be infringing copies, I would think that the caution, as mentioned by the hon. Sen. Dana Seetahal SC, is of some worth and merit, and, therefore, we will also look at it in terms of obtaining the special majority as required.

Concerning the sections that deal with the 10 years, that is clause 16, this would seek to amend section 41. The penalties imposed in clause 16 are no different from the penalties imposed in the original sections of the 1997 Act, of the 10 years, the fine of \$100,000 and 10 years and also the power of the magistrate to double where there has been a second conviction within five years. Therefore, while we appreciate the point about the anomaly, on this side we want to make it clear that this is not something new. The Government is following a policy that was adopted and passed by a special majority; both sides consented and agreed to this. We are prepared to relook it though. We are moved by the argument that a lot of youths may very well be caught by these offences that are created here.

As far as the provisions for limitation, clause 20 of the amendment seeks to create a new section 59, which creates as far as the recovering of money, an increased limitation period to accord with the limitation period under the Limitation of Certain Actions Act, which would be much more than the six-month period under the Summary Offences Act. We are willing to undertake as far as the criminal offences—*[Interruption]*

Sen. Seetahal SC: Perhaps I should point out that I have just had the opportunity to read the entire Act, because I had read the sections. I note that section 43 of the Act— maybe we both did not get a chance to look at section

43—has cured what I wanted to suggest; so there will be no need for the Government to intercede. If I may read section 43 of the parent Act:

"No prosecution for an offence under this Act shall be commenced after the expiration of five years after the commission of the offence or one year after discovery..."

So, therefore, we will not need to do this, because as I said, I had not looked at the entire parent Act. Sometimes when you have to go back to the parent Act it takes a while. I had reached up to where we had been talking about. So thank you for the concession, but thankfully we will not need it.

Sen. The Hon. B. Annisette-George: As far as the limitation period, I do not think we have an issue with respect to that. Certainly with the constitutional issue, we will deal with section 44 as proposed in clause 18 and as far as clause 19 and the new section 45(6) is concerned, the language in the Bill will be strengthened to remove any doubt that it relates to only unclaimed works.

I thank you, Mr. President.

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, I beg to move that the Senate do now adjourn to Tuesday 22 January, at 1.30 p.m. On Friday of this week the intention is for the Lower House to debate the Finance (Supplementary Appropriation) Bill, 2008. This is a requirement to close off the accounts at the end of the financial year; once that is passed, we propose to debate it here. If that is completed on time, we will continue with the debate on this Bill.

Mr. President: Hon. Senators, leave has been granted for two matters to be raised on the motion for the adjournment by Sen. Dr. Nanan and Sen. Mark, but I see that the Minister of Social Development is here, so, perhaps, we will take the motion by Sen. Mark first and afterwards we will do—*[Interruption]* No, we will do two this afternoon, Sen. Dr. Nanan's and yours and we are waiting for the Minister of Works and Transport to appear.

Sen. Mark: Mr. President, I had indicated to the hon. Leader of Government Business that as it relates to my second Motion on social benefits, I would have been prepared to leave that for the next sitting and we would deal with the matter, because all two qualify for today, otherwise I will ask you to rule that I deal with both. I am prepared to deal with both if they wish to push me. I did indicate to the hon. Leader of Government Business that I am prepared to deal with the matter I have raised in connection with the hon. Minister of National Security. *[Crosstalk]*

Adjournment

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Sen. Dr. Saith: Sen. Dr. Nanan has one as well.

Sen. Mark: Yes, but we can do three if you wish.

Sen. The Hon. C. Enill: Mr. President, just by way of clarification. My recollection of our discussion was that the Minister of National Security was a Member of this House and that the next motion will be dealt with at the end of the Finance (Supplementary Appropriation) Bill which is going to be a lengthy thing.

Sen. Mark: "Yuh don't want to talk about crime?"

Sen. The Hon. C. Enill: Therefore, we are prepared to discuss this afternoon the Motion raised by Sen. Dr. Nanan to the Minister of Works and Transport, in the first instance, and the Motion to Dr. Browne on disability, in the second instance. The third motion that was raised will be debated next week.

Sen. Mark: Mr. President, just for clarification. You have granted leave and you would have seen the order in which you would have granted leave. I sent to the Clerk two motions: Motion No. 1, Safety and Security, Motion No. 2, Discrimination in Social Allocation. You, hon. President, have granted leave for me to raise those two motions today; one, Safety and Security, not discrimination, unless the Government is saying through you, they are prepared to deal with all the motions that you have approved.

I was seeking to accommodate the Government by saying, "Listen, rather than deal with the two motions that you have approved..." it is not for the hon. Minister, Sir, to tell you that they are prepared to deal with what. You have given your ruling in the priority that I have advanced it, which is crime and social. How can he come here to tell you today, hon. President, that they are only prepared to deal with X and not Y. I do not understand that. I will like you to rule on this matter.

Mr. President: While I have approved several matters, as to the timing as to when the matters would be raised, I have not ruled. There is a practice in this House and in the other place that we would do not more than two matters on the adjournment on any given day, and we shall continue with that practice in this Session. That being the case, to the best of my knowledge, the order as we now have it is Sen. Dr. Nanan's Motion No. 1, and your Motion to the Minister of Social Development as No. 2. That is the information that the Government also has and, therefore, those are the two motions that the Government is prepared to deal with today and, therefore, those are the only two motions that we can deal with today. If you are not prepared to deal with the second motion for the Minister of Social Development, then we shall deal with only one, and that is with the Minister of Works and Transport and Sen. Dr. Nanan. I call on Sen. Dr. Nanan.

Adjournment

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Sen. Mark: Mr. President, may I again enquire: Is the Government running away from dealing with the issue of crime, Sir?

Mr. President: I think not. This is a matter of procedure only and it is entirely within my domain. I think we have settled on exactly what we are going to do here, therefore, I will call now on Sen. Dr. Nanan to begin with his Motion.

**Flooding in Downtown
Port of Spain and Environs
(Government's Failure to Address)**

Sen. Dr. Adesh Nanan: Mr. President, the Motion before this Senate is the failure of the Government to address flooding in downtown Port of Spain and environs. [*Crosstalk*]

In downtown Port of Spain, our capital city, there is a total neglect by the Government in terms of the situation of flooding. You can ask anybody who traverses the capital city when there is normal rainfall; you have commuters experiencing severe hardships because of flash flooding in downtown Port of Spain.

We have a situation where there is a Minister of Works and Transport who has promised us the water taxi. We have seen many water taxis, but they were not what the population expected. We are aware of the St. Ann's River on the East and the Maraval River on the West.

I know that the Minister of Works and Transport is a letter writer and replies to many editorials and articles in the newspapers on flooding in downtown Port of Spain. I hope that the Minister does not come with that kind of explanation in terms of contradicting other proposals put forward, because we are quite aware in terms of engineering capabilities and fluid dynamics.

There are many solutions that have been put forward. I want to go to the UNC-A Manifesto, because under "Water Management and Drainage" we said that we would introduce a system of maintenance of the existing drainage systems and we would introduce heavy penalties for the dumping of rubbish along the roadways and in the drainage system.

5.45 p.m.

Those were two proposals which would have been enforced by wardens attached to the respective local government corporations. I am sure the Senate is well aware of the approach of the Mayor in 2004 in purchasing a particular piece of machinery for over \$1 million which would have brought total relief; there would be no more flooding in downtown Port of Spain. That is now a big myth.

In fact there is a caption—Mr. President, I do not know if you have gone to that website where there is faked news in Trinidad and Tobago. I think you should go there because that website actually shows you the news that is reported and gives an idea of what Trinidad would look like, but it is faked and it is saying that we have a clean capital city and are now heading for 2020 development.

There are other areas especially in crime and the Minister of National Security should not come here this evening and hide. Everywhere we go, the Minister is afraid to face the population. He is a total failure. I want to stay on that issue because we are dealing with flooding in downtown Port of Spain which affects the commuters and if that particular situation develops—and it has happened many times.

I remember as a university student, when a particular area in downtown Port of Spain had flooded, we had to walk from Port of Spain to San Juan; because of that situation, there were no taxis in the area. Why should we have pedestrians and all those people waiting on taxis in the evening? It is very difficult with flooding and when there is flooding, these people are at the mercy of bandits; and the Minister must not hide, we are dealing with crime.

I saw in the newspaper an article by Dr. Bratt which had me totally shocked. In fact, the report is saying that people are hiding in their cars, they are going to the malls and not saying hello to anybody. We are living in a North American society. That is what this Government has brought this country to. The kind of North American attitude they are bringing here where we cannot have any fellowship again in this country. People have very expensive vehicles that are tinted and they are staying in their air-conditioned cars and even when they meet at the malls they are afraid to talk to people because we are afraid of the criminals. We cannot detect who are our friends from who are our enemies. We are faced with flooding in downtown Port of Spain because of the incompetence of the Minister of Works and Transport. We are seeing other areas flooding in Trinidad and Tobago and we are given the same terrible explanation.

I saw a report from Emile Elias—if I am permitted to make a reference there, Mr. President—about retention ponds and the biggest retention pond would be in Cocorite and the Minister of Works and Transport would have to put a flyover to get over that retention pond. That is the kind of solution coming from the Minister of Works and Transport, but we have to get explanations. We are here this evening because of the St. Ann's River and the Maraval River, but there are simple solutions which the Minister would not take. He is very arrogant and ignorant of the fact

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that people are suffering in this country especially in downtown Port of Spain. They have to come to the capital to work and they leave here expecting to be able to use the transportation.

We are hearing about a Rapid Rail System, a total failure by the Government in terms of transportation within the City of Port of Spain. But the situation is—and I go back to downtown Port of Spain—you would recall what was Independence Square, that was actually the shoreline before they had land reclamation, and you will remember Marine Square and when I was looking through the Internet—and it was not piracy—I was just looking at some pictures and there was a picture that said Marine Square was here and that particular area was under water and now South Quay is like Marine Square. So we cannot have that kind of situation developing in our capital city in this 21st Century. We must have explanations and that is why I raise this matter today.

Mr. President, we are seeing a situation where the Minister is talking about pumps, sluice gates and retention ponds similar to what is being used in Guyana and we are saying no to that, he has the wrong advice. He could quote on the United States approach, we are saying that he needs to clean the drains. You can get the Minister of Local Government to help you. You have already taken away CEPEP and URP from her, but you can still get some help.

Sen. Manning: I will help.

Sen. Dr. A. Nanan: Use the people there to help clear the drains and when you do so you will see what is happening on the hills in terms of the garbage situation building up in the river basins, and coming into the town, there will be a situation where you can control the flooding. You want to put pumps in Woodbrook and South Quay; those are the short-term measures put forward. We want to hear about the drainage plan for the country in terms of the total drainage system, especially for downtown Port of Spain.

We know it is an old city, we are aware of the situation in terms of the development of the St. Ann's and Maraval areas and the valleys in the Northern Range, but we are telling you, Mr. Minister, in terms of the southern end of the Northern Range because of the cutting down of trees and the hillsides, there is going to be massive flooding in the rainy season because this is a leap year. We will continue to see that kind of chaos taking place and the Minister will continue twiddling his thumbs in the Ministry of Works and Transport while people suffer throughout Trinidad and Tobago especially in downtown Port of Spain.

I thank you, Mr. President.

The Minister of Works and Transport (Hon. Colm Imbert): Thank you, Mr. President. I was taking notes during the Senator's presentation and I saw a collection of random thoughts as follows: A leap year, the significance of that is beyond me. Does it rain more in a leap year? Is it on the one day, February 29? We heard of a faked news website; is that the official UNC-A website? Then we wandered into people hiding in their cars, tinted vehicles, and some complaint about the Ministry of National Security and so forth.

Mr. President, since the hon. Senator did not address the Motion, allow me to do so and let me put this matter in perspective. The maintenance of the drains in the City of Port of Spain is the responsibility of the Port of Spain City Corporation and not the Ministry of Works and Transport.

However, Mr. President, I thought it appropriate to respond to this Motion because the Drainage Division has been doing quite a lot of work with respect to the drainage in the City of Port of Spain and in the last quarter of 2007, between September and December of 2007, contrary to the wild allegations made by the hon. Senator, the Drainage Division developed and executed a cleaning programme for the city drains between Piccadilly Street and Wrightson Road, and from the Beetham Highway to Ariapita Avenue. It was found that the drains within these boundaries were almost full and clogged with silt, concrete and other debris and during the last quarter of 2007 these drains were comprehensively cleaned by the Drainage Division of the Ministry of Works and Transport and the programme worked well, since during that period, there was no significant flooding within the city. There was flash flooding of course, as is common in periods of heavy rainfall, but the water quickly subsided because of the comprehensive drain-cleaning programme undertaken by the Ministry of Works and Transport.

The ministry has recently inspected—and that programme was completed in December—the drains particularly in the central business district and downtown and has found that they are becoming clogged again. The primary source of the clogging is the significant construction work that is taking place within the City of Port of Spain. The evidence shows that the several contractors, who are constructing buildings and doing other work within the city boundaries, wash and pump their wastewater from their construction sites into the city drains which is the main reason for the considerable amount of silt, concrete, and other aggregate found in the drains. In some cases, formwork has been found within the drainage channels and this is certainly a matter the Port of Spain City Engineer should address during 2008.

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As the hon. Senator said in his rambling discourse, the drains in the city are old and are of an antiquated design and in many instances they are inadequate and cannot cope with the flow. The outfalls need to be constructed and the Drainage Division is presently redesigning the outfalls of the main city drains where they enter the sea. We have also discovered that due to construction work, three main drains have been completely blocked off, these are drains at the bottom of Richmond Street on the Brian Lara Promenade and Duncan Street and the Drainage Division is going to address that matter and reconstruct those drains so that they function properly.

I can tell, Mr. President, that during the last three months of 2007, the Drainage Division removed 6,500 cubic metres of silt and debris from the city drains. This is close to 700 truckloads of debris from the city drains. I want to repeat that; contrary to the inaccuracies put into this Senate by the hon. Senator, the Ministry of Works and Transport has in fact completed a comprehensive programme of clearing the city drains which, I repeat, is the responsibility of the City Corporation.

Looking to the future now, a consulting firm by the name of Genivar has completed a comprehensive study and has prepared a master plan for the drainage of Port of Spain and they have modelled the main watercourses that affect the city; these are the Maraval and St. Ann's Rivers, and they examined the flow in these two watercourses for peak flows for a one in 25 year return period and a one in 50 year return period storm.

The hydraulic profiles generated by the model for the St. Ann's River have confirmed that that river also known as the East Dry River is inadequate, it does not have the capacity to evacuate a 25-year frequency storm which is manifested in flooding in various parts of downtown Port of Spain which is caused by an overflow of the St. Ann's River, which in turn is caused by its insufficient capacity.

A similar analysis was done on the Maraval River which demonstrates that it is large enough to evacuate both a 25-year and a 50-year return period storm. Since the St. Ann's River is inadequate and no amount of cleaning of the drains in Port of Spain can solve that problem, there is absolutely no doubt that other solutions would have to be adopted in order to eliminate the flooding problem in Port of Spain caused by overspilling of the St. Ann's River during periods of peak rainfall.

The solution proposed by the consultants, Genivar, which will require considerable discussions with persons who live and work in Port of Spain, is the construction of a number of retention basins; one in the Queen's Park Savannah and others in squares such as the Adam Smith Square and Victoria Square. This is what is proposed.

6.00 p.m.

It is felt that these are the most appropriate locations to construct retention basins or storage basins to deal with excessive discharge from the St. Ann's River. The consultants have also proposed that new underground drainage culverts be constructed because the existing culverts are over 100 years old and are completely inadequate. It is expected that this proposal will be taken to Cabinet in the very near future and that the drainage master plan for Port of Spain will be approved by Cabinet and suitable funding will be allocated so that the construction work can begin in the very near future. In the interim, the Ministry of Works and Transport will continue the drainage cleaning programme that it commenced in 2007, throughout 2008 in order to minimize the occurrences of flooding in Port of Spain in 2008.

Thank you, Mr. President. [*Desk thumping*]

Mr. President: Sen. Mark, are you ready to proceed with your matter or shall we defer that to next week?

Sen. Mark: Mr. President, I would like you to guide this honourable Senate at its next sitting on your interpretation and guidelines as they relate to Standing Order 11(1). I would like you to guide us on this matter, because I am totally confused. Having regard to your approval in a particular order and what has happened today is extremely disturbing and I do not know if it is a conspiracy that has occurred. But whatever it is, I would like you to really guide this honourable Senate from now on, on matters related to Motion for the Adjournment and the order that you are going to ensure that these matters are addressed. So if next week you can guide us, I will appreciate it very much.

Mr. President: Sen. Mark, you used the words, "a conspiracy" there and I assume for the sake of good order that you are not referring to me.

Sen. Mark: No, no, not you, Sir. I would not put you in that category at all, Sir.

Mr. President: Very well. I will look at the Standing Order, as you have requested. However, let me repeat the information as I have it, and that is to the best of my information, that we are dealing with the matters in the correct order. I have no other information to the contrary. That being so, are you at this point prepared to deal with the matter or should we deal with it next week?

Sen. Mark: Mr. President, may I clarify a point? When you say, in the order, that you have been informed, are you indicating that when you approved the two motions that I sent to you and you approved it in a particular order: one, Crime;

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two, Discrimination in Social Allocation, is that what you are referring to in terms of the order? Or are you saying that given the Government's position on the matter, that is the order that you are proposing, Sir?

Mr. President: Sen. Mark, I have no specific recollection in that regard, but to the best of my information it was done in the order in which we are doing it.

Sen. Mark: No, Sir.

Mr. President: That is the best of the information that I have. All right? But I understand your concern and your point and I think that we would have to consider that as we go forward and I will have a conversation with the Clerk to ensure that we do things either in that order or with the agreement of the parties as they come up. I ask the question again: Are you prepared to deal with the matter now or shall we defer it to next week?

Sen. Mark: Mr. President, I would deal with both matters next week, Sir.

Mr. President: Very well. Hon. Senators, before I put the question, it would be remiss of me if I did not congratulate Sen. Rahman and the Attorney General on their maiden contributions to the Senate. [*Desk thumping*]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 6.04 p.m.