

*Leave of Absence*

*Tuesday, February 12, 2008*

**SENATE**

*Tuesday, February 12, 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. Subhas Ramkhelawan for the period January 31 to February 15, 2008. I have also granted leave of absence from today's sitting to Sen. Basharat Ali, who is ill. The leave which the Senators seek is granted.

**SENATOR'S APPOINTMENT**

**Mr. President:** Hon. Senators, I have received the following correspondence from His Excellency the President, Prof. George Maxwell Richards:

“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: DR. ROLPH BALGOBIN

WHEREAS Senator Subhas Ramkhelawan 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, in exercise of the power vested in me by section 40(2)(c) and section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, ROLPH BALGOBIN, to be temporarily a member of the Senate, with immediate effect and continuing during the absence from Trinidad and Tobago of the said Senator Subhas Ramkhelawan.

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 6<sup>th</sup> day of February, 2008.”

*Oath of Allegiance*

*Tuesday, February 12, 2008*

**OATH OF ALLEGIANCE**

*Sen. Dr. Rolph Balgobin took and subscribed the Oath of Allegiance as required by law.*

**PUBLIC ACCOUNTS COMMITTEES  
(APPOINTMENT OF)**

**Mr. President:** Hon. Senators, I have received the following correspondence from the Speaker of the House of Representatives:

“Sen. The Hon. Danny Montano,  
President of the Senate,  
Parliament,  
Red House,  
Abercromby Street,  
Port of Spain.

Dear Mr. President,

Appointment of Public Accounts Committees

At the sitting held on Wednesday, January 30, 2008, the House of Representatives agreed to the following resolutions:

- (a) That the following five Members be appointed to serve with an equal number from the Senate on the Public Accounts Committee:

Mr. Roger Joseph  
Mr. Joseph Ross  
Mr. Nileung Hypolite  
Dr. Roodal Moonilal  
Mr. Vasant Bharath

- (b) That the following five Members be appointed to serve with an equal number from the Senate on the Public Accounts (Enterprises) Committee:

Mr. Roger Joseph  
Mr. Rennie Dumas  
Miss Marlene McDonald  
Mr. Kelvin Ramnath  
Dr. Hamza Rafeeq

These resolutions are accordingly forwarded for the attention of the Senate at the earliest convenience.

Yours sincerely,

Hon. Barendra Sinanan MP

Speaker of the House”

**CONDOLENCES**  
**Haji Ralph Khan**  
**Roy Kwabene**

**Mr. President:** Hon. Senators, it has been brought to my attention that Haji Ralph Khan, former Member of this Senate passed away on Wednesday, February 06, 2008, at the San Fernando General Hospital. I now invite Senators on all sides to pay tribute to the former Senator.

**The Minister in the Ministry of Energy and Energy Industries (Sen. The Hon. Conrad Enill):** Mr. President, we have learned through the media of the passing of the former Senator. Our information is that he was appointed a Senator with effect from September 10, 1990. On the advice of the Leader of the Opposition, he served until the third republican Parliament, which was dissolved in November 1991.

He was a prominent southern businessman and insurance executive who operated Ralico Insurance Company, an agent from the Maritime Insurance Group. His stint in the Senate was short, but I understand his contributions in debates were lively, humorous, sometimes very serious, and he always brought his religious background and training to the fore.

Haji Ralph Khan was a devout Muslim and social worker, who assisted many of the less fortunate citizens in his community. He was a Justice of the Peace and assisted the courts, particularly in San Fernando, in many matters.

On behalf of the Government Bench, we wish to convey our deepest sympathy to his wife and children. May his soul rest in peace!

**Sen. Wade Mark:** Mr. President, I join my colleagues in extending our profound condolences to the family of the late Senator, Haji Ralph Khan. I recall vividly when there was a change of the guards back in 1990. At that time, after the attempted coup, the ruling PNM occupied these benches and the UNC took the decision that the PNM should assume its rightful place in the Opposition Benches. Haji Ralph Khan was one of the six Senators, along with me, who entered the Senate.

*Condolences*  
[SEN. MARK]

*Tuesday, February 12, 2008*

Haji Ralph Khan was an affable individual, a practising Muslim and former insurance executive. He was a man of the people, very simple and humble. He made his contribution deliberately and at times humorously, but always serving country and people. We learnt of his passing as well.

I would like, on this occasion, to bring to your attention the passing of another former Senator, Roy Kwabene. He died in England sometime in December and was cremated and his ashes brought back to this republic. He too served in this honourable Senate for a period of time. As a practising Muslim himself, he served his country well. He was a poet, a writer, a social activist and a man of the people. I would like to express our profound condolences to the family and friends of the late Roy Kwabene.

On behalf of the UNC, we would like to record our collective sympathies to the family of the late Haji Ralph Khan as well as the family of the late Roy Kwabene. I, like my honourable colleague, the Leader of Government Business, hope that Almighty God would grant them eternal peace and rest. May their souls rest in peace.

**Sen. Prof. Ramesh Deosaran:** Mr. President, it is indeed with deep sadness, but fond memories of my long friendship with Haji Ralph Khan, that I rise to pay solemn regard on his passing. I do so on behalf of Independent Senators and, I believe, on behalf of all Senators.

Many stories reflect the character that Haji Khan had, but the last one a few weeks ago, during that conversation, as he usually would, he asked me: Boy, what is going on in this country? That would take us half an hour on the telephone, especially since he was making the call and I did not have to pay. He was a lively conversationalist and I shared his sentiment because he was a gentleman of great religious fervour who did his duty, especially covering those parts that so many of us have failed to do.

During that last conversation, he reminded me of a preface he had asked that I write for a book he had recently published—about a year ago—and I was late in delivering. When I did so, he called me and said that I was a day late and did I mind if he put it in the back cover. I told him I did not mind as long as he put it in the book. It is a book I recommend to our young people because it shows how a man can be of deep religious fervour, practising his religion with such zeal, yet have an open heart for the values and virtues of all other religions. I recommend our young people to a gentleman who has passed away, who worked very hard and yet found time to care for his family and raise his children in the fear of the Lord.

*Condolences*

*Tuesday, February 12, 2008*

I say so with some sadness, but at the same time the fact that we are remembering his life should help us to be further ennobled especially since it seems that this country is suffering from a spiritual dearth from which even religion seems unable to rescue us. If we can remember the things he did both as a fervent member of the Islamic faith, as a public servant and a former Senator, we who remember his life and his deeds would themselves be ennobled.

I remember when he was here in the Senate, each time he spoke on social legislation, he would take the opportunity to inculcate in that discourse a reminder of the moral and spiritual values that would help shape this country; make us more civil and more precisely ennoble the function of this distinguished Senate.

With those words, on behalf of the Independent Bench and myself, I extend sympathy to the family of the late Haji Khan. May his soul rest in peace!

**Mr. President:** Hon. Senators, former Sen. Khan served from September 1990 to November 1991 and I am advised that even though the period was short, his contributions were significant and meaningful.

On behalf of my family and myself, I extend condolences to his family. Certainly, I would like to associate myself with the remarks of Senators on all sides.

Senators, I ask that you stand so that we could observe a minute's silence.

*The Senate stood.*

**1.45 p.m.**

#### **INTERNATIONAL CHILD ABDUCTION BILL**

Bill to provide for the application on Trinidad and Tobago of the Hague Convention on the Civil Aspects of International Child Abduction and to provide for matters connected with or related thereto, brought from the House of Representatives [*The Minister of Social Development*]; read the first time.

#### **PAPERS LAID**

1. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Deposit Insurance Corporation for the year ended September 30, 2007. [*The Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne)*]
2. Report of the Auditor General of the Republic of Trinidad and Tobago on the abridged financial statements of the Deposit Insurance Corporation for the year ended September 30, 2007. [*Sen. The Hon. M. Browne*]

3. Report of the Auditor General of the Republic of Trinidad and Tobago on the statement of receipts and payments of the Intellectual Property Office for the year ended December 31, 2006. [*Sen. The Hon. M. Browne*]
4. Annual audited financial statements of First Citizens Holdings Limited for the financial year ended September 30, 2006. [*Sen. The Hon. M. Browne*]

#### ORAL ANSWERS TO QUESTIONS

**The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill):** Mr. President, questions No. 4, 6, 8, 10 and 19 are not now ready. With respect to question No. 4 that was submitted however, the answer needed further clarification and it was referred back to the Ministry. With respect to question No. 6, it was considered and an amendment is being proposed.

With respect to question No. 8, more information is required. With respect to question No. 10, likewise, and with respect to question No. 19, it is on the agenda. Questions No. 20 and 27, which are before us today, have been approved and would be ready on the next occasion. Question No. 9, therefore, is available for consideration.

*The following questions stood on the Order Paper:*

#### **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*]

#### **Former Senator, Joan Yuille-Williams (Accommodation at Trinidad Hilton, 2002—2007)**

6. Could the hon. Minister of Community Development, Culture and Gender Affairs indicate:
  - i. The total cost of hotel accommodation and meals expended in Trinidad and Tobago to accommodate the former Minister, Senator the Honourable Joan Yuille-Williams at the Trinidad Hilton during her term as Minister viz: 2002—2007?
  - ii. Whether all Ministers, similarly circumstanced are entitled to this facility as the former Minister? [*Sen. W. Mark*]

**Trinidad and Tobago Fire Service**

**(Details of)**

8. Would the hon. Minister of National Security inform this Senate whether:
- i. The Fire Service of Trinidad and Tobago is sufficiently equipped to combat fires in high rise buildings now being constructed in Port of Spain and environs and San Fernando?
  - ii. If the answer to (i) is in the affirmative, would the Minister inform this Senate of the type of equipment provided to the Fire Service?
  - iii. If the answer to (i) is in the negative, would the hon. Minister state what steps are intended to remedy the situation? [*Sen. W. Mark*]

**Magistrates' Court**

**(Details of CAT Proceedings)**

10. Would the hon. Attorney General inform this Senate when she expects to have full computer aided transcription of court proceedings in the Magistrates' Court in Trinidad and Tobago? [*Sen. W. Mark*]

**V.T. Shipbuilding International**

**Interim Facility Contract**

**(Details of)**

19. A. Could the hon Minister of National Security inform the Senate whether: the two interim vessels procured under an interim facility contract with V.T. Shipbuilding International were delivered in October, 2007 as promised by the hon. Prime Minister in his statement to the House of Representatives on April 20, 2007?
- B. If the answer to (A) is in the negative, could the Minister outline the reason or reasons for the delay?
- C. Could the Minister state what is the revised delivery date of these vessels? [*Sen. B. Ali*]

*Questions, by leave, deferred.*

**Gafoor Commission of Enquiry**

**(Details of)**

9. **Sen. Wade Mark** asked the hon. Minister of Health:

Would the Minister inform this Senate whether the Government has moved to implement the recommendations of the Commission of Enquiry into the Health Services, by the Gafoor Commission?

**The Minister of Health (Sen. The Hon. Jerry Narace):** Mr. President, as recorded in the proceedings of the 2007/2008 session of Parliament, the report of a Commission of Enquiry into the Operation and Delivery of Public Health Care Services in Trinidad and Tobago, led by Justice Gladys Gafoor was laid in Parliament in June 2007. The report described many deficiencies that exist in the public health care delivery system; some of which were described as perennial problems that have plagued the health sector over many years.

The Commission was of the view that out of its report has come a more comprehensive range of goals and objectives than has ever been presented to the nation and public expectations have been raised to the point where business as usual is certainly not going to satisfy the demand for progress.

Immediately following the laying of this report, Cabinet established a technical committee to examine the 400-plus recommendations it contained; with a view to prioritizing them and determining how best they should be implemented or otherwise addressed.

On August 22, 2007, the technical committee submitted a report of its findings to Cabinet which analyzed the recommendations made by the Commission as follows:

- activities on 14 of the recommendations were already completed or were in the process of being completed;
- 54 were in varying stages of implementation, with action therein proceeding in a satisfactory manner;
- 74 needed to be carefully examined to ensure their long term practicality and cost effectiveness, prior to any decision being taken to implement them;
- 241 needed to be assessed to determine their precedent value impact and readiness for implementation; and
- 36 were identified for priority action.

Ongoing analysis, notwithstanding, the Ministry of Health, has moved expeditiously to implement the recommendations of the Commission of Enquiry. Some of our interventions to date include strategic management of the entire system. To this end, PricewaterhouseCoopers has been actively engaged for change management; a process necessary for the Ministry's preparation for the medium and long term transformation plan.

The Commission recommended areas of learning and development in the Regional Health Authorities (RHAs). There were many complaints concerning the lack of training at all levels.

In July 2007, Cabinet approved a grant of scholarships and bursaries to a maximum of \$100 million for the period 2007—2010. The process of awarding scholarships and bursaries has already begun. To this end, Regional Health Authorities (RHAs) have already started to set up learning centres to facilitate in-house training at all levels.

The Commission recommended a need for a policy to replace vehicles used in the provision of ambulance services every three years and to ensure regular maintenance. A new Bill to regulate ambulance service providers and emergency response will be introduced.

The Commission also recommended an increase in salaries of nurses. The salary agreement in respect of the current period has been settled.

The Commission recommended a review and upgrade of all legislation pertaining to pharmaceutical services. Amendments have already been made to the Pharmacy Board Act and regulations.

The Commission recommended the Ministry of Health and GMRTT to implement a specific three digit number for emergency calls. The three digit number has already been assigned and will be launched soon.

The Commission recommended the Ministry of Health to establish a training programme for link personnel, doctors and registered nurses at cardiac centres. A training plan has been developed for all categories of employees. Implementation is ongoing.

The Commission recommended the establishment of a Health Sector Accreditation Council. This is already on the way. The National Health Services Accreditation Bill was tabled as a Green Paper. Draft legislation is being prepared.

The Commission recommended the IT upgrade of the system. Its initiatives to integrate the system are being implemented nationwide through the RHAs to improve internal and external communication.

Using the Commission's report as a base, the Ministry of Health also embarked on a series of consultations with over 40 stakeholders over the period mid-November to mid-December 2007, relating to health care delivery and the future direction of the health system.

These discussions identified areas of focus for immediate intervention as follows:

- improving the operation of accident and emergency departments;
- improving the management and availability of inpatient beds;
- improving the physical environment of care and upgrade of equipment;
- improving customer service and making existing services more customer friendly;
- introducing systems to benchmark performance and monitor progress;
- improving security at health institutions;
- improving communication, with emphasis on healthy lifestyles; and
- improving human resource management.

These discussions have led to the development of a 100-day action plan that the Ministry of Health and the RHAs have prepared for immediate delivery.

The interventions outlined in this plan are largely operational in nature and focus on the stress points in the system and the actions that are to be implemented to bring about stabilization in these areas.

The management and the availability of the inpatient beds is one critical area of health care delivery that has periodically engaged national attention.

To this end, the Ministry of Health has embarked on a series of measures to deal specifically with this. These include the following:

- management improvement teams that are to address issues of overcrowding, including the issues of length of stay, patient support needs and discharge planning;
- a home nursing programme for continuity of care actions;
- a customer relations programme that will be reviewed to reinforce policies, patients' rights and communication strategies for the issue of limited bed space;
- implementation of standard operating procedures to facilitate the transfer of patients between health care facilities; and

- establishment of memoranda of understanding with private institutions to transfer patients, in keeping with the Ministry of Social Development guidelines, to expedite the development in community-based facilities for long term live-in patients.

The Chief Executive Officers of the RHAs will be directly responsible and accountable for the implementation of activities at the Regional Health Authority (RHA) level.

Monitoring performance under this plan will fall directly under the purview of the Ministry of Health and will be conducted through the use of facility audits, announced and unannounced, using a standard reporting mechanism.

Finally, the Ministry of Health remains committed to implementing, as far as possible, the recommendations of the Gafoor report and will continue to make regular disclosures so as to keep the public abreast of all future developments and achievements.

**Sen. Mark:** Could the hon. Minister tell this Parliament whether the technical committee that he mentioned, which was established by the Cabinet, has been abolished, or whether it is continuing its work?

**Sen. The Hon. J. Narace:** I am not aware that it has been abolished.

**Sen. Mark:** Could the hon. Minister of Health indicate to this Parliament where we are with the 241 recommendations that are needed for further assessment? Has there been a committee established to assess the 241 recommendations? Could you inform this Senate?

**Sen. The Hon. J. Narace:** As I said, this is an ongoing exercise and this is the information that I have at this time.

**Sen. Dr. Nanan:** Could the hon. Minister point out, with respect to the 36 priority areas, if dental equipment is part of the priority areas?

**Sen. The Hon. J. Narace:** I did not get the question.

**Sen. Dr. Nanan:** With respect to the 36 priority areas, the report pointed out dental equipment in polyclinics being underutilized, has that particular situation been regularized?

**Sen. The Hon. J. Narace:** As I have said, it is an ongoing exercise. Where we were able to take immediate action, we have taken and it is an ongoing exercise.

**2.00 p.m.**

**COPYRIGHT (AMDT.) BILL**

[Second Day]

*Order read for resuming adjourned debate on question* [January 15, 2008]:

That the Bill be now read a second time.

*Question again proposed.*

**Mr. President:** Hon. Senators, following is the list of Senators who spoke: The hon. Peter Taylor, Minister of Legal Affairs, Sen. Wade Mark, Sen. Basharat Ali, Sen. Cindy Devika Sharma, Sen. Dana Seetahal SC, Sen. Mohammed F. Rahman, Sen. Prof. Ramesh Deosaran and Sen. The Hon. Bridget Annisette-George, the Attorney General, who had spoken for 14 minutes and has 31 minutes of speaking time remaining, if she so wishes to continue.

**Sen. The Hon. B. Annisette-George:** Mr. President, I have utilized the time and I do not need the balance of the time allotted. Thank you.

**Mr. President:** Thank you very much.

**Sen. Dr. Jennifer Kernahan:** Mr. President, thank you very much for the opportunity to contribute to the Copyright (Amdt.) Bill. The issues of copyright emerged in the early 1700s, because of the monopoly that the stationers Company, a London-based collection of booksellers enforced on the literary work of that era, and by virtue of a Royal Charter, they had been granted the power to regulate the availability of books.

In order to break that oppressive and censorial regime, an “Act for the Encouragement of Learning” was brought to the Parliament, and that Act ceded literary property to authors in order to provide an incentive to create works that would inform an advanced society. That was the beginning of the issue of copyright which has evolved and emerged over the years and shaped by different interests, primarily commercial interests. It has also been shaped by the development of technology, as we will see in this new digital age, the difficulties that the issues of copyright present.

One of the developments that is very clear, is that due to the nature of the marketplace, and in order to achieve a wider dissemination of their work, most authors had assigned rights to publishers, recording labels or employers. The major benefit was for these entities to be able to disseminate their work very widely and so forth. Coming

out of that development, most intellectual property rights have been held by large multinational corporations, and because of that governments have been under increasing pressure to protect these rights.

Mr. President, we are debating this Bill today in that context, and in the context of the fact that in the United States of America today, the movie and music producers are leading the fight for heavier entrenchment of copyright laws and penalties for copyright infringements. They have lobbied for an Act called the Indue Act, which hold technology companies liable if they manufacture products that could encourage people to infringe copyright. That is how far it has gone.

It has been remarked and observed that such a broad-based approach would criminalize things such as iPods, photocopies, floppy disks and all the technology that is so widely available to anybody in order to copy and reproduce at a very high standard of reproduction.

As you know, in recent years, the whole issue of digitalization has raised public awareness as to the issues of copyright. Every school child has access to Bluetooth cellphones, information and music. All these pieces of information are protected by copyright, and without even knowing it or being aware of it, many of us would be infringing on copyright protection and so on.

It has reached the point where an international debate and a national debate at this point, is about how do you balance the rights of owners of copyright and the rights of the public to access information and to access creative work.

One of the points made by very interested observers is that the very development of creative work and literary work and so on are based on what has gone before. So, if you circumvent or narrow the access to knowledge, work, literary compositions and music and so forth that have gone before, that inhibits the development and creation of new work. That is the debate. How do you balance the rights of owners of copyright and the rights of the public to knowledge, information and literary creation?

That was the whole issue of the initial Copyright Act, where the Act was to develop learning in the society. It was recognized, even at that point, that you need to open up the monopoly that these stationers had created and encourage the access of people in the society to the knowledge contained in the books that they controlled.

This Bill is eagerly anticipated by members of our cultural and artistic community. They have been waiting for a long time and, rightly so, it has had a long chequered history, and we are here today to put some sort of closure to this long drawn-out problem that we have had in coming to grips with bringing a definitive statement to the position of this country on copyright.

Mr. President, our artistes and our cultural workers see this Bill today as an instrument of protection for the work of creative persons. It is important and vital to protect the work of artistes and cultural workers in all spheres. My argument will lead—at the end I will come to the point, that in addition to protecting the work of our artistes and creative workers and so forth, it is also important to produce this work and promote this work. Protection is practically the last step. If you do not produce and promote, then you do not have anything to protect. I think this is where our focus and our perspective have fallen down in this country.

We have not seen policies initiated by this Government over the period of time that they have been in office. They have brought this Bill to Parliament today, but there is no perspective on how we are going to promote and produce artistic and cultural work. We are still waiting on the cultural centre and that is not the only problem.

We have communities all over this country—rural and urban areas and so forth—that are dying for some sort of cultural life or cultural institutions where young persons can go and learn to play musical instruments, drama, music and develop their cultural identity and so forth. This is the missing link in many of our communities, and this can be directly traced to what is happening, like the outbreak of violence and crime and criminal activity. This can be directly traced to this lack of nurturing of the cultural propensities of our people over the years. We have totally neglected that. Two oil booms have passed through this country and we have neglected to do that.

Mr. President, I lived in Cuba for six years and in every single community in Cuba there is a cultural centre. You do not have to be somebody who is working for a lot of money for your children to learn to play the violin, the piano or to dance and so on. There is a cultural centre available to all members of the community and your children can go there and be involved in whatever cultural activity takes their fancy and they can develop into professionals later on if they so wish. That is the sort of perspective we should have here, and this is where our artistes and cultural workers are going to come from. Where are they going to come from if there is no nurturing where they live and grow?

We come here and make a big to-do: “Oh yes, we are so involved in the protection of cultural work”, but where is the production of cultural work and the promotion of cultural work?

Cultural artistes in this country have been calling for the longest while for some sort of minimum airtime for local work and so forth. Other countries have

been able to develop their artistes and so forth by giving them that space to develop and grow, and that leads to more international exposure. I will end my contribution with dealing with some of these issues.

We have brought these amendments to the Copyright (Amdt.) Bill, and we have to be straight up and frank with the national community. The 1997 Bill and the amendments in 2008 are not of our own volition. It is not something that we dreamt of or thought of. These Bills that are being brought to Parliament are based on international agreements that are imposed on developing countries, in the context of a globalized environment, where the rules regarding international trade and so forth are being set by the most powerful developed countries and the multinationals of these countries, because they are the ones who fuel and power these agreements, these trade agreements; and participation in international trade is now conditioned. Our participation in international trade is now conditioned on issues that are not related to trade at all, such as the issues of the environment, government procurement, labour and now intellectual property rights of which copyright is a part.

We have a situation where the monitoring of these agreements and new rules are within the purview of supra national bodies, which exert the authority and which have the right to enforce compliance on erstwhile sovereign nations. This is the reality. It is no point in coming here and pretending that this is something that we want to do because we want to do it. We are forced to comply with these international agreements, because they are the international bodies like the WTO that set the rules.

The Minister, in his introduction, mentioned that these amendments are part of the WIPO Treaty and the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) and so on. The TRIPS Agreement, which the Minister mentioned, is an international agreement administered by the WTO. So, that is intimately connected to the WTO trade agreements.

I have a copy of the TRIPS Agreement. Some of the articles here are reflected in the amendments that the Government has brought today. Some of the amendments are also reflected in the WIPO Treaty that came into being in 1996.

### **2.15 p.m.**

So, I want to clarify the context in which we are debating this because, as I said before, it is not something that we dreamed up. We have to understand that the inclusion of intellectual property rights, for which we are here today, was a culmination of a programme of intense lobbying by the United States, supported

by the European Union, Japan and other developed nations. Actually, countries such as Korea, Brazil, Thailand, India and the Caribbean were defeated in the WTO negotiations on these issues of enforcing that inclusion of intellectual property rights into trade agreements and so on. So TRIPS now is a compulsory requirement of WTO membership and access to international markets. That is why we are here today debating this Bill, which the Minister mentioned, is a result of compliance with TRIPS and compliance with WIPO.

Therefore, we have to understand what are the issues here. The reason these developed countries are so eager to get all the countries of the world in full compliance with intellectual property rights is because the underlying motive is economics, trade, commerce, big money. What we have to understand in Trinidad and Tobago is that big money flows from the developing countries to developed countries. That is why I made the point that we have to understand what is our focus here; what is it we need to do to at least acquire some sort of benefit from these treaties and these Bills that we are passing in our country.

I looked at some of the economic aspects and the issues involved in the Global IPR Enforcement. This was a paper by Prof. Keith E. Maskus and it is interesting to see where serious issues of piracy and copyright infringement, in which countries you have these issues being of vital importance and what are some of the losses incurred. When we talk about introducing these copyright amendments to our country we have to understand that if we look at Article 66 of the TRIPS Agreement, it makes it clear that:

"Developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base."

So the very TRIPS Agreement that the Minister mentioned, recognized that it was necessary for the developed countries, in enforcing compliance with TRIPS, to provide incentives and institutions for the development of technology, because they understand that that technology is where the money is. This is where your royalties and so on from copyright come into your country to develop your country. It also says in Article 67 of the TRIPS Agreement:

"In order to facilitate the implementation of this Agreement, developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country Members."

It is interesting that the Government has come here today and brought these amendments to comply with TRIPS and the WIPO, and the very article that would be most relevant to us—and the Government Minister did not mention—is what this Government is doing to access or to force compliance on behalf of the developed countries to provide technological services, transfer of technology to our country, so that we in turn can benefit from these treaties that we are signing.

When you look at what is happening worldwide, Mr. President, you can see the reason for the need for the harmonization of copyright laws, and you can see the reason for the very haste with which these laws are being imposed on developed countries. A lot of developing countries are heavily infringing on copyrights, because of the kinds of economic benefits that accrue from infringement. That is a problem that developing countries have seen and that is why we are here today debating this, because copyright infringement accrues billions of dollars in losses to them.

For example, they have estimated software piracy rates and losses in East Asia. Those are countries which most infringe on copyrights, patents and licences. Our countries are not the ones that have access to all the technology to produce infringing copies; to produce the technology that produces these copies and so on. The Asian countries are the ones which are most infringing.

	Piracy Rates		Losses (\$M)	
	2003	2006	2003	2006
China	92%	82%	\$3,823	\$5,429
Indonesia	88%	85%		
Philippines	72%	71%		
Thailand	80%	80%		
Total Losses				
Share of global			24%	26%
United States	22%	21%	\$6,496	\$7,289

In the case of the United States, even though their percentages were low, their losses were extremely high, because of the type of articles that we are dealing with.

So, Mr. President, the developed countries have decided that this cannot go on; that high levels of piracy are causing great losses to multinational corporations that produce all these goods. We have it here; we have anything you can get here

*Copyright (Amdt.) Bill*  
[SEN. DR. KERNAHAN]

*Tuesday, February 12, 2008*

counterfeit: shoes, sneakers, handbags, clothes and so on. You have the international trade in counterfeit products and piracy which is extremely high, and this is the basis of TRIPS and WIPO treaties. The question of music is part of it and this is where we have to get into where the big players are. The areas that TRIPS deal with, apart from copyright, are industrial designs, integrated circuit layout designs, patents, monopolies and the development of new plant varieties, trademarks, trade dress, undisclosed confidential information. That is where the big money is, and that is where we are not. So many times I sat here and listened to former Senator Mary King when she talked about innovation, technology and when are we going to get into those fields; when are we going to do the research and development that will allow us to get into those fields, because that is where royalty flows out. We are a net exporter of royalties to these big countries because of the fact that we have very little to offer in terms of a protection of copyright.

You know, when I was thinking about this whole situation, I drew the analogy of cricket. You have the big developed countries, they monopolize the field and they have the bat and the ball, and you know what they tell us. In order to play this game you have to have a bat—which is this copyright legislation and these amendments—but we do not have any ball. What do we have to protect? Where are our patents? Where are our industrial designs? Where is the history of our cultural workers; all the work that has been produced over the years? Where is all that? What do we have? Where is the ball? I think this is what we have to do in this country, keep our eyes on the ball.

What is happening is that when the big players are in the field they bat the ball around; when the ball comes to the side we bat it around a bit and we get a little income from some CDs and so on, and we tell ourselves we are in the game, but we are not in the game; we are totally out of the game. Unless we get into innovation, research and development, technology transfer and we enforce compliance of the very TRIPS agreement, through which we have justified these amendments here today; unless we enforce compliance of Article 66, which says that you must transfer technology to the small and developing countries, so that they can get into the game and really benefit from these agreements, we are spinning top in mud; we are fooling ourselves; we are fooling our people, because at the end of the day all the money leaves the country. We do not even have minimum air time here for the artistes; all the money leaves the country; copyright organizations have to pay out millions of dollars every year to foreign artistes, foreign multinationals and very little comes in because we have nothing out there, and that is the reality.

Mr. President, there has been a lot of talk about all those pirates out there who are copying artistes' material, but there is a whole industry that can be developed in this country if you are serious. In the United States, their copyright industry accounted for 5.24 per cent of their gross domestic product last year. And if you included the recording and listening devices, the copyright industry accounted for 7.75 per cent of their gross domestic product. This is big money; this is big business. We are talking here about software, copyright industry, production of software, production of publishing, broadcasting, sound recording, and audio-visual recording and listening devices and so on. Where are our industries?

We have many informal workers in our country; people living below the poverty line, who are employable workers; they are on the street selling bits of this and that. The other part of it is the whole issue of piracy and selling pirated copies. The artistes are very upset and rightfully so. But the issue is, how do we incorporate these persons if we want to have a proper focus on copyright; on what is good for us in our national development? How do we incorporate these persons into a copyright industry? That is the focus. How do we incorporate these young persons into a copyright industry that would give them a sustainable job; that would give them some sort of status; some sort of foothold in the society that would make them feel that they are a part of the society and would make them know that they do not have to take up a gun; they do not have to join a gang; they do not have to firebomb people's houses in order to get recognition and status and in order to stake their claim in this society. They would know that there are sustainable jobs that they can be involved in.

Many of those young people like music; they like the industry, but there is no way into the industry and therefore our focus, our problem and the Minister's problem should be, how do you access technical—based on Article 66 of TRIPS—and technological input from the developed countries, which they have promised us in order to open up industries that would absorb all these young people who are on the streets trying to eke out an existence; to earn a living by selling presently pirated copies. That is our dilemma and we cannot just simply say lock them up, throw away the key, charge them \$100,000; it makes no sense. Where are those people going to get \$100,000 to pay when you catch them with infringing copies? It makes no sense.

### **2.30 p.m.**

You are going to fill up these jails now, the already overcrowded jails with all the problems that we have in the jails and so on of guns, drugs, health problems, hygiene problems and so on. We are going to pass this legislation today to further

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fill up the jails with all these young people—all they want to do is to make a living, all they want to do is to be able to provide for their girlfriends or for their young children and so on, to send them to school.

If you are going to pass legislation like this, Mr. President, if you are going to reinforce the legislation, if you are going to bring amendment that is going to impact very critically on people's lives in terms of the penalties, in terms of the enforcement you have to deal with the problem of what you are going to do with the thousands out there. The answer is, enforce compliance with TRIPS, if they can enforce it on us we can enforce it on them. Enforce compliance with respect o access to technology, to technical help and aid in order to open up an industry and incorporate young people who require help. It is interesting and this is an important aspect; we talk so much about the non-energy deficit and so on—and this is an important area that can brace the non-energy deficit because it is important to note that while the figures I quoted that these copyright industries grew at 5.2 per cent in the US while the economy grew at 3 per cent so that area of the economy actually was growing almost twice as fast as the other areas of the other economy. So this clearly is an area that we can work on if we have the political will, if we have the vision, if we care as they say they do. If you care about this country you will develop a copyright industry, ask for the technical help and so on, ask for the technology transfer resources and you will develop a copyright industry which would encompass a lot of persons now who are in the informal sector and who wish to graduate to the formal sector.

Mr. President, I was looking at the *Agreement on Trade-Related Aspects of Intellectual Property Rights* from Wikipedia in the encyclopedia and one of the issues that they mention is that it is important that we understand that there are flexibilities in the international TRIPS agreement that we have signed and it is important to use the flexibilities in there to give us time to deal with these issues. We cannot deal with these issues overnight. The thousands of informal workers out there, the young people who are trafficking—pirating infringing copies did not happen overnight and we are not going to get rid of it overnight. Therefore, also in the TRIPS agreement which the Minister mentioned, in Article 61.1 it says:

“In view of the special needs and requirements of least developed country members their economic, financial and administrative constraints and their need for flexibility to create a viable technological base such members shall not be required to apply the provisions of this agreement other than articles 3.5 for a period of 10 years from the date of application as defined under

paragraphs one of article 65 and the counsel for TRIPS shall upon duly motivated request by a least develop country member afford extensions of this period.”

Developed country members shall provide the incentives and so on.

Mr. President, there are flexibilities and we can ask for extension, we cannot legislate such draconian measures right away. We could give ourselves some time to develop an industry to ensure that there will not be this total displacement of a lot of people which would in turn exacerbate the crime situation, exacerbate the poverty levels and so on that we are experiencing right now; we can do these things. We do not have to rush off to comply every time WIPO comes up with a new development. For example the question of Rights Management Information, this was raised fairly recently by WIPO and I want to look at their document on this issue because we have brought today the amendments that WIPO has advocated—1996 and the name of this document is “The Advantages of Adherence to the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT)” and they have recognized everything that I have said here and in this document they are putting forward the case for compliance on the part of developing countries with the copyright treaties and some of the amendments that were brought here today because some of them are WIPO amendments and I quote:

“The treaties benefit both developed and developing countries. They contain numerous provisions that protect local creators in both the traditional and the digital environment. To the extent that they clarify and strengthen rights in the digital environment, they may be more immediately critical to countries that already have extensive use of digital networks. But they will assist creators from all countries when their works and other subject matters are used in the digital form without their authorization—a danger for all creators, wherever they are located.”

They admitted here that in the short term, this legislation will be more critical and will be more valuable to countries that already have extensive use of digital networks. Where are we in that respect? They say that “you are coming along; when you reach the point where you have extensive access it will be valuable to you too.” We have to give ourselves that space because WIPO has recognized that you need that space, although they have brought these amendments and so on and they have asked countries to ratify it. They have recognized that developing countries and least developing countries need the space to move into the digital

age and so benefit from copyright. They are saying clearly here that we are not going to benefit in the short term. It says here and I quote:

“Implementation of the treaties could be beneficial for developing countries in particular in that it encourages outside investment and puts in place a legal framework that will enable competition on a level playing field once the threshold of initial access to digital networks is passed.”

When are we going to pass that “initial access” to digital networks? Where have we reached with that? What has the Minister said here to reassure us that we are on the path, that the Government has a plan, it has a policy, it has a programme, that something is in the works for us to really benefit from these amendments and the copyright agreements that we are being made to comply with? There is nothing! There is nothing to give us any succour, nothing to give us any hope for the future, nothing to give the young people out there; they are going to shut me down but there will be an alternative, they are offering alternative employment in other areas of the copyright industry—and there is nothing, the Government has brought nothing to the table. WIPO has also recognized that due to the current state of the Internet technology the need for protection in the digital environment is greatest in the area of recording music, text computer programmes, photographs and graphic art, and that is true.

Therefore, when our artistes and cultural workers feel that they are gaining ground and they are happy in terms of the legislation that we are about to pass today, that they will be protected and so on, the point is that the world is moving on and in fact what is happening is that the music industry has reached the point where the sale of CDs and hard copies of CDs, DVDs and so on is on the way down in the world market and other innovative outlets have to be found for artistes to be able to get their work across and gain the economic rewards of their cultural activity. I would like to quote from this document, Economist.com, “The music industry: From major to minor,” January 10, 2008 and it says here:

“‘In 2007 it became clear that the recorded-music industry is contracting and that it will be a very different beat from what it was in the 20th century,’ says Mark Mulligan, an analyst at Jupiter Research. Last year several big-name artists bypassed the record label altogether. Madonna left Warner Music to strike a deal with Live Nation, a concert promoter, and the Eagles distributed a bestselling album in America without any help from a record label.’”

So this is what is happening in the world.

When we talk here we have reached the point here where we are now looking at the aspect of piracy and protecting our CDs and recorded music. The world has reached the point where there is a drop in the distribution of that type of music because of the technology, so on one hand you have copyright protection and so on and on the other hand you have the digital technology and Internet which make all that obsolete; people can go straight to the Internet, distribute their work, disseminate their work and reap economic rewards and there is no need for all this draconian copyright legislation.

This is the point made by Sen. Mary King in the *Daily Express*, Tuesday, January 29, 2008 and the headline is "The digital commons" and she says:

“Given that the Bill to modify the Copyright Act has just been debated in the Senate I would like to place on record for information, if not further consideration, the new approach to the use of cultural material; the ‘cultural commons’ or the ‘digital commons.’”—Former Sen. Mary King drew reference to Brazil where the—“Creators borrow freely from others and remix”—where—“The CDs, like in T&T, are sold on the streets for little more than the cost to produce the physical medium. In other words artists do not receive royalties for the CDs but,...view this as promotion of their work.”

This sentiment has been actually expressed by our artistes here.

“The artists make their money by live performances of their work that attract thousands of fans.”

That is one part of it, further on this article says:

“The Internet and the ability to make perfect copies are the drivers of this change. But more importantly is the concept of the ability of users also to produce and disseminate new creations...”

So she says:

“How can copyright work in an environment in which anyone can publish anything on the Internet that can be seen or used instantly by anyone in the world? Artists and producers no longer have to rely on the power of major corporations as producers or distributors.”

And she mentioned My Space, YouTube.

All of these are media in which artistes go straight to the public, go straight to the consumers, go straight to their market. And this is why copyright emerges in the first place because creators of work would have given over their copyright to

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the distributors, to the moguls in the music and so on because they are the ones who had the technology to disseminate the work. Now that the Internet has come on, the scene, the “digital commons” as Sen. Mary King has said, there is no need for that and therefore, it is in fact retrograde now to be talking in the language that we are talking when the world has gone past that and our artistes are beginning to recognize that.

Our artistes have recognized that the money to be made now is not on the CDs and so on which people do not buy anyway because they do not have the money. What is the price of an original CD? About \$200, \$250, it is difficult when the cost of food has gone up 25 per cent every year for the last four years and you cannot buy some bodi, you cannot buy some carrots, you cannot go in the grocery, you cannot buy milk and you cannot buy anything. According to calypsonian Relator, “When you go to the market now you only taking basket.” How are you going to fork out \$200 or \$300 for a music CD, however much you love music, you love the artiste, you want to support your country and so on? It is difficult and that is why a lot of our artistes have recognized that and you have to go with the flow, you have to do what you have to do to get your music out there, to get your promotions and use the digital technology to our advantage and not against us. We cannot fight each other.

**2.45 p.m.**

The young man on the street who is trying to make a living is not our enemy. Our enemies are the people who historically have taken millions and billions of dollars out of our country because they have all the technology; they have the information and they use it to milk developing countries. That is our enemy. What we need to do in this situation, is to try to use whatever technology there is to the best of our advantage and for our artistes. In this article—it was very interesting—in the *Guardian*, Tuesday, January 29, 2008 and the headline is: “The crazy road to online sales.” It is very clear the problems that the artistes face and I quote:

"In Ayoung's case, he spent \$175,000 to produce a full CD and the product with 17 songs, didn't arrive in the country until January 19, leaving people with a craving for the catchy but risqué song no choice but to buy it on a pirate CD compilation.

The situation made it all the way to a BBC business report by Robert Plummer and it all seemed a bit, well, crazy to me."

**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. W. Mark*]

*Question put and agreed to.*

**Sen. Dr. J. Kernahan:** So that is the dilemma that our artistes face, \$175,000 to produce a CD and problems in getting it sold. The so-called infringing copies are out there and the young entrepreneurs are out there selling them even before he can recoup a cent of his money. But he found a solution because he was called and was told about this new service, Trinidad Tunes.com. That is a service that provides online distribution for the music of the local industry. The article continues:

"There's powerful disconnect for artistes accustomed to thinking about their product as a plastic case with a recorded disc inside."

That is the mindset; that is the custom; that is the way they have been accustomed to do business and it was very strange to think that maybe this is a declining industry, maybe we have to think about something else. Crazy did and he went on to deal with the issue of online distribution. He has been very pleased with the results and he has over 20 songs on the Trinidad Tunes.com website. A lot of stars are signing on, Rikki Jai, Nadia Batson, Roy Cape and so on.

Mr. President, according to Hezekiah, the person who is promoting this website: "more artistes are calling to sign up everyday and there's new music on the service." So this is the way that our artistes have to go. You have to use the new digital technology, the Internet, in order to promote your music. You do not need the traditional people who would sign you up, take a percentage and reap the profits and so on from your music even before you see a cent. The music industry historically has been very, very exploitative to a lot of artistes. A lot of artistes work, and work and work and they hardly see the results of their work because there are all sorts of fine clauses and so on in their contracts that allow the producers and the owners of copyright to enrich themselves at the expense of the artiste.

Therefore, Mr. President, this new digital technology, the "digitals commons" as ex-Senator Mary King said, our artistes have to understand that that is the way to go and the Government has to understand that if you care and you really want to do something to develop our national cultural product; if you really want to do something to help our artistes; if you really want to develop a copyright industry in this country, this is where you have to help the artistes to set up. Give them the necessary technical expertise, the advice, the help and so on and allow our artistes

to go out there, go directly to the consumers, go directly to the markets and so on and they would get the full benefit of their product, of their cultural work and so on it and it is protected.

Because what we are doing here—as I have said, we have the bat; it is protected because we have the bat. We are going to have the bat this afternoon, but where is the ball? Where is the product? Where is the promotion? Where are the institutions that will bring artistes on a continuous basis from the communities right up to the national and international arena? It is lacking; it is not there. What we are doing is trying to comply as quickly as we can with every little thing that WIPO says. If WIPO says something today, tomorrow, we enact it. It is not necessary; we have the time. There are flexibilities which we can use. There are agreements in the TRIPS Agreement which we can use to guide us through this very murky, murky, era.

But you know, I am not surprised that this is the way we go because this is an administration that is committed to the promotion of the ordinary, the promotion of the mundane and this is why you have a situation where at a Dimanche Gras Show as was produced last Sunday in this country, the most ordinary mundane—It was a travesty because the real artistic work and artistic value is not promoted in this country anymore. What is happening, is that the seeds, fruits and the flowers of our culture are being stripped away and all that is left are the leaves, the bitter leaves, like the leaves of the aloes. That is all that is being left in this country and valuable, artistic creations are being left out of the international and national spotlight.

So, they are not interested in promoting artistes, they are interested in promoting people who sing for money, who would sing for their supper, who would promote a certain political point of view and that is why we are in this position today. Our people have to understand that. Our people have to understand that our cultural heritage that is so important to us; our freedom of speech; and our freedom of artistic expression are being compromised by this administration. Our people have to understand that we have to come out of the shadows of the ordinary; of the banal; of the impotent. We have to reach to the stage where true artistic creation and expression is valued in this society; and where we can go forward and really reap the fruits of our labour in the new digital age.

I thank you, Mr. President. [*Desk thumping*]

**Sen. Helen Drayton:** Mr. President, I have only a few comments with respect to the Bill which is certainly a measure to make our legislation consistent with international standards and to facilitate accession to WIPO. It is overdue and

welcome. Comments and recommendations have already been made with respect to amending section 23(1) which dealt with compensation for the indirect broadcast and communication of the copyright work.

I wish to draw attention of this honourable Senate to section 19 of the Act, which deals with the duration with respect to moral rights. Specifically, clause 5, section 19(b) for which I want to recommend to the Senate an amendment, and that is, that it be deleted. Clause 5(b), just to draw attention to it says: “by repealing subsections (3) and (4) and substituting the following subsections.” In effect, what this Bill does under clause 5, is to reduce the duration of protection for collective work other than work of applied art, and in the case of audio-visual work from 75 years and 100 years respectively, to life plus 50 years.

The reason I am recommending that these sections not be repealed,—and I heard in the debate that the duration of 75 years and 100 years respectively is more than what is in the international legislation and would put our creators at a disadvantage—is that in fact, if we seek to reduce it, they will be at a disadvantage, because the United Kingdom since 1996 as led by the European Union, has in fact, increased the duration for moral rights including collective works from 50 to 70 years. So that across the European Union and I understand that the United States has followed suit, Australia, some Latin American countries; and what is significant with respect to the United Kingdom—and my understanding is based on research—is that a number of Caribbean and Caricom countries are protected under the United Kingdom intellectual property legislation and these include: Antigua, Dominica, Grenada, Guyana, Jamaica, St. Kitts Nevis. So that the trend internationally is to increase the duration from 50 to 70 years and we are seeking to reduce it. Normally, one would seek to give our creators maximum protection.

I hear what has been said with respect to certain works of art and I know that some of it is with respect to audio-visual, CDs, et cetera, but for some reason we tend to believe that intellectual property deserves less protection than any other property, be it your land, be it your money, et cetera, and I do not think that any laws could be too draconian when it comes to protecting the work of our local artistes.

So in summary and as I have said, I will be very brief, I am recommending that clause 5(b) be deleted from this Bill and that the duration and protection not be reduced from 75 and 100 years respectively to 50 years. Basically, that is my contribution.

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

**Sen. Dr. Adesh Nanan:** Thank you, Mr. President. I enter this debate as a musician myself and a composer [*Laughter*] and I intend to bring a different aspect—[*Interruption*]

**Sen. Joseph:** What instrument do you play?

**Sen. Dr. A. Nanan:** I play the acoustic guitar, the electric guitar and the base guitar [*Desk thumping*] and I also compose calypsos. [*Laughter*]

**3.00 p.m.**

Mr. President, with respect to copyright, as was said before, it started with books. I want to put that in perspective immediately. I had a situation where I had composed a piece of music; in fact, I found it was suitable for the sound track of a movie. I then decided that someone in this country needed to hear that particular piece of music, so I played it for a few friends and they agreed that it was quite a very good composition and could be considered for a movie track. It was simply done, not with any fantastic equipment; it was just done using a piece of software with studio ability.

I was told that there was a specific individual who listened to music and promoted sound tracks, so I made a call as a Member of Parliament; the person arranged for the interview to hear the sound track. Then I got a call the next day saying that the interview was cancelled. So when the point is made with respect to entertainers and how difficult it is to get into the industry and become famous, it is a relevant point. It is a situation in this country.

We hear the Government talking about the entertainment industry as one of the tourism pillars, but we are not seeing anything with respect to them intervening in this particular area. Our entertainers are suffering. This Bill brings into focus a particular situation developing in this country. It is quite true that I could go on the Internet and get a particular sound track, but then I would be breaching various laws in various areas. I find it unfortunate that we want to put it in such perspective that we move away from our copyright organization. I think it is a bona fide organization; it is a non-profit organization. It is not really a watchdog, but it seeks the interest of our artistes.

It is in this perspective that I look upon the whole music industry. It is very costly to produce an album of substantial quality, because it costs hundreds of thousands of dollars to produce an album. We are just coming out of the Carnival season and many artistes would have spent a large amount of money to produce an album.

After Carnival many persons go around and ask for a compendium of the latest calypsoes and Carnival hits, and they could get them on a CD. You could get the best tracks from the various albums on a CD, and no royalties are being paid anywhere. Our artistes are suffering because they would have spent almost \$1 million to produce an album and they get nothing for it because somebody comes along, takes the seven best tracks, put them on a CD and sells it as a compendium of the songs from the Carnival era. Yes, we have the technology to do it; we have the capability to produce a software industry here. We have heard talk of a technology park; we have seen nothing with respect to any growth in this software industry here, but we have to face facts in terms of reality.

Just recently Rihanna from Barbados won a Grammy award, and in her contribution she mentioned Barbados. Our artistes are no different; they can move forward and be motivated, but they need the Government's intervention, at some point in time, to give them that boost. It happened in Canada and other countries where they have made a certain amount of allocations for local content with respect to music. It is an area the Government can look at in terms of giving a certain amount of air time for local music production.

When we look at this particular Copyright (Amdt.) Bill and the situation as it is now, there is another area that has opened up, not so much in terms of music, because the Copyright Organization of Trinidad and Tobago (COTT) deals with the music industry, but one which deals with the movie houses of Buena Vista, Miramax, Hollywood and Disney. If you look at what is developing, there is a particular Jamaican company buying out the rights to various movie houses. I am told that this particular company is now setting up in Trinidad, and is going to control the entire Caribbean.

Why should we as a nation have to pay a Jamaican company, if we intend to keep our DVD and video clubs operational? We now have to rely on paying this particular company, because they are going to produce all the DVDs. Somebody said that it was a glorified video rental company. They are cornering the market with respect to DVD production, so if you want to do any rentals, you have to go directly to that company. If you want to buy originals also, you have to buy directly from the company. The question is asked: If you have originals in your possession, would it be illegal, once you got them directly from this company? I do not know if it has been legislated for in the Jamaican law.

In fact, Mr. President, it was brought to my attention that a particular individual had a band that was going to play in a church. They are having a

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Valentine's Day concert. They advertised in the gospel part of the newspaper about the particular event, charging a small fee. Somebody from COTT has called the pastor. So we see how far this could go.

If you are playing music in a bar or even in a bazaar, you have to have either a permit from the Copyright Organization of Trinidad and Tobago or a licence. There is a mechanical licence and a synchronization licence. Do you know that if you are streaming music via the Internet, you have to pay a COTT licence, because COTT has membership locally and they also have linkages internationally?

So if I am a guitarist and I am going to play *Hotel California* and a few other songs on an electric guitar, and charge the public probably \$5 to hear, I will have to pay COTT for actually performing the song. The position is that we have to determine now how far we are going, because we could reach a point where we could cripple the budding artistes by particular licence fees.

Mr. President, COTT can send you a legal notice initially and ask you to pay a licence fee. If you do not, they could take you to court and have the matter dealt with. That is the power of the Copyright Organization of Trinidad and Tobago; although they are a non-profit organization, it still has that recourse to the courts. In terms of the various areas, whether it is a bazaar or even if a fete promoter, they have to have a permit from COTT, because they are either playing local or international songs, and the music is copyrighted.

In this country the music industry is being controlled, to some extent, by various fees, whether mechanical or synchronization licences; even broadcasters now. I am sure that many of you call 6411, that is the Telecommunication Services of Trinidad and Tobago (TSTT) line, and you get concert music. I am sure that piece of concert music is copyrighted. I do not know if TSTT is paying COTT any particular fee for that kind of music. So there is non-compliance taking place in many areas that can be looked at in terms of the music industry, but it is mainly our local artistes that are suffering.

I am sure that many of you can recall that the Mighty Shadow had his music in a movie. I forget the name of the movie at this time, but he never got any royalties for it. A film was made, part of Shadow's music was used, and he got no royalties. In fact, I met Shadow when I was at the airport once, and he was going to Miami to sing, because he was not getting any royalties from anybody here, and Shadow is a very popular calypsonian; maybe not in Trinidad and Tobago in terms of our appreciation of his music, but internationally he is.

Many of our artistes are trying to make it internationally, because they are getting no support nationally, and that is very unfair. I think the Minister of Culture and Gender Affairs should look into this particular area and work with the Ministry of Tourism to develop the entertainment industry, because we have the creative minds here.

In fact, if you look at it, it is intellectual property. It is actually what is coming out of a person's creativity that we are copyrighting. You would recall that the Mercedes Benz is a car known for its reliability, and because of its performance it has a high price. Eventually, in terms of performance, if you keep it over a longer period of time—So you have a situation where there is demand for a particular product, only because it is constrained. If you have so many CDs of a particular song being sent out freely and you pay \$3 for it, it will not have any worth. I think that is what happened initially with these particular songs being in such short supply.

In fact, there were initially many websites you could go to and actually download music. Many music instructors have gone out of business because a number of music lessons are on the Internet for free. We are seeing now that a number of websites are being taken down; every time you go to them they are closed or being reconstructed because somebody says that you have infringed copyright and they have to take them down.

The world is moving in terms of copyright, and what was free before is no longer going to be free again. That is why Trinidad and Tobago, in terms of our ability as we are in a global environment, has to see what is happening and how we can bridge the gap. That is with respect to music and the music industry.

The Bill also deals with the situation where if the police is doing surveillance and comes upon persons doing video recording—let us say that for Carnival you are video recording a band passing. In fact, I saw many people video recording during the Carnival season, especially when passing the Savannah. I do not know how many of those persons who were recording the particular parade of the bands had any licence to do so.

So we are seeing that our particular package, which is our mas, is being transmitted without any benefit to our country; that should not be. I was very surprised while browsing the Internet to see the Brooklyn Steel Band, and they made reference to the steel pan in Trinidad and Tobago. They said that it started here, in terms of how the playing of steel band originated, but I do not know how many of you recognize that it is an orchestra. When you go to Panorama, there are various tones of music being played, but if you listen individually, if you actually focus on the various areas of a steel band, you will then recognize that there are certain pans playing the base, there are pans

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playing the guitar aspect and there is a whole drum set; so there is a whole accumulation and, again, a compendium of various tones that make up this particular band and orchestra. It is just like a symphony.

There is no difference between what Sen. Dr. Kernahan was speaking about in terms of Cuba, and our own national instrument, our steelpan and steel band. They are both orchestras in various forms, because it is the same notes being transformed in various fashions to make music. That is what this thing is all about; it is the art of creating music that is being now put under copyright.

There are many studios in this country that can go bankrupt. If you continue to mass produce CDs by copying, many studios will go out of business. We heard of technology and technological advancement, in terms of what we have, the global perspective and the transfer of technology. We have very good studios in this country. In fact, we can compete internationally in terms of our quality with respect to sound production. Our musical arrangers are par excellence in terms of their capability. So it is not because we are a small island that we do not have that creative genius, but we need some fillip to go further into the entertainment industry, so that one day when we look at the Grammys we will see somebody from Trinidad and Tobago winning because Barbados did it.

**3.15 p.m.**

I am sure there is the potential for many budding artistes to win a Grammy and go into a particular area. That is the beauty of the entertainment industry. You did not know that, Sen. Browne? I am sure you are aware of that. I am asking if you are aware of that, you look confused. I know you looked confused from the time you entered the House when you spoke about the Order Paper—

**Mr. President:** Before we fall into any bad habits, remember that the hon. Senator is to be referred to as the Minister in the Ministry of Finance for me please.

**Sen. Dr. A. Nanan:** May I go back to the Minister in the Ministry of Finance or—

Thank you Mr. President, you will recall WITCO Desperadoes playing in Barbados with Pavarotti; that was a fantastic concert in Barbados. You must know that.

**Sen. Browne:** Agreed.

**Sen. Dr. A. Nanan:** When WITCO Desperadoes played alongside Pavarotti, people filmed that and they are making millions out of that particular event and WITCO Desperadoes, I am sure, only got appearance fee but that particular combination could have been a marketing tool for Barbados and Trinidad and Tobago. That is the possibility and the Barbados tourism industry is flourishing.

I read some of the Barbados Tourism plans and we should look at that model, it is great in terms of the entertainment industry. Little Tobago is also doing very well in terms of the Jazz Festival. I think what we should look at is the Barbados model because they are using smaller festivals to make a lot of inputs in terms of the entertainment industry and that is why their artistes can make that jump that our artistes cannot do and there is no difference between the quality Barbados has and that of Trinidad and Tobago in terms of the potential. So that is the opportunity with respect to the Copyright Act and the ability of our artistes to move forward once the Government recognizes that.

It burns my heart, Mr. President, to talk about a situation where a Jamaican company now is coming in to control the entire Caribbean and what was put forward in 1997 was for Trinidad and Tobago to be the connecting agency with respect to the movie industry. I know we are in free trade with respect to these particular situations and free enterprise and marketing, but it is sad because our people now have to go out of business when they could have been utilizing another avenue and be satisfied to some extent.

As I read the Bill I saw in terms of the—I spoke about the Parade of the Bands and the video recording. Let us just say hypothetically that somebody is video recording the parade of the bands and a policeman taps his shoulder and tells him that he is infringing copyright and takes that individual into the station with all the equipment. Let us say it happened in Chaguanas that somebody was recording a carnival parade and an officer tells him he is breaching copyright and he is under arrest and takes him to the police station with all the video equipment, and we have a situation as we have seen at the Chaguanas Station in terms of the state of that station. How can you have an Act that makes a policeman confiscate equipment, put it into a station like the Chaguanas Police Station for safekeeping and then that will be produced as evidence? It begs the question.

All police stations are in such a state in this country with respect to not only keeping evidence but even the change rooms as we have seen in the Chaguanas Police Station. So the Government must recognize as it comes with a Copyright Bill there is also the tentacles via the Judiciary which I will come to later if I have

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time, and the state of our police stations and even the training of our policemen to police this particular Act. We heard about the 1997 era that there were certain policemen being trained under the Copyright Act but we have heard nothing with respect to the ministry and whether a unit is still in place or if they intend to put one. I do not know if I have missed that.

So you have that policeman apprehending the individual for breach of copyright and putting the equipment in the Chaguanas Police Station which we are not sure what will happen there. We have also heard in this particular Bill if you have CDs the onus is on the person apprehended to say whether it is a pirated copy or not. There is a situation in the US that has been brought to my attention last year that under the US law you are allowed to make one copy of an original so you have the possibility—I know there are certain exemptions in the Act that allow you to make copies whether educational or otherwise and somebody made the point that if somebody using it as educational material, makes five copies and takes it out of the country and sends back 100,000 copies to people in this country how would anybody know?

So with respect to the five copies in the US which allows you under the Act to make one copy of an original, it was proposed, I am not proposing it, but it was said to me why do we not allow the original and allow persons to make one copy and keep the rental business, but then we have the problem of policing and how we are going to control one copy. You know in our culture one could say the copy was damaged so you have to make another and we have another situation developing, but they have managed to control it in the United States of America and that is why the video rental business is still existing and ours is about to crumble.

So there are two areas; one is the US law with respect to the one copy and then there is the situation where Caribbean Home Entertainment is now coming in to take over this particular movie industry. What is our culture? How many of us go to movie houses? The price to view a movie has skyrocketed at Movie Towne; the price has gone up suddenly. Is it that people are now being encouraged to see movies outside and is there a conspiracy to get people to go back to the movie houses? Because when this particular DVD era has passed probably people would go back to movie houses and how this particular use of technology was before.

There is a possibility also that you can view a movie if you want, you can pay a small fee and download a movie and look at it so that is a possibility that is still there. I do not know if the copyright will eventually get a hold of that but there are

avenues and we do not know about the losses in terms of piracy and bootlegging, billions in losses and it takes millions to produce a movie.

I was shocked when one of my friends told me that before the movie is shown, two weeks before that particular individual had the movie. That is the kind of advanced use of technology that is available. I am happy that Sen. Dr. Kernahan raised the point of our youths and the ability to transfer music. I am very happy to see that capability in our youths. They are able to transfer movies, pictures, download ring tones, and they can do anything. I was shocked that 12- and 14-year-olds can transfer music via Bluetooth from their telephones utilizing iPods, so that there is that capability of transfer and people are being familiar now with the technology.

So we can move from that level if the Government will only concentrate on what they put in their budget document with respect to a Technology Park and a software industry. In Costa Rica there is a software industry that is flourishing. Now with outsourcing, I was very surprised when I went on the Lyndon Vernon site to order a particular item and an error was made with respect to the item and there was a number to call and when I called that particular number I ended up in India and a person from India was responding to the call I was making for Lyndon Vernon's product which is in the United States, and that particular person was taking the information and in fact, that person does everything and it is fed back by some mechanism.

So outsourcing is a major part of networking and we have that capability here where we can become a hub. In fact, the United National Congress started that in Chaguaramas, if I recall, with our call centres. If we have a situation where people are being put out of employment in one area we can open a call centre to probably utilize that and have those people who are very familiar with technology into these call centres, so that is one area you can utilize in terms of a very vibrant software industry.

I know because when I was a former Minister of Education there were people who were creating software for the education system. There are people in this country who create software for our schools but, again, they are competing to some extent with an international company that is producing software and have that kind of image and they are on par and it was not sold within the Trinidad and Tobago market but in other islands of the Caribbean so there is that potential here.

When we are dealing with copyright, as pointed out with respect to the TRIPS Agreement and the software industry—I just digress a bit to show that the software industry under the TRIPS Agreement in terms of patent and software and

its use is a possibility here, but it has to be channelled, the Government has to play a role. It cannot sit by and expect these individuals to go forward when it is very difficult because countries are very competitive.

I recall when video games were first being introduced way back in 1964, I do not know how many of you will remember the 1964 era in terms of the computer. People were actually writing programmes and creating video games; they were able to create their own video games and utilize the computer to do it. That was the capability at that time when Atari computers were around. So look at what we have today, I am sure there are people in this country with that kind of capability who are just sitting by and their talents are not being harnessed. When I read this particular Bill it gave me the opportunity when I entered the debate to show that particular aspect of hidden talent that can be utilized to promote not only our artistes but also to play a major role in our GDP, as the Senator pointed out in terms of the entertainment industry.

**3.30 p.m.**

We are promoting film and entertainment. The Government is moving towards the film industry. Many companies are being established but we are not seeing the benefits. The opportunities are there and we can utilize them. I am sure that these same individuals who can transfer ringtones, pictures and music— As the Senator mentioned, with the Apple iPod you need a certain sequence not only to use the Internet, but also to download programmes that will be compatible with the iPod. You must be able to transfer a movie from one format to another format. It is not as simple as it looks. A certain amount of knowledge is available. Many people here are able to use the iTunes software and transfer it. That area is available.

That particular age group has the knowledge and it is not being tapped. That is the point I am putting across in terms of the software capability and how far our population has advanced. If you do a survey and ask any student in this country to transfer a picture, almost all of them could do that. That is a norm across the board. It takes a certain amount of intelligence. It is transferred from student to student. It is not that they are being taught to do that. It is self-taught and they are learning from each other. They have reached such an advanced stage that we are ready and ripe for a software industry. We have the people here to do it. We have the students who are waiting to get into the software industry.

I was totally shocked when I looked at Trinidad Ceramics and saw that over 90 per cent of the ceramics is being imported. They are importing large slabs and cutting them into tiles. Why can we not have a tile industry in this country?

Somebody will say that we do not have the quality of granite. I am sure that if we do the research we can utilize that area and it would become part of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement in terms of patents. There are opportunities under these agreements. They are constrained in terms of the situation with respect to the World Intellectual Property Organization (WIPO), TRIPS and our linkages via the treaties. As the Senator said, we can use these treaties to our advantage because we are a fledgling as we go into them.

The Minister of Foreign Affairs must be au courant with these treaties, so when she goes to these meetings with other ministers, she would be able to dialogue and get something from these meetings. As we saw in overseas travel, there are large votes but we are getting nothing for them. The Minister of National Security sent a team to London and other places to deal with our travel advisories and nothing happened. There are opportunities when you go to these conferences and have meetings with ministers, especially with intellectual property. We have the capability to negotiate and get something. When we sign these treaties and come with copyright law, we must be able to get something for our artistes.

The Minister of Trade and Industry should be negotiating to get something with respect to a software company to manufacture software in this country. They did it in Malaysia, Costa Rica and India has that kind of factory. Why can we not have it? Let me point out something. Mr. President, I am sure that you are aware, because you have that experience in the marine industry, on the entire island of Trinidad we have the best in terms of humidity in Chaguaramas and that is why they can manufacture boats there. That situation is not being utilized. Private interest groups are coming into Chaguaramas to build boats but we are not deriving any benefits. We have the opportunity to have our boat industry to build our boats. We know the problem the Government has with respect to the offshore patrol vessels (OPVs) arriving on time and ordering boats. There is a possibility. That is how the Dutch started off their shipbuilding industry. There are opportunities in every area at which the Government is not looking.

I entered this debate to help our youths and artistes. I know how difficult it is to compose because it takes much thought. The advantage I have as a composer is that I am able to be on the ground and know what happens in the various areas. It is not difficult to see in terms of the country and the perspective of how we are going in the different areas. To do that and put music to the composition is another aspect. The composer is copyrighted. We have to recognize that there are people who do not compose anything, buy the rights from the composer and make all the money. We have to look at that. You have the composer, musical arranger

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and then the person who markets the product. We need to have that division of royalty for the composer to go forward. If we do not have these composers—in fact, these composers can become the teachers of the youth. We need to have succession planning in the entertainment industry.

Those are the few thoughts I wanted to introduce in this debate and to show that side with respect to copyright, the artistes and youths in this country.

Thank you.

**Sen. Corinne Baptiste-Mc Knight:** Mr. President, I have little difficulty in supporting this Bill, except insofar as it concerns the duration of protection involved. I understand and accept the fact that one of the purposes of this Bill is to bring us into conformity with the Berne Convention. I will point out that we will not be contravening the Berne Convention by providing our artistes, composers, artists and others, the maximum protection possible. The Berne Convention as it stands, allows or suggests coverage for life plus 50 years, but at Article 7(6) it also stipulates that any member country can decide on a longer period of protection for its nationals.

In addition to this, I know that it is felt among the state parties to the Berne Convention, that the national law covers any other artistes in a member country. Here again, the Berne Convention allows member states specifically, to identify in their laws what protection they will give to non-nationals and non-national works.

This being said I think that we must recognize that when our law was written, we gave coverage to the original authors for the Berne term of life plus 50 years. In recent times, I have discovered that the United States has changed its laws to extend this by 20 years to life plus 70, that is for the authors of the works. The European Community in its directive of 2006, has also adopted life plus 70 years and interestingly, at Article 7 of that directive, it states categorically, that for works that emanate from non-nationals of the community, the protection within the community would be restricted to the limits of protection in the national country of the work, once it does not exceed the coverage in the community. This means that if we maintain the law that we have our artistes would be disadvantaged in the community countries.

Europe is one of the markets where our artistes need protection. For this reason, I would be circulating an amendment—which I think the Clerk should give shortly—in which I suggest that our law come into harmony with the United

States and the European law in that respect and cover authors for life plus 70 years. Life plus 50 years was meant to give coverage to two generations after the death of the original author. I do not think that it will be a surprise to us, that other people have discovered that 50 years will not cover two generations and this is why they have gone to 70. Since I am convinced that it is the will of this Government and the Senate to ensure that our nationals and national works are given at least the same coverage as those of other countries, I feel sure that you would agree with me that we should look very carefully at extending our coverage to life plus 70.

In addition, Article 19(b) speaks to other types of coverage. It is interesting that in our law we started out with 75 and 100 years of protection. This, I am sure, was mirroring at the time the American provision of 75 and 100 years. What has happened in the interim? Their Copyright Act extended those protections as well to 95 and 120 years; in the case of anonymous and pseudonymous Acts, 95 or 120 years whichever is less. If we reduce that coverage to 50 years we are clearly doing an injustice to our nationals and I know that this is not the intention of this Bill. I am convinced that it was an oversight and for this reason I am suggesting the amendment as a means of redressing that position.

### **3.45 p.m.**

The fact that we may adopt a length of protection that is beyond what is adopted by the European Community really does not affect our protection in Europe except that it entitles us to the full length of the protection that the European codes would now give. I feel convinced that since we all accept the fact that copyright is really a means of providing a monetary value for intellectual product, the fact that we recognize that whereas a business tycoon, a successful professional, can leave stocks, houses and boats to his heirs, in the same manner our artistes can leave the rights to their works as part of their legacy. We would not want to deny them that.

With respect to the performers, we only have to look at the current situation in our country where there are artistes who are in their 80s who are no longer in a position to provide for themselves. If our laws give the work they did in their productive years coverage for 95 years, it means that, instead of the Ministry of Community Development, Culture and Gender Affairs having to provide for them, the income they would be getting through the Copyright Organization of Trinidad and Tobago (COTT) would provide them with enough, perhaps with the addition of the Senior Citizens Grant, to have the dignity of being able to exist on the benefits of their intellectual products.

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Mr. President, I wish to recommend my amendments to the Senate solely on the basis of the fact that they are in the very best interest of our nationals and will give voice and tangible form to what I know is the spirit of the legislation that is before this Senate.

I thank you.

**Sen. Dr. Carson Charles:** Thank you very much, Mr. President. I have a few comments to make on this Bill before us. Let me begin by saying that I share the sentiments of Sen. Baptiste-Mc Knight that we need to do what is in our power to provide protection for our creative people well into their later years so that they will not become poor people, as happens to many of our other retired people who have served for many years in public and private enterprise only to find that in their later years all is taken from them and they cannot keep up.

I have a few points to make. Let me begin by saying that I think that this is a Bill we will all want to support because we all like to support our artistes, performers, promoters; all those who are a part of the creative environment we have in this country. We just came out of Carnival and that is our most visibly creative time. So we have to support the Bill, naturally.

It is a habit, I think, of the Government of the day to “chinks”; always doing something that does not reach very far, in a superficial manner. We have a challenge in this country. It is either to be active participants in the world—this new global environment that we speak about here and elsewhere—or to be bystanders. This kind of approach is one of an observer. I did not expect the Bill to contain everything, but I expected the Minister and the other contributors on the Government side to tell us something about the importance of this and of the entire regime that is being created—no doubt in collaboration with other interests in the country because Government cannot act alone to transform the country using our creative resources, which we have in abundance.

We do not only have oil and gas in abundance, we have creative talent in abundance. If we are to transform the country so that when oil and gas is no longer king—there are some who believe it will last forever—we can still maintain a high standard of living.

One of the things that we must do is that we must rely more heavily on the creative capabilities in the country. It is because we are not moving in that direction that we are not really fighting any great battles against the people who are trying to expand control via copyright—countries in the East are fighting a battle. They are intent on copyrighting more and more because the battle is to

enter the elite club, the First World countries. You do not become a First World country by putting up tall buildings around the place, or by fudging the numbers and saying we have full employment. You get First World status, if you want to call it that, by being an active participant as opposed to being a bystander. The world is changing. It will not be the same in 10 years' time. You cannot predict what will happen in 10 or 20 years. They cannot even select a particular industry.

I know they want to go into smelters and so on, it was the rage 20 years ago, in the 1960s. It was the rage to go into iron, aluminium and so on and they are still on that old tune. We cannot tell what industry will be the industry in 10 or 20 years. What we know is that intellectual power drives the advanced nations of the world. Knowledge is power. That is more so today than at any other time. [*Desk thumping*]

The ethos of the Worldwide Web is to fight against things like copyright; to break down barriers of control by those who know and do not want others to know. You can expect that this will not be a one-sided affair. It will be a continuing battle between the controls that come via copyright and other such legislative attempts to control and keep control of their property on the one hand and, on the other hand, those who believe that every young person should have access to all knowledge. It is not something that is going in any one direction.

We know for sure that the players in the game, those who consider themselves First World and those who aspire to be First World, are all actively fighting to get into that elite club, to take charge of intellectual property—the creative world if you like—creating things, not only in music and art, but in all areas of technology because that is what the battle is about. We, therefore, expected to hear something about that from the Government. I expected the Minister to tell us the focus of the Government, using all this wonderful wealth we have around us. We cannot touch it at times, but it is there and the Government can tap it and use it to transform the society.

I want to give some concrete examples. It will not be a new invention so they can use it. I know that the Government is afraid of new inventions. It will not be a new invention actively to target youngsters who are creative and promote them; to identify them at the primary school level, the secondary school level and promote them because creative youngsters get left out of the system. They cannot fit into the whole Secondary Examination Assessment (SEA) run, so they get left out. Some creative people at the adult level were never high performers in that rigid system of SEA, O and A levels. It was when they became adults some of them were able to demonstrate their creativity and found their place in the world. Even so, it is a great battle.

We produce talented people in every sphere of activity. We won the Miss Universe contest. We produced talented people in cricket and football and all the various areas of sport. We have talented people at all levels. There is no area that is out of our reach, but always these people are individuals who had to make it almost on their own, not with the assistance of the Government and other powerful interests.

Our Hasely Crawford and Ato Boldon were always on their own fighting and making it. It is time for the Government, with the resources available to it, to do something about those who are creative and not leave them to make it on their own where you get one in one thousand reaching somewhere, especially if they have to go abroad to make it. You can get one in 100 or 10 in 100 because there is so much creativity here. That would give us a head start.

That is a first point I make. Stop “chinksin”! Do not just pass this Bill. It is a Bill that may not make a difference to anything. If they do nothing else but pass this Bill, it will make no difference to anything. Every now and then, the police will descend on some guys in Port of Spain, seize what they have and charge them. They would not do it all the time because they have so many other things to worry about. They cannot spend all their time running after these guys, while in other parts of the country things would be going on as usual—you can buy your DVD for \$5 and you can go on the Internet and do what you want. It makes no difference to the way things run in the country if you do not do anything else but pass the Bill. So do more than just pass the Bill.

I wanted to hear the other things the Government is doing that would justify our spending time passing legislation and not just feel that after we pass them, as the Senator said before: Why pass a law when no one will enforce it? There is a credibility gap that the Government has to bridge. There is a tremendous challenge now in the country where there is a gap between the formal sector of authority and the informal sector where most people live. Most of the country goes about its business as though the Parliament does not exist and what is done here, in too many cases, has little impact or relevance to the everyday life of Trinidadians and Tobagonians. We have to bridge that gap and what better area to bridge that gap than in the field of culture and other areas of creativity. This is what drives us as Trinidadians and Tobagonians.

**4.00 p.m.**

We use music for everything, even political campaigning. Our campaigns are centered around music and performances. That drives our country. We have to bridge that gap.

We have a sort of frontier state. That is the country and our mentality. It is a different kind of rush, where people are disregarding all authority, systems and procedures and scrambling against what is out there. Many people are scrambling after money, because money can be made in Trinidad and Tobago. Despite all the difficulties that we face, people know that money can be made. You can expect that in frontier land, enforcing legislation will be the most difficult to do. You have to choose what you are trying to enforce and how you would enforce it. That is why we have to give serious consideration to the point which is not contained in this legislation, whether we are actually going to allow people, to a certain extent, to carry on the rental business. You have to give consideration to these kinds of things because you cannot enforce everything. You have to decide if you are going to enforce in public and private places.

I suggest that you could enforce in public places and the cities. You could go so far as to enlist the support of the regional corporations. The Mayor and his resources in the City of Port of Spain can play an active role in ensuring that piracy is not taking place in the city, similarly in other regional corporations and boroughs. I am sure others would like to play an active role so that the police do not always have to do it. The regional corporations and borough corporations can play an active role in policing their own territory to make sure that active pirating is not on the streets in their territory. You can decide how far you want to go in policing. In a physical sense, you really cannot police in peoples' homes. Let us not give anybody the false impression that by passing this Bill, suddenly you can police what people are doing on the Internet. What we can do is use the opportunity to make a connection with the creative community and the creative world. To promote that, we can use the opportunity to demonstrate that we actually want people to value intellectual property.

This is a country where, if the Government or a big corporation wants to do something, more often than not, it looks abroad for the intellectual talent and consultants. People who are creative find that it is very difficult to make a living using their creativity.

If you look at some of the advertisements, you wonder why we are always copying something that somebody else has done elsewhere. You have to take the lead as the Government in changing the environment that we have. You cannot do it by yourself, especially in this kind of field, you have to engage private enterprise and those in the private sector who have a stake in this mission of promoting local creativity, local intellectual property, local talent, local consultants and local ideas. You have to take the lead in that. Whenever you have the opportunity, as government, you must be the one who will take that lead.

I want to also make a plea to the Government—this is the only way I can put it—to recognize that money drives almost all endeavours in the modern world. Therefore, if you put a little change in the hands of those who are doing the right thing, as opposed to those who are doing the wrong thing, you can encourage the right behaviour. Therefore, with respect to the youth—the young person who is simply selling pirated stuff—it is not so much a matter of punishing him, although we may have to do that. That is not where the emphasis should be. The emphasis should be on putting some money in the pockets of the young person who is creating something. You will find that a lot of the young people whom we consider as deviant have the ability to create.

Where did the steel band movement come from? Creativity is what will save us in this country, not the simplistic approaches that the Government has been using to solve its problems. I suppose, after the police descend upon those guys in the streets, they would have to look for work in CEPEP. I do not want anybody to think that I am a great enemy of CEPEP. It is the lowest level you can get to, in terms of promoting the mundane, ordinary and simplistic way of solving anything; if you consider that as employment. You use 10,000 people to cut a strip of grass and you consider that employment. It is an elevation of the mundane and simplistic. That is what would always get us in trouble.

You have instead, to elevate the creative. You have to put your money where you want people to go. Do not put your money in the ordinary. If you put your money in that kind of make-work thing and you promote that as the way to go, then that is where the country will be. We will be bystanders and not active players. If you put your money instead in the creative area and give young people a contract to do all kinds of things, reward those who have some expertise and use their initiative, that is where the young people will go.

Many of the young people whom we consider have a lot of creativity, sometimes creativity comes with deviance. You want to promote people who are going to take their ability and talents and put it into the legal operations, as opposed to the illegal operations. The same talented people can find themselves in the legal operations using their talents. You want to promote their use of this talent in legal activities. You have to offer things to them.

That brings me back to a point I made before, with respect to scholarships. You have to offer scholarships to every talented young person. Stop “chinksin”. Do not do it on this mundane kind of level. Where is the grand programme of the Government to offer 10,000 scholarships? Do not be afraid and think you have to offer 200. Where is the grand programme? If you do not do that on a grand scale,

then we will be trapped in the situation that we are in, hoping that the money that we have put aside in the Heritage and Stabilization Fund will sustain us in our old age as a country—using the same kind of approach and in your old age, you expect to collect some dollars. That is where we will be trapped. You have to think on a higher and grander level. That is my only plea to the Government on this matter.

I do not propose to go into a whole lot of details, because I support the legislation. I think our artistes, promoters and producers in the music industry are all waiting to see this sign that we are actually, in a bipartisan way, prepared to support them and give them what is their due. I support that.

This is not enough. This Bill by itself is not enough and we have not heard anything about what is the overall regime and what you are going to put into effect, using the talent that we have; the thing that we can boast about more than anything in this country. We used to be able to boast about harmony. The two things that result in progress in human society are harmony and creativity. We used to boast about harmony, but that is not with us these days. We have to work to get that back, but we still have creativity. We have to make use of that because we are talented in ways that few nations on earth can match. We are wasting it in using the simplistic method to attend to our problems, the superficial. We are maintaining this huge gap between authority, those in office, and the average person who lives in the country.

That is my appeal to the Government.

**Sen. Gail Merhair:** Mr. President, thank you very much for allowing me to make some recommendations on this invaluable piece of legislation that I think is long overdue, that seeks to protect the invaluable contribution of some of our creative minds in the Republic of Trinidad and Tobago.

In so doing, I want to pay particular attention to two areas. I want to look at two aspects of this Bill: the economic aspect and the moral aspect. I am particularly concerned with how this Bill, after it is passed, is going to make a difference to the people of Trinidad and Tobago. How will it make a difference in protecting the rights of the owners of our copyright properties of Trinidad and Tobago? In so doing, I would like to make some recommendations. I would like to see the establishment of a separate intellectual property enforcement unit. I know the Intellectual Property Unit already exists. I would like to see a unit that would work alongside with the protective services and the police of Trinidad and

Tobago. We already know of all the horror stories of calling police stations to report an act that is being perpetrated against citizens of Trinidad and Tobago. Many times they did not have the resources, vehicles and manpower.

I am suggesting that a warden officer be attached to the Intellectual Property Unit of each division in Trinidad and Tobago. This officer should be trained and should work alongside the police in collecting and gathering information of people who are breaking the law within each division. This officer will work along with the police and also be attached to the Intellectual Property Unit. This would mean that they would have the powers of arrest on anyone who is infringing the law. This will, of course, ease the burden on the local police establishment.

I would also like to see the establishment, perhaps, of an Intellectual Property Court that can deal directly with offenders who break the Intellectual Property Act. In truth and in fact, we might put all these laws in place and when persons are charged with the offence, the matter will take approximately four or five years before it is presented to the court. I think that is wrong. Somebody might be out on bail and they would continue to do the necessary acts to damage the much guarded rights of our artistes.

In this light, I think that an Intellectual Property Court should be established. This will also ease the backlog and burden on the Magistrates' Courts across the country. If we are serious about protecting the copyright laws and people's rights, we should also understand that in Trinidad and Tobago, right now, the reality is that the Magistrates' Courts are overburdened and the police are already overburdened with the amount of criminal activity that is taking place. Therefore, we need to put things in place to make this Act work for our citizens of Trinidad and Tobago.

I would also like to make the point that education of the public—not only of the perceived perpetrators of the law—and the individuals who are creating the music, need to be educated and sensitized. If I am producing this piece of music, if I am doing this piece of artwork, or if I am writing this book, what are my rights in Trinidad and Tobago? Where do I have to go, in order to seek protection? I think many creative people in Trinidad and Tobago cannot access the necessary protection that is much needed. I think a campaign needs to be done by the administration to sensitize people, in terms of what are their rights when they are creating, not only music but artwork, designs, writing books, et cetera.

This has become necessary. We also need to alert potential perpetrators of the law. We are quite aware of the moral and social fabric being decayed in our society on a daily basis. We need to alert these potential perpetrators of the law, that if they break the law they are going to be punished harshly by the system.

My final point is that I would like to draw attention to the Copyright (Visually Impaired Persons) Act, 2002, which was passed in the United Kingdom on October 31, 2003, in which it seeks to give individuals who are visually impaired, permission to actually have score sheets and other materials done in brail version so that they access certain information, if need be.

**4.15 p.m.**

I think, instead of us trying to make amendments to an Act now, we should also have consideration for the visually impaired and other challenged individuals who would like to access music.

Mr. President, I thank you.

**Sen. Dr. Rolph Balgobin:** Mr. President, thank you. I would just speak briefly on this Bill. I think this is very necessary, and it is a timely piece of legislation. I commend all for the general support. I would like to point out—I did not hear it in the debate thus far—that there is a very significant relationship between national competitiveness and intellectual property rights. It is not just about protecting the rights of entertainers; it is not just talking about encouraging creativity on an individual or even on an industrial scale. There is a very significant relationship there.

In fact, the research is clear that in the 200-plus countries of the world, there are just about 28 that would qualify as developed nations. These 28 countries are distinguished, in large part, by their capacity to produce and protect intellectual property. They respect intellectual property rights.

The value of human ideas is now generally accepted as critical. I think they have moved away from this notion of land, labour, capital and enterprise. We are now very much into a realm where the power of the human imagination is crucial. So, any legislation that respects, honours and seeks to really enhance the protection that we can give to creative persons is very welcome.

I am of the view that the legislation incentivizes the production of creative work. I think we should be realistic, because it does that in part by protecting the rewards of so doing. The reality is that the value of creative work is lost when people pirate it. Where does the money come from to incentivize these people? It

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does not come from the Government. [*Desk thumping*] It is not the Government's responsibility to pay for that. [*Desk thumping*] It is the market that does that.

We need to protect the rights of these people to go to market, and let the market decide what has value and what does not, because that is really the one objective arbiter of value; the market.

It is important for us to have pieces of legislation like this. I do think it is key to note that intellectual property can be very cheap to produce, or as Sen. Dr. Nanan very rightly pointed out, it can also be enormously expensive. If creative persons do not see a return on their investments then they will not invest. It is not very difficult, in my view to connect the dots.

I am of the view that legislation like this does much to prepare us for developed nation status. If we want to be a developed country, we have to be able to protect the ability of our people to monetize their ideas. So, we cannot talk about development without providing some measure of protection for the people who are doing the developing. Encouragement, yes and the Government has a role, but as a society, we need to respect the ideas of other persons.

Presently, the society appears to have lost respect for human life. We seem not to have respect for the traffic laws, and we certainly do not have respect for other people's ideas. I think our view is that ideas are shared over a "doubles" and a "red solo" and, perhaps, there is no value, and he should tell me that for free.

The rest of the world, particularly the developed world, recognizes the criticality of ideas, and respecting, valuing and protecting that is so very important.

I would like just to close on two quick points. The first is the constraint to national development is no longer access to technology. Everybody has technology. We heard some interesting contributions on that point.

I have a Blackberry phone which allows me to email even while I sit here, and I can access the Internet from this. This is an iphone—[*shows the iphone*—]and it holds about 10,000 or 20,000 songs on it, and they have just doubled the capacity. Every song I have ever owned now sits on this little thing.

Our children are now much more au courant with technology. Recently, I came across a manual that was about this thick—[*book in hand*] This was a manual for the operation of a new electromechanical device. It was a manual from 1948 for the telephone, and we take telephones for granted.

The world is using much more technology and our children are. So, the constraint to development is no longer our access to technology without capacity or ability to generate intellectual property, but to respect intellectual property rights. Intellectual property is going to have a hard time getting generated in an environment that does not protect it.

The second point I would like to make and close on is just an observation that was not raised in many places, and that is we should recognize that these pieces of legislation do have the effect of increasing cost to consumers. That is what it does. Once this Bill is passed and is enforced people would pay more. I should not buy something that is pirated for \$10. I need to go to the CD store and buy it for \$80 or \$100, so it increases cost to consumers, and that is a cost that the society in some way, shape or form eventually has to be prepared to pay.

I take this legislation as tacit acceptance or maybe explicit acceptance by the Government that development costs money. [*Desk thumping*] Development is not free. As a society, we must be prepared to bear the cost.

I fully support this Bill and the amendments proposed by Sen. Drayton and the hon. Minister of Legal Affairs.

I thank you. [*Desk thumping*]

**The Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne):** Thank you, Mr. President. I would be brief. There are a few points which I wish to answer that were made by Sen. Mark on the last occasion when we were debating this Bill. He raised a number of questions with respect to the ability of the Customs and Excise Division to be able to adequately police and enforce some of the provisions of this Bill.

As he said, it was not merely the question of enforcement by the police alone, but it had to be complemented by other arms of the State. In that regard, I would like to direct him to sections 3, 205, 206 and 220 of the Customs Act, Chap. 78:01, which gives the Customs and Excise Division fairly wide and extensive powers. These powers were, in a sense, anticipated in the background to the Bill.

I shall just read section 3 which gives customs officers police powers and it says:

“For the purpose of carrying out the provisions of the customs laws all Officers shall have the same powers, authorities and privileges as are given by law to members of the Police Service.”

That is the first point.

In section 205, the Comptroller may apply to the High Court for a writ of assistance, and the writ of assistance shall be in force on any application by the Comptroller.

“Any Officer in possession of a writ of assistance issued pursuant to subsection (1) may, at any time during the day or night, enter into and search any house, shop, cellar, warehouse, room or any other place and, in case of resistance, break open doors, chests, trunks and other packages for the purpose of seizing and bringing away any uncustomed or prohibited goods or any books or documents relating thereto; and any goods, books or documents seized shall be securely kept in a State warehouse.”

These are very strong and wide powers.

Officers also undergo training in conjunction with external Customs and Excise Departments, where we also look after some of those aspects of copyright legislation and areas that we seek to control in the Bill.

With respect to search warrants, section 206 states:

“If an Officer has reasonable cause to suspect that any uncustomed or prohibited goods, or any books or documents relating to uncustomed or prohibited goods, are harboured, kept or concealed in a house or other place in Trinidad and Tobago, and it is made to appear by information on oath before a Magistrate or Justice in Trinidad and Tobago, the Magistrate or Justice may by special warrant under his hand authorise the Officer to enter and search the house or other place, by day or by night, and seize and carry away any uncustomed or prohibited goods, or any books or documents relating to uncustomed or prohibited goods as may be found therein; and the Officer may, in case of resistance, break open any door, and force and remove any other impediment or obstruction to such entry, search or seizure.”

Section 220 is a little longer. Essentially, it says what procedure to follow on seizure. In point of fact, there are sufficiently wide powers to complement the Act.

**Sen. Mark:** I just want to ask the hon. Minister if he could tell us what efforts are being made to train our custom officers in their efforts at preventing or controlling the importation of pirated material that will infringe on the intellectual property rights of their owners. What kind of training is there? Do you have a specific unit in the Customs and Excise Department that is responsible for handling these matters?

**Sen. The Hon. M. Browne:** In response, we do not yet have a specific department which is set to do so. With respect to the matter of ongoing training with regard to surveillance, I would say that this is a very complex matter. This is a matter which tests Customs and Excise Departments everywhere in the world. I think Sen. Dr. Kernahan made ample reference to the difficulties in terms of the development of technology.

I would like to point out with regard to that particular point that in many instances—just to go back to the quotation that Sen. Dr. Kernahan gave from Jupiter research, where it was indicated that the size of the CD market is shrinking internationally, that is a classic case in point. The music companies have actually taken Internet companies to court in an attempt to stop the breach of copyright privileges, to protect their revenue.

YouTube is another example which has actually been sued in several instances by TV companies, on the fact that they are breaching content laws.

The other point is with respect to music downloads on the Internet. It is not the State that is to follow through, but it is those companies/individuals that had an interest to protect that has followed through to protect their rights. What we have done is created a mechanism to allow those individuals as they are to follow through. From that particular perspective, I would just like to follow through with one example, although I do not want to steal any of the Minister of Legal Affairs' thunder.

Going back into our economic history—

**Mr. President:** How much time do you need? I will give you a little latitude if you would just be a couple of minutes, otherwise we can break and return at 5.00 p.m.

**Sen. The Hon. M. Browne:** We can do it after the break.

**Mr. President:** Very well. Hon. Senators, it is now 4.30 p.m. and we will take the tea break. The Senate is now suspended until 5.00 p.m.

**4.30 p.m.:** *Sitting suspended.*

**5.00 p.m.:** *Sitting resumed.*

[MR. VICE-PRESIDENT *in the Chair*]

**Sen. The Hon. M. Browne:** Thank you, Mr. Vice-President. I am sorry Sen. Mark is not here, I wanted to give him the benefit of some additional information I had during the break. Whilst I said that there is no special unit, there has actually

been training, which has been conducted—here you are, Sen. Mark, I was saying in response to your question I was given some additional information during the break. There is no specific unit—I was correct in that—but training has been conducted specifically in the area of intellectual property and intellectual property requirements by the IPO office of the Ministry of Legal Affairs.

Our success however in the interdiction has not been all that good, but then again, successful interdiction in terms of intellectual property matters by the State is not very good anywhere in the world. In fact, the majority of successful interdiction, as I was making the point earlier, occurred when the private sector entities protected their rights under the law. That is one of the reasons why we have to have a framework, it gives us the right to protect.

It is also true—I think the point was made by Sen. Dr. Kernahan—that under the WTO, certainly many of the larger US corporations have made the effort to protect their intellectual property rights wherever they are in the world. Probably the best example of that is Microsoft. Microsoft has the capacity to look down the pipeline literally at almost every computer. One of the things that we do not like about Microsoft is that if you buy any Microsoft product and you look at the back of the packaging for a telephone number or an address to get in touch with them, there is none; you have to go through a website. The difficulty from this point of view, if you have trouble with your software, of how you are going to get it back to them and so on. So there is an element how multi-nationals behave that needs to be corrected and can also be corrected by law. But the bottom line is that you need to be in the game. You have to have a framework by which one can do so. The Government is taking that into consideration by putting a framework in position, by which our artistes and those who have intellectual property can protect themselves.

I was also going on to make the point of the need for private sector approach. I am indeed heartened to listen to Sen. Dr. Balgobin when he was reminding me and if I am not mistaken, I was hearing echoes of Michael Porter and the questions of how industries come into being, and the fact that development is about expenditure, about spending money. In that context, Sen. Dr. Charles was also correct, and it is a question of how you direct your expenditure, but we would get back to Sen. C. Charles' matter.

The point I am making is that intellectual property rights is a hot topic, precisely because the technology has changed so rapidly. The technology moved from 78s to 33s to 45s to CDs and even CDs are under threat. In fact, the biggest example of a change in the industry is the iPod and the fact that Apple has come

to terms with the recording companies that are quite prepared to sell their CDs, their intellectual property to Apple and through Apple for approximately 1/12 to 1/15 of the cost to the consumer if you were to buy it in the store. And that they recognized that if they do not adapt or change the recording companies will die. That is a fact and that is a fact that Sen. Dr. Kernahan was quite correct to point out.

Once again, having said that and if you take the logic of that particular statement, how can the Government enter into—how was it said?—a development thrust to develop a copyright industry? You cannot develop a copyright industry. Copyright industry is about intellectual property; it is something that people create as they go about their normal lives; as they go about their daily inventions. We can create the conditions to protect intellectual property; to encourage it, but a government cannot create intellectual property; that is something that has to come from and by the people and the private enterprise sector.

I was making the point in that regard as we were talking about—we had this idea of poor suffering artistes; but there is a classic example and it is the story of—I just wanted to read a piece of information with respect to the story of the Andrews Sisters versus Lord Invader, “Rum and Coca Cola”. I think we all know that story in outline, where the Andrews Sisters picked up what was an old calypso, adapted it, popularized it and it became “Rum and Coca Cola” and it was a hit in the 1940s. It was a hit here in Trinidad and Tobago and somebody visiting picked it up, relayed it and it echoed in the public domain and they took it.

The point is, the State did not act, Lord Invader acted on his own; he was successful and he did not do it under the umbrella of a Copyright Act. The point I am making is that the individuals are the ones who need to follow and protect their intellectual property. In the same way that corporations do it, individuals need to do it and we need to recognize that.

So, it is not a question of a large massive intervention by the State to create an industry. The State does some things good and it does some things not so good. With regard to the development and creation of industry and perhaps the best example for that—and if I could speak with a certain degree of pride on behalf of our side—is the development which Trinidad and Tobago has brought to the world. We have moved from flaring gas to creating an industry out of gas; that is intellectual property; that is strength and that is something that the Government and the Members on this side need to be—how shall we call it?—praised; our fathers need to be praised. [*Desk thumping*] Thank you for praising them; for their contributions to the economic development of this country.

Lord Invader is an example of what must be done by the private sector and private sector organizations in terms of protection and development of intellectual property.

**Sen. Mark:** May I? Through you, Mr. Vice-President, I would like to ask my hon. colleague whether he can shed any light on this company that is going about Trinidad and Tobago, calling itself Caribbean Home Entertainment Limited and with the support of the police, they have been shutting down DVD outlets throughout Trinidad and Tobago, and are putting hundreds and thousands of people on the breadline.

Now if they have to do it, hon. Minister, I would imagine that they ought to give people some notice and it must have the backing of the State so that these people who are being pounced on by this individual out of Jamaica, saying that he is acting on behalf of all these companies abroad. At least the State should intervene and tell the country that, look, you are violating intellectual property rights; there is going to be a grace period; you need to get a licence. What is taking place? I want to get some clarification as to what authority this organization has to invade my private property; take all my instruments; close me down and put thousands of workers on the breadline. That is taking place in our republic today. So I want you to just clarify that for the population.

**Sen. The Hon. M. Browne:** I was not aware of the development of which you speak, but I have been passed a note and I would ask my colleague to deal with it in greater detail when he is making his contribution.

Sen. Dr. Kernahan was stressing on this point about big business and protection of intellectual property. This is a development that is taking place the world over and even the large companies have difficulties in terms of protecting their intellectual property. So this Bill is not in any way geared to protecting big companies; it really is about creating a framework to protect the little man; to protect any man; to protect any Trinidadian who has intellectual property. I think that is the most important point to make. A very important point to make with regard to the change in technology and the changes that need to be made in Trinidad and Tobago in that regard.

Now technology is a tool that you can use in any one of different ways. What we have is an enabling environment, which allows people to use it that way. I think Sen. Dr. Carson Charles was saying that he expected to hear the big wide plan, vision and view in terms of what the Government was going to do. I think it is very important to point out—and this is something I always remember from the

economic field, in the days when I read economics and the development economics in particular—Schumpeter calls invention "Creative Destruction". The fact that change brings about destruction; it creates opportunities which bring new industries into play. Similarly, 200 years ago, 150 years ago, 110 years ago, I guess the horse and buggy was what you would call one of the principal industries, but the car changed all of that. That is now being changed even further in terms of what we are moving forward.

So, what are the big things and what does Schumacher have to teach us? Schumacher is the guy who wrote "Small is Beautiful". Remember him? Yes, "Small is Beautiful" and the answer is that there are a number of small developments, which are taking place in Trinidad and Tobago, which go unnoticed, unrecognized, but are leading to the type of change, particularly in the area of culture. One of the things that is changing in our schools is the curriculum.

**Sen. Dr. Kernahan:** Sugar Aloes changing too.

**Sen. The Hon. M. Browne:** Yes, I think probably he has. You like his music? [*Laughter*] Let us speak a bit more about the changes we are talking about in our schools. Let us speak about the music festival that is going on, where we have for the first time 44 new schools this year than we had last year participating. [*Desk thumping*] From Port of Spain alone we are talking about 1,200 new people participating; that is a big change. And that is a big change that also has to do with the change in the CXC curricula, where music has been put on the curricula and I thank the former Minister of Education for pointing it out to me. [*Desk thumping*] Where music is not only part of the curricula but it is also very much part and parcel of what you are allowed to take as part of your examination.

So that in fact, if you looked at Panorama, those of us who follow pan and I am sure the Opposition does that, it is our national instrument, and they followed our music, our creativity and everything else and we bow to the fact that it is the only invention that has been created in music; the only new musical instrument that has been created, where a lot of the participants; the steel band men were very young. All part of those changes that took place as a result of the change in the curriculum in 2003. [*Interruption*] Well, you could always refute it, but the facts are there.

You can also take music as part of your exam. Music was always on the curriculum you may say, except that we now have the little additional part that pan is an optional instrument that could be studied. [*Desk thumping*] There are also the developments that are taking place in the creative arts, which are also

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being brought into the curriculum. So the idea is that we are also trying to develop the creative arts as part of our intellectual property; as part of that creative life, in as much as that is one area in which we are very strong.

The final point that I wish to make and in which I wish to thank Sen. Dr. Balgobin for hammering home on, is the fact that development costs money; it takes time and intellectual property is a critical part of that development and this Bill is a critical part of that thrust.

Thank you, Mr. Vice-President.

**Sen. Annette Nicholson-Alfred:** Mr. Vice-President, I thank this honourable Senate for the opportunity afforded me to join in this discourse on the Bill entitled an Act to amend the Copyright Act, 2007.

Let me state very early that I support the amendments which will facilitate Trinidad and Tobago's accession to the World Intellectual Property Organization Copyright Treaty and to the World Intellectual Property Organization Performances and Phonograms Treaty. However, I want to show some concerns. I wish to record a plea to the Government to stage or embark on a massive drive at educating our populace.

**5.15 p.m.**

Believe it or not, I have been having casual conversations with people in "paradise" Tobago and they are not even aware, many of them, that there are benefits to be derived from what they compose; what they write; what they sing. I take, in particular, the case of our tambourine music, our speech band and even those of us who compose tunes to work with our dramatic performances. We do it because we like it. We gain nothing from it. Probably, we need to be educated more. I stress the education, because I believe from Charlotteville to Blanchisseuse, Crown Point to Icacos, there are a number of people who do not know the benefits to be derived from copyright. I feel that there needs to be some urgent education and after that we can then embark on penalizing people who flout the copyright laws.

I feel pity for some of our older folk who would have contributed so much towards culture, however, they are left in the evening of their days—well, I would not say to beg alms, but to depend on the State to take care of their needs, when in their youth they contributed so much to our culture.

I also pity the young man who might be selling these CDs/DVDs on the street. Believe it or not, there are some of them who do not know that they are committing an offence. When a child picks plums from the neighbour's plum tree

without permission, it is stealing, and if that child is not corrected, not to do something like that, he continues to commit a crime. In the same way when these young people download the information from the computer and they go on the street, without hiding they hang up their wares and they sell; people come and buy. We who buy contribute to stealing, because we are supporting those people who do that.

Therefore, that is why I say people need to be educated. After education, we then embark, not on sporadic raids, but on constant policing so that the offenders, or those who flout the laws, will be brought to justice. It is also very important to be sure that the lawmakers put the laws in place—now I am not a lawyer so I might not be able to say it as it should be, but make them sort of foolproof so that it would be very hard for the offenders to get away; when the plaintiff gets there and is made to feel like nobody, because the defendant found some place in the law to take his point home.

Mr. Vice-President, I strongly suggest that we must consider the matter of education. Do not think that we all know. We do not. One may say that educating the populace has already been done. I humbly suggest that if it was done, it was not done very well or sufficiently, so we need to go about it again and get things in place so that the people who compose would get the benefit of what they do. They would earn something from their talent. We all talk about the creativity; we are a creative people and permit me to say, a whole lot of them reside in Tobago and we need something to be put in place to help us get the benefits which are due to us. No more should we be left to the whims and fancies of those who peddle our goods, make all the money and leave us without anything.

The matter of copyright has been around for a very long time and it is time, I think, that in Trinidad and Tobago the Bill is firmed up and made into international standards. It is time that incentives for the creation of works become attractive enough to build a stronger society of innovators and creators.

I thank you. [*Desk thumping*]

**Mr. Vice-President:** Sen. Annette Nicholson-Alfred, I would just like to congratulate you on your maiden speech. [*Desk thumping*]

**The Minister of Legal Affairs (Hon. Peter Taylor):** Mr. Vice-President, I am heartened by the level of contributions that we heard from both sides of the Chamber and permit me to start with the last point first, which has to do with public education. I would like to inform the hon. Senator that the Ministry of

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Legal Affairs is quite mindful of the importance of public education as far as the whole thrust towards intellectual property development is concerned. Notwithstanding the fact that there will be persons in the country who are still oblivious to the fact that when they buy a CD on the sidewalk on Frederick Street, that they are, in fact, buying an illegal pirated copy of somebody's work.

The Intellectual Property Office has, over the last few years, been embarking on quite substantial public education programmes. In fact, we have gone to the schools; we have gone to universities and just last year there was an initiative along with the Ministry of Legal Affairs, in collaboration with the Embassy of the United States, where there was a song and verse competition which encouraged youngsters to create verses that would speak towards anti-piracy. So your point is well taken that more needs to be done, and I want to reassure you and the national community that we are acutely mindful of the importance of public education as a precursor for embarking full-scale on reversing the whole piracy thrust as it exists in the national community on such a large scale.

[MR. PRESIDENT *in the Chair*]

There were quite a series of contributions dating back—the contribution of the hon. Sen. Mark, and there were quite a few pertinent recommendations, some of which were already circulated, but I got the sense today, hearing some of the contributions, more so from Sen. Dr. Jennifer Kernahan and to a lesser extent from Sen. Dr. Charles, that they sought to give the impression that perhaps the Government was not taking the initiative as it should or that, perhaps, the legislation was somewhat misplaced as we move towards enacting these amendments. But if we look at the history of the music industry in Trinidad and Tobago, we would see that from the start of the 20<sup>th</sup> Century, there were calypsonians emerging whose work was well known internationally and, in fact, whose work was being sampled, unbeknownst to them and whose work was being sung internationally.

In fact, when we listen to Brother Valentino's song: "Where Calypso Went", he laments the fact that people like Harry Belafonte and, in fact, the Andrews Sisters, were singing calypsos as a matter of course, and that what you had at the turn of the century was a system where, while the calypso was well known, you, of course, did not have the necessary legislative framework, or the knowledge was not widespread enough that would have allowed these musicians and these artistes to have the necessary protection.

So it is not enough for my friends to say that the legislation would achieve nothing. The legislation is an essential missing piece of a puzzle, because what you have now is the Copyright Act of 1997 which addresses the composers and the songwriters. What this seeks to do is to provide proceedings for, what we call the neighbouring rights: the back-up singers; the musicians; your percussion players; your producers, and by so doing, once we accede to these Internet treatise, every steel band man, every percussion player, will now have the protection, once they are registered with the respective collection society. So that once the steel band is registered; once the players are registered; once the moneys are distributed, it is now incumbent upon the collection agency to ensure that every steel band man is paid his due. So it is an essential lacuna, an essential gap that the amendment Bill seeks to fill.

I have heard my friend mention Trinidad and Tobago is the land of oil and gas, but we knew long ago, even before Machel Montano, that Trinidad and Tobago is the land of oil and music. Do you not agree?

**Hon. Senator:** Yes.

**Hon. P. Taylor:** Oil, gas and music. So the point is, really, as a Government, as a country, we have to now provide the legislative framework to ensure that all our artistes who exist on their own, have the capacity now to enjoy the fruits of their labour and we on this side have recognized that as we move towards a digital environment, it is incumbent now to provide the necessary legislation that would address music in a digital age.

This is what the Internet treatise does; this is what this piece of legislation, once we accede to it, with one stroke of their pen, is going to embrace all of those artistes who otherwise would not have received coverage. So it is not so much, as my friend sought to point out, it is not so much for the Government to create a copyright industry; the musicians exist; they play their music as a matter of course; we are providing the legislative framework to ensure that they now have the necessary coverage that is required.

This is in keeping with a whole series of developments which we can trace from the misfortunes of Lord Invader back in 1942 when, as my colleague alluded, Morey Amsterdam came to Trinidad and heard the song: “Rum and Coca Cola”—by then Lord Invader had already written this song; he was singing it as a matter of course; it was very popular, and because there was not the copyright protection, Morey Amsterdam went back to the States and, in collusion with one or two other persons, claimed the copyright for the song, and it was eventually

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

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given to the Andrews Sisters and that song sold four million copies. Of course, you always resort to the common law and in collaboration with a Paul Barrel, Lord Invader, whose name is Rupert Grant, went to the United States court and got the necessary relief.

**5.30 p.m.**

I am told he received US \$150,000 in lost royalties. But having moved from that situation, Mr. President, we are now in a society where information is of course the premium product and my friend Sen. Dr. Balgobin made reference to it. Information is by far the most valuable resource on the face of the earth. And in recognition of that, once you understand that you can simply go on the Internet and download a song from whence it comes, it is now incumbent on national governments to provide the legislative framework, ensure that you have the regulatory ambit within which you can operate to ensure that your artistes derive the necessary revenue from existing in that environment.

As we progress to where we are now in 2008, I am happy to say that the Copyright (Amdt.) Bill does just that. And we have taken on board many of the suggestions that have been made by the other side with respect to section 23(1) of the parent Act by including the word, "indirectly". What we do is to capture a situation where, for example, a club, a restaurant or what have you, might be having a function and they may not necessarily hire a DJ, but because so many radio stations have party formats as it were, they can simply tune in to a radio station and broadcast the entire proceedings. I think what section 23(1) would now catch with the words, "or indirectly" is to capture that loophole that would have otherwise existed. So that that club or that individual now has to pay the necessary royalties if they attempted to go that way by broadcasting through a radio station. We had no difficulty in embracing that suggestion.

Sen. Seetahal SC, as well, expressed the concern that a special majority would have been needed. And, again, Mr. President, in the interest of furthering the national interest, we had no difficulty in agreeing that perhaps a Preamble to the Bill suggesting that the amendment should be incorporated even though inconsistent with sections 4 and 5 of the Constitution would be appropriate, because in no way it diminishes or prejudices the purpose or the mischief of the Bill.

Mr. President, points were also raised by Sen. Baptiste-Mc Knight and Sen. Drayton with respect to the reduction in the life coverage as it were to 50 years. I just want to inform Sen. Mark, he had raised concerns on the previous occasion as to whether Sparrow still enjoys copyright. Certainly Sparrow continues to enjoy

copyright protection under the present legislation because the 50 years actually kicks in upon the death of the artiste. But to come back to the suggestion, having regard to the trend that is taking place internationally, we looked at the European Community; we looked at what is happening in the United States and everywhere you see a trend suggesting that the extent of coverage should be at least life plus 70. Now this was the initial provision that existed in the parent legislation and we have no difficulty in accepting the fact that it is in the interest of our artistes, certainly at the very least, to give the coverage for at least 70 years. We do not have a problem with that, but you must be mindful that the coin has two sides, so that while we seek to ensure that our artistes have coverage for an extended period, the converse is the same for our artistes, our software and industry persons who wish to utilize that reciprocal technology, that they would also have to wait that time.

In speaking to my colleagues I made the point that Trinidad and Tobago is unique in terms of the sheer output of creative talent that we have, and per capita I am confident that we can match any country in terms of our chutney artistes, our rapso artistes, our calypsonians and our soca artistes. In fact, our poets, the oral tradition, there is such a wide gamut of creative talent that is flowing from this country, that I had little difficulty really in agreeing that—let us give our artistes the benefit of the doubt and increase the coverage from 50 years to 70 years even though it would mean that our software developers, those involved in trade, our other innovators would have to wait an equivalent time to access the relevant technology. So I want to assure Members on the other side that that piece of legislation may have been circulated and we have embraced that.

Importantly, Sen. Seetahal SC raised the issue of the penal clauses and in her contribution she suggested that it was rather onerous, perhaps unfairly so, to give a magistrate a power to double the sentence as it presently exists from 10 to 20 years.

Mr. President, while the magistrate would have a discretion and he or she may not choose to exercise it, to impose a penalty on a repeat offender to 20 years, to my mind no prejudice would be suffered in the legislation if we maintain a 10-year penalty. Because 10 years by any stretch of the imagination or by any standard is a significantly long time to deprive someone of their liberty. If you look at the comparable criminal legislation, 10 years is indeed a punitive sanction. So having regard to those comments, we took the view that, to continue to send a message that piracy is to be frowned upon and also to send the message that we hold our artistes, our musicians in the high regard to which they are entitled, we have sought to have some type of compromise, as it were, where we increase the financial penalty from \$100,000 to \$250,000 and keep the 10-year sanction, deleting

the power of the magistrate to double the penal conviction. So we have kept it at 10 years and we are empowering the magistrate, as it were to increase the fine to \$250,000.

When you consider the amount of money that circulates, particularly in the DVD and the CD industry, it is staggering to know and international trends seem to suggest—even though we have not conducted the empirical studies here to that extent—that there is a direct link between piracy, the drug trade and even organized crime in general. So we have to be very careful that as we create legislation that we do not open the door, as it were, for the organized crime to continue in the underground economy. My friends on the other side seem to—I am not sure whether they take into consideration this issue. It is not simply a question of depriving youngsters of a job who might be selling a CD; they are not the ones, they are at the end of the trail; they work for someone who imports containers upon containers of blank CDs and have this network throughout the country. That is the nest as it were, the nub of the problem. What happens to that funding? Where are those moneys channelled? You ask a youngster on the street how much money he makes? He makes \$2,000 a week on average, so that tells you the capacity and the depth of the employer, and you have to ask the question if you are speaking about national security, it goes merely beyond the issue of providing employment to young persons.

We have to understand, Mr. President, that there has to be a price for social peace. If on the one hand we are talking about reducing crime, developing a civil society, then we cannot be sending mixed messages by decrying the police or the law enforcement agencies when they crack down on these pirates, by saying you are depriving somebody of a job. That is far too simplistic a view. We have to look behind the issue and see whether these young persons who are employable do not have other legitimate options of employment. There is a boom in the construction industry, there are many Government initiatives that do not necessarily require any great academic training as a precondition for entry, so what are we really saying. We cannot seek to eat our cake and have it. That is a major concern for us and it is for that reason we have increased the punitive sanction, as I said, while maintaining the 10-year penalty.

Now, Mr. President, as we look towards the future and as we seek to develop a developed nation on or before the year 2020, one of the Government's pillars, of course, is the development of innovative people. And I remember looking at Dimanche Gras a couple Sundays ago and I was also present at the Soca Monarch, and what you saw was a rather high standard of theatric production.

**5.45 p.m.**

In fact, I recall the song by Kurt Allen, *The Last Badjohn of Kaiso*. I do not know whether my friends on the other side saw that, he performed at the Dimanche Gras. In that song he was suggesting that had it been in the days of “Spoilers” and the “Executors”, that piracy would not have been able to continue because they were the real “bad johns” and they would have not allowed their music to be pirated on the street. It is interesting that Gillian Lucky writing in the *Guardian* of February 08, 2008 made reference to that song entitled, “The Very Good Badjohn.”

I had a somewhat different view from her, but the point is that we recognize that piracy is a problem. We also recognize that we have a great reservoir of talent. Do we wish to go the way that Kurt Allen is perhaps suggesting that we need to revisit “badjohnism”? Or, do we take the proper view and put in place the legislative framework that would speak to generations yet unborn; that would ensure that due process is followed and observed and that all our artistes, our contemporaries whom we revere; whom we salute; the Montanos; the Patrice Roberts and all of those who are now our contemporaries, that they in the future do not suffer the dignity of having their works continuously pirated, and as a consequence, not derive the amount of revenue to which their creative genius should entitle them?

My point is the choice is a simple one. We must continue to follow the best practices as outlined by the World Intellectual Property Organization, and we also have a responsibility as members of the Caricom region to ensure that our legislation is in step with those international trends, because we in Trinidad and Tobago set the stage as it were for the rest of the Caribbean. And when you look at the CSME requirements and the Revised Treaty of Chaguaramas, there is an obligation for us to ensure that our legislation is on par, there is harmonization certainly at the regional level, and certainly at the level of the international organizations to which we accede and the treaties to which we accede.

Mr. President, we at the Ministry of Legal Affairs are cognizant of our role as regional leaders and we are mindful of the fact that many of the other countries in the Caribbean import or copy our legislation wholesale. So, I do not accede to the view, that reason of Sen. Baptiste-Mc Knight, that we should perhaps go over the 75 years and increase the legislation that she is suggesting for some cases, 120 to 125 without having some discourse with our regional partners. That will certainly be irresponsible of us, that we take such unprecedented measures without having first discussed this as a matter of regional comity with the others in the region.

Mr. President, as far as the amendments are concerned, I wish also to refer to clause 20, that we insert after paragraph (d)(ii) the following words:

“and that such copies, apparatus, implements or devices appear, having regard to all the circumstances, to have been abandoned,”

That is to capture instances where there may be a warehouse, there may be some place where there are copies lodged that would afford the authorities to also bring that within the net.

Mr. President, in a rather concise way, I have sought to embrace the concerns of my friends on the other side. There was one point raised by Sen. Mark with respect to CariHome. Now as far as I am aware, CariHome is a Jamaican company, an exclusive distributor for DVDs and because there is such a proliferation of piracy in Trinidad, my understanding is that they have come within this jurisdiction to seek to clamp down on the piracy. Now, I had a visit from two persons representing diverse interests, one on the CariHome side really, and the others who are essentially the pirates.

I sought to have a meeting with them to ascertain exactly what their interests are, what their concerns are, and to see to what extent the Ministry of Legal Affairs and certainly the Intellectual Property Office, can now provide the necessary framework to ensure that the respective interests within the scope of the law are observed. So I am not in a position as I stand now to say exactly the locus of CariHome, over and above my knowledge that they are here, simply to enforce their legal rights with respect to piracy. So that is as far as I can say with respect to CariHome.

**Sen. Mark:** May I? I was just trying to get some clarification as to whether a foreign entity can enter the Trinidad and Tobago space and enlist our police officers to accompany them on virtual raids and seize people's equipment? Because I have evidence and information that the police have accompanied these gentlemen to various places in this country and they have actually seized people's equipment, closed people's outlets and placed hundred of citizens on the breadline. I am wondering for instance if this is being done lawfully, if anyone can just come in here and do that kind of thing, and then what kind of protection? I am not saying that I am supporting illegality; I am not supporting that, but at least give the people some framework and some time to get on the right track. So I am just trying to find out from you whether—this is not a spaceship, they come from Jamaica, so we want to know if they could just run into this country and do whatever they want.

**Hon. P. Taylor:** Mr. President, this is not as my friend is suggesting a foreign entity coming in, there are local agents here, but it appears to me that the head is resident in Jamaica, but there are local franchise holders here who have come to me to plead the justice of their cause. So it is not that a Jamaican is coming in and seeking and enlisting the support of our local protective services; there are local persons here who have their own business. It is just like you have a local franchise of a KFC or whatever the case may be, and they are the ones whose business is suffering. They, now, perhaps with the support of the head office, if I can use that term, are seeking to enforce their legitimate rights within the whole ambit of copyrights. So it is not that we have a foreign entity coming in at all.

**Sen. Mark:** Mr. President, now that my colleague has given way again, could you tell us in a nutshell what then would the Government be doing to bring about some resolution to this question? What kind of mechanism are you going to put in train to meet, treat and make a determination so that persons who might be interested in obtaining licences might be able to do that? So I just wanted to find out.

**Hon. P. Taylor:** Yes, indeed, my friend's question is a pertinent one. We have resolved to deal with the matter with a certain degree of humanity, having regard to the fact that you have had this proliferation of persons selling, and as Sen. Nicholson-Alfred stated, they are not even aware that they are committing a crime. They are not even aware. So there has to be some element of education and consultation and a gradual loosening of the grip, as it were, in an incremental way to ensure that the education is there to let these persons know, "Listen, you are making a living, but you are really breaking the law". That is the approach I propose to take in consultation with the Intellectual Property Office and with both sides.

So, I resort to meet with them to determine exactly what are the possibilities of increasing the price of the original CDs and DVDs and have some kind of compromise where both sides can be happy; a win-win situation. I think that is the best way to deal with it from a humanitarian point a view, understanding the respective interests.

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

*Question put and agreed to.*

*Bill accordingly read a second time.*

*Bill committed to a committee of the whole Senate.*

*Senate in committee.*

**6.00 p.m.**

*Clause 1.*

*Question proposed,* That clause 1 stand part of the Bill.

**Sen. Seetahal SC:** Before we move on, what about the proposal for 1(a), will we deal with that afterwards?

**Mr. Chairman:** Yes we will.

*Question put and agreed to.*

*Clause 1 ordered to stand part of the Bill.*

*Clauses 2 to 4 ordered to stand part of the Bill.*

*Clause 5.*

*Question proposed,* That clause 5 stand part of the Bill.

**Mr. Chairman:** We have several amendments to deal with. [*Interruption*] Let us deal with the one from the Minister first.

**Mr. Taylor:** Mr. Chairman, I beg to move that clause 5 be amended as follows:

Delete and substitute the following:

“section 19 Amended	5. Section 19 of the Act is amended in subsection (1), by inserting after the words ‘moral rights’ the words ‘of the author.’”
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**Sen. Seetahal SC:** Would that be the supplementary list?

**Mr. Chairman:** Yes. In his initial list there is no amendment from the Minister to clause 5. In his supplementary list there is an amendment.

**Sen. Annisette-George:** If I may guide, Mr. Chairman. The proposed clause 5 in the Bill is deleted. So 5(a) and 5(b) will be deleted and substituted by clause 5 on the supplemental sheet. [*Interruption*]

**Mr. Chairman:** Sen. Baptiste-Mc Knight has some amendments. [*Interruption*]

Sen. Drayton, your amendment is effectively covered by the Minister’s amendment so that you can withdraw your amendment?

**Sen. Drayton:** Yes.

[*Amendment withdrawn*]

**Sen. Baptiste-Mc Knight:** I was of the impression that the hon. Minister would have accepted that 50 be replaced by 70; life plus 70 instead of life plus 50.

**Mr. Chairman:** I believe the original section has 70 or 75.

**Sen. Baptiste-Mc Knight:** No, it has 50.

**Sen. Anisette-George:** The original parent Act has 75. [*Crosstalk*]

If I may assist; the proposed amendment sought to decrease the number of years within the parent Act. We have surrendered those amendments and, therefore, what would remain are the provisions untouched in the parent Act.

**Sen. Drayton:** Just confirming that it remains at 75 and 100.

**Sen. Anisette-George:** Seventy-five in the cases of (a) and (b) and 100 in the case of (c).

**Mr. Chairman:** So, Sen. Baptiste-Mc Knight, you can withdraw your amendment?

**Sen. Baptiste-Mc Knight:** Yes.

*Amendment withdrawn.*

*Question put and agreed to.*

*Clause 5, as amended, ordered to stand part of the Bill.*

*Clause 6 ordered to stand part of the Bill.*

*Clause 7.*

*Question proposed, That clause 7 stand part of the Bill.*

**Mr. Chairman:** We have a proposed amendment by Sen. Baptiste-Mc Knight.

**Sen. Baptiste-Mc Knight:** Mr. Chairman, in light of the fact that we are going with the 75 and 100, I withdraw this amendment.

*Amendment withdrawn.*

*Question put and agreed to.*

*Clause 7 ordered to stand part of the Bill.*

*Clause 8.*

*Question proposed, That clause 8 stand part of the Bill.*

**Mr. Chairman:** We have another proposed amendment by Sen. Baptiste-Mc Knight. Will you withdraw this one as well?

**Sen. Baptiste-Mc Knight:** Yes.

*Amendment withdrawn.*

*Question put and agreed to.*

*Clause 8 ordered to stand part of the Bill.*

*Clause 9.*

*Question proposed, That clause 9 stand part of the Bill.*

**Sen. Seetahal SC:** Can we come back to new clause 9?

**Sen. Annisette-George:** Might I suggest that we deal with the amendment now, because the other clauses will have to be renumbered. There is an amendment to insert a new clause 9. This would be on the original sheet.

**Mr. Chairman:** Under Standing Order 53 it requires that we dispose of all the existing clauses and the new ones we will deal with after and insert them.

**Sen. Annisette-George:** I am guided, Chair.

*Question put and agreed to.*

*Clause 9 ordered to stand part of the Bill.*

*Clauses 10 to 15 ordered to stand part of the Bill.*

*Clause 16.*

*Question proposed, That clause 16 stand part of the Bill.*

**Sen. Seetahal SC:** Before we go to clause 16, I know what you said, Mr. Chair, but in light of the fact that the supplemental list has a proposal for that amendment, should we deal with that now? It is called 17 as renumbered, which was clause 16. It is no sense voting for something and then coming back to amend it.

**Mr. Chairman:** I am advised that we cannot renumber the clauses as yet.

**Sen. Seetahal SC:** The reason I ask that is because previously we dealt with an amendment, that was under clause 5, as amended—

**Mr. Chairman:** But we did not renumber it.

*Question put and agreed to.*

*Clause 16 ordered to stand part of the Bill.*

*Clauses 17 to 20 ordered to stand part of the Bill.*

*New clause 1A.*

**Mr. Taylor:** Mr. Chairman, I propose a new clause 1A which reads:

Insert after clause 1, the following new clause:

“Act inconsistent with Constitution      1A. This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.”.

*New clause 1A read the first time.*

*Question proposed, That the new clause be read a second time.*

*Question put and agreed to.*

*Question proposed, That the new clause be added to the Bill.*

*Question put and agreed to.*

*New clause 1A added to the Bill.*

*New clause 9.*

**Mr. Taylor:** Mr. Chairman, I propose a new clause 9 which reads:

Insert after clause 8, the following new clause:

“Section 23 amended      9. Section 23 of the Act is amended in subsection (1) by inserting after the word ‘directly’ in the third line, the words ‘or indirectly’”.

**Sen. Seetahal SC:** Before we go on, should we not vote and renumber them?

**Mr. Chairman:** We put in the new clauses and then renumber them.

**Sen. Mark:** I had circulated an amendment. Having regard to the Minister's amendment as it relates to this new clause inserted after clause 8, I will, therefore, withdraw my amendment.

*Amendment withdrawn.*

*New clause 9 read the first time.*

*Question proposed, That the new clause be read a second time.*

*Question put and agreed to.*

*Question proposed, That the new clause be added to the Bill.*

*Question put and agreed to.*

*New clause 9 added to the Bill.*

**6.15 p.m.**

*Clauses 9 to 20.*

*Question proposed, That clauses 9 to 20 be renumbered as clauses 10 to 21 respectively.*

*Question put and agreed to.*

*Clauses 9 to 20, renumbered clauses 10 to 21, ordered to stand part of the Bill.*

*Clause 17 as renumbered.*

*Question proposed, That clause 17 as renumbered stand part of the Bill.*

**Mr. Taylor:** Mr. Chairman, we have some changes. I propose that clause 17 be amended as follows:

- A. In the proposed section 41(3), delete the words “one hundred” and substitute the words “two hundred and fifty”.
- B. Delete the proposed section 41(4).
- C. Renumber the proposed section 41(5) as 41(4).
- D. In the proposed section 41A(2), delete the words “one hundred” and substitute the words “two hundred and fifty”.

*Question put and agreed to.*

*Clause 17, as renumbered, ordered to stand part of the Bill.*

**Sen. Seetahal SC:** Should we not do the amendments first because it is now renumbered? My understanding of it is that clause 17 as renumbered be amended as amended by the Minister on the supplementary list.

**Mr. Chairman:** I am not following you; what do you want me to do?

**Sen. Seetahal SC:** Now that we have renumbered them, Mr. Chairman, we should now go through the process as we did with clause 5, clause 17 as renumbered be amended as proposed by the Minister in his supplementary list of amendments.

*Question put and agreed to.*

*Clause 17 renumbered, as amended, ordered to stand part of the Bill.*

*Clause 18 as renumbered.*

*Question proposed, That clause 18 as renumbered stand part of the Bill.*

**Mr. Taylor:** Mr. Chairman, I propose the following amendment:

Delete the words “one hundred” wherever they occur and substitute the words “two hundred and fifty”.

*Question put and agreed to.*

*Clause 18 as renumbered, as amended, ordered to stand part of the Bill.*

*Clause 20 as renumbered.*

*Question proposed, That clause 20 as renumbered stand part of the Bill.*

**Sen. Seetahal SC:** Before we go to that amendment, if I may point out to the Minister, clause 20 as renumbered was originally clause 19 and at page 20 it is (d) but there is no (d)(ii), there is actually (6)(ii). The number in the proposed amendment is:

Insert after paragraph (d)(ii)...

If one looks at it, it is really (6)(ii).

**Sen. Annisette-George:** Mr. Chairman, the actual amendment according to the Bill would be renumbered clause 20(d).

**Sen. Seetahal SC:** The point I am making is that it is (d)(ii), if one looks there you will see it is (d)(6)(ii) in clause (d) or insert in paragraph (d) at (6)(ii) something like that because it is really subsection (6)(ii) in paragraph (d).

**Sen. Annisette-George:** Mr. Chairman, I think the (ii) should come out, it is not (6)(ii), it is paragraph (d) after the words ending copies.

**Sen. Seetahal SC:** So insert after paragraph (d) what?

**Sen. Annisette-George:** Insert in paragraph (d) after (6)(ii).

**Sen. Seetahal SC:** Yes, that should be it. Insert in paragraph (d) at the end of 6(ii) the following words.

**Mr. Chairman:** Let me get this straight. Does this form part of 6(ii) or does it form part of the ultimate paragraph at the end?

**Sen. Annisette-George:** It is part of the ultimate paragraph at the end.

**Mr. Chairman:** So it should really appear before the words “may bring”?

**Sen. Annisette-George:** Yes.

**Mr. Chairman:** Sen. Seetahal, you got that?

**Sen. Seetahal SC:** No, it is really part of (ii) is it not? Because the words “may bring” are telling what the police officer—

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

- (i) copies of a work, performance...
- (ii) any apparatus, implements...such copies, apparatus, implements or devices...”

So it is really part of (ii), it is, it has to be. Because the “may bring” is the action he is doing. Is that not it?

**Sen. Annisette-George:** It should govern both, so that is why it comes before “may”.

**Sen. Seetahal SC:** The reason I ask is because in (i), there is no reference to apparatus and so forth, there is only reference to copies. Oh, I see, yes, it is a combination of both, yes. So it is insert in paragraph—

**Mr. Chairman:** Senators, we need to go back to the Senate to pass a Procedural Motion.

*Senate resumed.*

#### PROCEDURAL MOTION

**The Minister in the Ministry of Finance (Sen. The Hon. Conrad Enill):** Mr. President, in accordance with Standing Order No. 9(8), I beg to move that the Senate continue to sit until the conclusion of the Bill.

*Question put and agreed to.*

#### COPYRIGHT (AMDT.) BILL

*Committee resumed.*

**Mr. Chairman:** Clause 20 as renumbered and as circulated now stands part of the Bill.

**Sen. Seetahal SC:** No, we have amended what the Minister circulated, Mr. Chairman, so we have to say what the new amendment is, which is:

Insert in paragraph (d) immediately before the words “may bring such copies” in subsection (6), the following words.

Is that not what we want? I think we have to rephrase it that way.

**Sen. Dr. Nanan:** Mr. Chairman, I think we have to remove that comma after the word “copies”.

**Mr. Chairman:** At the end of (ii)?

**Sen. Dr. Nanan:** Yes.

**Mr. Chairman:** That is editorial really.

**Sen. Seetahal SC:** My suggestion is that clause 20 as renumbered with the words: Insert in paragraph (d) immediately before the words “may bring such copies” in new subsection (6) the following words, and then put what we have here and then we vote on that.

**Mr. Chairman:** Clause 20 as renumbered and amended as follows:

Insert in paragraph (d) immediately before the words “may bring such copies” in new subsection (6) the following words:

“and that such copies, apparatus, implements or devices appear, having regard to all the circumstances, to have been abandoned,”

*Question put and agreed to.*

*Clause 20 as renumbered, as amended, now stands part of the Bill.*

*New Preamble.*

**Mr. Taylor:** Mr. Chairman, I propose the following Preamble:

“Whereas it is enacted by section 13(1) of the Constitution that an Act of Parliament to which that section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution, and if any Act does so declare it shall have effect accordingly:

And whereas it is provided in subsection (2) of the said section 13, that an Act of Parliament to which that section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the Members of that House:

And whereas it is necessary and expedient that this Act have effect even though inconsistent with sections 4 and 5 of the Constitution:”

*New Preamble read the first time.*

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*Question proposed, That the new Preamble be added to the Bill.*

*Question put and agreed to.*

*New Preamble added to the Bill.*

*Question put and agreed to, That the Bill, as amended, be reported to the Senate.*

*Senate resumed.*

**Mr. President:** Hon. Senators, this needs a special majority so we will have to take a vote.

*Bill reported with amendment.*

*Question put, That the Bill be now read the third time.*

*The Senate voted*

AYES 28

Enill, Hon. C.

Browne, Hon. M.

Joseph, Hon. M.

Manning, Hon. H.

Piggott, Hon. A.

Narace, Hon. J.

Dick-Forde, Hon. Dr. E.

Gronlund-Nunez, Hon. T.

Annisette-George, Hon. B.

Hadeed, G.

George, W.

Rogers, L.

Lezama, Miss L.

Melville, Miss J.

Saith, Hon. Dr. L.

Mark, W.

Nanan, Dr. A.

Charles, Dr. C.

Kernahan, Dr. J.

Sharma, Miss C.

Rahman, M. F.

Deosaran, Prof. R.

Seetahal SC, Miss D.

Annisette, M.

Nicholson-Alfred, Mrs. A.

Drayton, Mrs. H.

Merhair, Miss G.

Balgobin, Dr. R.

*Question agreed to.*

*Bill accordingly read the third time and passed.*

**6.30 p.m.**

#### 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, February 19, 2008 at 1.30 p.m., at which time we would deal with the Legal Profession (Amdt.) Bill; time permitting, we will take the next Bill on the Order Paper.

**Sen. Mark:** Mr. President, before you move to adjourn the Senate, may I crave your indulgence by bringing to your attention my utter disappointment with the tardy approach by the Government as it relates to the several Motions that you have authorized and approved that I raised in this honourable Senate. I would like to record my total disappointment with the Government's attitude to the public business of this country.

*Adjournment*  
[SEN. MARK]

*Tuesday, February 12, 2008*

I just want to bring this to your attention and as I am on my legs, I would also like to bring to your attention my disappointment over the continued lackadaisical attitude on the part of the Government in responding to questions that they have been given adequate notice to address. I just wanted to bring to your attention and to the attention of the Senate, our utter displeasure with the Government's attitude. It is not towards us; it is towards the public of Trinidad and Tobago when the Government behaves in that way and I can only urge the Government to adopt a new and more responsible attitude towards questions on the Order Paper by the Opposition as well as responding responsibly to our several Motions which you have approved. So I just wanted to bring this to your attention and the attention of the honourable Senate.

**Sen. The Hon. C. Enill:** Mr. President, I wish to thank Sen. Mark for putting it so eloquently. However, the Government does have challenges related to answering the questions and many of these have to do with sourcing information. Many of the questions have great potential for research over long periods of times and, invariably, what happens is that when those answers get to a stage where we are looking at them, there are inaccuracies and we do not wish to mislead the Parliament. In those circumstances, they are sent back. It is in those circumstances, primarily, that answers to questions have been delayed.

As I reported earlier, we have answers to questions that are not on the Order Paper and I just wish to assure Sen. Mark that in the circumstances, based on the systems that we have, we are doing the best that we can and we would certainly look at ways to improve on performance. We also benefit from the answers to the questions because we, too, are in a search for knowledge. So we are, in fact, taking your comments and we would look at it again. But within the system that we have, this is what is being produced and until we change the system, there is no other mechanism available to us to do better than we are—

**Hon. Senator:** Or change the Government.

**Sen. The Hon. C. Enill:** That is all that we have.

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 6.34 p.m.*