

Leave of Absence

Friday, April 04, 1997

HOUSE OF REPRESENTATIVES

Friday, April 04, 1997

The House met at 1.31 p.m.

PRAYERS

[MR. SPEAKER *in the Chair*]

LEAVE OF ABSENCE

Mr. Speaker: Hon. Members, I wish to advise that I have received communication from the Member for San Fernando West (Mr. Barendra Sinanan) who has asked to be excused from sittings of the House of Representatives as he will be out of the country until April 15, 1997. He has been excused.

Correspondence has also been received from the Member for Port of Spain North/St. Ann's West (Mr. Gordon Draper) who has asked to be excused from sittings of the House of Representatives as he will be out of the jurisdiction until April 20, 1997. He has been excused.

**JOINT SELECT COMMITTEE
(APPOINTMENTS)**

Mr. Speaker: Hon. Members I wish to advise that I have received three pieces of correspondence from the President of the Senate which read as follows:

“April 02, 1997

Hon. Speaker,

RESOLUTION: JOINT SELECT COMMITTEE

I wish to refer to previous correspondence on the above subject and to inform you that at the sitting of the Senate held on Tuesday, March 25, 1997 the Senate appointed the following six Members to serve on the Joint Select Committee to consider the (Seventeenth) Annual Report of the Ombudsman and to make recommendations for the more effective machinery for the office of the Ombudsman.

Mr. Philip Hamel-Smith

Mr. Nizam Baksh

Mr. Andrew Gabriel

Joint Select Committee
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Miss Penelope Beckles
Prof. Julian Kenny
Prof. Kenneth Ramchand

Yours faithfully
/s/ Ganace Ramdial
President of the Senate”

Secondly,

“April 02, 1997

Hon. Speaker,

RESOLUTION: JOINT SELECT COMMITTEE

I wish to refer to previous correspondence on the above subject and to inform you that at the sitting of the Senate held on Tuesday, March 25, 1997 the Senate appointed the following six Members to serve on the Joint Select Committee to consider the Working Paper on Equal Opportunity Legislation and to submit recommendations to Parliament thereon.

Mr. Wade Mark
Dr. Daphne Phillips
Mrs. Carol Cuffy-Dowlat
Miss Penelope Beckles
Prof. Kenneth Ramchand
Dr. Eric St. Cyr

Yours faithfully
/s/ Ganace Ramdial
President of the Senate”

Thirdly,

“April 02, 1997

Hon. Speaker,

RESOLUTION: JOINT SELECT COMMITTEE

I wish to refer to previous correspondence on the above subject and to inform you that at the sitting of the Senate held on Tuesday, March 25, 1997 the Senate appointed the following six Members to serve on the Joint Select

Joint Select Committee

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Committee to consider a Green Paper on Integrity Legislation and to submit recommendations to Parliament thereon.

Mr. Finbar Gangar
 Mrs. Vimala Tota-Maharaj
 Mr. Selwyn John
 Mrs. Nafeesa Mohammed
 Prof. Kenneth Ramchand
 Prof. Julian Kenny

Yours faithfully

/s/ Ganace Ramdial
 President of the Senate”

INTEGRITY COMMISSION REPORT

Mr. Speaker: Hon. Members, I have received from the Secretary to the Integrity Commission, the Annual Report, 1996 which under the relevant Act, Integrity in Public Life Act, 1987 ought to be laid in the House of Representatives and in the Senate not later than May 31, 1997.

I hereby indicate that this has been received by me and it would be made to lie on the table so that it is, in fact, before the Parliament.

Thank you.

COMMON ENTRANCE EXAMINATION (ALLEGATIONS OF IRREGULARITIES AND FRAUD)

The Minister of Education (Dr. The Hon. Adesh Nanan): Mr. Speaker, in June last year the Minister of Education received an anonymous letter which contained allegations of irregularities and fraud in the 1996 Common Entrance Examination. The Minister of Education requested the Fraud Squad to carry out an investigation into these allegations. The allegations were:

- students who did not pass the examinations were being accepted into so-called “prestige” schools;
- examination papers were sold to certain students before the examination; and
- numbers on some students’ examination scripts were altered.

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In reply to questions asked in the Senate and the House of Representatives in October, 1996 and January, 1997 respectively, the Minister advised that the allegations were being investigated by the Fraud Squad and that the report was expected in February, 1997.

I am to advise that I have recently received the report of the investigation by the Fraud Squad and now wish to inform this honourable House of the investigating officer's conclusion as follows:

“I am satisfied from available evidence that the allegations are unfounded.”

Mr. Speaker, it is quite clear from the report that the anonymous letter fabricated allegations. The intention was to mislead, deceive and to cause panic in the population. It is not the normal practice for the Ministry of Education to launch such investigations on the basis of anonymous letters. However, the Minister of Education took the decision to involve the Fraud Squad because of this Government's commitment to transparency and accountability in all matters of public interest. [*Desk thumping*] Accordingly, the Minister of Education felt compelled, in the national interest, to request this investigation by the Fraud Squad. Mr. Speaker, like Caesar's wife, the Common Entrance Examination must be above suspicion. [*Desk thumping*]

1.40 p.m.

Mr. Speaker, with respect to its administration and conduct, something more must be said on the issue of the Common Entrance Examination. As we all know, every year there is the national ritual of debate, controversy, allegations of corruption and unfairness, surrounding this examination. It has been celebrated in calypso. The Fraud Squad's investigation was thorough and there is no need to go into it in any detail. However, there is the need to convince the public that the Common Entrance Examination—in its administration and conduct, and its use as a means of placing pupils in secondary schools—is as fair and as free from corruption, with policies, procedures and mechanisms in place to ensure its integrity.

Accordingly, the Ministry of Education has taken the following actions with the intention of eventually enhancing the image of the Common Entrance Examination and assuring its credibility among all members of the public.

The Minister of Education appointed a committee to study the feasibility of releasing students' scores of the Common Entrance Examination. The report of the

committee was received in December. The committee has made certain recommendations. For example, that the scores could be released to different users, including students, in different forms and with some carefully worded directions as to how they are to be interpreted. They should not be published in the press as examination results are personal and should be treated with confidentiality.

Another committee was appointed by the Minister of Education to review the placement of common entrance students. Its terms of reference merit being quoted here, because this addresses many of the concerns expressed by the public about this examination. The terms of reference of the Committee were:

- a. To examine the existing system of “weighing” in converting raw scores to standardize scores.
- b. To identify the various stages of the process involved in allocating students to various types of schools.
- c. To make a list of the concerns expressed by school personnel, parents and members of the public regarding “placement”.
- d. To evaluate the merits and demerits of the concerns.
- e. To assess the strengths and weaknesses of the present structure adopted for the placement of students.
- f. To make recommendations for improving the policy, practices, systems and procedures about the placement of students for 1997.
- g. To examine the system of transfers.
- h. To examine the feasibility of having the division of school supervision undertake the exercise of Common Entrance placement.

This committee has recently submitted its report and the recommendations are being considered.

Mr. Speaker, hon. Members of this House, this Government of national unity would continue to ensure transparency and accountability at all levels of the education system.

Thank you.

ARRANGEMENT OF BUSINESS

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, I beg to move that the House proceed to Bills Second Reading, No. 1.

Agreed to.

COPYRIGHT BILL

Order for second reading read.

The Minister of Legal Affairs (Hon. Kamla Persad-Bissessar): Mr. Speaker, I beg to move,

That a Bill to make provision in respect of copyright and neighbouring rights, in substitution for the Copyright Act, 1985, and for related purposes be now read a second time.

Mr. Speaker, the Copyright Bill before this honourable House seeks to repeal and replace the Copyright Act of 1985. The objectives of the 1997 Bill are as follows:

1. To bring the law up-to-date by the use of language and definitions which are appropriate to both old and new technologies and to anticipate future developments in the high-tech industries.
2. To make the copyright system more user friendly, by laying down clear and wherever possible, uniformed legal principles for all classes of copyright work, so that owners and users are aware of the rights.
3. To improve the legal framework for the fight against piracy by granting additional powers to the High Court in relation to civil proceedings for infringements of copyright and to impose stiffer penalties and introduce wider-ranging measures with respect to criminal offences as they relate to infringements of copyright.
4. To bring Trinidad and Tobago's law into line with international conventions by which we are bound—and this is not merely because of impositions that may be described as neo-imperialistic forces, but really out of sheer necessity that has been occasioned by Trinidad and Tobago being a member of an interdependent global village that is our world today. This is especially so in the area of copyright, where it is so easy for sound waves through satellite transmissions video to come through, we must ensure that we have proper protection in the area of copyright.

In addition to these practical reasons for modernizing the copyright law, there is also some moral justification for doing so. The justification for recognizing property rights in products of the mind is based on a number of premises.

The first reason is that a person's moral right to reap the fruits of their own labour would be given protection.

The second reason is that it works like an incentive scheme designed to produce an optimal quantity of works of authorship and thereby enable authors to obtain rewards for their contributions to society.

The third reason is that it protects the integrity of authors, artistes and their creations as extensions of their personalities.

There is another justification that has to do with the role the copyright law plays in our market economy rather than encouraging production of works merely through subsidies by Government. The authors, artistes and other creators are given, through the limited exclusive monopoly of copyright law, a private property right over the creations of their intellect. The worth of that would ultimately be determined by market forces.

In a sense then, copyright provides a legal foundation on which profits could be built, provided always that there is sufficient market demand for the work. One could say that copyright provides protection for the investment of intellectual effort and capital in order that profits shall be shared in accordance with investment. Moral high ground of copyright law which said that creations or works should not be copied or otherwise taken without authority, supplies the justification for effective legal intervention by enforcement of that legislation.

Mr. Speaker, we could look back a bit at the history of what has resulted in the 1997 Copyright Bill. The review of the copyright law in this country since the 1985 Copyright Act, began in 1994 under the former administration. In February of 1994, a mission from the World Intellectual Property Organization visited Trinidad and Tobago under the aegis of the Intellectual Property Registry. At that time the aim of the mission was to review the copyright law as well as the system of collective administration, which goes hand in hand with copyright, in Trinidad and Tobago. Those who attended and interfaced with that WIPO mission included representatives of the Copyright Organization of Trinidad and Tobago; representatives of Pan Trinbago; representatives of the National Carnival Commission; representatives of the Ministry of Community Development, Culture and Women's Affairs; members of the Ad Hoc Committee set up to review intellectual property laws; members of the Intellectual Property Registry in Trinidad and Tobago; and private attorneys-at-law.

1.50 p.m.

These persons have been meeting with the WIPO missions since 1994. Thereafter, there was a second mission in 1995 which, when it came, was given a

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specific mandate to review the 1985 Copyright Act. In 1996 another mission from the World Intellectual Property Organization came to Trinidad and Tobago and members may recall that we introduced, in the Senate, the Copyright Bill, 1996 as a result of that final mission in 1996.

Mr. Speaker, in that other place—on the day when the debate was scheduled to begin on the Copyright Bill 1996—I attended there and indicated that because of the desire and expressions of interest from those groups and persons who were particularly concerned with copyright legislation, they needed time to comment and make suggestions on any new copyright legislation that was going to be put into place. At that time we decided to halt the debate on the Copyright Bill, 1996 and put the Bill out for public comment.

Thereafter, on August 5, 1996 the Ministry of Legal Affairs set up a Working Committee to review the 1996 Copyright Bill and copyright law generally, to receive comments from the public on copyright law and to make a report thereon. We were very fortunate to have as the Chairman of that Working Committee, Mr. Alvin Daniel, the Chairman of the Copyright Organization of Trinidad and Tobago. The working group was comprised of the various interest groups which included representatives of the Copyright Organization of Trinidad and Tobago (COTT), the legal profession, the Recording Industry Association of Trinidad and Tobago, Pan Trinbago, the Architect Society, National Drama Association, the Broadcasters Union and Government representatives.

That committee held consultations on the 1996 Copyright Bill. They obtained the views of the public at six venues located throughout Trinidad and Tobago. At City Hall in Port of Spain and San Fernando, the Tobago House of Assembly, Fairfield Complex; the Point Fortin Civic Centre, Arima Town Hall and the Chaguanas Borough Council Hall.

In addition to those views submitted to the committee, Mr. Speaker, the Ministry of Legal Affairs received written submissions from persons, groups and individuals who sent in their suggestions and comments on the 1996 Bill. We received written submissions from the National Carnival Bandleaders Association, the Copyright Organization of Trinidad and Tobago, the Performing Rights Society from London sent their submissions through the Copyright Organization of Trinidad and Tobago, the Writers Union, the Inventors Association, the Trinidad Arts Society, the Neighbouring Rights Society, the Recording Industry Association of Trinidad and Tobago, the National Carnival Commission, the Photographic Industry Association of Trinidad and Tobago, and many others.

All these organizations sent their written submissions and these were referred to that Working Committee set up by the Ministry of Legal Affairs. The committee had the opportunity to take the oral submissions in the public consultations, as well as the written submissions from interest groups and individuals, and to report thereon on the 1996 Bill. The result of those consultations, Mr. Speaker, and further study by the Ad Hoc Committee with the drafting assistance of Mr. Ian Macintyre of the Chief Parliamentary Counsel's department, and the *pro bono* assistance of Miss Allison Demas, the Vice Chairman of the Copyright Organization of Trinidad and Tobago, together with comments from WIPO and the assistance of the Ad Hoc Committee, has resulted in the Copyright Bill, 1997, which is at present before this honourable House.

We have had the input of the local interest groups, the input and expertise from international organizations such as the World Intellectual Property Organization (WIPO) and also from Mr. Dennis DeFreitas who sent us his submissions on behalf of the Performing Rights Society in the United Kingdom. I also had the opportunity to meet and consult with Mr. DeFreitas on the Copyright Bill, 1996 and, the importance of this, Mr. Speaker, is that Mr. Dennis DeFreitas is the person who drafted our 1985 Copyright Act. We were fortunate to have his suggestions and comments on this Bill that is now before the House. We have also had, of course as I said before, the input from the local interest groups and certainly the Bill which is before us, together with the amendments from the Senate, we have had the benefit of the suggestions from hon. Senators in the other place.

Mr. Speaker, if you would permit me, I would like to take the moment to thank all of those persons who have worked on this Copyright Bill. They are the Ad Hoc Committee, in particular, Ms. Mazina Kadir, who heads our Intellectual Property Registry, Mr. Brian De Gannes, who heads the Ad Hoc Committee, and Miss Deborah Dade, a member of that committee.

I also pay tribute to the Working Committee that was set up on very short notice last year, chaired by Mr. Alvin Daniell of the Copyright Organization of Trinidad and Tobago. They met at very short notice. They took time and did it *gratis*, went throughout the length and breadth of Trinidad and Tobago to take the views of the public and to report. That committee comprised, as I said, Chairman, Alvin Daniell, Miss Allison Demas, attorney-at-law; Miss Josanne Leonard, Mr. Oattie Mieres, President of the Neighbouring Rights Association of Trinidad and Tobago; Mr. Mungal Patasar, Miss Christine Johnson, representative of the Drama Association; Rudy Lynn Roberts, representative of the Architects Association;

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Selwyn Taradath, representative of Pan Trinbago; Bernard Pantin, representative of the Broadcasters Union; Ruth Bharath and Sadie Robarts, from the Ministry of Legal Affairs, together with the staff of the Intellectual Property Registry.

In addition, Mr. Speaker, in drafting the Copyright Bill, 1997, we have taken note of the copyright laws of other jurisdictions including Australia, New Zealand, the United Kingdom, and also the laws of Nigeria, Kenya and Ghana. The laws of these latter three were especially important in assisting us because they have the same kind of common-law traditions that we have and those three developing countries are very much like Trinidad and Tobago, with very vibrant musical and cultural traditions, so we are able to benefit from their experiences.

I understand that in Ghana they have introduced a system which has been most effective in dealing with bootlegging and piracy of copyrighted material. In addition to the laws of those countries we have also looked at the laws from the other Caribbean islands within our region. We have looked at the Copyright Act of St. Lucia, No. 10 of 1995, and I believe, Barbados. We have looked at a wide range of legislation and took the international input to produce the Bill that is before us.

Mr. Speaker, in redrafting we had to understand that it is almost 12 years since we had copyright legislation in Trinidad and Tobago, so that our law was outdated, not just simply because it was 12 years that had passed since the 1985 Act was enacted, but because the strides that have been made world-wide, tremendous developments in computer technology, the applications of computer technology as a whole, have made it necessary for our copyright law to be updated. We have seen the creative use of new technology, new computer programmes, data bases, dissemination of works via the computer, the fax, scanners, the use of cable network satellites for retransmission, and we are witnessing in Trinidad and Tobago DirecTV, digital technology. All these new forms of work that can be copyrighted are in need of protection. The 1985 Act, however, was not designed to deal with these new developments in order to fulfil the need for protection.

2.00 p.m.

The 1997 Bill, in my respectful view, includes many new categories of protection. In fact, if we look at clause 3 of the Bill which is the definition clause, we will see that there are several new definitions that have been introduced. These

reflect the advances in technology, amongst other things. There is also for the first time in any proposed legislation in Trinidad and Tobago, a definition of a "work of mas".

Mr. Speaker, I will just spend a few moments on this because, for the first time the law of Trinidad and Tobago will give protection to the creative effort that goes into a "work of mas". We had tremendous difficulty including mas as copyrighted work within the 1997 Bill to be given protection. Emotionally, we always felt that we needed to include a definition of a "work of mas" and to give protection to "works of mas" in the legislation of this country. What happened was Mr. Todd Gulick of the Callaloo Company came to us, together with Mr. Richard Affong of the National Carnival Bandleaders Association, and their lawyer Anthony Vieira, all suggested that we include in the legislation, a definition for a "work of mas" and to grant that "work of mas" copyright protection, along with the other kinds of works that are given copyright protection. Mr. Gulick brought the definition to us and we looked at that definition.

Legal personnel who looked at it felt that mas was already protected under other categories of works within the legislation and, therefore, there was no need to include a separate category of work known as a "work of mas". However, the feeling of many persons in this country was that we should include a "work of mas" and when we took the Bill to the Senate we got the support of the Senators and, of course, they voiced their concerns that we should include a "work of mas".

Prior to that, Mr. Speaker, after the comments of the legal personnel here in Trinidad and Tobago that we should not include "work of mas" because it was already covered; we would be overlapping categories, there was no need to do so, I took that and sent it to the World Intellectual Property Organization (WIPO) for its comments, indicating that it was very desirable for us to include "work of mas" in our legislation. The World Intellectual Property Organization's response was that again, it was not essential, but if we wanted to have it included we could do it in a certain way and we were given the rewording of the definition. As a result of that we were able to use the reworded definition suggested by the World Intellectual Property Organization and accepted it in the other place to include, for the first time in legislation in this country, protection for "works of mas".

Mr. Speaker, there are also other new areas that are covered in this proposed 1997 copyright legislation, especially in the field of computers and computer programmes. There was also urgent need for developing new legislation because of the difficulty with piracy and counterfeiting of copyright works. If we look at

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legitimate sales worldwide, Mr. Speaker, the total is US \$8 billion with respect to computer sales and computer software. The next figure that we have by the Software Publishers Association of America is that almost 48 per cent of the total sales of US \$15.5 billion, that is US \$7 billion, is pirated software. Out of the total sales of software, 48 per cent is pirated software, and not legitimate sales. Fifty per cent of the total lost, or \$3.75 billion, is lost in Europe, particularly in countries that are of the former communist bloc.

What we see is piracy with respect to computer software. One would tend to think that does not affect us here in Trinidad and Tobago, and we may not need to have strict laws with respect to counterfeiting and piracy of computer software; that is in effect something to assist the developed countries, not necessarily to assist us here in Trinidad and Tobago. In fact, there is an argument that it will be better for us not to have strict legislation to prevent counterfeiting and piracy of computer software since we do not develop that ourselves; it will be cheaper for us not to have strict laws. However, Mr. Speaker, that kind of argument is definitely not a worthy one, apart from the fact that we are saying it will be all right to use illegal and, therefore, pirated software.

Mr. Speaker, right here in Trinidad and Tobago, members of a particular company came to us at the Ministry of Legal Affairs to seek our advice as to how they could get protection for software that they had developed locally in Trinidad and Tobago for a particular industry. It was their view that they needed to do this because there were several American companies who were trying to get the software from them and they were very much afraid that if they did not have proper protection, they would be losing. They estimated that the software that they had developed was worth millions of dollars. I will not give the details because they are in the process of getting proper protection for that.

What is important to note, is that the argument that computer software protection is not essential for Trinidad and Tobago is a fallacy and it is very clear that right here we have the expertise, the talent, as well as the creativity in this field, to give adequate protection. Computer software is one of the areas to which this new Copyright Bill is seeking to give protection, where the 1985 Copyright Act did not give that kind of protection. The 1985 Copyright Act did not completely define a computer *per curiam* very clearly, but in clause 3 of this 1997 Bill, in the definition clause, there is clear definition, in my respectful view, of computer programming.

Now, when we look again at the question of piracy in computer programmes, throughout the world, existing copyright legislation has been and must be strengthened in other places and we are seeking to strengthen ours here. It has also been effectively enforced so that there is real progress against piracy in the interest of attracting foreign investment in developing countries. This has been done because it is hoped that individuals who make thousands of dollars out of piracy may be deterred by the thought that they may face heavy fines or imprisonment. Further, their equipment—that may be used to pirate things—may be seized, can now be destroyed by the order of the Court and, of course, they can get up to 10 years in jail as well.

Mr. Speaker, in this globalized world, foreign investment—we have always said and we appreciate—is essential to sustainable development together with the creation of permanent employment. Recently, the hon. Prime Minister himself went on several missions to the East, the USA and Canada, and those missions, in my respectful view, were clearly aimed at, amongst other things, the obtaining of foreign investment for Trinidad and Tobago. Such foreign investment would assist us with sustainable development and if we can get this, if we can attract the foreign investors and keep them, then there is the real likelihood of having some kind of lasting development.

Mr. Speaker, clause 19 of the Bill deals with the different lengths of time for which protection is granted to an owner of rights. The duration of copyright protection is shorter where a pseudonym is used rather than a person's use of his or her own name. The reason real and traditional personal property is property for an unlimited period is that since the ability to be possessed by one person to the exclusion of others is coterminous with the person's physical existence, the law must provide rules which determine the entitlement to possession for the duration of the person's existence.

We must remember that copyright is purely a creature of statute. It has no existence outside of the parameters of legislation. In other words, copyright is a legal right; it has no existence except as a legal right; that is as a creature of statute. So that what the statute does and the legislation seeks to do, is create a balancing of allowing the creator of a work to have the monopoly of the rights over that work for a limited period of time and, thereafter, it will become open to the public domain to allow further development and progress. So copyright is in fact, that limited exclusive right to deal with the work, to sell it, to assign it, or otherwise.

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Mr. Speaker, on the question of foreign investment, if we look at examples in the United States and the United Kingdom and see how they have reacted as potential investors to different countries with respect to intellectual property legislation and copyright legislation, an interesting picture would emerge. If we look, for example, at changes in laws in Brazil, in June 1996, they passed what is described in the November issue of the *Latin Trade* magazine, as the most progressive patent protection law in Latin America. This was done because amongst other potential foreign investors, a British pharmaceutical company, Glaxo, threatened not to invest a proposed US \$150 million factory in Rio de Janeiro if they did not put that law into place.

Therefore, when we are looking at copyright law, patent law, intellectual property law as a whole, it becomes very clear that if we are to attract foreign investment we must have the type of legal framework to give protection in order to attract them and keep them. There is another example, Mr. Speaker, in Brazil where Glaxo refused to invest their US \$150 million unless Brazil changed its law. So Brazil obviously went ahead, changed its law and this caused Glaxo to change their minds, thus taking their investment into Brazil.

Mr. Speaker, I would now like to take a look at clause 5(1) of the 1997 Bill. We see clearly there that:

“Copyright is a property right which subsists in literary and artistic works that are original intellectual creations in the literary and artistic domain.”

Clause 5 gives a non-exhaustive list of the type of artistic and literary works in which copyright subsists and, therefore, we should be given copyright protection. A host of original works are expressly set out in the list: books, computer programmes, musical works, audio visual works, fine art, photography, architectural works, diagrams, maps and plans. All of these are non-exhaustive because there will be others that will fall within copyright and would be given copyright protection.

Protection would be afforded to all creators of original works, authors, playwrights, script writers, film and video producers, composers, choreographers, artists, lyricists of all works whether it be soca, calypso, chutney or parang and so forth; whether it be the field of fine arts, graphics or plastic arts, mas designers, artisans, photographers, architects and draftsmen. Protection would also be given to the acquirers of those rights such as publishers, producers, mas bandleaders, directors and employers.

For the first time, Mr. Speaker, the pan arrangers will also be given protection under the copyright law. In clause 6 we would see significantly that translations, adaptations and arrangements of works, as well as collections of works on data bases are afforded full copyright protection. Therefore, translators, script writers—and very important for Trinidad and Tobago—arrangers of music, whether they be arrangers of pan or otherwise who create original work based on pre-existing works, can now receive recognition and reward for their creative output.

In keeping with the recent technological developments, computer programmers who develop data bases should also be afforded copyright protection for their products. This category of works is referred to in the Bill as derivative works and shall be without prejudice to any protection of a pre-existing work that has been utilized in making that work. The rights subsisting in original creative works would be in no way diminished. It is noteworthy that these rights were not specifically described and defined in the 1985 Act and we felt that it was important, based on the views we received, to include them in the 1997 Copyright Bill.

Mr. Speaker, we need to realize that today, copyright is essentially seen as a property right. It has become an important and vibrant factor in calculating the gross domestic product of most countries. Statistics from elsewhere show how important the creative industry is to national economies which show how piracy is corrosive of the industry, eroding millions of dollars and even billions in profit. If we look at, for example, figures from the United States, it is apparent that the copyright industry contributed 5.6 per cent of the United States' gross national product and employed more than \$5.4 million since 1993. In that same year, it is reported that this industry reduced the United States' balance of payments deficit by some \$45.8 billion. In other words, copyright business is big business.

In the United Kingdom, copyright contributes anything up to 3.6 per cent of the gross domestic product. Hong Kong, an island that is only 412 square miles, is the second largest exporter of quality print in a nation. It is reported that Hong Kong's exported printed matter alone accounted for more than 3 per cent of Hong Kong's gross domestic product in 1987. So that the rights protected by copyright, could and do form an essential and important factor in the gross domestic product of any economy. Regrettably, we do not have any figures for Trinidad and Tobago, Mr. Speaker. It is obvious then, that we should work towards this to see how much copyrighted matter and how much money is generated for the gross domestic product here in Trinidad and Tobago; also in terms of the employment that is created as a result of copyright.

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At Carnival time, there is much material in terms of music and designs but again, these need to be calculated on a monetary basis and we will be able to see that it is a substantial sum which can be accounted for. So therefore, on a world-wide scale, figures from the International Federation of Phonographic Industry reported that in 1995, sales of recorded music reached an all time high. The recording industry numbers report—this covers music market data from 1991 to 1995—found that sales last year reached 3.8 billion units. That represented a total monetary value of US \$40 billion world-wide in sales from the recording industry.

Much of this growth has been attributed to the massive success of the CD format. Again, like in the past, the digital press has created a profitable opportunity for national economies of countries so that we can see world-wide copyrighted matter is essential and important in development in terms of the GDP.

Whilst this is happening on the positive side, Mr. Speaker, on the other side of the coin there are losses in terms of money and employment that is being created. There are losses that result because of piracy, counterfeiting, bootlegging, sampling and outtakes. If we look at the losses provided by the British Phonographic Industry, in 1994 in the United Kingdom alone, the music industry lost £38 million. The video industry lost £250 million. In the United States, it is even worse with the loss of US \$2.25 billion. If we look at these figures—and again I say it is regrettable that we cannot have comparable figures for Trinidad and Tobago and the other Caribbean islands—we would see that a tremendous amount is being lost through piracy and counterfeiting. It is therefore most important and essential that copyright laws be put into place to try to prevent the counterfeiting and piracy that is taking place, as much as we can.

Mr. Speaker, I do not propose to go into the Bill clause by clause. I will be willing to deal with any questions, queries or suggestions that are raised by Members of this honourable House. I would like to point out that this new Bill strengthens the infringement provisions and, in fact, this is where the measures that are outlined in clause 7 of the Copyright Bill call for the special majority of the Parliament because of infringement of sections 4 and 5 of the Constitution. This is because we have attempted to give “stronger” protection—if we can use that word—to copyright. However, in so doing, we will be infringing sections 4 and 5 of the Constitution. Therefore, we will need the special majority of Members of this honourable House in order to put those stronger measures into place.

2.20 p.m.

Mr. Speaker, this then represents the framework—I will use the word skeleton. The legislation that we are putting in place is in fact the skeleton that has to be fleshed out and life has to be breathed into the legislation to work. Then we come to the issue that always arises, that is the issue of enforcement and implementation. We are putting this law into effect; we are putting stronger measures into place; we are giving protection to a wider range of categories of work, but what about enforcement? What about the implementation of it?

The Ministry of Legal Affairs has already started and will continue to have some kind of public awareness programme with respect to the provisions of the new copyright law. We will do so together with interest groups such as COTT and others. We have the assistance of the World Intellectual Property Organization and they have agreed to assist us with the training of customs and excise officers and police officers. In fact, a member of the Police Service was sent recently on a training mission set up by the World Intellectual Property Organization with respect to piracy, but we intend, with the assistance of the World Intellectual Property Organization, to have training here for our customs and excise officers and police officers in the near future.

In addition, Mr. Speaker, as we already started at the end of last month, Mr. Paul Berry, who is a consultant on intellectual property law, especially with reference to copyright, visited Trinidad and Tobago and assisted the Ministry of Legal Affairs in discussion on collective administration. Now, for copyright law to work, there must be appropriate collective administration systems set up. The Copyright Organization of Trinidad and Tobago only has certain categories of works and collects, as it were, the benefits for those works. COTT does not handle other areas and, therefore, it is essential that artistes group themselves in collective administrative societies so that they can reap the benefits of their creative efforts.

To this end, Mr. Berry met with the Carnival Bandleaders Association, the Copyright Organization of Trinidad and Tobago, the Trinidad Unified Calypsonians Association, Pan Trinbago, REACT and the Neighbouring Rights Association as well, and held discussions with them on the whole business of setting up adequate collective administration systems.

I saw in today's newspapers where Mr. Berry's discussions with those groups, is leading to some kind of insistence by some of those groups that royalties be paid to them for the showing of their works on video. So I think the education programme would be of tremendous benefit.

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Just one other matter, Mr. Speaker, that has to do with the question of folklore which we had originally included in the Copyright Bill and which we omitted. This was because of the public discussion we held where members of the public expressed the view that the provisions as contained in the 1976 Act with respect to folklore was not adequate and a series of questions were raised. In fact, next week the World Intellectual Property Organization, together with UNESCO, would be holding a world forum on folklore and Trinidad and Tobago would be represented at that forum by our Registrar of the Intellectual Property Registry. So we will be able to have the benefit of discussions that take place there. After that, we would be looking again at legislation to deal with the protection of folklore in Trinidad and Tobago.

[MR. DEPUTY SPEAKER *in the Chair*]

This Copyright Bill, in my respectful view, covers a wide range of works for protection; it provides for stiffer penalties; it provides for a wide range of remedies which could be utilized for infringement. In my respectful view, because of the tremendous amount of work that has gone into it by all interested parties, both locally and internationally, I believe that the Bill is technically sound and I would be very grateful for the support and look forward to the suggestions, during debate, from Members of this honourable House.

Mr. Deputy Speaker, I beg to move.

Question proposed.

Mr. Fitzgerald Hinds (*Laventille/East/Morvant*): Mr. Deputy Speaker, we have heard from the Minister of Legal Affairs and Member for Siparia, a rather eloquent and indeed timely expose' on the need for this Bill to repeal and replace the existing law, the Copyright Act of 1985.

I am quite appreciative and satisfied that a few months ago, the Member for Siparia had the courage and fortitude to resist forceful urges from her Government to rush this piece of legislation through this honourable Chamber. She resisted it and, of course, the urges that she got were repelled as well, by the hum of discontent that came from interested groups in Trinidad and Tobago. Consequently, the Minister, quite properly, at that time, did the honourable thing and today has come before this House and can properly boast as having undergone a process of rather thorough consultation with all the interest groups, and that is almost a certain recipe for a better product, a better law and a better service to the people of Trinidad and Tobago. I commend her for that fortitude and that strength.

I listened to what is by now, a well-rehearsed piece coming from the Minister—those words I read before, and I want to make the point that in respect of her thoughts on the question of the introduction of this Bill by the way of an amendment of protection for the works of mas, that at another place, the Minister from my understanding and my reading, was against the introduction of protection for the work of mas.

In this particular Bill before us today it comes in the form of an amendment. I think it is beautiful, it is welcome and for all the reasons the Minister explained, it is certainly a good thing, except, of course, that today she takes the opportunity to give the impression that she subscribed to that view originally. That is, of course, not the case. But more importantly, Mr. Deputy Speaker, work of mas is now protected as it ought to be in the context of Trinidad and Tobago.

Mr. Deputy Speaker, this is not about self-praise, certainly not, but the record must show, because the Minister told us about the experience of a company in Brazil and the importance of copyright legislation in the context of attracting foreign investment. We are all too aware that part of the impetus for this Bill and, in particular, at this time, is a response to our international treaty obligations. That is quite clear. I am quite proud and quite happy, just for the sake of the record, and this is not a self-serving comment, to indicate to this Chamber that the former administration was all too aware of the need for copyright legislation. In fact, it is the reason we proudly sent along our representative at that time, our Foreign Affairs Minister, to Marrakesh, who agreed on our behalf and signed to that agreement, including the TRIPS agreement.

2.30 p.m.

I am also quite happy to put on the record that it was the former administration which engaged the United States of America in negotiations and settlement of a bilateral investment treaty and a treaty protecting intellectual property rights. So that merely for the sake of the record, I want to indicate to this honourable House that that is nothing entirely new and that the former administration was all too aware of the need for modern legislation in this area.

I also want to place on the record, at the outset, that any time any legislation comes before this honourable House which involves an interference, as slight as it may be, with the Constitution of Trinidad and Tobago, for my own part, I become immediately alarmed when it comes from the other side and I have every reason to think that every Member on this side has good reason also to be particularly alarmed.

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This legislation, because it impinges upon an element of the fundamental rights, requires a special majority for its passage, and notwithstanding the alarm that we feel when we hear the words “constitutional amendment” coming from the other side, given their manifestations for the last year, we are prepared to subscribe to it and to give this Bill the support that it requires. That is, of course, after taking a very close and careful look at every single word, every dot, every comma.

Indeed, this modern facelift to copyright legislation is welcomed and it is designed, as was made quite clear by the Member for Siparia, to repeal and replace the old Act. This legislation carries much more stringent penalties for breaches and infringements of copyright. Of course, this is big monetary involvement and certainly one has to respond by hitting out at those who seek to pirate where it hurts most and an increase in the penalties—now we have gone to an upper limit of \$100,000—is, indeed, very welcome. Where there are infringements—in certain circumstances, it threatens terms of imprisonment for as much as 10 years. I want the people who are engaged in pirating up and down this country to understand that we lend our support to these measures because we are, indeed, serious, having started it and we support the Government in dealing with this rather serious problem.

As was indicated by the Member for Siparia, the 1985 legislation which we now seek to repeal, in section 6, defined copyright rather simply. There is no point in reading it; it is now a public document and it is there for the record. At any rate, I agree with the Member that the definition and the embrace of copyright and the elements that are sought to be protected, are certainly a lot more comprehensive in this Bill than in the existing legislation. Indeed, it ought to be so. Between 1985 and today’s date, considerable advances have been made in technology and it is with the aid of technology that pirating flourishes, as it does, in a modern society.

[MR. SPEAKER *in the Chair*]

In fact, lawyers would know that there has emerged a body of case law arising out of efforts to deal with pirating. A number of orders and injunctions have all come out of an attempt by members of the international community, in particular the one we focussed on in the United Kingdom, to deal with this. What we are seeing around the world as the world becomes more globalized, is that in most civilized states, including, of course, Trinidad and Tobago, modern copyright legislation is being put in place and serious efforts are conducted to stem the problems that exist and subsist.

Mr. Speaker, in the deliberations of a committee that was put together to deal with this question of copyright, one of the concerns of that committee was to make this Bill, in its language, more user-friendly. It is a word that I have heard the Member for Siparia use time and time again and there is no need to attempt to explain what it means. I think it is self-explanatory. This Bill has gone a long way in achieving some of that. There is much complexity yet in it and I suspect that complexity is entirely unavoidable in this very specialized area of law.

The objective of it being more user-friendly, plausible as it is, is not entirely achieved. I suspect it will probably never entirely be achieved. In fact, if we could structure legislation in such a manner that every single pirate or interested party could read and easily understand, that would be ideal, indeed, because I have no doubt in my mind that if the honourable people who walk the length and breadth and live in this country, properly understand the implications of some of their actions, they would desist from some of the practices that now exist in the society and reduce the burden that is placed upon people who, out of their own creativity, put things in place only to see others drain away the income that would ordinarily flow from them.

This Bill that we seek now to put in place extends the category of persons and the range of protection that is offered. In general, it seeks to protect the creative output of performers, singers, writers and such like. There are organizations around the world, in the United Kingdom, in the United States and in France. The Performing Rights Society; the American Society of Composers, Authors and Publishers; the Society of Authors, Composers, Editors of Music, in the United Kingdom, the United States and France respectively—all these institutions, just like our local and rather important association, the Copyright Association of Trinidad and Tobago, play their part in attempting to ensure that the creative energies of those who take time, money and effort to do it, are not wasted on those who invested nothing, that is, the pirates.

Our local Copyright Association of Trinidad and Tobago performs a very useful function indeed. I join wholeheartedly with the Member for Siparia and Minister of Legal Affairs in complimenting that association for the work that it has been doing in this realm from 1984 when that organization was established. I know that it has come in for some criticisms, but certainly it has performed creditably over the years. Its limited functions include offering technical expertise to the people who create these works. It performs that important function, though only

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largely for composers; the collective administration function. It monitors the use of works that are protected. It grants licences to people who, in one way or another, intend to lawfully make use of these works. It distributes moneys, having collected them, to the interested parties. Most of all—and as will grow in its importance as we put this Bill in place—it educates the society as to the important elements that are involved in the whole scheme of intellectual property protection. I wish to compliment them.

While we acknowledge that this Bill has as a large part of the drive behind it, the satisfaction or fulfilment of our international obligations, it is critical that as a matter of policy, of practice, and as we administer this legislation in the years ahead, that we seek to ensure that the benefits that can be derived therefrom, accrue not only to our international partners in this world of trade and investment, but moreso, and rather importantly, to those who produce those works in Trinidad and Tobago.

2.40 p.m.

I think all it requires is a rather different or healthier attitude of mind as we approach it. I was quite happy to hear the Minister utter these words and trust her integrity no end. I am sure she would do all within her power to resist any urges that will inevitably come from the other side to maintain that trend.

Mr. Speaker, I read in the newspaper a few days ago, with some degree of deep concern, that the National Carnival Bandleaders' Association said that come carnival next year we would not be so fortunate as we were in previous years to see the parade of bands on the television. I came by this information through a newspaper report and it saddened me because though this festival of carnival comes once per year, a number of viewing hours please us greatly as we sit at home—those of us who do—and enjoy the parade of bands on television.

I cannot tell what is the reason for that if, indeed, that is the case, but it will be reasonable for me to assume, based on the trends that I have been hearing and the things that I have gathered on it, that it might be because the National Carnival Bandleaders' Association made certain demands for payments for having the parade of bands put on the television; some person or persons, or group of persons, perhaps, I do not know. I would hope that the Minister has more information on this than I and in her winding up she will edify us and tell us if she has any further information. I suspect, based on what I am gathering, that because they made certain demands and insisted on demands for money, that someone decided in that case, no television.

Mr. Speaker, if that is the case, again, it does not immediately demonstrate a desire to ensure that local creative output is encouraged and protected and that where applicable, remuneration is made for this creative energy. It is a matter of concern, and I am sure that many people up and down Trinidad and Tobago share similar concerns. If there is more information forthcoming, I await it eagerly.

If, indeed, that is the case, at least three consequences would flow. It means that during those hours when we would normally have enjoyed the parade of bands, it is possible that maybe foreign works of art would be brought to us as a replacement. It means, therefore, that the Copyright Organization of Trinidad and Tobago would collect moneys, but those moneys would be siphoned off elsewhere, again, to the detriment of our local creative geniuses.

Mr. Speaker, those two consequences are not healthy at all. As I indicated earlier, whatever we do or say in the administration and the practice—and even now as we legislate in this area—we would want to see an attitude that suggests that we are putting concerns of the producers and the artistes of Trinidad and Tobago first and foremost in all that we do.

I call on the local artistes to understand that notwithstanding that and any other frustrations that may beset them, they have done a great service to Trinidad and Tobago over many years and that they should continue. I urge them to recognize that this legislation is a significant advance in terms of protection on what existed previously and they can now feel freer, hopefully, and let those creative juices and energies flow which will redound to the benefit of them, their families, and indeed, Trinidad and Tobago. Please, come on and do the work.

Mr. Speaker, I was told, as I concerned myself with preparing for this debate, that it is indeed the case that significantly more music, for example, produced by artistes outside of Trinidad and Tobago is still ventilated on the airwaves in Trinidad and Tobago. Nothing is wrong, of course, in this world to share the culture, music and creative energies of others. We have always done it and I know we always will, but it is going to be a great day when the Copyright Organization of Trinidad and Tobago, whose figures of collection reflect the playing of the music—at least the proportions in which it is played between local and foreign—can one day report that they have collected more in a given year by way of royalties for music played locally than that emanating from overseas. [*Desk thumping*] As true lovers of Trinidad and Tobago, as true samplers of its culture, we on this side look forward to that day with relish. We are not entirely stating

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that it is likely, given what we are faced with in this country today, but we keep faith and hope.

Mr. Speaker, I want now to turn my attention to a few elements. *[Interruption]* Indeed, I keep at the highest level, but truth is the highest principle, Member for Tobago West, and wherever one goes, even in this Chamber we must speak the truth, and I shall speak it. *[Interruption]* Especially in this Chamber, we must speak the truth. When I speak the truth and I hear the Member for Tobago West telling me to keep it higher, I really do not understand what she is saying. I know that she has unlearnt the art of distinguishing between truth and untruth and between right and wrong.

Mr. Speaker, I wish to bring your attention to clause 26(4) which reads as follows:

"In respect of a work created by an author employed by a natural person or legal entity in the course of his employment, the original owner of copyright shall be, unless provided otherwise by agreement, the employer."

What this is saying, in effect, is that unless there is a clear prior agreement, if an individual is in the employ of a firm, his creative work will be deemed to be that of the firm. The natural person or the legal entity will be regarded as the original owner of the copyright.

Mr. Speaker, in other departments of law the question of whether one is an employee, or is involved or engaged in a contract of service or a contract for services is clearly well-defined. In this particular legislation I suspect that if a problem arises in this department, especially in light of the fact that we do not have a system of registration of copyright and, therefore, no one can come—a matter that I will deal with more extensively in a while—with a certificate and show that he has registered this at a particular date and time, there can be all kinds of confusion arising out of who would claim the ownership of the copyright in a situation. I suspect, as a lawyer myself, that a resolution to this will come from other or general legal principles, but it is something that had been brought to my attention by an interested party; and just as the Government claims to be, we are responsive. I put it on the table and urge the Member for Siparia, the Minister of Legal Affairs, to apply her mind swiftly to it and tell us something in her winding up.

2.50 p.m.

That particular problem would be, of course, exacerbated when there is, for example, a pan arranger or a pan tuner who comes as an affixation to a particular band at a time and he does some work. We have just learnt from the Member who proudly said that, for the first time, arrangers of pan music will enjoy protection under the legislation that we now seek to put in place.

The problem I have just described would be exacerbated in a case like where the arranger comes, does his thing and goes away. He is not an employee of the band as such, for example, a freelance photographer working for a news house. I merely raised this so that the Minister could apply her mind to it and, if possible, prevent any problems which may arise later.

I turn now to clause 3 of the Bill which includes the definition section. There is a definition of “communication to the public.” I had the benefit of exposure to a document—I think the Minister mentioned it in passing—issued at the hand of a renowned expert in this area of copyright law. In fact, Mr. DeFreitas drafted the 1985 legislation. I was taken aback that his rather simple and straightforward suggestion that a few words be added to that definition for the purpose of clarity was, either intently or otherwise, overlooked by the Member for Siparia. I felt it compelling, because having read the definition of what “communication to the public” means, it is long-winded. We all have the document before us, so there is no need for me to read it into the record. I draw the Minister’s attention to the rather straightforward suggestion by Mr. DeFreitas that a few words can be inserted after the word, “wire or wireless” for the purpose of clarity. I am sure this is not the first time the Minister is hearing of this. She would have had the benefit of reading the document herself. I bring it to her attention, yet again, hoping that she would sort this out in her winding up and make this legislation more efficient than it is now.

Mr. Speaker, in my consultation with interested parties, I spoke to a representative of an association called Neighbouring Rights Association of Trinidad and Tobago. I read this Bill as I should, and as we all have. It states in Part V, clause 20:

“Neighbouring rights are property rights which subsist in performances, sound recordings and broadcasts.”

My understanding of neighbouring rights suggests, with the greatest humility, that those words cannot entirely convey the essence of the concept. I am not an expert by any means in this area of law.

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The representative of that association felt it necessary to lend me a document which I shall share with this honourable House, an example of what are neighbouring rights. He described it as follows: He caused me to recall a tune: “On the Road” made popular by Ronnie McIntosh in 1994. As happens with many, the writer of the song was Super Blue (Austin Lyons), the producer was someone else, whose name I cannot immediately recall and the performer was, indeed, Ronnie McIntosh. There were, at least, three persons coming together to present to us, the consuming public, a rather interesting and enjoyable song. That is a perfect example of what are neighbouring rights. The composer carries, if one could call it, the fundamental rights as he wrote the lyrics to the song, though I do not ascribe any priority in terms of the levels of rights. The composer would have written the lyrics and the neighbouring rights would be for the performer who did the song that we enjoyed and, of course, the producer who put it together. Together they made the song palatable and enjoyable to us all. That is an example as Mr. DeFreitas put to me, of what neighbouring rights really are all about. As the 1985 legislation stands today, the Copyright Association of Trinidad and Tobago organizes, monitors and protects only composers’ rights. That lends itself to a great disservice and cheating of the intellectual property of those persons with so-called neighbouring rights.

Mr. Speaker, if there is one major concern that this Bill indeed, quite properly, sought to address was that. Because of the intensity of the delivery from the representative of the Neighbouring Rights Association of Trinidad and Tobago I immediately recognized that it was a matter of grave concern—and he spoke for his entire association. I am quite happy that this legislation attempted to deal with that. He did, however, express, and I too wish to express to this House, some element of concern, in that while it is now recognized as an exclusive right, it did not seem in the legislation to be given the pride of place, the recognition, and more importantly, the protection that it seeks. Mr. DeFreitas calls in aid clause 23 which at subclause (1) states:

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

His concern, and indeed mine, is the question of the “single equitable remuneration.” I read from the deliberations in the other place that there are

concerns in Jamaica and other parts of the civilized world, and perhaps indeed, there are some persons who, because of their own economic circumstances and unawareness of the benefits of this kind of legislation, are really—and to put it blandly and colloquially—ripped off; they create a work and they receive a rather small single payment. The purchaser of that then takes it, uses his ingenuity and his knowledge of the business and makes a whack of a lot of money as a result of that. The question of a single payment, therefore, alarms me. *[Interruption]* I am getting a question from the Member for Oropouche. It is certainly not the kind of whack that Balroop has made well-known to Members of this House. I wish to continue undisturbed. Mr. Speaker, I am being disturbed. The Member for Oropouche, perhaps, does not have a lawnmower. *[Interruption]* That is logic.

3.00 p.m.

I would like the Member for Siparia to consider that particular subclause, and, as I have expressed, on behalf of Neighbouring Rights Association of Trinidad and Tobago (NRATT), that it be given some further attention with a view to making even better that which is good. I am confident, based on reports received, that this matter was previously brought to the attention of the Member for Siparia. *[Interruption]* I am advised and accept as truth that the Member received the communication today.

Other very simple questions arise. For us lawyers and Parliamentarians, perhaps we would have no difficulty, but it is well-known to us now—and this is not to cast any aspersions on anyone or even our courts—that because copyright law is a rather specialist area, it may be that even those who adjudicate and those who practise are not entirely appreciative of some of the finer and more subtle elements of copyright law. If that is so, can you imagine how much difficulty interested parties who are not legally trained would have? In that particular subclause, the question about who decides on the equity would obviously arise.

Subclause 23(2) says that the court will make a determination in the absence of some solid agreement, but that would be *ex post facto*. If one can have a little more certainty as one attempts to interpret this legislation in the course of one's business dealings, then that would be very helpful indeed. I hope that the Minister would contemplate this rather simple matter for the purpose and benefit of efficiency.

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One concern that has been mooted elsewhere, a rather valid one and one with which I concur, is the establishment of a copyright tribunal, in this jurisdiction, and as a part of the entire framework of copyright protection. I am aware that this is a matter which has engaged the attention of Members on the other side and particularly the Member for Siparia. She explained in the other place that such a tribunal is a worthwhile course to adopt. We are aware, for example, that in the United States of America, there is a copyright tribunal, the function of which is to deliberate, not on matters of infringement, but on matters of agreement between parties insofar as those rights are concerned. The courts, I suspect, will continue to deal with infringement of copyright and protection. Mr. Speaker, I am advised, based on my readings of the discussions in the other place that the Minister had seriously considered and had promised to continue to look at that seriously. We look forward to that.

The question of the registration of copyrights is a matter to which I alluded earlier. The registration of copyrights is a rather useful approach to take. It is simple. In the area of intellectual property protection, the Registrar does not concern himself or herself with who invented the product or who created the work, he is concerned largely with who protected it and that entity is the one that the law recognizes as being the owner of that intellectual property. For those reasons a system of registration will be quite helpful because there may be a situation where a person claims that he is the creator of the work. If there is a system of registration and a certificate is issued upon registration, that individual will be able to demonstrate that at an earlier date and time he protected that particular piece of intellectual property and many problems would be avoided.

I am advised that this is a matter to which the Member for Siparia has applied her mind and she explained, perhaps correctly, that it will take some time to put it in place. It is a matter which requires further consideration and the Member shall pursue those thoughts. We have no international obligations to establish a registration system, but it is undoubtedly the case that it will help no end.

Mr. Speaker, the Minister explained quite properly that in view of our international obligations, and in view of the deficiency of the existing legislation, she would not be detained by those deficiencies and get on with this. We on this side accept this as a plausible position to take.

In terms of the effectiveness of this legislation, it is a matter of common sense that the law cannot entirely restrain the human being. It is self-evident that wherever in the world there are laws in place, however stringent the sanctions,

human beings attempt to circumvent those laws and, indeed, in many cases succeed. It is quite clear that even though we make this particular law much more stringent, efficient, all-embracing, wide-ranging and widen the net of its protective embrace, it requires constant education of all those who may, in one way or another, act in a manner which may impinge on this legislation, that is to say, the Copyright Organization of Trinidad and Tobago, all interested groups, all artistes, all creators of this kind of intellectual property and, indeed, all pirates or persons who seek to circumvent this legislation for their own financial benefit, to the detriment of others.

3.10 p.m.

Mr. Speaker: The hon. Member's speaking time has expired.

Motion made, That the hon. Member's speaking time be extended by 30 minutes. [*Hon. P. Nicholson*]

Question put and agreed to.

Mr. F. Hinds: Mr. Speaker, I am particularly grateful to the Member for Tobago West—so gracious is she—and, indeed, to all Members of this honourable Chamber. I rather suspect that I would not need the entire allotment of time because I was approaching my conclusion.

As I indicated, there is a clear need for much more education in this department of the law. At the beginning of my contribution I expressed my utter confidence in the people of Trinidad and Tobago, however, there are some persons who test that confidence and I see many of them here today. I am confident though, that once those people who are inclined to do things to the detriment of their brothers and sisters—those who work hard and at great costs to create work, recognize the implications and they learn that there are opportunities for them—Mr. Speaker, the creative energy it takes to capture a man's work as soon as it is heard, to reproduce it in mass quantities and to distribute it on the underground market outside of the gaze of the inspectors, police officers and those who enforce this legislation, is creative energy indeed.

The Copyright Association of Trinidad and Tobago has indicated that it would attempt, in its process of education, to demonstrate to those would-be pirates—at least in Trinidad and Tobago—that the creative energy they clearly have could be used to do works for themselves and they could benefit to no end from it, so I urge them to continue.

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Mr. Speaker, over the long weekend, in a period of relaxation, I listened to a long playing record, *Africa 70* by Felé Ransom Kuti, that I particularly love and thoroughly enjoy. I was amazed and excited when I observed on the back of the record jacket there was an inscription—it was a cassette with two holes which represented eyes and something that looked like a skull, with two cross bones under it which said: “Home taping kills”. I thought that was really significant, Mr. Speaker. That record was produced and printed in the United Kingdom, a jurisdiction which has mastered the art, to a large extent, though it has problems with pirating, monitoring and enforcing copyright legislation. Notwithstanding that, the producers of that piece of work saw the need to attempt to educate those into whose hands it came with that little inscription. As I said, I particularly liked it because it demonstrates the point I am attempting to make: That education will reach the parts that legislation would not; that education is not only for the would-be pirates.

The Customs and Excise Division must also be the beneficiaries of much learning so that when it sees 8,000 or 10,000 LPs, CDs or cassette tapes it would understand, immediately, that something could possibly be amiss. The Customs and Excise Division’s concerns must be raised and it must conduct the kind of investigation that ought to be conducted.

Hon. Member: There must be more vigilance.

Mr. F. Hinds: Yes, there must be vigilance, indeed.

I am told by representatives of the Copyright Association of Trinidad and Tobago that the police—hardworking as they are—may sometimes see an offence and may not recognize it immediately. In this respect, education is, again, very critical. Those who administer this law: practitioners, the courts and so forth, must be able to recognize it.

One of the reasons I put the case for the tribunal—and the Minister has undertaken, as I indicated—is that litigation that comes under the copyright legislation find themselves alongside all other court matters. I am told that these matters are adjourned on many occasions because they do not hold the pride of place in people’s minds. This is not to cast aspersions, but much has to be said on the question of education insofar as copyright legislation is concerned.

Finally, it is the practice in Australia, at least, and I know this for a fact that—

Mr. Maraj: Have you been there?

Mr. F. Hinds: I want to reply to the Member for Naparima that one does not have to be in a place to know of it. If that is the limit of his capacity, it certainly is not the case here. *[Laughter]*

Mr. Maraj: I walked into that.

Mr. F. Hinds: You are in that place and apparently you are not even aware of it. If you were—a man of your calibre and integrity—you would have been in the right place. Mr. Speaker, I wish to continue undisturbed and unperturbed.

An alarming situation has come to light, and I wish to put on record some facts that came from the very hard-working Tourism and Industrial Development Company (Tidco), using statistics from the Central Statistical Office. Those statistics have been put in the other place but I think I owe it to Members of this House to demonstrate the seriousness of some of these issues. In 1994, some 2.2 million-plus blank audio tapes were imported into Trinidad and Tobago. The records for that year show only 11,000 recorded works on audio tapes left Trinidad and Tobago. In 1995, I think, that figure increased, marginally, to 19,000. The question obviously arises therefore: What has become of those 2.2 million-plus blank tapes that were imported into Trinidad and Tobago and did not leave, legitimately, filled with music?

I suspect that the head of the Tourism and Industrial Development Company (Tidco)—hardworking as that organization is—may have something to say on this. *[Interruption]* It was a report that came from the Tourism and Industrial Development Company, therefore, my question is quite legitimate. To what extent have these tapes—in terms of the amount unaccounted for—operated to the detriment of those who create these works in Trinidad and Tobago? It is quite reasonable to assume that many of these would have left this country, illegitimately, in breach of the legislation we have in place and which could continue in breach of the legislation we now seek to put in place. Again, this is a matter for the Customs and Excise Division and I hope that the educational process continues.

Mr. Speaker, we may think that members of the national community do not pay close attention to the deliberations of this Chamber, so I take this opportunity to warn of a matter that was brought to my attention. I am told that a citizen of this country, in his uprightness and honesty, approached a vendor selling recorded works and inquired about purchasing one of those works with local music. However, when he raised the question of it being done in contravention of the

copyright legislation, the vendor was able to produce a licence from the Copyright Organization of Trinidad and Tobago. He made further diligent inquiries which revealed that the licence from the Copyright Organization of Trinidad and Tobago was quite properly issued upon application, but for the limited purpose. It was a licence to play that music in a party on a particular occasion.

This individual now chooses to use this certificate with the logo of COTT as a trick to coerce persons, as honest as that buyer was, and to give the impression that he was operating legitimately.

3.20 p.m.

Mr. Speaker, I wish to take this opportunity to warn members of the national community that is dangerous and it works to the detriment of the artistes who work so hard and diligently in this country to bring us the pride and the income that they certainly do, and we must be careful as we seek to do business with such persons.

I feel quite gratified that this Parliament has given me this opportunity to speak in this important debate that deals with copyright legislation and administration; a piece of legislation that, no less than others, reflects Trinidad and Tobago's surge towards being a more modern and competitive economy and society in today's world. I am entirely gratified and I feel so beautiful and confident that this vision was espoused and enunciated by our party and it has continued. It is something that we had set in motion and like truth, you can do what you want with it, it shall remain unmoved, and it would continue, notwithstanding whatever others may attempt to do with it. I am proud to be on the side that gave birth to those wonderful ideas and I am proud to have been given an opportunity to speak in this important debate. I am quite confident that the Member for Siparia will attempt to address, though with short notice, some of the very fleeting concerns that we have raised. I trust her integrity.

Mr. Speaker, I am grateful to you and to this House.

I thank you.

Some Members of the Opposition leave the Chamber.

The Minister in the Office of the Prime Minister (Dr. The Hon. Vincent Lasse): Mr. Speaker, I rise to make a modest contribution on this Bill entitled, "An Act to make provision in respect of copyright and neighbouring rights, in substitution for the Copyright Act, 1985, and for related purposes".

Mr. Speaker, before I deal with my contribution, I wish to touch briefly on some of the points raised by the Member for Laventille East/Morvant. After listening to the Member, I assure him that there is no contention *vis-a-vis* the fact that this work is not continuous. *[Interruption]*

Mr. Hinds: Mr. Speaker, I am very tempted to take the assurance given by the Member for Point Fortin, but I have been given other assurances. Nonetheless, I shall hear him out. Please continue.

Mr. Griffith: Mr. Speaker, the Member is a man of integrity. He shows class.

Dr. The Hon. V. Lasse: Mr. Speaker, as I was saying, as far as government is concerned, it is continuous, especially when we are dealing with international obligations, and this piece of legislation before us today touches that area. Not to view this otherwise would be folly.

The Member for Laventille East/Morvant made reference to our international partners and indicated, among other things, that probably the legislation may have provided opportunities for international partners to benefit. Mr. Speaker, when we consider this Bill very carefully, we see that the legislation deals specifically with protection for the work of composers, calypsonians and pan arrangers. So it is not proper to say that the legislation deals exclusively with supporting our international partners. However, when the Member touched on the question of royalties, I believe he was really missing the point.

I refer briefly to the Member for Laventille East/Morvant's contribution on Article 26 of the legislation. This Article was very, very clear because it spoke about the original owner of the copyright as the author who created the work. This was very clear and convincing to the layman as well. Clause 26(2) went on to treat with joint ownership which stated that where there is a joint partnership, if the work is divided in two parts the author of Part I shall be the original owner of that part and the author of Part II shall be the original owner of Part II. This is clear to me, Mr. Speaker.

The Member for Laventille East/Morvant also spoke about the registration of copyrights. On the one hand, the World Intellectual Property Organization sent a mission to Trinidad and Tobago in 1994 to deal with the registry for intellectual property. The question of copyright being private property needs much more work to be done. I am sure that the World Intellectual Property Organization would continue to assist Trinidad and Tobago as it continues to assist developing countries in this regard.

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Mr. Speaker, I shall now turn to my contribution. Of the various branches of intellectual property law, such as patents, trademarks, designs, confidence and so forth, copyright, in my view, is of particular interest and importance to nationals of Trinidad and Tobago, moreso, to our composers, calypsonians and pan arrangers.

3.30 p.m.

It is said—and there can be no doubt about this—that we in Trinidad and Tobago are rich in cultural art forms and, because of this, we need the legal exclusivity in the market-place and, of course, Mr. Speaker, the right to prevent others from using our ideas and our information for their own commercial benefits and advantages.

Mr. Speaker, we are all aware of the numerous debates, conferences and international negotiations about intellectual property but, Mr. Speaker, I submit to you that legal protection is still, at base, a matter for domestic laws of each state or territory. While this bill, as stated in its Explanatory Note “is a part of the general overhaul in our intellectual property legislation to harmonize it with international treaties and conventions to which Trinidad and Tobago is a signatory, as well as, to modernize our legislation in the field of law to bring it up to international standards...”, what is most important, Mr. Speaker, is the provision of legal protection at base. When I say “at base” I mean here in Trinidad and Tobago, for our composers, performers, and our calypsonians, who will be given the legal framework to fight against the continuing acts of piracy, especially at carnival time.

I speak here with a measure of authority and experience, having been for many years myself a musician and, at present, a carnival bandleader. [*Desk thumping*] Mr. Speaker, when I mentioned that the piece of legislation, among other things, is to harmonize our laws with international treaties and conventions, I must state that Trinidad and Tobago acceded to the Berne Convention on August 16, 1988 and the Berne Convention is the main convention dealing with the question of copyrights.

Now, Mr. Speaker, those who are familiar with intellectual property law would recognize that in the field of copyright, there is a long history of conferring special remedies against pirates. For example, the British Copyright Act, 1956, section 21, creates a series of summary offences concerning certain types of activities that infringe copyright. The activities covered include making copies for sale or hire, trading in them in specified ways, and exhibiting them for trade purposes. Further, this Act of 1956 gives proscriptions covering possessing plates for manufacturing

infringements, and causing literary, dramatic or musical works to be performed in public. However, what is very important in applying the law, is that the person who is actually infringing must be aware of the fact that he is committing that crime in the first place.

Mr. Speaker, protection of performers, recorders, and broadcasters, is adequately covered in Part V of this Bill. Clause 21 of the Bill, among other things, states that:

“a performer shall have the exclusive right to do, authorize or prohibit any of the following acts:

- (a) the broadcasting or other communication to the public of his performance other than a communication through an electronic retrieval system, except where broadcasting or other communication
 - (i) is made from a fixation of the performance, other than a fixation made under the terms of Section 25;”

Section 25 deals with the limitations on protection, such as the use by a person exclusively for his own personal purpose— for the purpose of teaching activities; or for scientific research and so forth.

Pursuant to clause 22 of this Bill—

“a producer of a sound recording shall have the exclusive right to do, authorize or prohibit any of the following acts:

- (a) direct or indirect reproduction of the sound recording in any manner or form;
- (b) importation of the copies of the sound recording, even where the imported copies were made with the authorization of the producer;”

Here again, Mr. Speaker, section 25 refers—if a person is utilizing this for his personal use or where it is being utilized for teaching, or for scientific research.

Mr. Speaker, as I mentioned earlier, this clause dealing with the protection of performers, recorders and broadcasters is closely related to the United Kingdom Copyright Act, 1956 which supported the entertainment industry as we are now trying to protect it. More generally, what we see here is that the United Kingdom had become a strong supporter of international collaboration against the piracy of the work of performers, particularly through the media of records and broadcasts.

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This drive of the United Kingdom resulted in the Rome Convention on the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations. The Convention was done in Rome in 1961, a mere five years after the United Kingdom Copyright Act, 1956 had been put in place.

Mr. Speaker, having said this, I am confident that all Members of this House would have recognized the importance of these clauses, and should find no difficulty, from a jurisprudence point of view, in supporting a piece of legislation which would be giving protection to nationals of Trinidad and Tobago. It goes further than this, because this piece of legislation deals with the public interest versus partisan and confrontational politics. I submit that where public interest is involved there should be no room for partisan or confrontational politics. There are those who may not be thinking positively.

There are those who allow their emotions to run away with their wills, as we saw earlier. There are those who may be devoid of logic and, again Mr. Speaker, there are those who may take the silly approach of not supporting a piece of legislation because they do not want to make the Government look good. Mr. Speaker, all I am saying is that this piece of legislation is not protection for the Government, it is protection for the nationals of Trinidad and Tobago, and I submit, public interest is involved here.

3.40 p.m.

Mr. Speaker, the passage of this piece of legislation is for the protection of nationals of Trinidad and Tobago: performers, artistes, pan arrangers and so forth. Those who fail to recognize this fact would be seen not only as obstructionists, but also as individuals who have adopted the confrontational approach even if it means denying protection to the nationals of Trinidad and Tobago.

We are now in the age of high technology and here I must agree with the Minister of Legal Affairs when she mentioned that events have overtaken the 1985 Copyright Act. Because, not too long ago, there was only calypso. Today there is soca, chutney, rapso, gospel-calypso, a fusion of soca/chutney, a fusion of pan and brass and, of course, art forms are developing at an alarming rate. It is said also that law follows the changes in society. So, too, should our intellectual property law follow the latest developments in our high technology. Therefore, as legislators, we must agree to preserve and encourage the rapid development of our artistes and our cultural art forms, which need a solid legal framework to ensure adequate protection.

Mr. Speaker, in the other place, it was interesting to note that this Bill was well received by all sides, to the extent that it was said that when a measure like this, which would benefit the country at large, comes before any House, it should be supported. Here again, I wish to refer to the concept of public interest. This is the type of positive and pragmatic response which is expected from reasonable and prudent men. It was refreshing when I heard the Member for Laventille East/Morvant say that he would be supporting this Bill.

Successive governments have become more aware of the importance of international trade and, in this regard, Trade Related Aspects of International Property Rights (TRIPS). This has become prominent on the national landscape and also on the national agenda. Thus, I submit that support for this piece of legislation is, in my view, a progressive step in the right direction.

Mr. Speaker, permit me to allude to an article in the *Daily Express*, Thursday, February 20, 1997, entitled "The fairness of copyright," which was written by Mr. Alvin Daniell, chairman of the Copyright Organization of Trinidad and Tobago. He referred to two aspects. He asked: Why is it wrong for individuals to sell cassettes on the street? I quote:

"The cassettes sold on the street represent unauthorised duplication of sound recordings owned by others. To appreciate the severity of the wrong being perpetrated by the offending individuals, one must consider the financial output of the original producers. To produce an album of six songs could cost between \$80,000 to \$120,000 depending on the technical persons used in the various stages of the production. The 'pirate' as he is not so fondly referred to, selects the best songs from ten to 12 albums and prepares a compilation. His only cost is a cheap 60-minute cassette."

Mr. Speaker, this is the classical example of what takes place during the carnival season and, of course, the only person who benefits here would be the one who has been the "pirate", so to speak.

The second point raised by Mr. Daniell was: How should the public view copyright? And this is very, very important. He went on to state, Mr. Speaker, that:

"The public should view copyright as the product of a creator's mind, as intellectual property. It is a product which can be bought and sold, passed on to one's family, and used as collateral in the same way as land."

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This is very interesting, Mr. Speaker, seen at the local level. But I shall now treat with this matter briefly, at the international level. It is said that the obligation to protect and the protection of beneficiaries does not stem from the fact that a given state is a party to the Berne Convention, which is the principal convention dealing with copyright as has been stated in Article 2.21 of the Berne Convention and I quote:

"Other countries, notably those following the British legal tradition, treat Conventions as agreements between States. Ratification does not, in itself, make any difference to individual rights enjoyed there. The obligations imposed on such countries by the Convention must be met by legislation, before ratification takes place."

This is the point I am trying to make, Mr. Speaker. Legislation at the national level must first be put in place and, of course, it is necessary for Members of this honourable House to support this piece of legislation, which would give protection to our nationals at the international level.

3.50 p.m.

Mr. Speaker, it is legislation, and not the convention itself, that gives convention nationals the right to sue in their courts.

Mr. Speaker, permit me to deal briefly with *National Treatment, Automatic Protection, Independent Protection and Country of Origin*. I refer here to Article 5 of the Berne Convention which sets out the fundamental principles on which the convention is based and these are the pillars which hold the building up and determine the structure of the protection.

Mr. Speaker, with specific reference to the *Principle of National Treatment*, Article 5(1) of the Berne Convention states, and I quote:

"Authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention."

Here again, Mr. Speaker, if national laws are not in place then the protection of our nationals would not be guaranteed internationally, and I wish to stress this.

Mr. Speaker, I must stress again and again, the need for legislators in this country and I mean here, Members of Parliament—those present—to recognize the fact that it is of paramount importance for all to support this piece of

legislation and I hasten to say it should not be seen as support for a Government, but rather, support for the nationals of Trinidad and Tobago.

Mr. Speaker, this must be made very clear. Once national legislation is in place pursuant to Article 5(2) again of the Convention, foreigners are treated in the same way as nationals with regard to protection of their work. In other words, Mr. Speaker, works which have a country of origin, that is a union country which is party to the Convention, benefits in all other union countries for the same protection as the latter gives to the works of its own nationals. For example, Mr. Speaker, if the copyright for the work of a Trinidad and Tobago author, published for the first time in Barbados or Jamaica, is infringed in the United Kingdom, this author and his successors in title must be treated in the United Kingdom as if the work was one made by a British author and published in an English-speaking country or territory. Article 5(4) states that authors who are union nationals are promised protection in all union countries and have a guarantee that they will enjoy all the rights which the convention expressly gives them.

Mr. Speaker, I believe it would be remiss of me if I did not echo the thanks of the Government and appreciation to all those who have assisted in the drafting of this piece of legislation. In the first place, Mr. Speaker, permit me to express thanks to the World Intellectual Property Organization, having been a Fellow of that institution in 1973, [*Desk thumping*] and again, from 1978—1979, I can appreciate the assistance rendered to developing countries by the World Intellectual Property Organization, and of course, the assistance rendered to Trinidad and Tobago in this instant case; by its programmes of technical co-operation, training and fellowships, fellowships are made available to persons from the developing countries.

Before I conclude, Mr. Speaker, permit me to quote from the guide to the Berne Convention which is a World Intellectual Property Organization publication, taken from the comments of the then Director General, Mr. Arpad Bogsch, in 1978, when he said and I quote:

“Copyright, for its part, constitutes an essential element in the development process. Experience has shown that the enrichment of the national cultural heritage depends directly on the level of protection afforded to literary and artistic works. The higher the level, the greater the encouragement for authors to create; the greater the number of a country’s intellectual creations, the higher its renown; the greater the number of productions in literature and the arts, the more numerous their auxiliaries in the book, record, and entertainment

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industries; and indeed, in the final analysis, encouragement of intellectual creation is one of the basic prerequisites of all social, economic and cultural development.”

Mr. Speaker, with reference to the assistance given by WIPO to developing countries, the then Director also said that:

“The aims of WIPO’s Program are, in particular, to promote the encouragement of intellectual creation, the dissemination of literary and artistic works, and the development of legislation and institutions in the fields of copyright and neighbouring rights in the developing countries.”

Therefore, I submit, Mr. Speaker, that supporting this piece of legislation is not only answering the call of the World Intellectual Property Organisation, but also ensuring the promotion, protection and encouragement of intellectual creations here in Trinidad and Tobago.

Mr. Speaker, I thank you.

Mr. Roger Boynes (*Toco/Manzanilla*): I am much obliged, Mr. Speaker. I thank you for recognizing me and I wish to join in this debate.

Mr. Speaker, may I say at the very beginning of my contribution, that this 1997 Copyright Bill is, indeed, necessary in this country. I see this Bill as one of the limbs upon which the entertainment industry is based and in order for our entertainment industry to skyrocket and to assume its rightful position based on the potential that it has, this Copyright Bill is, in fact, a necessity.

I also wish to indicate that what falls under the umbrella of entertainment law would be music, all of these matters and sports. That is why I have asked my friend on numerous occasions what she is doing—Member for Tobago West—for Samuel Stafford, the world champion of Trinidad and Tobago. Make no mistake about that! His mother is a Tobagonian; his father is a “Toconian”.

4.00 p.m.

Mr. Speaker, it is in this light and it is because of the Government's lack of focussing on sports and entertainment as a business, why we are now in the confused state that we are in.

Copyright law was, in essence, concerned with negative rights of preventing the copying of physical material existing in the field of literature and arts. The object is and was, to protect the writer or the artiste from unlawful reproduction of

his material. This was approved in the case of *George Henka Limited vs Rest-a-While Upholstery Limited* which could be found in the 1976 Appeal Cases at page 64.

It is and was concerned only with the copying of physical material and not with the reproduction of ideas, and the case cited is *Donahue vs Allied Newspapers*. Now, when we look at a film like *Jaws* that is based on the idea of shark attacks; the films *Rosemarie's Baby* and *Exorcist*, they are both based upon the idea of satanism. None is a copyright infringement of another, since each constitute an original expression of an idea.

The law of copyright, Mr. Speaker, was first concerned only with preventing the unlawful reproduction of copies of books. It has developed in two directions: first, by extending the subject matter of protection by including dramatic, musical, artistic works, computer works, architectural works, diagrams, maps, records, cassettes, compact discs, films, broadcast, television performances, cable and published editions, to name a few; and secondly, by extending the classes of acts which constitute an infringement.

Without the agreement of the copyright owner and apart from the limited exception, for example, library and educational purposes, there can be no copying of the copyright owner's work, no public performances nor recording, as was stated in the laws relating to copyright designs and performance protection—a consultative document presented to Parliament by the Secretary of State for Trade by counsel of Her Majesty in July 1981. A consultative document was first presented to us in Parliament for us to debate. This extract, to a large extent, highlights the direction in which the Trinidad and Tobago Copyright Bill hopes to take.

On perusal of the Bill, I commend Mr. Brian DeGannes, Allison Demas, Alvin Daniell, Paula Sanchez from COTT; and I see she is here today, and others who have worked tremendously hard on this Bill. I am glad to see that the Bill expressly provides for the protection of unpublished works, a situation, that is this very day, implied in the United Kingdom, and they have all sorts of problem with that.

I am also impressed with Part VII—that is the infringement part, Mr. Speaker. In this country the copyright owners lose millions of dollars due to the lack of a proper infrastructure and understanding in the entertainment industry and also due to the counterfeiting, piracy and bootlegging of their material.

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Counterfeiting in the record business consists of the unauthorized manufacture and distribution of copies of records under the guise of authorization of the legitimate manufacturer. Piracy in the record business applies to unauthorized duplication of compact discs, tapes or records, sold openly, without permission of the record company. If we go on the side of the road, or to some of the record shops and ask for a tape containing all the 1997 carnival hits—and in some instances we get it—that is piracy, Mr. Speaker.

Bootlegging is similar to piracy, but it involves products created from an unauthorized recording of a live broadcast performance rather than the duplication of existing products. After the record company, Caribbean Sound Basin, owned by Mr. Robert Amar, releases a song like *Shot Call* by General Grant—and they invest huge sums of money on a high quality album to produce a hit—achieved by wide market publicity by investing heavily in videos in order to promote this particular artiste, then we have, at this point, the pirates swooping down like thieves in the night to reap the benefits, at little or no expense. I say this, with respect to the Caribbean Sound Basin, because at one point, I was their entertainment lawyer, and we understand the problems that the pirates have, in fact, caused to many record companies that have expended tremendous sums of money for the growth and development of culture in our blessed island.

Perhaps, Mr. Speaker, through lack of understanding and interpreting the Copyright Act, this has led to little action on the part of the law enforcement agencies to clamp down on these pirates. I see in the *Daily Express* newspaper of Tuesday, March 25, 1997, page 22:

"COTT complains: Police not taking us on."

4.10 p.m.

The *Daily Express* of Saturday, March 15, 1997, at page 3, states:

"NY Consulate selling pirated videos."

Again, I wish to refer to the *Daily Express* of Monday, March 17, 1997 which states:

"Piracy scandal at NY Consulate...Kaiso, pan, mas get the shaft again."

I am glad to see that clause 41, which is the infringement clause with respect to criminal liability, does not put the onus on the prosecution to prove both knowledge and fraudulent intent on the part of the offender. This obtained in the

United States of America in 1962 and it appeared in the Federal counterfeit label law. This was plagued with many difficulties and it was very problematic in establishing fraudulent intent, so I am happy that the fraudulent intent part has been kept out of this piece of legislation.

Clause 41(2) states, *inter alia*, a defendant's profits attributable to the infringement. If I may just simply read clause 41(2), it states:

“The amount of fine shall be fixed by the Magistrate, taking into particular account the defendant's profits attributable to the infringement.”

I simply have one concern with that. Who determines the profit attributable? What is the criteria for so determining? Are we going to take the potential offender's word for granted? Or are we going to contact all the persons to whom this offender sold cassettes, tapes, videos, and ask them to come in so that the profits which are to be taken into consideration by the court can be quantified? What is the magistrate to do in this particular instance; take the word of the police, who themselves would only average an estimate?

If we could perhaps get some more guidelines on this, I think it is important in making the legislation workable. That is why we are here, not as obstructionists, but as a true Opposition and a true alternate government of Trinidad and Tobago, to make things work. [*Desk thumping*].

How can we really stop the exploiting of our carnival, calypso, pan and chutney from these pirates? I am humbly suggesting that by approaching this problem in a meaningful and holistic manner, we can safeguard one of our greatest resources, culture. We could develop it as a business, providing jobs for many, encouraging the talented and establishing ourselves as the greatest cultural country in the world, because that is what we are. Make no mistake about it, we are the greatest cultural country in the world. Look at our cultural mix; look at the amount of culture we possess in this country. We have to focus on it as a business.

On page two of the *Daily Express* of April 1, 1997, the article states:

“NCBA pulls plug on Parade of the Bands—No more mas on TV.”

So NCBA, the National Carnival Bandleaders' Association, is pulling the plug on mas on the television. This was April 1, so I do not know if this is an “All Fool's Day” article, but I am taking it as a serious thing. The article states:

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“NCBA Chairman, Mr. Richard Affong, yesterday told the *Express* that his Association derives nothing from the televising of the mas parade, even while the stations broadcasting it were able to sell advertising space and pirates made a killing from videotaped copies of those programmes.”

The NCBA could not receive moneys on behalf of the bands because the rights had not been assigned to NCBA.

[MR. DEPUTY SPEAKER *in the Chair*]

A lot of explanation has to be given in our country in order for people to understand the entertainment industry. Whereas I understand the position of the NCBA; it needs money because the bandleaders are complaining that they are not getting any moneys; the TV stations are not paying any and the pirates are making a killing. But the correct procedure must be established. NCBA must understand that COTT cannot pay them any moneys. The television station cannot pay COTT; it cannot in turn pay them any moneys because the rights have not been assigned from the designer to NCBA. So pay who? That is the problem.

What has to happen in the future—and I am glad to see that “work of mas” has been put as a part of this Bill—is that even though “work of mas” has been placed within this Bill, the problem still has to be faced now, in that, whereas NCBA will assume the portfolio of COTT with respect to bands, the artistes and designers must still assign their rights to NCBA, just as the writers and the artistes will assign their rights to COTT. So COTT then has the authority to collect moneys and administer royalties on their behalf.

I wish to make the point that there is much confusion in the entertainment industry. NCBA, representing the mas bands, will be responsible for negotiating the rates and royalties on behalf of the mas bands. It will be responsible for collecting royalties and also for supplying the administrative services and granting licences on behalf of its clients, which would be the mas bands.

We have the Neighbouring Rights Association of Trinidad and Tobago (NRATT) on behalf of the artistes with respect to neighbouring rights. It would be negotiating, collecting royalties and also providing administrative services. We have the Recording Industry Association of Trinidad and Tobago (RIATT) and we also have the Copyright Organization of Trinidad and Tobago (COTT). It is important to understand that the international societies would only recognize the body in the country that has the blessings of the Government.

For accountability purposes, even though the copyright is a private right, the supervision by the Government is essential. These bodies recognize COTT. As a matter of fact, COTT is an agent of the Performing Rights Society (PRS) and on its board PRS has two directors, just as the Government has two directors on COTT's board. How would NCBA, therefore, be in a position to collect and administer on behalf of its members their property rights in a foreign country, where they do not have the reciprocal relationship with an international society? COTT has it.

They will not be able to establish that relationship outside of COTT. It has been tried before. Many bodies have tried to set up an individual collection and administration agency similar to the American Society of Composers, Authors and Publishers (ASCAP), the Broadcast Music Incorporated (BMI), the Society of European Stage Authors and Composers (SESAC) Inc. and the Musical Performance and Mechanical Reproduction Rights (GEMA) in Germany, but the fact of the matter is that the international societies recognize one body and that body must have an affiliate association to the Government.

4.20 p.m.

This has been tried before and rejected. The solution is to allow the National Carnival Bandleaders' Association to negotiate the rates and royalties on behalf of its members so that the fee for airing the parade of bands on the television and for anyone videotaping must be established from the negotiations between the National Carnival Bandleaders' Association and the stations. The collection and administration, on the other hand, should be conducted by the Copyright Organization of Trinidad and Tobago on behalf of the National Carnival Bandleaders' Association. The Neighbouring Rights Association of Trinidad and Tobago, for instance, could negotiate with record companies and others on behalf of its producers and other members because at times producers, writers and others would be members of the Copyright Association of Trinidad and Tobago. To avoid a potential conflict of interest, the Neighbouring Rights Association of Trinidad and Tobago should negotiate the rates and royalties on behalf of its members.

Mr. Deputy Speaker, we have to look, for instance, at COTT. I recall the words of the Member for Siparia when she mentioned that collection and administration have to be developed in this country. I am saying that we should develop this at COTT. That is supposed to be the basis which we could use for developing COTT.

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I also suggest strengthening COTT so that it will be a very powerful collection and administrative agency on behalf of copyright owners with a view to not only being an agent of the Performing Rights Society but to be an entity on its own, having direct reciprocal relationships with the societies in other countries where music is sold and aired substantially, such as the Broadcast Music Inc. (BMI) and the American Society of Composers, Authors and Publishers (ASCAP) in the United States of America, the Society of Composers, Authors and Music Publishers of Canada (SOCAN) which is in Canada and in Germany, there is the Musical Performance and Mechanical Reproduction Rights Society (GEMA).

Mr. Deputy Speaker, if we strengthen COTT in this collective and administrative manner, it will not be an agent of PRS. It will be an entity on its own having bilateral relationships with other performing rights organizations throughout the world. This is the goal that we should aim towards. The Copyright Organization of Trinidad and Tobago and each society based on a contractual relationship would pledge to apply the same tariffs, methods, and means of collection and distribution of royalties to works in the repertoire of the other societies.

The Government must embark on a massive education drive, holding seminar after seminar throughout the length and breadth of this blessed land. People must know that COTT is not only concerned with rights in connection with the calypso and steelband, but moreso with the chutney and country music, reggae, R&B and with every artist, designer and writer in this country. The Copyright Organization of Trinidad and Tobago's function is also to serve as a collection and administrative agency. That is what we have to do. We have to focus on COTT.

Why? I would tell you why, Mr. Deputy Speaker. Because many people have moneys out there they do not know about. The Mighty Shadow's music, for instance, was featured in the movie "Lean on Me". He has money out there in the United States of America. We need to have a very important and powerful drive to collect our artistes' moneys.

Miss Nicholson: That is why the Bill is here today, partner.

Mr. R. Boynes: We need to be training the staff at COTT. This Bill should be like a bible. Artistes throughout Trinidad and Tobago must understand that when this Bill becomes law it should be used as a bible. The book entitled *This Business of Music* must be used like the *Koran*; *The User's Guide to Copyright* by Michael Flint should be used as the *Holy Gita*. If we expect to make this country the number one cultural country in the world—and we have the basis and culture to do it—we have to take this thing seriously and educate the people.

The Copyright Organization of Trinidad and Tobago must be staffed with enough personnel to monitor the rights and property of persons abroad and in Trinidad and Tobago. Inspectors, who must be properly trained by COTT, must be employed to visit every business house to determine whether there are television sets or radios there. There are numerous businesses throughout the length and breadth of Trinidad and Tobago in which there are television sets and internal radio systems. We do not seem to understand that for every television set in a public place money should be paid and a licence obtained from COTT. These business houses need to have a licence in order to play music.

Mr. Deputy Speaker, if we are to be given individual status, the international societies need to be sure that we are in a position to safeguard their property. In 1993 the Performing Rights Society had severed all links with COTT over a dispute of administrative expenses. I am sure that another concern may have been the rampant piracy in this country. We need to ensure that COTT is given the requisite assistance.

[MR. SPEAKER *in the Chair*]

Mr. Speaker, I recommend that the Government tax every blank tape that comes into this country and any equipment relating to the entertainment industry, for profit should be looked at very carefully. In the alternative, persons desirous of bringing into the country such equipment that would go against the property rights of our artistes here and abroad, should be made to apply to COTT for a licence. This licence must be presented to the Customs and Excise Division where there should be a representative from COTT, if that is possible.

The granting of an occasional bar licence for fetes, block-Os and so forth is done by the Magistrate's Court and promoters should be made to apply and pay for a licence from COTT just as they do for police services. If, for instance, music is played on the streets or in a yard, the fact is that it is the people's property being used. They are using the property, and once the property is used they must pay for it. So at the level of the court, when one is applying for an occasional bar licence, one should also be made to apply and pay for a COTT licence. They have no problems paying for police, they should have no problems paying for a COTT licence as well.

Mr. Speaker, persons should be criminally liable for receiving pirated tapes and videos because they are stolen property. They are not theirs. One should look at

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the idea of introducing in the legislation, perhaps, a clause of criminal liability for receiving pirated tapes and videos. I believe that piracy will go down to zero in the morning!

4.30 p.m.

The Government should insist, by way of this Bill, in the granting and/or renewing of broadcasting licences that a mandatory percentage of local music be played on our radio stations. This is important! According to Paul Berry of the World Intellectual Property Organization, the countries that have stipulated to their stations what percentage of music must be played, have benefited. These radio stations have not lost business. These are countries such as France and Canada and their business has boomed.

The majority of music played in America is American music. It must be mandatory that we in Trinidad and Tobago play a percentage of our music. What will that do? What is the danger? It would act as a certain inspiration to the people to give them a certain amount of national pride. Financial rewards would also be even better for the locals.

Mr. Speaker: The sitting of the House is suspended for half an hour.

4.32 p.m.: *Sitting suspended.*

5.05 p.m.: *Sitting resumed.*

Mr. R. Boynes: Mr. Speaker, I made mention before the tea break that the Government should put in place, if it has not done so as yet, some means to make it mandatory that the radio stations air a certain percentage of local music. This is very important to this country.

When we look at radio stations such as Rhythm Radio 95.1 FM, we ask ourselves what percentage of local music is played. Even if it is mandatory that these stations play a certain percentage of local music, I still ask the question: What percentage are they empowered to play? As a layman, I feel that a greater percentage of local music should be played.

ADJOURNMENT

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, I am indebted to my colleague, the Member for Toco/Manzanilla, for giving way.

I beg to move that this House do now adjourn to Friday, April 11, 1997 at 1.30 p.m. We shall be debating the Trade Marks (Amdt.) Bill and the Fire Service (Amdt.) Bill.

Adjournment

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Mr. Speaker: Hon. Members, before putting the question on the adjournment of the House, I had given leave to the Members for Arouca North and South to raise two issues on the adjournment.

**Unauthorized Excavation of Hillside
(Bye Pass Road, Arima)**

Mr. Jarrette Narine (*Arouca North*): Mr. Speaker, I thank you for allowing me time to raise this motion on the adjournment. Originally, there were two motions, but in your wisdom, you have placed them as one and the relevant Ministers will reply. This motion is “Unauthorized excavation of hillside on private lands at Bye Pass Road, Arima, causing a health hazard to the residents and damage to the environment and nearby roadways and bridges”.

The residents of Bye Pass Road and surroundings asked me to accompany the Mayor of Arima on March 22, since I was formerly resident there and as the present Member of Parliament for the area cannot be found—there are security guards at his home and when he goes to Arima he is surrounded by security. They are not comfortable speaking with him, so I have been asked to do this today.

After our visit on Saturday, March 22, appearing in *The Independent* newspaper on Monday, March 24, was an article which was headlined, “Arimians complain of dust problem”. It is itemized here that for 20 hours or more per day, from as early as 5.00 a.m., trucks take fill from the Bye Pass Road, Arima, to the Airports Authority to fill lands for that new project at the airport.

The dust problem has caused serious health hazards to the residents of that area and children who were preparing for the Common Entrance Examination found it difficult to study. The newspaper report states that the food they were eating was contaminated with dust. We know that there are people who hang their washing on lines outside to dry and this has been a difficult situation for them and still is.

The homes in that area have had to be closed and children are now having asthmatic problems. During the tea break, I spoke to the Minister of Health on the equipment at the Arima Hospital and he told me that he would visit the area. I will ask the Mayor to accompany him so that he can do something to upgrade the facilities there. This facility was opened a couple months ago, but it lacks equipment.

Mr. Speaker, the dust is also causing a serious problem for persons with agricultural lands in that some of the trees are no longer green. These operations

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continue past midnight. The areas affected are Torecilla Gardens, Honeybee Housing, Calvary, Mount Pleasant, Eleanor Gardens, where the Member for Arima used to live; and Holy Cross College, which carries about 650 students. In total, we have assessed the situation and feel that about 10,000 residents in that vicinity are affected. More than that, the uncovered trucks that take this material from the Bye-Pass Road to Piarco have also created a problem in the Piarco area.

I refer to a newspaper clipping from the *TNT Mirror* dated March 28, 1997, captioned, "Dust bowl disaster". I read the article and the people are not blaming the Minister of Housing and Settlements, who is their representative, but they are saying that the problems are caused by staff working with him who did not relocate persons before the project started. This creates a health hazard for them. They, too, have identified the various problems that they are having as far as health and the environment are concerned.

It is along the way from the Bye Pass Road to Piarco that persons are affected. There used to be three entrances to that area, but about 12 years ago, in 1984, the bridge along the Mount Pleasant Road broke down and I have noticed that, in the Public Sector Investment Programme for 1997, there is no provision to reconstruct that bridge, which is the main link along the Blanchisseuse Road to the other areas.

5.15 p.m.

There are two other areas used to get into Blanchisseuse. However, strangers would find it difficult to pass on Woodford Street to get into Blanchisseuse Road, so they would normally use the Bye Pass Road Arima, which begins off the Eastern Main Road, obliquely opposite Demerara Road, Wallerfield. The uncovered trucks are creating a problem throughout that distance. There is a headline on today's *Newsday*:

"Site preparation for new airport almost completed.

Already more than 500,000 tonnes of earthfill have been deposited at the site..."

Mr. Speaker, I am not exaggerating or giving any false claims here. The 500,000 tonnes of earthfill that was removed to the Airports Authority came from the Bye Pass Road Arima. This report about the dust bowl disaster and no relocation at the time, is also creating a serious problem for the people of Oropune Village. Why are they working to have this project done so quickly, Mr. Speaker? They must be doing something wrong.

The authorization for housing and the change of use of lands comes from the Town and Country Planning Department. At that stage, the change of use of land has to go through the Local Government Authorities. Therefore, the Tunapuna/Piarco Regional Corporation has to give a provisional approval based on the drawings, information from Drainage Department, Water and Sewerage Authority, Trinidad and Tobago Electricity Commission and the Fire Department. This information has to be transmitted to the Local Government Authority and in this case, it is a border Tunapuna/Piarco Regional Corporation had no authority to authorize the construction of any type of housing in that area, and no permission was given from the Arima Borough Corporation.

The Ministry of Energy and Energy Industries is also involved in land development and it has to quarry areas to bring those lands passable for housing. Mr. Speaker, the area to which I refer belonged to the Herde family. There was a small plot, near the Bye Pass Road which was used as a horse farm. The Arima River cuts across that parcel of land and the pollution is going lower down-stream, to the La Horquetta housing project which produces the food basket for Arima. Watercress was grown in the river stream; however, there is now only mud in the river.

Years ago, environmentalists of Trinidad and Tobago found that there is a rare specie of Silver Cray fish which lives in that river stream. I am afraid that will also be lost.

My information is that no permission for quarrying activities was given to the land developers in that area. However, the lands have changed ownership and they now belong to a UNC activist. My question is: When was approval given to quarry that area? Normally when this type of approval is given by the Ministry of Energy and Energy Industries, it takes into consideration the environment and the residents of the area—a built-up area being used to excavate and quarry materials to provide for the Airports Authority.

When I visited, there was a checker on site and he was recording on the cartage receipts the amount of earth fill that was left. If the materials are being sold—I am saying, if, because Members on the other side say that the Opposition Members are always making accusations—to the Airports Authority to develop land area for a private person to sell afterwards, then we are using taxpayers' money fraudulently to develop private property and to sell earthfill to the Airports Authority.

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Mr. Speaker, today I was going to ask for this matter to be sent to Justice Lennox Deyalsingh for investigation, but I understand that would not be necessary because there is a situation where the contracts were already awarded to Mr. Galbaransingh and others. Therefore the assurance that was given in Parliament to have investigations done at the Airports Authority is a sham. They say that the “IMF” of Trinidad and Tobago is doing this—“Ish Minister and Fergusson”. There is the situation where lands are being developed at no cost and the earthfill is being sold to the Airports Authority. That needs to be investigated.

The people of the area are asking why another state-owned property was not chosen from which to take the earthfill in order to cut costs. One could now see why the allocations for the Airports Authority have moved to \$600 million. Most of the money would be spent on these types of activities.

The Environmental Management Authority’s Chairman, in his First Annual Report dated April 30, 1996, indicated that the silt from the land flows into the Caroni River.

Mr. Speaker: Would the hon. Member please use the next two minutes to wind up?

Mr. J. Narine: Mr. Speaker, this is why I had two motions.

Mr. Speaker: I repeat, would the hon. Member please use the next two minutes to wind up?

Mr. J. Narine: Yes, Sir.

The loss of forest habitats, water-sheds, agricultural productivity, fresh water supply, the Silver Cray fish and the environmental situation in that part of Arima is very great. With respect to the roads and bridges already on the Bye Pass Road, there is a single lane of traffic that goes through there and half of a bridge that was constructed by the Arima Borough Corporation and other areas are broken. There is also a problem for taxi drivers and tourists because there is the Asa Wright Centre, Telecommunication Services of Trinidad and Tobago transmitting station, and the Mannette Ranch. Everyone who is acquainted with this area knows that it is the main entrance to the North Coast of Trinidad and Tobago.

Today, I am asking that the ministers involved answer these questions and if it is that no authority has been sought to do mining or quarrying operations in the area, that the project be stopped immediately. The same soil type could be found

throughout the Northern Range and some other area could be found from which to take the earthfill to complete the rest of the Project PRIDE.

Thank you very much, Mr. Speaker. I hope there would be an early reply.

5.25 p.m.

The Minister of Housing and Settlements (Hon. John Humphrey): Mr. Speaker, the Piarco Improvement Project includes elevating the construction site for rapid drainage and flood control, two essentials for an airport.

Sunfill material is being won from excavating major drainage channels and from establishing a large water-retention reservoir. However, this material is not adequate for total site elevation, and fill has to be trucked in from elsewhere. The contractor on this first phase of the project is Seereeram Brothers Limited. In order to win the material the contractor has entered into a contract with a landowner to shape and develop his land for a housing project which has obtained outline approval from the Town and Country Planning Division of the Ministry of Planning and Development.

The excavating of the site for the housing development is being supervised by the design engineers for that development. A considerable amount of fill is being removed and transported to Piarco. This exercise can only be done in the dry season, and it is impossible to avoid dust, totally. However, the contractor is minimizing the nuisance by conforming to its contractual obligations in the following ways:

1. The route is being cleaned and watered.
2. The trays of the trucks are covered with tarpaulins.
3. The time is being minimized by trucking for 24 hours daily.
4. The route is being continuously maintained and on completion of this phase of the contract would be reinstated; that is, the roads that are being used.

Mr. Speaker, this phase of the Piarco Airport Development Project would be completed within the current dry season. Were this work to be attempted in the rainy season, the inconvenience to citizens would be multiplied. There would be mud in major proportions. This mud would clog the area's drainage system and cover the roadway and spread, and I dare say, in spreading, would dry out and create more dust and hazard.

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Mr. Speaker, this Government of national unity has embarked on an Airport Improvement Project that would be completed within a two-year period if it is not hindered. We are justifiably proud of this project and we know that the people of Trinidad and Tobago would applaud us on its completion.

Thank you, Mr. Speaker.

**Unbearable Stench
(East Trinidad)**

Mrs. Camille Robinson-Regis (*Arouca South*): Mr. Speaker, I bring this Motion following innumerable complaints, both verbal and written, which were made to the ministry of Health and, particularly, the Public Health Department at that Ministry. As the Motion indicates, the scent which has been affecting residents for over one year, has reached the stage where it is causing a nuisance, not only because the scent is highly noxious and, therefore, extremely unbearable at most times, but has been causing illness to adults, particularly the elderly, and to children.

Mr. Speaker, the areas adversely affected are densely populated. For example, the La Horquetta area is comprised of seven phases of housing development—indeed the largest housing development in the Caribbean—with a population of over 15,000 people with two primary schools; several early childhood care centres and churches.

Another area is Malabar, comprising four phases of housing development with a population of over 6,000 people with two primary schools and several churches, including the one now being completed by the former Member for Arima. Then there is Carapo Village which is adjacent to the La Horquetta area, also Maloney Gardens with a population of over 10,000 people similar to the La Horquetta area where there are several Government institutions and a primary school.

The scent also affects people who come into the area to work as there is the O'Meara Industrial Estate, Government institutions such as the Trinidad and Tobago Electricity Commission's East office, the Water and Sewerage Authority. The police is also affected at the Malabar Police Post and the Northern Divisional Headquarters located at La Horquetta.

Even though I do not live in Arouca South, I still, legitimately, represent the people of Arouca South and I am speaking on their behalf. I do not think the Member can say the same. This does not, therefore, only affect the people who live in the area, it also affects people from all over Trinidad who have to come to the East of Trinidad.

It is, therefore, very disheartening that this Government would turn a blind eye to this very unhealthy situation, despite letters from the La Horquetta Community Movement to the Ministry of Health. This letter to the Ministry of Health dated November 25, 1996 with copies to the Chairman of the Tunapuna Piarco Regional Corporation has received absolutely no response from the Ministry of Health. It is noticeable that the copy which was sent to the Tunapuna/Piarco Regional Corporation which is PNM-controlled, did, in fact, get an acknowledgement. In fact, the complaint which was sent to the Ministry of Health and copied to the regional corporation was sent through the regional corporation to the Ministry of Health's Medical Officer and to the Environmental Management Authority. As yet there has been no response from the Ministry of Health.

It is because of this scent and the inaction of the present Government that the people of the area were moved to such an extent that they had to take to the streets to demonstrate their disgust. This demonstration was engineered by one of the most affected groups in the area, that is, the Presbyterian School which is very close to the S & J Plant. Despite this, the Government showed absolutely no compassion. *[Interruption]*

Mr. Speaker: Order, please! Please continue.

Mrs. C. Robinson-Regis: Mr. Speaker, despite this desperate reaction, not even the arrest of Councillor David John of the Arima Borough Corporation and several other innocent people, made this Government take notice or take action. What is really hurtful is that when a similar demonstration took place in the Bamboo to remove the crash barriers which were placed for the safety of the residents of the area, the results were highly different. There were no arrests and the crash barriers were immediately removed. Is it because they voted for the United National Congress?

5.35 p.m.

Mr. Speaker, the only reprieve that the persons affected by the operations of the S&J plant—which is causing this noxious scent—got, was that for a few days after the demonstration, production ceased and thus the scent was alleviated; just for a few days. As soon as the owner jumped on a plane to India with the Member for Couva North, production resumed and has not stopped since and the scent has continued.

So, Mr. Speaker, I ask the question whether this Government is only shaken into activity if there is a definite threat from their own supporters or investors? If

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people's health is at stake, are they going to be so callous as to seek certainty of illness or even death before something definite is done? I understand that S&J's feed production process utilizes decomposing chicken offal, chicken heads, and other parts not used for human consumption. As a consequence of this, the stench is primarily one of hydrogen sulphide, the gas that comes from, for example, rotting eggs. Hydrogen sulphide can be toxic at high levels and this toxicity can severely affect persons who have respiratory problems, particularly asthma, as there may be an overstimulation of their respiratory systems, causing increased asthma attacks which could lead to death.

Maybe we should revisit the death of the weatherman who died from asthma and who worked in the East. Mr. Speaker, persons, particularly school children, have been suffering from nausea and vomiting. Apart from these illnesses, hydrogen sulphide—and I note their callousness because the children are not from their areas—

Mr. Speaker: Hon. Members, could we do ourselves the courtesy of listening to the hon. Member and, in the process, allow the Hansard reporter to record that which is being said.

Mrs. C. Robinson-Regis: Thank you, Mr. Speaker. I note that the children are not from the areas they represent so perhaps it would be of no concern to them. The illnesses are real; they are not imagined. Could I also indicate that apart from these illnesses, hydrogen sulphide in combination with water makes sulphuric acid which, when in the atmosphere, can lead to acid rain. I am sure you have heard of this phenomenon. When it falls on plants it kills them, and eventually pollutes the soil to such an extent that plants can no longer grow.

My colleague from Arouca North indicated that the La Horquetta Estate is the bread basket of the Arima area, the eastern area of Trinidad. Mr. Speaker, the expert advice that I just shared with this House came from one of the doctors who does voluntary work in my constituency, but it is not only from this source that we have advice—

Mr. Speaker: The hon. Member has two more minutes in which to wind up.

Mrs. C. Robinson-Regis: Mr. Speaker, in addition to this advice, the Environmental Management Authority (EMA) has indicated in its April 30, 1996 Report that 27 per cent of the country's daily water requirements comes from ground water sources and, the El Socorro to Arima area, which is called the “northern gravels”, is one of these ground water resources. As such, the EMA has

said that runoff from meat processors contributes to organic pollution, as these processes, which contain faecal matter, blood and feathers, which is the type of matter that comes from the S&J plant, has had a serious impact on these water courses and thus drinking water is being contaminated.

Article 25 of the Universal Declaration of Human Rights states in part that: “everyone has the right to a standard of living adequate for the health and well-being of themselves and their family.” Therefore, on behalf of my constituents and indeed, because people traverse the area, on behalf of the people of Trinidad and Tobago, I demand, I implore this Government, if it has any heart, to take immediate steps to work on rectifying the situation as no one should be above the law.

Thank you, Mr. Speaker.

The Minister of Health (Dr. The Hon. Hamza Rafeeq): Mr. Speaker, I am grateful for the opportunity to respond to this Motion so that I can inform this honourable House and the national community of the steps that have been taken, so far, to alleviate this particular problem and other similar problems affecting the population. The S&J Rendering Plant has been in operation for the past three years, and I would like to outline what we have done; the previous Government, having done nothing to alleviate the problem. [*Desk thumping*]

Mr. Speaker, in the instant case, a series of steps have been taken culminating so far in the serving of a legal notice to the owners of the S&J Processing Plant, Mr. Sayam Ramkissoon and Mr. Jai Ramkissoon, for abatement of the nuisance. This problem was first brought to my attention by the Member of Parliament—and still the Member of Parliament for Arima—Dr. Rupert Griffith. [*Desk thumping*]

Based on this, I instructed the Principal Medical Officer in charge of environmental health at the Ministry of Health to have the matter investigated and steps taken to alleviate the problem of the stench emanating from the S&J Processing Plant. As a result the plant was visited, an assessment done, and remedial works recommended. The plant was closed for a period of time, however, some time later it resumed operations. It was determined after a visit from the Ministry of Health that although some of these recommendations were carried out, the operation of the plant remained unchanged and the nuisance of the foul odour continued unabated.

We believe that every reasonable opportunity was given to the operators of the plant to put their plant in order, in a state which would not compromise public

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health. As a consequence, the Public Health Ordinance, Chap. 11:04 was invoked and an abatement notice was served on the company on March 27, 1997 requiring that the nuisance be abated within 14 days.

5.45 p.m.

Mr. Speaker, I would like to read this notice into the record. It is addressed to Mr. Sayam Ramkissoon and Mr. Jai Ramkissoon.

Mr. Speaker: Order please.

Dr. The Hon. H. Rafeeq: Mr. Speaker, this is addressed to Mr. Sayam Ramkissoon and Jai Ramkissoon.

Mrs. C. Robinson-Regis: Excuse me. I am asking the Member to give way, through you, Mr. Speaker. I am asking the Member to repeat the date that the notice was given. Mr. Speaker, if the Member would give way, I am asking.

Dr. The Hon. H. Rafeeq: It reads as follows:

"TAKE NOTICE under the provisions of the Public Health Ordinance, the Minister of Health being satisfied of the existence at Pinto Road, Arima of a nuisance, noxious and foul smell emanating from an Offal Rendering Plant which are injurious to the health of and are unnecessarily offensive to the health of the public in contravention of Section 70(1)(i), Public Health Ordinance Ch. 12 No. 4.

HEREBY REQUIRES YOU within fourteen (14) days from the service of this notice to abate the same Section 72(1); and to do what is necessary for preventing the recurrence of the nuisance Section 72(1).

If you make default in complying with the requisitions of this notice a summons will be issued requiring your attendance before a Magistrate to answer a complaint which will be made for the purpose of enforcing the abatement of the nuisance or prohibiting the recurrence thereof, or both and for recovering the costs and penalties that may be incurred thereby."

It is signed by the County Medical Officer of Health for, and on behalf of the Minister of Health. Dated March 26, 1997 and served on March 27, 1997.

Mr. Speaker, may I just indicate here that I received the notice of this Motion yesterday. [*Desk thumping*].

Mr. Speaker, the procedure set out under the law thereafter is for summary court action if there is no compliance with the requests contained in the Notice.

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The Ministry of Health intends to pursue all the available options to have this problem alleviated. In the meantime, the plant is not operating and the situation is being closely monitored by Ministry of Health officials.

Mr. Speaker, the problem at the S&J Processing Plant is only one of the numerous public health nuisances that we inherited when we came into office. These have to do with pig farms, chicken farms, pluck shops, among others and the indiscriminate dumping of garbage and waste from these operations. These have created undue public health hazards and continuing discomfort to many of our citizens.

As a result of this, the Public Health Inspectors have been instructed to intensify their efforts in enforcing the law and minimizing the nuisances. In addition, the Minister of Health, the Minister of Local Government, the Minister of Planning and Development, the Minister of Agriculture, Land and Marine Resources, and the Minister in the office of the Prime Minister with responsibility for the Environment, together with the EMA, are meeting to develop a strategy to deal with this problem. [*Desk thumping*]

Mr. Speaker, while we wish to encourage members of the population to go into their own businesses, these must conform with certain regulations so that they do not pose a health hazard or nuisance to others. As a responsible Government, we will continue to do all in our power to aspire to have a cleaner and healthier environment for ourselves and our children. I wish to appeal to the general public to co-operate with us in this effort.

Thank you.

Question put and agreed to.

House adjourned accordingly.

Adjourned at 5.50 p.m.