SENATE

Tuesday, February 18, 1997

The Senate met at 1.33 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

OMBUDSMAN'S REPORT (SEVENTEENTH)

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

"Speaker's Office
Red House
Port of Spain
Trinidad and Tobago

February 13, 1997

Senator the Hon. Ganace Ramdial
President of the Senate
Parliament
Red House
Port of Spain

Dear Mr. President,

Resolution—Joint Select Committee

Please be advised that at a sitting held on Friday February 07, 1997, the House agreed to the following Resolution which was moved by the Honourable Attorney General:

'Whereas the 17th Annual Report of the Ombudsman of the Republic of Trinidad and Tobago was laid in the House of Representatives on December 1, 1995, and in the Senate on December 5, 1995;

And Whereas both Houses of Parliament agreed that a Joint Select Committee be appointed to consider the 17th Annual Report of the Ombudsman and to make recommendations for a most effective machinery for the Office of the Ombudsman and appointed such a Joint Select Committee by resolutions passed by the House of Representatives and the Senate on Friday, March 8, 1996 and Tuesday, March 26, 1996, respectively;

And Whereas that Joint Select Committee reported to this House on Friday, November 8, 1996 that it was unable to complete its deliberations and

recommended that continued consideration of the matter be undertaken at the next session of Parliament:

Be It Resolved that a Joint Select Committee be established to consider the 17th Annual Report of the Ombudsman and to make recommendations for a most effective machinery for the Office of the Ombudsman; and

That this Joint Select Committee be authorized to adopt as part of its records all the work done by the Joint Select Committee appointed to consider the said matter in the last session.'

Accordingly, I respectfully request that you cause this matter to be placed before the Senate at the earliest convenience.

Yours sincerely,

Hector McClean, MP
Speaker"

EQUAL OPPORTUNITY LEGISLATION

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

"Speaker's Office
Red House
Port of Spain
Trinidad and Tobago

February 13, 1997

Senator the Hon. Ganace Ramdial
President of the Senate
Parliament
Red House
Port of Spain

Dear Mr. President,

Resolution—Joint Select Committee

Please be advised that at a sitting held on February 07, 1997, the House agreed to the following resolution which was moved by the Honourable Attorney General:

'Whereas the Working Paper on Equal Opportunity Legislation was laid in the Senate on February 13, 1996 and in the House of Representatives on February 16, 1996;

And Whereas both Houses of Parliament agreed that a Joint Select Committee be established to consider the said Working Paper and to submit recommendations to Parliament thereon, and appointed such a Joint Select Committee by resolution passed by the House of Representatives on Tuesday, October 1, 1996 and Friday, October 4, 1996, respectively;

And Whereas that Joint Select Committee reported to this House on November 14, 1996 that it was unable to complete its deliberations and recommended that continued deliberations on the matter be undertaken in the next session of Parliament:

Be It Resolved that a Joint Select Committee be established to consider the Working Paper on Equal Opportunity Legislation and to submit recommendations to Parliament thereon.'

Accordingly, I respectfully request that you cause this matter to be placed before the Senate at the earliest convenience.

Yours sincerely,

Mr. Hector McClean, MP
Speaker"

INTEGRITY LEGISLATION
(GREEN PAPER)

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

"Speaker's Office
Red House
Port of Spain
Trinidad and Tobago
February 13, 1997

Senator the Hon. Ganace Ramdial
President of the Senate
Parliament
Red House
Port of Spain

Dear Mr. President,

Resolution—Joint Select Committee

Please be advised that at a sitting held on Friday February 07, 1997, the House agreed to the following Resolution which was moved by the Honourable Attorney General:-

'Whereas the Green Paper on Integrity Legislation was laid in the House of Representatives on February 2, 1996 and in the Senate on February 6, 1996;

And Whereas both Houses of Parliament agreed that a Joint Select Committee be established to consider the said Green Paper and to submit recommendations to Parliament thereon, and appointed such a Joint Select Committee by resolution passed by the House of Representatives and the Senate on Tuesday, June 4, 1996 and Tuesday, June 11, 1996, respectively;

And Whereas that Joint Select Committee reported to this House on Friday, November 8, 1996 that it was unable to complete its deliberations and recommended that continued consideration of the matter be undertaken in the next session of Parliament:

Be It Resolved that a Joint Select Committee be established to consider the Green Paper on Integrity Legislation and to submit recommendations to Parliament thereon; and

That this Joint Select Committee be authorized to adopt as part of its records all the work done by the Joint Select Committee appointed to consider the said matter in the last session.'

Accordingly, I respectfully request that you cause this matter to be placed before the Senate at the earliest convenience.

Yours sincerely,

Hector McClean, MP
Speaker."

CAROL MAHADEO
(DEATH OF)

Mr. President: Hon. Senators, I have been informed of the passing of the former Senator Carol Mahadeo, on February 13, 1997.

Miss Mahadeo served as an Independent Senator from January 1992 until the dissolution of Parliament in 1995. I offer the bereaved family the deepest sympathy of Members of this Senate and myself. The floor is now open for tributes by any other Senator.

140 p.m.

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. President, we, too, would like to join with you in expressing our deepest condolences to the relatives of the late Sen. Carol Mahadeo.

As you know, Sir, she was a former magistrate and during the period 1992—1995 she served in this Senate in a very able capacity. She was a very pleasant, decent and dignified Senator; always friendly and willing to offer advice, given her legal training. I feel certain that her contribution in this Senate during the period that she served went down extremely well as the records would show. Therefore, we on this side join with you in extending our deepest sympathy to the family of the late Sen. Carol Mahadeo.

Sen. Nafeesa Mohammed: Mr. President, we, too, on this side would like to join with you and indeed all other Members of this Senate, in extending our deepest condolences to the family of the late Sen. Carol Mahadeo.

We have known her to be a woman of substance, someone who, as an attorney-at-law, served the legal profession well. She made us proud and most of all, as a magistrate for many years, she was an exemplar to many of us, particularly the younger ones. I have also known her to be actively involved in the cultural field where she has made her mark and indeed, I know she came from the Sangre Grande area and her contribution to this country and certainly to the Parliament would be recorded.

Once again, we endorse the sentiments and we, too, extend our deepest condolences to the bereaved family.

Sen. Prof. John Spence: Mr. President, on behalf of the Independent Senators I express our condolences to the family of the late Sen. Carol Mahadeo. Sen. Mahadeo started her career as a teacher and taught in a number of Presbyterian primary schools, having taken the Teacher's Diploma with distinction. She then naturally went on to do law in London and after serving as a legal assistant in the Industrial Court, she was registered on the Tax Appeal Board. She went on to be a magistrate and then a senior magistrate. So I think she had a very distinguish career both as a teacher where she taught home economics for a while, and also as a magistrate.

We found her to have a delightfully right sense of humour and, certainly, our time with her on these benches was very much enriched by her presence.

She also did social work—although she did not have children of her own—with young people, with a number of homes such as; St. Jude's Home for Girls; St. Mary's Home for Children and also the J. C Mc Donald's Home for the Aged in San Fernando. So she made her contribution, as Sen. Mohammed said, in the cultural and social fields. We certainly would like to convey our condolences to the family and to express our sympathy.

Thank you, Sir.

Mr. President: Hon. Senators, I would ask the Clerk to send an appropriate letter of condolence to the bereaved family. I now ask Senators to rise so that we can observe a minute's silence.

The Senate stood.

TRINIDAD AND TOBAGO FREE ZONES (AMDT.) BILL

Bill to amend the Trinidad and Tobago Free Zones Act, 1988, brought from the House of Representatives *[The Attorney General];* read the first time.

Motion made, That the next stage be taken at the next sitting of the Senate. *[Hon. W. Mark]*

Question put and agreed to.

PETITION

Premier Oilfields of Trinidad Limited

Sen. Diana Mahabir-Wyatt: Mr. President, I wish to present a petition on behalf of the Premier Oilfields of Trinidad Limited, of Forest Reserve Road, Fyzabad.

It has to do with a very simple matter. Premier Oilfields of Trinidad Limited has taken over from the Consolidated Oilfields Trinidad Limited. In fact, it is the successor company which has taken over all of its predecessor's business, including its debts, its union recognition, its obligations under collective agreements and so forth.

As so many of these companies in South, one of its problems is that among the properties taken over, there are literally hundreds of small leases and these are very old and, in many cases, it has been almost impossible to find all the thousands of owners or heirs of each of these hundreds of leases and, therefore, it seemed that the simplest thing to do was to change ownership by an Act of Parliament so that the company's obligations in respect of its union agreements and so forth could continue.

Therefore, this petition has been brought to this Senate and I ask that the Clerk be permitted to read the petition.

Petition read.

Question put and agreed to. That the promoters be allowed to proceed.

1.50 p.m.

PAPER LAID

Report of the Auditor General on the accounts of the Victoria County Council for the year ended January 01—September 30, 1991. *[The Minister of Finance and Minister of Tourism (Sen. The Hon. Brian Kuei Tung)]*

ORAL ANSWER TO QUESTION

Government Officials (Overseas Trips)

3. Sen. Nafeesa Mohammed asked the Minister of Public Administration and Information:

Could the Minister please inform the Senate of:

(a) The number of official overseas trips each Minister of Government, including the Prime Minister, has made since November 07, 1995?

(b) The nature and duration of each Minister's visit abroad and the cost of each trip to the taxpayers of Trinidad and Tobago including airfares, hotel accommodation, and allowances?

(c) What real and tangible benefits have accrued to this country as a result of these overseas trips?

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. President, with the concurrence of Sen. Nafeesa Mohammed, I beg to move that the answer to question 3 be deferred for a period of two weeks.

Question, by leave, deferred.

PROTECTION OF NEW PLANT VARIETIES BILL

Bill to provide for the protection of new varieties of plants and for matters incidental thereto, *[The Minister of Legal Affairs];* read the first time.

POLICE SERVICE (AMDT.) BILL

Bill to amend the Police Service Act, Chap. 15:01, *[The Minister of National Security];* read the first time.

COMMUNITY SERVICE ORDERS BILL

Bill to make provision for the making of community service order in respect of convicted persons; to make provisions for the making of combination orders; and for matters incidental thereto, *[Minister of Social Development];* read the first time.

Motion made, That the next stage of the following bills be taken at the next sitting of the Senate:

The Protection of New Plant Varieties Bill, 1997; The Police Service (Amdt.) Bill, 1997; and The Community Service Orders Bill, 1997.

Question put and agreed to.

ARRANGEMENT OF BUSINESS

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. President, I seek your leave to introduce another Bill at a later stage of the proceedings.

Agreed to.

JOINT SELECT COMMITTEES (ESTABLISHMENT OF)

Equal Opportunity Legislation

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. President, I wish to move the following Motion standing in my name.

Whereas the Working Paper on Equal Opportunity Legislation was laid in the Senate on February 13, 1996 and in the House of Representatives on February 16, 1996;

And Whereas both Houses of Parliament agreed that a Joint Select Committee be established to consider the said Working Paper and to submit recommendations to Parliament thereon, and appointed such a Joint Select

Committee by resolution passed by the Senate and the House of Representatives on Tuesday, October 1, 1996 and Friday, October 4, 1996, respectively;

And Whereas that Joint Select Committee reported to this House on November 14, 1996 that it was unable to complete its deliberations and recommended that continued consideration of the matter be undertaken in the next session of Parliament:

Be It Resolved that a Joint Select Committee be established to consider the Working Paper on Equal Opportunity Legislation and to submit recommendations to Parliament thereon.

Question proposed.

Question put and agreed to.

Resolved:

That a Joint Select Committee be established to consider the Working Paper on Equal Opportunity Legislation and to submit recommendations to Parliament thereon.

Ombudsman's Report
(Seventeenth)

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. President, I beg to move the following Motion standing in my name:

Whereas the 17th Annual Report of the Ombudsman of the Republic of Trinidad and Tobago was laid in the House of Representatives on December 1, 1995, and in the Senate on December 5, 1995;

And Whereas both Houses of Parliament agreed that a Joint Select Committee be established to consider the 17th Annual Report of the Ombudsman and to make recommendations for a most effective machinery for the Office of the Ombudsman and appointed such a Joint Select Committee by resolutions passed by the House of Representatives and the Senate on Friday, March 8, 1996 and Tuesday, March 26, 1996, respectively;

And Whereas that Joint Select Committee reported to this House on Friday, November 8, 1996 that it was unable to complete its deliberations and

recommended that continued consideration of the matter be undertaken in the next session of the Parliament:

Be It Resolved that a Joint Select Committee be established to consider the 17th Annual Report of the Ombudsman and to make recommendation for a most effective machinery for the Office of the Ombudsman: and

That this Joint Select Committee be authorized to adopt as part of the its records all the work done by the Joint Select Committee appointed to consider the said matter in the last session.

Question proposed.

Question put and agreed to.

Resolved:

That a Joint Select Committee be established to consider the 17th Annual Report of the Ombudsman and to make recommendation for a most effective machinery for the Office of the Ombudsman; and

That this Joint Select Committee be authorized to adopt as part of its records all the work done by the Joint Select Committee appointed to consider the said matter in the last session.

2.00 p.m.

Integrity Legislation (Green Paper)

The Minister of Public Administration and Information (Sen The Hon. Wade Mark): Mr. President, I beg to move,

Whereas the Green Paper on Integrity Legislation was laid in the House of Representatives on February 02, 1996 and in the Senate on February 06, 1996;

And Whereas both Houses of Parliament agreed that a Joint Select Committee be established to consider the said Green Paper and to submit recommendations to Parliament thereon, and appointed such a Joint Select Committee by resolutions passed by the House of Representatives and the Senate on Tuesday, June 04, 1996 and Tuesday June 11, 1996, respectively;

And Whereas that Joint Select Committee reported to this House on Friday, November 08, 1996 that it was unable to complete its deliberations and recommended that continued consideration of the matter be undertaken in the next session of Parliament:

Be It Resolved that a Joint Select Committee be established to consider the Green Paper on Integrity Legislation and to submit recommendations to Parliament thereon; and

That this Joint Select Committee be authorized to adopt as part of its records all the work done by the Joint Select Committee appointed to consider the said matter in the last session.

Question proposed.

Question put and agreed to.

Resolved:

That a Joint Select Committee be established to consider the Green Paper on Integrity Legislation and to submit recommendations to Parliament thereon; and

That this Joint Select Committee be authorized to adopt as part of its records all the work done by the Joint Select Committee appointed to consider the said matter in the last session.

COPYRIGHT BILL

[SECOND DAY]

Order read for resuming adjourned debate on question [February 4, 1997]:

That the Bill be now read a second time.

Question again proposed.

Sen. Nafessa Mohammed: Mr. President, let me say that it is indeed a pleasure for me to be participating in this very important debate at such an exciting moment in the history of Trinidad and Tobago, because when I look at the Explanatory Note attached to this Copyright Bill, 1997, I see on the first page:

"Clause 45 of the Bill is inconsistent with sections 4 and 5 of the Constitution. Consequently, the Bill requires a special majority of three-fifths of all the Members of each House in order to be passed."

2.10 p.m.

So it is indeed a very timely debate Mr. President, a debate that is taking place at a time when, in our Parliament, and indeed in Trinidad and Tobago, we are seeing new standards of political morality being set. Poaching is now becoming the order of the day and I have to wonder if it is not just to get some parliamentary support.

Notwithstanding the mischief that is being made by others, Mr. President, the PNM remains, and is, and will continue to be, a very responsible political party. We are the official Opposition under the Constitution of Trinidad and Tobago and indeed, we are the alternative Government. Certainly, when we see a measure that is designed to benefit this country at large, we will support it, unlike other political parties that have been known in the past, and even in the present, to engage in horse trading and deals, *et cetera*. We do not obstruct just for the sake of obstructing, Mr. President. In this regard let me say at the outset, that having discussed this Bill, having looked at the provisions of this Bill, we are inclined, to an extent, to support the Bill, but we do have some very serious concerns which I am sure the hon. Minister of Legal Affairs will address in the her winding up.

I would just like to go back a bit to the sequence of events leading up to this present 1997 Copyright Bill. Last week we heard the hon. Minister make mention of one of the objectives for repealing and introducing this new Copyright Bill is to keep in line with our international obligations. Certainly, Mr. President, it was under the former PNM administration that the bilateral agreement with the United States of America was signed. We have heard about the TRIPS Agreement (Trade Related Aspects of Intellectual Property Rights), and last year we dealt at length when we were dealing with other measures relating to the whole package of intellectual property legislation. I also believe way back in 1992, the IADB had initiated some kind of study with regard to our industrial properties system in Trinidad and Tobago.

Mr. President, what I remember very well indeed, is that sometime last year, it was around the month of August 1996, we had this Government of public relations and propaganda trying to convey the impression about how much legislation it was passing, and we were being compelled to meet very hurriedly in what is now known as the "cubby-hole" across in the tea room, sometimes twice or three times for the week. I distinctly recall when, in or around August 1996, a Copyright Bill was introduced on the Order Paper. It was introduced for a first reading, and a week or two after it was on for second reading in the Senate.

On that particular day, the records will show—I do not have the exact date with me, Mr. President—that we on this side came to this Parliament prepared to participate in a debate relating to copyright legislation, and suddenly, our infamous "minister of misinformation and propaganda" announced in the Senate that the particular bill was going to be withdrawn and that the hon. Minister of Legal Affairs intended to put it out for public consultation. We were shocked. We were taken by total surprise at the manner in which this event occurred. My limited knowledge of parliamentary procedures—and there are several other Members in this Chamber present today who have experience and knowledge with regard to parliamentary procedures—tells me that if a bill is introduced for second reading the next step is supposed to be a debate in the Parliament. However, if it becomes necessary, you either refer that bill to a committee of the whole Senate, or indeed a select committee of the Senate.

Instead, Mr. President, we heard on that day that the bill was going to be withdrawn and be put out for public consultation. Now, the hon. Minister of Legal Affairs subsequently invited us to participate in those consultations. In fact, I believe she set up some kind of ministerial committee and we were invited to be part of that committee. But because of the manner in which it was being handled at that time, we had very serious concerns, because we felt it was yet another attempt by this present Government to subvert our parliamentary democracy in this country, Mr. President.

In withdrawing the bill on that particular date, the Minister probably expected that she was going to be criticized for the haste with which it was going to be debated. In fact, my information was that it was only on the morning of that scheduled debate date that she had actually met with one group of people who are directly affected by copyright, and I refer to the Copyright Organization. There were many criticisms and comments that were coming out at that time. At that time, I too, had spoken to several persons involved, with respect to copyright in this country and they were all shocked at the haste with which debate on that bill was proceeding.

We are getting accustomed to their style of governing this country, Mr. President. Deception and double standard are the order of the day. On the one hand, they have boasted about consultation, yet they introduced a bill prematurely and then withdrew it for consultation. In recent times we have seen where they have been poaching on our parliamentarians. Not too long ago, they sought to place a gag order on a well-known trade unionist. And we know about the vicious

attack on the press last year. They will do anything to stifle criticism and effective opposition, because they want a one-party state under the guise of national unity. We certainly have no difficulty with national unity; we are all for national unity, but within the rubric of our democratic system as we know it under our Constitution, Mr. President. So we would not be surprised in the future in terms of their *modus operandi*.

Mr. President, quite apart from that, when the bill was withdrawn in August of last year we were told that there was a September deadline to be met. These consultations were supposed to have taken place, and it took almost another six months before another Copyright Bill was reintroduced in this Parliament. It was just about two weeks ago, a bill was circulated and we had to ask for time in order for us to look at this redrafted bill. We are indeed grateful that they allowed us that opportunity.

2.20 p.m.

Mr. President, having looked at the Bill and having spoken to a few individuals, we certainly congratulate those persons who have been directly involved in the drafting of this particular piece of legislation. We recognize the hard work that has been put in by the *Ad Hoc* Committee. This committee was appointed under the former Attorney General—I do not mean Hon. Kamla Persad-Bissessar—Mr. Keith Sobion. The committee is headed by a well-known, prominent attorney-at-law, Mr. Brian DeGannes who is linked with a firm that really specializes in intellectual property matters and I have seen other persons involved in this committee; Deborah Dane, another person who is very familiar and eminently qualified to deal with this kind of legislation.

Moreso, Mr. President, I am aware of the tremendous amount of work that has gone into this Bill by the Registrar General's Department; the hardworking team including Miss Mezena Kadir and Mr. Malcolm Spence and others who have been engaged in this particular piece of legislation and, indeed, the whole package of intellectual property legislation. We also note that Mr. Ian Macintyre and other persons from the Legal Drafting Department have been involved as well as persons from the World Intellectual Property office in Geneva.

Since last week when this Bill was introduced—and I want to take this opportunity to thank the hon. Minister of Legal Affairs for allowing us to have access to the report of the ministerial committee that she had set up some time

ago—and having looked at comments that have been made and having discussed this particular piece of legislation with other persons directly involved, we are of the view that this 1997 Bill is certainly a much improved bill to the 1996 Copyright Bill.

We have heard that this 1997 Bill seeks to repeal and replace the 1985 Copyright Act because since 1985 we have had a significant piece of copyright legislation.

Mr. President, when I look at this 1997 Bill I notice that substantial parts of that 1985 Act are, in fact, incorporated in this particular Bill; and the 1985 Act as well, did require a particular constitutional majority for its passage in Parliament.

Now, last week the hon. Minister said that the 1997 Bill is intended to update the law relating to copyright in terms of its language and definition. Yes, we agree that to an extent when you look at clause 3 of the Bill it does, in fact, reflect the technological advancements that have been made over the years, especially since 1985. I also heard the hon. Minister say that this Bill is supposed to be more user-friendly. I have to wonder about this user-friendliness. To whom is it user-friendly? I think this is a Bill with which lawyers would have a field day, but I have to wonder whether the man down in Penal, on the Chaguanas Main Road or indeed down on Frederick Street, who is making a living from selling cassettes would find this particular Bill user-friendly.

Mr. President, one aspect of the Bill that I particularly agree with and like, compared to the 1985 Copyright Act, is that in clause 5 of Part II of the Bill, a definition of copyright if nicely set out. Then, Part III goes on to deal with moral rights and Part IV spells out what are neighbouring rights. It really is more comprehensive than it was before.

However, I have some concerns when I go on to Part VIII of this Bill which deals with civil remedies and criminal liability. Now, we see in clause 41 of this Bill—and this is a point that the Minister has emphasized in her contribution—that stiffer penalties are being suggested with respect to persons who are found to be infringing the copyright laws. This clause is certainly wider than its equivalent, section 7 of the 1985 Copyright Act, which introduces a penalty of $100,000 or a 10-year imprisonment term. Would these stiffer penalties really deter those persons who infringe our copyright laws?

I would like the hon. Minister to tell us—and I am sure she would have the time to get the relevant information for us—how many people have been charged for breaching the Copyright Act since 1985 where there were, in fact, penalties as well and a term of imprisonment involved. How many people have been charged? To what extent have those 1985 measures been enforced? I would like to know to what extent our police and even our prosecutors, magistrates, judges and other persons whom we have to rely on to enforce the provisions of this Bill, are aware of their role in terms of the enforcement of these copyright laws. I wonder whether we should not, in fact, be focusing more on this aspect of it because in 1985 we had many of these provisions.

Mr. President, this brings me to clause 45 of this 1997 Bill which deals with the powers of police officers. Now, this is the particular clause in the Bill that warranted a special majority of votes in the Parliament. I know that some of these powers already exist in the 1985 Act, except from what I have gathered the intention is to make the powers of the police officers a bit clearer. However, I wonder if they have succeeded in this regard.

When I look at clause 41(1) and (2), the first sentence in those two subclauses state:

> "A police officer not below the rank of Inspector, or a police officer below the rank of Inspector acting on the authority of a warrant issued under subsection (4), may—
>
> *(a)* enter and search any premises or place;
>
> *(b)* stop, board and search any vessel...
>
> *(c)* stop and search any vehicle..."

Likewise, in clause 45(2) says:

> "A police officer not below the rank of Inspector or a police officer below the rank of Inspector acting on the authority of a warrant issued under subsection (4), may seize, remove or detain—
>
> *(a)* any article which appears to him to be an infringing copy..."

What frightens me, Mr. President, is that if you compare these two subclauses with clause 45(3) which simply states:

> "A police officer may—
>
> *(a)* break open any outer or inner door..."

That to me means that any police officer—I may have a friend who is a police officer and I can take him to somebody's record shop or store and ask him to do me a favour, and let him break and enter, and do any of these things that are spelled out here in clause 45(3).

2.30 p.m.

I would like to believe hon. Minister that this has been an omission, but certainly clause 45(3) suggests that very, extremely wide powers are being given to any police officer; whereas in subclauses (1) and (2) certain police officers are given certain kinds of powers. That is, a police officer above the rank of an inspector, or if below, that particular police officer will need to have a warrant. Clause 45(3) imposes no kind of limitation or restrictions, and we are a bit concerned about that, because that is the clause, Mr. President, which warrants a constitutional majority, a three-fifths majority. We have very serious concerns with that particular clause in the Bill.

Mr. President, last week the hon. Minister of Legal Affairs said that this Bill will help the creativity in our country and will create employment opportunities for us, *etc*. We are all aware of the very rich multicultural, multireligious, multi-ethnic nature of our society. Only last week we saw an explosion of culture, colour and creativity in this country; it is dubbed "the greatest show on earth" and certainly our entertainment sector is known to be one of the richest in the world. It has tremendous potential. Our calypsoes, pan, carnival, chutneys and our products of Mastana Bahar, have been internationalized for many years now.

Last week the Minister gave us some interesting statistics relating to the GDP in certain countries and we know that the world music trade is one of the fastest growing sectors, and certainly in Trinidad and Tobago our music industry has tremendous potential. In the United States of America, copyright industries account for six per cent of the GDP and five per cent of employment. In the United Kingdom, pop music generated half billion dollars in overseas royalties alone. In Canada between 1987 and 1991, revenues from cultural industries increased by over 40 per cent from $5.3 to $7.5 billion. What about Trinidad and Tobago?

Mr. President, I crave your indulgence at this point because I would just like to give a brief insight into the contribution that the East Indian community has been making toward the entertainment industry in Trinidad and Tobago. In this regard, I would like go back a bit. In 1845, the first East Indian immigrants came to Trinidad and Tobago and brought with them their songs and their music. They

brought their *biraha, hori, kafri, chowtal, sohar* and their wedding songs. They also brought with them *tassa, nagara,* and the *abir* dance.

Right here in Trinidad and Tobago over the years, there developed a breed of men and women who started to sing what is known as classical songs; these are local compositions. They sang songs that are known; the *durpad, tilana, thumri* and of course *gazals*. But in the 1950's with the advent of Indian movies from India, this brought about a change in our music and the old classical songs gave way to film songs from record disks, hence in the early 1960's there was a craze for film songs. But that developed a kind of cultural vacuum and it was against this background that in 1970 a particular television programme was introduced on TTT known as "Mastana Bahar" which still exists today. I happen to be speaking from first-hand information and knowledge. An off-shoot to this programme was the Mastana Bahar Cultural Pageant which was initiated in 1975, the International Year of the Women. In those early years of the pageant a kind of cultural fusion was beginning to take place.

The pageant included steelband, the Ambakaila Dance Troupe, and Aubrey Adams, Eugene Joseph and Molly Ahye were all involved in the production of this particular pageant. An outstanding feature of this pageant which exists up till today is a particular category known as the local song contest. This is a category of singing that was design to encourage our local artistes to compose songs that were typically Trinidadian in flavour whilst at the same time retaining some of the Indian flavour. Hence the rise to fame of Sundar Popo who is known throughout the world, in Holland and India. In fact, some years ago a particular group of artistes from India took his lyrics and even some of the beat and made their own records and have been making thousands of dollars overseas with our own local creations here.

There were people like Basdeo Jaikaran, Drupatee Ramgoonai, and even Ricky Jai with whom I am sure the Hon. Wade Mark is very familiar. In those early days of the pageant, the purist condemned the pageant, they said it was "creolizing" and "carnivalizing" Indian culture in Trinidad and Tobago. But today, there is now recognition of our need to develop our own artistic styles and so fusion is taking place. Instead of copying wholesale from India and America, we have our own potential right here in Trinidad and Tobago to develop our own music.

One will recall, Mr. President, the 1980s when there was the rise of what is known as "chutney" music in Trinidad and Tobago. In those early days there were

those who were condemning chutney. But chutney had its genesis right here in Trinidad and Tobago since 1963 when a lady by the name of Drupatee came from Suriname to perform in our first independence anniversary celebrations together with a well-known group, the Naza Jamana Orchestra and Ramdaye Chautou. That expression of the word "chutney" was coined by a well-known broadcaster in this country who is now deceased, Hansraji Maharaj, the person in the early 1960s who is responsible for that chutney music.

We all know that there now is chutney/soca competitions taking place in Trinidad and Tobago; how healthy that is for our country. We all know of artistes like Sonny Mann the "Lotayla" man. I am sure the hon. Minister Wade Mark is familiar with him as well. He is a product of years of hard work by these local artistes. There is Mr. Heeralal Rampartap, Boodram Holass, Annad Yankaran, Ramraji Prabhoo. They have been keeping the flag of Trinidad and Tobago flying in Canada, the United States of America, England, in other parts of Europe and in Holland, together with our well-known calypsonians.

2.40 p.m.

I ask the question: How are these artistes going to benefit from this piece of legislation? I just want to highlight a bit, the *modus operandi* of some of these artistes, and indeed, the plight of producers who have been instrumental in producing records and cassettes involving these artistes.

With copyright legislation, the payment of royalties or indeed the collection of royalties is a significant aspect of it, but one of the facts of our cultural scenario in Trinidad and Tobago—and it is a matter I think the hon. Minister of Legal Affairs needs to take note of—is the manner in which the Indian artistes in Trinidad and Tobago operate with regard to their compositions and so forth. Maybe, it is something cultural, but from what I have been told after speaking with many of them, they prefer when they compose a piece of music, to sell over their rights to a producer and receive a flat fee.

I have been told of a particular situation where a well-known artiste in this country sold over the rights of one of his most popular songs. In return, all he wanted was a cassette player and a refrigerator. That was all he accepted in return for his song! They do not have the time nor the inclination to be registered as is

required under the operations of the Copyright Organization in Trinidad and Tobago. They operate in a kind of informal manner. Maybe they need to become a bit more organized. I have been told that in India this is how the Indian music industry operates as well; not on the basis of royalties but on the basis of flat fees. This is a matter which persons involve in this field ought to look at. Then, there is the plight of our records producers. They put out the money for the production of a record and we are aware of the hardships which are involved.

I am sure my colleague, Sen. Mannette will speak more in terms of the recording industry. Up to today if one wants to produce a record, one has to do part of one's recording or send in a particular gadget to Barbados in order for one's record to be produced. After all the great expenses and difficulties in producing this record artistes are afflicted with this problem of widespread piracy. There is no protection for them. This brings me to one of the main problems with the Copyright Organization in Trinidad and Tobago. I am basing this on the feedback I have obtained from certain persons who are directly affected by copyright. I refer especially to the concerns that have been expressed with regard to the Copyright Organization of Trinidad and Tobago and its role in this legal framework that we are substituting here. One of the complaints is that royalties are collected, but many artistes do not benefit from the distribution of these royalties.

I know for a fact of a particular case where royalties are collected from a particular broadcasting organization. I understand that two per cent of a popular Indian radio station's gross earnings in Trinidad and Tobago, is paid to COTT.

I have looked at a clearance sheet from this radio station, because, I think COTT has its own system of collecting royalties, and how they divide the proceeds thereof. We would like to know a bit more about it. In one particular case where there was the clearance sheet by a particular broadcaster, in a two-hour programme with tassa and chutney, most of the items which were played on that particular programme neither the producers of those pieces of music nor indeed the artistes who performed would have benefited in any way from any royalties that may have been collected from a particular station where royalties would have been paid. So there is the feeling that COTT is not really representative of all those persons who are directly affected by copyright. I am speaking here, not just about calypsonians and East Indian artistes. Mr. President, in many other respects as well, there is this concern being expressed.

I have had the opportunity to interact with one or two persons from COTT, and looking at the background I gather that COTT is the only collecting society that

exists in Trinidad and Tobago. It is a private society. It is organized as a company that is limited by guarantee under the Companies Ordinance of Trinidad and Tobago. I believe COTT was formed sometime around 1984, and this would have just been around the time when the 1985 Act was enacted. I am informed that its membership include about 300 composers, 10 music publishers. There are some licensees which include four radio stations; now there is one television station operating. And, there will be propaganda soon on that station for the entire night, and I do not have cable as yet. And, even on the cable channels we are being bombarded with the propaganda or misinformation.

Mr. President, I understand too, there are several night clubs, hotels, cinemas that are legitimate members of COTT. I have already outlined some of the problems with COTT. I also gathered there are other problems. For example, the actual collection of royalties; and I wonder whether there are sufficient trained persons involved with COTT. There is a whole credibility problem. As I said, many of the persons I spoke with have complained that COTT is really not sufficiently representative. I am very mindful and very much aware of the years of hard work that has gone into COTT, especially by Mr. Alvin Daniell and certainly, Miss Allison Demas.

COTT needs to broaden its base; it needs more teeth and certainly, it needs to become more representative. This brings me to the question of whether or not the time is right for us to consider the formation of a national society and, more particularly, the setting up of a system of collective administration. I am sure Sen. Prof. Ramchand may have more to say on this particular aspect.

The hon. Minister of Legal Affairs should consider whether it is not desirable for Government to play a more meaningful role in terms of actually setting up a national organization such as a national author's society because, throughout the world there are organizations like these operating. A national author's society of Trinidad and Tobago will be responsible for the issuance of licences for the use of copyrighted works by third parties and, certainly, it will be involved in the collection of royalties and generally seeking the interest of creators of works and certainly securing the protection of these works.

2.50 p.m.

There are examples from the 17th and 18th centuries where societies have been formed in Europe and elsewhere. In France, one of the earliest such societies was the Society of Authors, Composers and Editors of Music (SACEM). In the United

States of America, there is the American Society of Composers, Authors and Publishers (ASCAP). In the United Kingdom there is the Performing Rights Society (PRS).

Such a society is crucial because the effectiveness of copyright legislation depends on a system of collective administration. What is collective administration? Collective administration refers to a system whereby the creators of works, authorize an organization, usually an authors' society, to administer their rights; to monitor the use of the works concerned; to negotiate with prospective users of these works; to give licences for appropriate fees and to collect and distribute fees. This is important because most authors do not have the time and the ability to see about these things for themselves.

With this suggestion, I am not saying that COTT, as an organization, has to be ignored. Maybe, some closer examination can be made with regard to COTT in terms of making it such an organization. I believe that some kind of coming together of those specialists in the field, should take place. Perhaps, a committee can be set up with representatives from COTT, the Ministry of Legal Affairs, the Registrar General's Department and even the Ad Hoc Committee, to see if this particular matter could take root in Trinidad and Tobago. It is important in terms of the effectiveness of our copyright legislation.

At this point, I would make another suggestion to the Government. We have heard a lot of talk about stimulating culture and creativity. During the Carnival season, I remember hearing a calypsonian—I think it was Lady Wonder—singing a particular calypso. I think the time has come in this country, particularly for those persons who are so interested in culture—I know the Minister of Community Development, Culture and Women's Affairs would consider this particular suggestion—to construct a national cultural centre. Let us face facts. With all the richness of our culture, to this day, there are no appropriate facilities for the many artistes in this country.

Last week the Caribbean Comedy Festival was held at the Jean Pierre Complex. I had to wonder what would have happened if it had rained on that night. About 15,000 persons would have been scampering. The Jean Pierre Complex was designed for sports. What other facilities are there in the country? There are Queen's Hall and Naparima Bowl. These are small centres where about 3,000 persons can be seated, if so many. If there is a show at Skinner Park, there would be restrictions with regard to the grass. At certain times of the year it is

difficult to use that particular compound. Instead of facilitating and assisting our artistes, we are seeing hardships all around. I urge this Government, that claims to be so interested in developing our culture, to consider this suggestion of the construction of a national cultural centre.

Recently, an Indian cultural centre was opened, but this is a small place. We want a centre with appropriate and adjustable stage facilities.

Mr. President: The speaking time of the hon. Member has expired.

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. P. Beckles*]

Question put and agreed to.

Sen. N. Mohammed: Thank you, Mr. President, and all my other colleagues.

As I was saying, given our rich cultural heritage we need appropriate facilities. I know the hon. Minister of Legal Affairs is from Siparia and she must be familiar with the Simplex Complex and the Samar Entertainment Centre. There are attempts, but, are they sufficient for our artistes? We need a facility which would have appropriate stage facilities with proper dress rooms, acoustics, lighting and seating for a capacity crowd. The Minister of Finance is here and the Government has billions of dollars with all the investors who are coming in from all over the world. I would like them to give it some serious thought. Do not laugh at it! It is a serious matter, especially as they claim that they would be there until 2015 or 2020.

With this Copyright Bill we are talking about culture. I am sure that Lady Wonder, our other calypsonians, artistes and dancers—we have heard talk that a building is supposed to be erected for our performing society. If there is an appropriate facility these diverse groups can be accommodated. On one night there can be several different shows. I understand in Madison Square Garden the facilities are very elaborate. We should be thinking along these lines. I urge the Government to put its money where its mouth is. If the Government seems to be so concerned and committed to culture in this country, it should give that some serious thought.

Another aspect I would touch on, is with respect to implementation. I remember distinctly, that last year when we were debating the other pieces of legislation in the intellectual property package, I asked the Minister of Legal Affairs to give us an idea of how far the infrastructure for the implementation of

intellectual legislation was put in place. I did not receive an answer. Today, several months after, once again, I am asking the hon. Minister to give us an idea. Has an office for intellectual property been set up? We would like to know. I have been to the Companies Registry and I have seen a sign, "Intellectual Property Office". I recall hearing that a controller was supposed to have been appointed. Who is our new controller for intellectual property? If there is none, what is the delay? Please let us know, hon. Minister. Do we not have sufficiently trained professionals in our country so that we can have this whole implementation process going?

3.00 p.m.

I understand that recently there was a diplomatic conference on certain copyright and neighbouring right questions which was held in Geneva. What effect will this particular conference have on us now? To what extent is it going to impact on what we are seeking to do here today—and that is to pass copyright laws in Trinidad and Tobago? Would we need, at some later time, to review this particular Bill, Mr. President?

With these concerns, and the suggestions I have made, I trust that the hon. Minister will certainly, in her winding up, seek to address some of these issues. I wish they would stop the "gallerying" and let us know what is happening.

Thank you very much.

Sen. Martin Daly: Mr. President, may I say at the outset how very pleased I am that we are debating this Bill after the hon. Minister of Legal Affairs very graciously gave the main players affected by this legislation an opportunity to present their views.

I do not recall the 1996 Bill being withdrawn at all. What I recall is that after certain representations were made, the Government gave time to various persons, including the Copyright Organization, to study the Bill. I compliment the Government for that and would not try to suggest that there was anything wrong or discreditable about that. Indeed, it represents a culmination of what many of us were pressing for, which is to have orderly debate preferably on our regular day, after we have had time to study the Bill and after the main players have had time to comment on it.

So I commend the Government for the way in which the Copyright Bill has been handled in contradistinction to many of the earlier bills, but we do not want to open old wounds. Suffice it to say that I am satisfied that we have moved

forward and we are now conducting our business in a more orderly fashion, and I hope that means we are going to return to the norm.

Mr. President, as one who has consistently criticized the way in which business has been organized as a disrespect to Parliament, I might say in passing, how much the parliamentary process is enhanced by dealing with a bill in this way, as indeed it was enhanced by the proceedings which took place last Friday which reflected very well on the organization of the Parliament—its orderly way, and we were even able—unlike anything else that we produce in this country—to predict how long it would last and stick to that. So that Parliament is perhaps in a slightly better odour with the population as we seek to debate this Bill today.

Now, Mr. President, I join this debate only to agitate something which I raised with the Minister on the last occasion, and that is the protection of works of mas. I have had the benefit, Mr. President, of being provided with certain materials which passed between the local advisors and the World Intellectual Property Organization, and I am absolutely mystified, having read this material, as to why the work of mas is not specifically catered for, either in clause 5 or clause 6 of the Bill. I must say that the absence of a specific protection of work of mas in this Bill is symptomatic of what always concerns me about this legislation. I do not expect anyone to give anything I do uncritical acceptance, and therefore, I rarely afford uncritical acceptance to Governance with a capital "G" or indeed, to ad hoc committees.

It is very clear to me—and indeed, I have the answer which was provided by the Minister of Finance in relation to a question which I asked—that all of this intellectual property legislation is being driven primarily by foreign interest. I am not a socialist, nor a xenophobe. All I ask is that if something is being driven by foreign interest, whatever legislation we pass, or whatever policy we formulate, must take account of our own peculiar circumstances. It is symptomatic that the one thing local that should receive specific treatment in this Bill has been excluded and, as I shall demonstrate, it has not been excluded because it was not understood, but on the nebulous grounds that it might create some confusion, and I will refer to the material in due course.

I cannot accept that, and I cannot accept that the Government, or any committee that it appoints, should be so supine when it comes to protecting our interest. That is all we ask. No one is saying that one must curtail or cause the curtailment of foreign investments, because investors will not invest in a country

where their intellectual property rights will not be protected. I am a lawyer and businessman and I understand that, but that does not mean that we must not carve out in each policy, or piece of legislation, protection for what belongs to us, or something that suits us. I am not impressed when I am threatened with sanctions because I want to be certain that whatever legislation we are passing, properly provides for us because, as I say, charity begins at home.

We know that this legislation has been outstanding since 1993 because in answer to a question which I asked on October 14, 1996, we were told at that time that certain pieces of legislation, including the Trades Mark (Amdt.) Bill and the Patents Bill were conditionalities of a loan of the IADB in 1993 so it means that the Government is to be commended for finally getting this job done. If we took a loan on certain conditionalities, we must honour our obligations and the Government is to be commended for ensuring that we honour our obligations.

What I am concerned about, and this is the only area of the Bill on which I would speak, is the complete failure to include protection for works of mas. We must get something out of this, and if we have a legitimate cause, it must be met in this legislation. I repeat that charity begins at home.

Mr. President, the Minister's response to my question when she opened the debate as to which of the clause—and I will direct Members to clauses 5 and 6, because it is on those two clauses I am speaking. When I asked the Minister under what subclause mas is protected, she suggested one or two of the subclauses and offered to let me have the material, but I know that a work of mas does not fit easily into any of these categories. If we do not provide separate protection for it, it will simply go unprotected. One only has to think about mas and I understand that sometimes it is not original in the sense that it is the first time the various components that comprise the mas have been presented. It maybe what the experts call derivative, and these works are provided for in clause 6.

3.10 p.m.

In a book which Sen. Beckles was kind enough to lend me, there is a great deal of explanation about what are derivative works. They are works which may combine a series of ideas that are already out there, but the combination becomes something original. I would like to give two examples, Mr. President. I suppose most people know what a King Sailor is and what the King Sailor Dance is. It is always very easy to address the Chair on these subjects because I know he will empathize with these things. There is nothing original about a sailor costume or the feathers that comprise the costume. Indeed, I am not an expert on dance. The

dance may not be original in the sense that no one has ever performed precisely those steps, but when one combines the sailor costume—the feathers, the dance, the stoker's or fireman's stick, as the case may be, that whole thing must be protected. I am at a loss to see how that is protected by this Bill.

Let us take a much more recent example. There was at a certain stage of Minshall's presentation, the cloth of Asia, the cloth of Africa, the cloth of the Americas, the cloth of Europe, eventually leading to the tapestry of the Caribbean, which was drawn from all these other cloths. I do not suppose, if one breaks down each of the sections in that presentation, that they are protectable by themselves, but what a wonderful presentation! I am absolutely satisfied that that section of Minshall's presentation, to which I just referred by way of practical example, is not covered by any of these clauses, and any suggestion of its architecture or that it is a dramatic work or work of applied art only has to be considered to be rejected.

Now the problem was very well understood because, to the credit of the local advisors, they entered into correspondence with the World Intellectual Property Organization (WIPO) about this matter. They do not really care about our Carnival; they only care about it to the extent that, perhaps, Coca Cola, which is a protected product, is sold in this market. As a result of the efforts of the local advisors, they first of all started on this basis. I quote from a note which has been provided me by the Deputy Registrar General, on the instructions of the hon. Minister of Legal Affairs.

> "The Internal Bureau has some doubt as to whether it would be appropriate to include such a specific category of works for the following reasons:
>
> (i) as defined in section 2 of the bill..."

and this is in reference to the 1996 Bill—

> "...a work of mas consists of elements that overlap certain categories of works, already mentioned in the Bill, namely, in particular, spoken works...dramatic and dramatico-musical works, pantomimes, choreographic works and other works created for stage production...works of architecture...works of painting, sculpture, and other works of fine art...and, perhaps, works of applied art."

So, they do not really know into what category to put it either. As a result of the correspondence—and they point out that most masquerade is not official—they eventually came up with what I consider a near perfect definition of a work of mas. If this definition is in the possession of the Government, I require an explanation of why it has chosen to leave it out. I got this material from the Government, so it is here:

> " If it is considered indispensable to include mas in the Bill, we suggest the following:
>
> '...'work of mas' is an original production intended to be performed by a person or a group of persons in which an artistic work in the form of an adornment or image presented by the person or persons is the primary element of the production, and in which...'

Think about our King Sailor!

> '...such adornment or image may be accompanied by words, music, choreography or other works, regardless of whether the production is intended to be performed on stage, platform, street or other venue.'"

What a marvelous definition! Why is it not in the Bill? I suggest that we talk not only about performing but about display; but that is just a matter of language. I think that quite often one displays mas as much as one performs it. The point is that the definition very often understands the aggregation of adornment, dance and music. I want an explanation of why this is not in the Bill.

The note continues to give a description and gives an alternative that if we do not want to put it in clause 5, we can put it in clause 6, which deals with derivative works. If we put it within derivative works then:

> "This solution would indicate that what would be protected as a work of mas would be the original putting together of various protected and unprotected elements into one production."

I raise this because I asked the Minister about it when she introduced the Bill and she has been kind enough to provide me with this material. Having read it, the definition seems so eminently sensible that I would like to know why it is left out. At the moment, the only reason I can think of is that the World Intellectual Property Organisation was not keen about it. It was not very important to its members and the commercial interests which they represent. I hate to think that the

Ad Hoc Committee was not keen on it because they are representing the same interests as the World Intellectual Property Organization.

Mr. President, I think it is very clear and well known to the Government and its advisors that mas is not covered by any of the categories in the existing clauses 5 and 6. The matter has received a great deal of thought; it has been the subject of a definition that someone who has a nodding acquaintance with mas finds very descriptive, and I urge the Government, unless there is some very good reason, to re-introduce this definition into the Bill. It is very important that we get something out of this legislation and that all this process does not simply become a one-way street. I am sure that I will have the support of the Minister of Finance for the definition, having regard to how fresh in his mind our mas must be.

Finally, I would like to identify with two points raised by Sen. Nafeesa Mohammed. What little experience I have had of this and what little I have read suggest that the big players who support the World Intellectual Property Organization make their money this way. I think the same thing happens with boxing, although I am less familiar with that. In the days when there were boards with song sheets, one could buy romantic songs for 25 cents each. Depending on the heat of the romance, it was either on white paper, green paper or pink paper. This was at the corner of Frederick and Queen Streets. It is important that we do not forget these things because we have become sophisticated. I see the President smiling. He may have bought and used one or two of these songs.

The point is simply this: from anyone who produces anything, whether it is a musical work or a dance—it happens with athletes as well—the material is bought at the source at the cheapest possible price. All over the world, there are promoters and producers who buy up everything because it is so cheap. It has no value until it is produced. If one produces 180 songs. They can buy up all of them with a one-off payment. They then take this material and refine it. I do not have the statistics, but I suppose one in every 10,000 becomes a commercial success. However, they have paid so little for the source material that when it becomes a hit the flat fee they have paid the original composer or the promising boxer to sign on, is minuscule in relation to the ultimate commercial success and the money that is produced by the work.

3.20 p.m.

I mentioned this because I want to identify with what Sen. Nafeesa Mohammed said—without in anyway being other than completely supportive of the good work

that COTT does—that we need some support for those artistes who would like to take the trouble to develop their own work, if not completely to fruition, certainly, at a higher and at a more rewarding stage of the commercial ladder. I think there is much to be said for the references to the American Society of Composers, Authors and Publishers, other societies and national organizations. Maybe, the Ministry of Culture and Women's Affairs would have to give some thought to having some kind of promotions or self-help unit which could help the originators of the raw material to carry it to a higher stage along the production ladder.

Ultimately, in the global market-place they are not going to have the fantastic success of the various well-known pop singers because at some stage they would be forced to part with the material. They could, however, carry it higher up the commercial ladder and even get some kind of royalty, as opposed to a flat fee. I would, therefore, like to identify with that suggestion and I think it is something at which the Ministry of Culture and Women's Affairs should look.

Mr. President, I would also like to identify with her concern about clause 45(3). I believe it is tolerably clear that in order for a police officer below the rank of an Inspector to do any of the acts here, there would first have to be an authorized search. I believe the answer is that he would be acting in an ancillary fashion for a warrant that is obtained under clause 45(1) and (2). However, I am not really clear whether that is so and I would like the Government to take the points that have been raised by Sen. Mohammed very seriously and tell us really whether clause 45(3) is open-ended or whether it is ancillary to the search that has been previously authorized.

Mr. President, there are many other persons who are far more qualified than I am to speak on this difficult subject. I plead with the Government, in the absence of some good explanation, not to simply walk away from including works of mas in the Bill because it does not suit the commercial interest of the World Intellectual Property Organization, or the various persons who are advising on this Bill. In the absence of some explanation, I would like the Government to reintroduce that definition, certainly, by the time this Bill goes to committee.

Thank you, Mr. President.

Sen. Prof. Julian Kenny: Mr. President, I join the commendation of the Government for the way in which they handle this particular Bill. In my commendation, I note, that there have been substantial adjustments to the original Bill. I have no difficulty whatsoever in supporting the Bill, I give strong support. I

shall, however, make a brief comment on clauses 11 and 12 which relate to photocopying materials for use in teaching.

Mr. President, it is a fact of life that educational institutions, including the University of the West Indies, have no hesitation—and it leads to people who actually do the teaching—in photocopying material for teaching purposes. I wonder whether this does not sanction what is, to me, abuse. Clause 11 says, "the reproduction of a short part...". This is interpreted in a variety of ways and, indeed, people who have been in the teaching profession will point out, not only does one see it in the University of the West Indies—which ought to know better—but in all secondary schools. Even when one goes to CCS, and one would see someone copying 10 to 20 copies of part of a textbook. I wonder whether having a clause of this kind is not also encouraging our citizens to continue to abuse the process.One of my concerns also is that it takes away the absolute right to that property of the creator of a written book. I know that it has now become standard practice but when one looks at text-books used in science and other subjects, one would see under the copyright sign, a statement—I cannot remember the exact words—I think it says, "no part of this may be copied, retrieved, stored, in whatever form, without the approval of the holders of the copyright."

I know of some Members of this Senate who own materials which have been copyrighted. I find it a bit difficult, in a small country where there is comparatively little materials produced, to find that the law will permit anyone to take a piece of my work—which I have produced for educational purposes at my personal cost, for which I am trying to recover the cost—without so much as saying, "we would like to do it." This law simply allows everybody who wishes to use this material to photocopy, "a short part of it" which should, in fact, be all of it, for personal use. I find that for a small country that produces so little, and where the numbers of educational institutions are so few, that the law would permit this. Mind you, I am not going to object to it. I just sincerely hope that when people use anything that I may have produced that may be of value to the development of their minds that they would buy the original rather than mak a photocopy.

Another minor concern is clause 12 which deals with photocopying for archival purposes. Quite frankly, I prefer that where national libraries and national archives require a particular document for the national record that these things be purchased from the people who actually produce them.

With these comments, Mr. President, I assure the hon. Minister of Legal Affairs that this Bill has my strongest support.

Thank you.

3.30 p.m.

The Minister of Energy and Energy Industries (Sen. The Hon. Finbar Gangar): Mr. President, as I rise to lend my support to this Bill, let me join with other Senators in congratulating, first of all, all the relevant staff who have contributed to the production of such a comprehensive and well thought out Bill. I also congratulate the Minister of Legal Affairs who, when certain queries were raised with respect to consultation with interested groups, took it upon herself to initiate such consultation. We, on this side, do not interpret such actions as being examples of incompetence or any other such thing, but rather, we will do what we feel is in the national interest.

With respect to the particular Bill under consideration, as we are all aware, this Bill represents part of a comprehensive approach to dealing with intellectual property rights in order to bring our legislation up to international standards. To put things in proper context, we will look at defining what is intellectual property.

Mr. President, intellectual property comprises patents, trademarks, trade secrets, integrated circuits, geographical indications, industrial designs, and the one we are considering now, the copyright. As we are all aware, these factors which I have just mentioned form the basis of modern business since they provide competitive advantage. Many businesses have realized that intellectual property rights are increasingly important, particularly in the competitive global market-place. The advent of pirate factories which duplicate protective works of art, in particular, and also intellectual property, has created a whole new world in which property owners undergo significant risk in ensuring that their works are, in fact, protected.

The explosive growth of electronic communications and duplication machinery has increased the ease with which intellectual property, particularly those governed or described under the definition of copyright, can be duplicated, leading to a corresponding growth in litigation regarding intellectual property rights. This Bill under consideration seeks to give protection for original works of authorship, giving the creator the exclusive right to reproduce the work, to display and perform the work publicly and, to authorize others to do any of these activities.

Works covered by copyright, as they relate to this Bill, include books, magazines, musical scores, motion pictures and computer software programmes. I share Sen. Daly's concern that the reference to works of mas may not be adequately covered in this particular Bill. I am sure my distinguished colleague, the Minister of Legal Affairs, will deal with such a query.

Mr. President, why is this Bill needed in this particular context? It is needed for a variety of reasons. Over the past few years, the scope of the multilateral trading system has been greatly expanded to protect intellectual property rights. We have had a series of agreements. For example, we have had the General Agreement of Trade in Service, the Trips Agreement, and the refurbishment of the General Agreement on Tariffs and Trade. However, notwithstanding the implementation of these agreements, counterfeiting and piracy continue unabated.

Recent statistics have shown that in 1986, the aggregate loss, worldwide, to US business due to counterfeiting and piracy, amounted to about US $23 billion. In 1996, it is estimated that the aggregate loss to US business due to counterfeiting and piracy exceeded US $200 billion. So what we have seen in the last decade is an exponential increase in the loss of business because of people infringing upon the protection of intellectual property rights. We also find that notwithstanding countries agreeing to adopt the World Intellectual Property Organization's guidelines and principles, it has been to some extent ineffective for a number of reasons.

Many countries decide for economic, social and political reasons to stay out of the World Intellectual Property Organization's agreement. Also, other countries have been able to find, skilfully, loopholes in these agreements and, finally, there has been a lack of enforcement in many countries as it applies to these particular agreements. That is why we as a Government have found it necessary to implement legislative measures to ensure that these various patents, trademarks, trade secrets, integrated circuits, geographical indications, industrial designs and, now, copyrights, are in fact protected.

Mr. President, we have heard a lot today in this honourable Senate, about the exploitation of local artistes. In Part II of the Bill, clauses 5 to 14 clearly outline the protection which will be afforded our local artistes against the exploitation as it relates to duplication of their works. This has been a very serious shortcoming and we hope that by the implementation of these new laws, this exploitation would, in fact, be minimized, if not completely eliminated.

There is another reason we need to introduce and pass this Copyright Bill. It deals particularly with the subject of computer software programmes. This world in which we live is driven by information technology. That is a fact which cannot escape any or all of us who sit in this honourable Chamber. Today, the world is, as I said, completely driven by computers and their applications, as they relate to information technology. This area has been one of the areas which has been most subject to counterfeiting and piracy. It can be proven statistically, for example, that in China, approximately 75 million computer programmes are pirated on a yearly basis and 94 per cent of all computer software in the Republic of China is in fact pirated also. Those of us in Trinidad and Tobago who operate in a computer environment will also be aware that the percentage of computer programmes which are, in fact, pirated, would be in excess of 50 per cent. We also need to ensure that this legislation which deals, among other things, with protection against the duplication of computer software is, in fact, put in place.

3.40 p.m

Finally, Mr. President, the need to attract foreign investment follows from the implementation legislation dealing with intellectual property rights.

About two months ago, or late last year, I had the pleasure to present a paper at a conference organized by the hon. Minister of Legal Affairs on The Impact of Intellectual Property Rights on the Energy Sector in Trinidad and Tobago. During my research for the preparation of this paper, I came across what is regarded as the only single authoritative reference in the world today on the impact of intellectual property rights on foreign direct investment.

We all have an idea that intellectual property rights is a prerequisite for attracting foreign investment but there has hardly been any experimental or empirical data which can, in fact, support this statistically. I encountered a paper in the Columbia University Journal of World Business which seeks to make a correlation between the implementation of intellectual property rights as it relates to the ability to attract foreign direct investment. This study was conducted between the period 1975 to 1990 and was done by four university business professors in the United States. To simplify it, they considered eight independent variables. They considered four intellectual property variables: patents, trade marks, trade secrets and copyright; and four economic policy variables: market size, the ratio of public sector investment to gross domestic product, the ratio of external debt to exports, and exchange rate fluctuation.

The statistics are quite revealing. They categorized the 27 countries into less developed, newly developing and developed countries. It was found on a comparative basis that in less developed countries, the implementation of strong intellectual property rights legislation accounted for a 13 per cent increase in foreign investment. The implementation of strong economic policies contributed to an increase of 21 per cent. As we go on now, it is here where the statistics become very revealing as they relate to Trinidad and Tobago. In newly developing industrialized countries, the institution of strong intellectual property rights accounted for a variation of 43 per cent in foreign investment, and economic indicators accounted for a variation of 28 per cent. In developed countries, strong intellectual property rights legislation accounted for a variation of 35 per cent, whereas economic indicators accounted for a 20 per cent variation.

These figures are quite revealing, in that they clearly indicate that in order to attract foreign investment into a country, it is almost a condition, a precedent, or a very desirable feature that the introduction of strong intellectual property rights legislation is necessary. For those of us who are familiar with economics and econometrics, it is clearly stated that in the regression analysis, the copyright variable is positive and significant for all country groups, and this is understandable, since new information technologies, such as computer software and semi-conductor chips are protected by copyright and a high level of protection is critical to the transfer of technologies through foreign direct investment into developing countries.

As I close, I would like to say that competitive advantage created by a technology cannot be sustained without adequate protection of intellectual property rights. The absence of adequate protection for such rights could make investment in innovative and creative work less attractive, thus affecting economic growth and the expansion of world trade. It also restricts trade in technology-intensive sectors because of fear of copying, and in those areas where there is a quantitative expansion of traded goods, there occurs a distortion of trade.

Incidents of intellectual property rights violation remain high in many countries, moreso in developing countries like Trinidad and Tobago. In Trinidad and Tobago, we, as a Government, are committed to the strategic imperatives of globalization, trade liberalization and attracting foreign investment, particularly in critical areas such as the energy sector and also in our artistic endeavours. The passage and implementation of intellectual property rights legislation, such as the

Copyright Bill, is considered to be a major step forward in meeting these objectives.

Once again, in closing, I compliment the Minister of Legal Affairs in bringing this Bill to this honourable Senate.

Thank you very much.

Sen. Elizabeth Mannette: Mr. President, I join with the Members of this Chamber to compliment the Minister of Legal Affairs on presenting a good Copyright Bill. It is no profound statement to say that Trinidad and Tobago abounds with creative talent. We have just come out of a 1997 carnival season, during which expressions of creative ideas were unbridled. If I could go into details with respect to the number of calypso tents we had with calypsonians, the number of steelbands with arrangers and players, the number of mas bands, and so forth, you would certainly understand that statement. I think copyright is important to all these persons because it ensures that their creativity is protected.

Before I go into the Bill in detail, I want to just set up a backdrop, a context around which I think we should look at this Bill. That is, that individuals in the creative sector need to ensure that not only can they express themselves, but that they can commercialize and exploit their works to improve their own standard of living and their lives. I think we must look at copyright law in that context. It should facilitate this commercialization. Copyright law should make it easy for individuals to understand their rights as well as to negotiate their rights with others and to understand the exceptions to their rights.

When I looked at the Copyright Bill of 1996, the one that fortunately was withdrawn, I was quite alarmed at that Bill. I think what we have here in the 1997 Bill is a good start for the industry. Some areas, as my colleague, Sen. Mohammed pointed out, are of concern to us, but in general it is a very good Bill.

The Minister of Energy and Energy Industries just mentioned the need to harmonize intellectual property law to encourage foreign investment and to give some level of comfort to the foreign investors who are interested in investing in our island. I understand that, but my concern, really, is for the people of Trinidad and Tobago. I have to underscore Sen. Daly's point with respect to what this Bill does for us. We have to ensure that whatever we pass is in harmony with the intellectual property law of all the nations, but at the same time effectively protects

our people and our creative expressions, and effectively facilitates the commercialization aspects of our culture.

3.50 p.m.

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

Mr. Vice-President, it is with those things in mind that I would like to look at some of the provisions in a bit more detail. With respect to the need to facilitate commercialization and at the same time ensure that we are in harmony with the intellectual property law of other countries, and so, can facilitate and encourage foreign investment, I think the two can be done; it will just require some balancing and some compromise.

Clause 5 of the Bill outlines the areas in which a copyright subsists. I was also very concerned, as was Sen. Daly, that there was no clear reflection here of certain aspects of our culture that we are seeking to have protected. I recall when he raised the issue of the works of mas during the presentation of the Minister, the answer the Minister gave was less than satisfactory, and one wonders why that definition that was proposed was not included in the Bill. Indeed, the 1985 Act that we are repealing, Mr. Vice-President, included a definition that could have covered works of mas. "Artistic works" in the 1985 Act included works of artistic craftsmanship, and I have been made to understand, Mr. Vice-President, that works of mas could have fallen in that category.

So the questions really to the Minister of Legal Affairs are:

(a) Why was not this definition in the 1985 Act retained in this Bill?

(b) Why was not the definition proposed by a member of the industry included in the Bill?

I think unless the Minister can present some compelling reason, then we certainly should amend this Bill to include such a definition.

I move on to the exceptions to copyright that are outlined in clause 7. In this clause, one of the provisions that I was not clear on and on which I would like some clarification, is the exception for copyright protection with respect to political speeches. I do not understand exactly what the Minister was trying to target. If the Minister could shed some light on this exception, we on this side would be very grateful. If speeches are protected, but political speeches are not protected, except they are part of a collection, then what are we trying to say?

What really is the purpose of that? It appears that one would have to convert a political speech into an article in order for it to be protected. So that seems to be inconsistent with the categories in clause 5.

Moving on to another exception Mr. Vice-President, in clause 10 of the Bill, it provides that an individual or person can quote from a copyright protected work without the authorization of the owner, provided that such quotation or reproduction is compatible with fair practice. Now the concept of fair dealing or fair use, is one that is established in the intellectual property law. I think that is the area to which this fair practice term is supposed to apply. Although the term used here is fair practice, the understanding with respect to fair dealing and fair use should apply. What I am concerned about is that there is no clear definition about what exactly is fair practice or fair use.

The 1985 Act in section 35(2) outlined that the fair dealing exception was to apply to the use of copyright protected works for purposes of research, private study, criticism, review, or reporting of current events. So there was a clear definition in the 1985 Act. We are repealing that, and in its stead we are using the term fair practice in clause 10 without defining it, and then in clauses 11 and 13, we are also carving out sub-categories that seem to also be included in fair practice. So it appears to me that some clarity or some better organization could be put into these provisions to establish with certainty what is meant by fair practice, and whether or not fair practice includes some other categories besides use for teaching and reporting of current events.

Sen. Prof. Kenny referred to clause 11 which deals with the authority to reproduce certain parts of published works for teaching purposes. I have two concerns with respect to that exception. They are not the same concerns mentioned by Sen. Prof. Kenny so I would share them here. The first one deals with the use of the term "reprographic reproduction. It applies clearly to the making of copies by photocopying or offset printing, *et cetera,* but the fact is, why are we limiting this exception, if we think it is a valuable and useful one, only to the making of photocopies for teaching purposes? One imagines that with our thrust towards distance learning—and the Government has indicated that it is moving in that direction—pretty soon other aspects or other teaching aids would be used besides photocopies. If this exception is to facilitate teaching, then we would like to carve out, with some care, a wider exception that would be effective with respect to encouraging the use of certain materials and works for teaching purposes.

I noted that when we had the debate on the motion with respect to textbooks and making textbooks more available, comments were made that we should accept the fact that in our society many teachers make photocopies in order to present a well-rounded curriculum. So clearly, there must be some sort of balance, or middle-of-the-road approach, where the concerns of Sen. Prof. Kenny, with respect to people being allowed to photocopy his work, are balanced against the concerns of the educational institutions with respect to being able to provide teaching materials to the majority of their students at a cost that is affordable.

The other comment I would like to make with respect to clause 11 and this exception for teaching purposes, is that it mentions that the exception applies "for face the face teaching in educational institutions". This applies at present, but one wonders with the use of computer technology and the ability to have interactive programmes, *et cetera*, whether or not this limitation would be useful. If the Minister of Legal Affairs wants to narrow this educational exception to only specific instances of using photocopies for face to face teaching, then that is something that we should know and be certain about, because as we develop, as new methods of teaching are used more regularly, we certainly would run into problems with respect to this exception.

4.00 p.m.

Clause 23 of the Bill deals with the public performance of sound recordings and it states that with respect to sound recording:

> "...a single equitable remuneration for the performer and the producer...shall be paid...to the performer."

The Minister indicated that she would be changing that to the producer.

My concern with respect to clause 23 is that this provision seems to prohibit the payment in the form of royalties because it says "a single equitable remuneration". When I read that at first I asked myself: Why would we want to restrict the payment between two parties to a single payment? I have been made to understand that, perhaps, what was intended is that one payment would be made to the producer and that payment would be split between the producer and the performer. If that is the intention then I think some clarity is necessary because it can be read in two ways and one way would certainly be detrimental to the artiste.

Mr. Vice-President, I now move to clause 26 of the Bill which deals with ownership and assignment. This outlines the owners of certain types of work but

what seems to be missing here is some sort of statement as to who are the owners of sound recordings. It deals with the ownership of joint works, audio visual works and collective works, but there is no statement with respect to the ownership of sound recordings and that, I believe, should be clarified. It appears to me that we could insert ownership of sound recordings in subclause (5) to state that the owner is the producer unless provided otherwise by agreement.

Also, in clause 26(3) there are provisions that deal with collective works. I think some additional clarification is needed in that provision because a "collective work" is defined in clause 3 of the Bill as:

> "a work created by two or more natural persons at the initiative and under the direction of a natural person or legal entity, with the understanding that it will be disclosed by the latter person or entity under his or its own name and that the identity of the contributing natural persons will not be indicated;"

That is to be contrasted with a compilation which, generally, is also a collection, under one school of thought. A compilation can be owned by the compiler or the individual persons and they can retain the ownership of their works. There is no mention of the word "compilation" in either the clauses defining the terms, or in clause 26 which deals with the ownership of copyright. I believe that in order for this Bill to be clear and in order for people in the industry to understand exactly what laws apply that a clear distinction should be made between "collective works" and "compilations".

I could draw the example that a "collective work" is something such as an encyclopaedia where a number of people write certain parts but the publisher of the encyclopaedia owns the copyright, whereas a "compilation" which can be a CD of all the hits of carnival 1996 as a whole has no additional original creativity and, therefore, each of the individual artistes retains his or her copyright. So, I think clear distinction is necessary.

Also, in clause 26(4), which deals with ownership, states:

> "In respect of a work created by an author employed by a natural person...in the course of his employment, the original owner of copyright shall be...the employer."

This is a standard in the industry but what is not covered, and what has to be clarified is, what happens to work that is not performed by employees in the course of the employment, and works that are commissioned or performed by someone hired for a particular purpose?

Mr. Vice-President, I noted that in the report of the committee the Photographic Industry Association had some concern about the fact that some freelancers are not really considered to be employees and they are of the view that they, as individuals, should retain copyright in the works that they contribute to various newspapers or magazines. Therefore, I think we have to clarify that with respect to work created by employees, the employer is the copyright owner, but with respect to work that is commissioned or created by someone who is merely hired, that the employer is the copyright owner unless provided otherwise by agreement.

What we need is clarification as to exactly what should be done. I think I can use the example to which the Minister referred in her presentation dealing with pan arrangers, that they would now own copyright in their arrangement. That has to be clarified because if you consider that an arranger is not generally an employee; he is just hired for one purpose, then the band may be of the opinion that it owns the copyright in the arrangement whereas the arranger may be of the opinion that he owns the copyright. Therefore, the difference between "employee" and "works for hire" should be clarified.

As I said at the beginning, one of the aims of copyright legislation should be to encourage and facilitate commercialization of creative works, but one of the significant problems faced by the industry is that of piracy. Sen. Mohammed mentioned the realities of the East Indian artistes and the Minister of Energy referred to computer programmers and the piracy of the programmes, but I am concerned about the piracy of the work of local artistes in Trinidad and Tobago. It is a major revenue loss with respect to their works. When someone makes a CD or a record and a few days later you can get a cassette on the corner, you can be assured that neither the producer nor the performer has received any money from that sort of commercialization. What is the most effective way to prevent this? Although I was concerned that the Minister of Energy was focussing on the piracy of foreign computer programmes, I am concerned about the piracy of local material. One of the most effective deterrents to that type of action is some sort of levy against the tapes that they are using to record the material.

In fact, the industry has been agitating for this sort of levy for quite some time and I am sure the Minister of Legal Affairs is familiar with this. Perhaps, the hon. Minister can clearly tell us whether or not the Government is prepared to do something about piracy with respect to a blank tape levy or whether or not the Government thinks that the penalties in the Bill are sufficient.

4.10 p.m.

I can refer to a report that was prepared for TIDCO in October 1996, Mr. Vice-President. The people who prepared that report quoted some statistics from the Central Statistical Office, which indicated that in 1994 and 1995 approximately 2.2 million blank cassettes were imported into this country each year. Yet, if one looks at the exports of the recorded material, it is substantially less. Therefore, you have 2.2 million blank tapes coming into the country but only 11,000 recorded tapes leaving in 1994 and 19,000 recorded tapes leaving in 1995. So the question is: What are the other two million tapes being used to do? Clearly it is to record material in this country and to sell it to the detriment of the producers and performers.

A levy on blank tapes would be a more effective deterrent to pirates because it would cause their profits to dwindle and also it would accrue to the benefit of the performers and producers. In other countries, such as Canada, for example, they recently introduced a measure by which some levy or tax is paid on the importation of blank tapes, and that was put into a fund that was then distributed to people in the industry. So if it is difficult to eliminate piracy then, at least, let us do something which will ensure that revenue lost to performer and producers is minimized.

Mr. Vice-President, one other aspect of this legislation that I am concerned about is really the lack of any mention of a register of copyrights. Now I noted that in the earlier legislation with the Patents Bill and also with the Trade-Marks Bill, there is a clear system set up to facilitate individuals who want to register their patents or trademarks, but it seems to me that there is a void here with respect to registering copyrights. While it is okay to say that one does need to register one's copyright to be a copyright owner, the fact of the matter is that to effectively commercialize one's work, one must be able to show some proof of ownership; that one is a copyright holder. Any reasonably intelligent artiste will not send his or her work to a foreign company, or to anyone else, without having some sure proof that he or she is the owner. We all know that there are claims that one artiste stole another person's song or parts of the song. If these things were ever to get to litigation there would be a lot of evidence to be presented with respect to what date the first song was created and so forth.

In fact, the Minister of Energy and also the Minister of Legal Affairs mentioned computer programmers. Yes, we do have computer programmers in this country, but the fact is, they have been registering their computer programmes

in foreign countries. For example, in the US there is a clear system where you can register your programme and get a certificate and, therefore, you have clear proof that you did it on a certain date, whereas in this country there is no such system. There are recording artistes who send their material to the US copyright office for registration so they will have a clear certificate indicating that they registered and created it on a certain date, whereas, here there is no such system and that, to me, has to be remedied, and I do not imagine it would be at great cost. If one is upgrading the office to facilitate the registration of patents and trademarks, then why not upgrade it to facilitate the registration of copyrights? And I say this recognizing that in 1995, approximately 87 patents were registered with the patent office locally and the number has not really been greater than 100 for the past 10 years in each year, whereas we have thousands of potential copyright owners in Trinidad and Tobago, and they have no where to register their works. I am personally aware of individuals who have sent their music abroad to register it in the US office because they need some certainty with respect to the date of creation.

Indeed, in some jurisdictions I know in the US you cannot even file an action for infringement unless you have a copyright certificate indicating you have registered it with a government office. And this is to be separated from the issue of COTT which is a licensing company. It has its role to play but I think it would be more suitable for the Government to upgrade its intellectual property office to handle this function.

The final area of the bill that I would like to deal with Mr. Vice-President, is clause 52, which outlines the method of handling disputes. It provides that: where a dispute arises with respect to licensing of the material the dispute may be referred to the court. I always have a very deep concern whenever the first remedy available is a judicial one, because it limits the type of individual, person or company that can actually take advantage of that remedy. Whenever there is a judicial remedy we know it involves a lot of cost and a lot of delay. It would be quite helpful to the industry—in fact I know that there have been a number of comments and suggestions—to have some sort of copyright tribunal which would be able to mediate or arbitrate disputes between the licensing body and the artistes, as well as disputes of other kinds involving copyrights. I believe the committee appointed to review the 1996 Bill recommended—and I am looking at the committee's report on page 17—that a special tribunal for resolution of disputes be established and the alternative dispute resolution mechanism be encouraged. I think that the Minister could, perhaps, shed some light on it when she is winding

up, to indicate whether or not it was seriously considered by her ministry, whether or not they are prepared to move in that direction.

The final point I want to add, Mr. Vice-President, is to go back to what I really said at the beginning. Copyright law is supposed to, among other things, facilitate the commercialization of created works. I would like to know what other means does this Government have to encourage the commercialization of created works with respect to our people. I would like to know, particularly, from the Minister of Tourism. I am aware that he is in receipt of a report that outlines a number of suggestions from the industry, including various grants, subsidies and incentives, such as low interest loans and so forth, that the industry feels would be helpful to them to develop their creativity and earn a living from it. I know the industry would appreciate if the Minister, as well as the Minister of Community Development, Culture and Women's Affairs could outline exactly what the Government plans to do, beyond reforming the Copyright Act, to assist in the development of the entire entertainment sector.

Mr. Vice-President, with those words I would end, and I thank you for this opportunity.

Sen. Diana Mahabir-Wyatt: Mr. Vice-President, I will take exactly three minutes for my contribution. I would like to start off by saying that I thoroughly approve of the way in which the Minister of Legal Affairs has approached this. I think it is entirely an intelligent and very democratic method and I congratulate her and the Government. I think it is beautifully done.

Secondly, I support Sen. Daly's recommendation that there be a definition of mas. I do not think that the definition which he read out would take away anything from the Bill. In fact, it would add to the Bill and it would be a matter of extreme satisfaction to many persons in this country who are very much involved in the creative process.

4.20 p.m.

Thirdly, I take exception to what Sen. Prof. Kenny said earlier when he referred to clause 11 in the Bill. I do not believe saying that persons who make copies for learning purposes condone abuse. I believe it is misguided, to say the least.

We have had a long debate in this honourable Senate in which it has been pointed out that the cost of schoolbooks in this country is often prohibitive. I have had occasion recently, where a young person of my acquaintance whose sole

support is her mother who has four other children and who works as a domestic servant, came to my office in trouble because, in trying to get enough education to support herself, she has to have school books. One of those schoolbooks costs $400.00 and another book costs $378.46. She came to my office and said, "Please help, I need these books." I told her to find out which sections she was going to need for the next month and I ran off four chapters on my photocopier of a book which costs $400.00. If this makes me a criminal then put me in jail. There is no way that poor children are going to be able to get an education because they cannot afford to buy those $400.00 books. If this is an abuse of the system well, I am sorry. If it has to be 10 or 20 pages at a time—otherwise what we are doing is condemning a large number of young people in this country to no those $400.00 books. If this is an abuse of the system education whatsoever because the books are not available in our school libraries, they are unavailable otherwise and this is not using these copies for commercial purposes.

My understanding of the purposes of this Bill is to prevent instances where copies from these books could be used for commercial purposes. Mine is not an isolated case. This happens in secondary schools, in Servol, and in other various educational organizations and to call this an abuse, and to call people who do this for very poor students abusive, is going a bit too far.

Thank you, Mr. Vice-President.

Sen. Philip Marshall: Mr. Vice-President, I want to begin by congratulating the Minister of Legal Affairs for this work of art. Congratulations are also in order for those members of the Minister's department, and other members of attorneys and private sector firms who have instinctively given of their time. I do not know from which section but I understand that they cannot copyright this document.

I make my presentation from an economic perspective. We have talked a lot about one of Trinidad and Tobago's areas of competitiveness that would lie in our intellectual capability. We have talked about markets that will develop intellectual services and export them. I am going to try to focus on the use and development of knowledge resources and the use of computer technology in marketing and distributing these products which we have developed. I would like to begin basically by making a few points so that we all understand why this Bill is necessary.

Firstly, this Bill would provide an underlying framework that will benefit the citizens of this country. Why? The market opportunities open to the authors or

owners of works developed in Trinidad and Tobago are vast. I am talking about the overseas markets. A foreigner who has his product used in Trinidad and Tobago, even if copyrights were broken, Trinidad and Tobago would represent a very small domestic market. The point I am making is that we have every benefit to gain by instituting this legislation and showing the rest of the world that we expect, in the same way we protect their resources, that ours will be protected. We live in a virtual world. We live in a world where resources and expressions of ideas are now digitized. In fact, the terminology is, we no longer trade in a market place, we trade in a market space. It means that our artistes, their recordings that they make, any art designs and art forms they may design, can be represented in graphic images; they can be uploaded and they can be stolen from us. A very important opportunity in the selling of the intellectual and artistic capability of our people can be lost in large financial overseas markets if we do not demonstrate that we are going to be part of this philosophy of intellectual protection.

Yesterday, in fact, in an address to the American Chamber of Commerce, the Hon. Prime Minister of Barbados talked about their offshore sector and what drives and encourages people in their offshore sector is a lot of the very protection that the Minister of Energy talked about. He stated that the offshore sector in Barbados brought into that economy something like US $150.00 million a year; and this includes the tourism product admittedly. But in one case there was a company in the information technology sector that employed approximately 3,000 persons. This is important because there is a foreign direct investor who owns some sort of knowledge-base, some sort of resource or development material that requires the use of computers and he may want to offer a service say, for example, in the United States, but he may want to use the intellectual capital and capacity of our people in Trinidad and Tobago so he would want to locate his operation here with our people using his product. He would be very reluctant to do so if he felt that when he sets up operation in Trinidad and Tobago, we would have access to use information that was a competitive advantage for him in his domestic competitive place and, we did not protect that competitive product of his.

We should look at the establishment of this copyright environment as one that would also provide us with significant employment opportunities. There is one concept which we have to understand with the whole aspect of digitization and computerization, and this is what this Copyright Bill 1997 does. It takes consideration of the advancement in technology that did not exist in 1985. That advancement in technology has had one very important aspect, and it is this: it distinguishes the use of data or information from other types of resources.

With respect to data, you and I, or more than one person, can be sharing the same data at the same time. In other words, more than one person at the same time can physically possess the same resource. This is unlike other physical possessions like a house. If I am occupying a house, you may not be able to occupy the house at the same time.

One of the things that we must understand with respect to information and data is that information and knowledge resources can be the result of millions of dollars of expenditure, a life time of work and development and, in the twinkling of an eye we can lose it if we do not have protection in terms of the legal framework.

4.30 p.m.

In the past, if there were a physical document or any form of collection of data or information in a business environment, it would be locked in a physical vault. There may be, a number of people required to have a combination to it. With respect to why there are networks—people with very astute capabilities can break into networks—although there maybe fire walls, one can lose the entire formula, research or development material of a company in a short frame of time.

In supporting this Bill, there are two outstanding points I would make. The first follows Sen. Mahabir-Wyatt's contribution. In order not to break the copyright laws, our students at primary, secondary or tertiary education level may need to have access to certain types of expensive computer software or programmes, which they otherwise could not afford on an individual basis. The Ministry of Finance and the Ministry of Education may have to establish some form of project centres where the property in the software would be owned by the Government of Trinidad and Tobago or some educational agency. The students would then go there to use that capability and, thereby, not break the copyright laws which we are trying to enforce.

The second and final point relates to clauses 5 and 7. I would like the Minister to consider this. Clause 7 says basically that protection would not be extended to any idea, procedure or system. I tried to relate this to the development of computer software to which the Minister referred in her contribution. She said that in developing any major software product, the conceptual design of that software, the conceptual expression of that idea may be mapped out in a very informal way. It seems to me, that the Bill does not protect that product until it is actually formulated in programme code and instructions, as a saleable product. This is

important because the real worth of such a software is in the conceptual innovation of how that business problem or commercial use can be solved or exploited.

I end by saying that these innovative expressions and ideas of business software to be used in metropolitan countries, are actually shipped or sent to Bangalore, India, where on an annual basis, programmers develop about US $300 million or US $500 million worth of programme code from the ideas. The ideas need to be protected.

With that, I congratulate the Minister, the team and all those who assisted in this substantial piece of work which would augur well for the development of entrepreneurs and the market, for the whole issue of venture capitalists in funding such projects.

Thank you.

Mr. Vice-President: Hon. Members, before taking the tea-break, I draw you back to the leave which was granted earlier for the introduction of a Bill at a later stage of the proceedings.

COMPANIES (AMDT.) BILL

Bill to amend the Companies Act, 1995 [*The Minister of Legal Affairs*]; read the first time.

Motion made, That the next stage of the Bill be taken at the next sitting of the Senate. [*Hon. W. Mark*]

Question put and agreed to.

Mr. Vice-President: At this point we would take the tea-break. We would resume at 5.05 p.m.

4.35 p.m.: *Sitting suspended.*

5.11 p.m.: *Sitting resumed.*

COPYRIGHT BILL

Sen. Prof. Kenneth Ramchand: Mr. Vice-President, I am very happy that the Minister of Legal Affairs has put aside the threats about what would have happened if we did not keep the original deadline and has submitted this Bill to the scrutiny of the interested parties and organizations. I am glad too, that all of us have had the time to think about this Bill and its implications.

I want to raise a number of questions about it and I suppose they can all be fitted under two main headings. The first heading is perspective. From what, or whose point of view is this Bill coming? The second big question I want to raise

has to do with the treatment of the author or creator. I think that most of what I have to say will fall under those two headings: perspective and the treatment of the author or creator.

I have a number of other subheadings which I would like to declare now, so that I and those who are listening might not get lost: I want to raise the question of the reciprocity of enforcement; I want to look at the question of the protection of folklore, and at a document—an explanatory memorandum about the difficulties of legislating on behalf of folklore; I want to look at the issue about the reproduction of material for teaching purposes; and I want to raise the question of self-publishing and how the Copyright Bill speaks to that issue.

Mr. Vice-President, in the explanatory note, the Government speaks about harmonizing our legislation with international legislation, and it speaks about modernizing it, which seems to mean to bring it up to international standards. The ordinary meaning of the word "modernize" is to bring up-to-date, and one brings something up-to-date in relation to oneself. To modernize cannot mean to bring up to international standards, since that implies a standard, or set of standards that we in the former colonies cannot expect to achieve by ourselves. I am just serving warning that to harmonize with those people with whom we have signed contracts—especially if one takes modernize to mean, “to bring up to international standards”—is to harmonise with a perspective that is not a native perspective. What one is saying, is that one is trying to accommodate to someone else's perspective and so, although I welcome the revision of the 1995 Copyright Act, and I remain grateful to all the people who have worked at it, I feel there is a fundamental problem with the Bill. But it is nothing new—that is a problem I seem to have with all these economic policies; they are oriented to, and dictated by the outside. I want to look at certain parts of the legislation which seem to me, to be badly warped by that perspective.

Mr. Vice-President, law is not universal, but justice is. So I do not see the point of trying to universalize or harmonize laws. No country can claim that its laws are superior to, or better than the laws of another country unless comparisons are conducted on the proper basis which seems to be how effective the laws are in fulfilling the intentions of the framers of the law in the country where the law is framed. If we say, if one steals, we will chop off one's hand and that stops stealing, another country cannot say that is a bad law. If we have framed laws to stop stealing, and we have passed a law which says each time one steals, one's hand would be chopped off, and it is effective, someone cannot say that his country has

a better law than us because that country's law does not say, "chop off people's hands". It is not a better law, our law is better for us because it has stopped stealing, so no country can claim that its laws are superior, or better than ours.

One criterion is effectiveness. The other one on which I would like to spend more time, is how well the laws protect the citizens and the state in the country where the laws operate against other citizens of other countries and other states. How well am I, an author in Trinidad and Tobago, protected from infringers of my copyright in the United States of America? That is my problem. I want my copyright laws to protect me against them. How can I check on it? How do I know that my work is not translated into Danish, French, or Estonian? Can they devise laws to prevent people from doing that? So the criteria I would use, are as I said, is how effective they are in our own country for solving the problems which they were intended to solve, and how well they protect the citizens of this country from violation or infringement by persons outside this country. To be specific, we have to be sure that the copyright laws we devise speak to the specific social, economic and cultural situation out of which we produce, and that is why when Sen. Daly said there was nothing about mas, I wondered why is there not something here about mas. What that tells me is that the laws we are adapting and modifying for our purposes, are laws devised by people who do not have mas, and the people who make mas were not invited to take part when those basic laws were being produced.

We have to devise laws which speak to the specific social, economic and cultural situations out of which we produce.

5.20 p.m.

If I had the power I would say: “We will take this as it is, but we want an addendum—a set of laws devised to deal with our specific social, cultural and political situation.” Before we sign the agreement that they want us to sign, they must sign the additional laws that we have put in, which we feel are very necessary, and which relate to our situation.

Mr. Vice-President, I will take most of my illustrations from the literary field, but what I say will apply to all other artistic forms of expression. I am interested in protecting great works—the writings of Sir Vidya Naipaul and Earl Lovelace, the lyrics of David Rudder—but I am also interested in little Trinidad and Tobago-created jingles like the one everyone in Point Fortin is saying these days and for which I do not think Mr. Wilfred Best is getting anything. It comes from the *Student’s Companion*:

"He who loves glass without a 'g'

Take off the 'l' and that is he."

I do not think Mr. Wilfred Best is getting anything from that. I also want that to be protected.

I spoke about the context of literary production and I would like to tell a few horror stories. Has the hon. Minister missed the rhyme? Would she like to hear it? I was just saying that we have to protect David Rudder, but we also need to protect Wilfred Best, who wrote the *Student's Companion*. I have heard that all over Point Fortin people are quoting this poem from the *Student's Companion*:

"He who loves glass without a 'g'

Take off the 'l' and that is he."

In our literary situation, an author who has produced a manuscript, in eight cases out of 10, has to send it to a publisher overseas. Now when that publisher examines it to see where it could sell and to whom, he then sends a contract for the book. The author has no say over what is in that contract. If I might use my own experience, when I wrote the book called *The West Indian Novel and Its Background* and it was accepted by a British publishing firm called Faber & Faber, I received a contract. The contract said that they would give me a royalty of 7½ per cent on sales. They did not ask how much I would like. It was not negotiable.

Mrs. Persad-Bissessar: That was before you became famous.

Sen. Prof. K. Ramchand: Yes, but even after I became famous, they held me to the contract. When the book was reprinted, I did not get to renegotiate. When it went into paper back, I did not get to renegotiate. The same 7½ per cent applied. When I went to the United States, I saw my book published by Barnes and Noble**,** but I did not get any American money. I am still receiving 7½ per cent. The publishers who gave me the contract for my book took world rights and, therefore, had the right to sell it to an American publisher. So, whenever I am dealing with copyright now, I ask what they are paying for: whether it is Caribbean rights, UK and Commonwealth rights, US rights or world rights. I make it clear which they are paying for.

I would like the Minister to consider, in dealing with copyright for literary productions, some way of indicating that the right to publish what we sell must have a clear indication of whether it is world, Commonwealth and UK, Caribbean

or US rights. If we do not specify the extent of the copyright, our writers will be exploited as I have been.

During the course of the life of that book, I saw chapters of the book appearing in collection of essays and in handbooks. Never once did a royalty statement of mine say that the publishers charged someone £500 for using a chapter of the book and offered me £250. It is not that I am a bad businessman. It is just that if the contract is written up by someone else and you are asked just to sign, they can take advantage of you. If they send me a royalty statement which says that the book is going badly and that they have only sold 300 copies the year before, how do I know this is so? I have no audited statements about the sales of that book.

So the writer in the Caribbean, and certainly in Trinidad and Tobago, is utterly at the mercy of the publishing house because there is distance between them in time and place. If an author tells them something, they say that British law does not permit it. If they say that you have earned £200 off a book a particular year and they have taken 40 per cent for income tax and you say that you do not live in that country, they say that they still have to take out the income tax and that you can claim it back from the British government if you desire. I do not have time for that.

Mr. Vice-President, the situation of literary production has to be thought about and the copyright laws we devise have to understand that that is the situation we are coming from. The same applies to our recording artistes.

The situation that I have tried to describe in this graphic way is the way in which the performer, the creator or the artist in this country is separated from the person who is producing his work. That situation has to be borne in mind and has to be a shaping influence when our copyright laws are framed. In going through this Bill I do not see any such thinking in evidence.

In this country, there is much self-publishing. There is a book entitled *Views from the Bridge: A Memoir on the Fresh Water Fishes of Trinidad and Tobago.* The author of that book, which is 98 pages long, did all the research, field work, photography, drew the illustrations, designed and typed the book and printed it at his own expense—$24,000. He is also the distributor of the book. When one looks at some of the clauses in this Bill, such a person is deprived of his rights. If I produce a book in that way you cannot tell me that you have the right to reproduce my book for teaching purposes, or that you can use a chapter for this or

that. I think it is criminal that after a self-published author goes to the extent that Sen. Prof. Kenny went to produce his book, he would have to sit in a parliament and pass legislation that gives people licence to exploit it and deprive him of his rights. I am not saying that we should not consider the question of making copies for scholarly use or for teaching, but when I come to that issue I will talk about it in more detail.

5.30 p.m.

I am saying that in our situation if one is framing copyright rules, one of the peculiarities of our situation—in addition to the other one I talked about of having to use foreign publishers—is self-publishing. I would have liked the law to take account of the fact that we have a lot of self-publishing in this country.

Mr. President, I can give you another experience, and maybe the Minister could tell me what protection exists. Some time in the 1970s—I was not living in Trinidad at the time—I had a book published, *An Introduction to the Study of West Indian Literature*. The publishers sent me a copy of it. Very nice. On the front cover there was a design based upon a man playing pan. Very subtle. One has to look hard to see; one has to be a Trinidadian or Tobagonian to see it is that right away. From the time I looked at it I saw it was that.

About four years later I came to Trinidad and while driving past the Furness Building, I saw Pat Chu Foon's sculpture standing there watching me in my face. Somebody from the publishing firm of Nelson's, visiting Port of Spain, saw Mr. Chu Foon's sculpture; photographed it, took it over there and said, "That is a Trinidadian sculpture and this is a Trinidadian writer; we would put this sculpture on Sen. Ramchand's book". I wrote them saying: "How can you do that? What would Mr. Chu Foon think of me? Would he think I gave you his sculpture to put on my book without consulting him?" *[Interruption]* He could sue me! *[Interruption]* Well, I do not know who he could sue. However, I wrote Nelson's and I said, "Look, this is quite intolerable, you are putting me in bad graces with Mr. Chu Foon, whom I know, and the people of my country would believe that Sen. Ramchand did this. Therefore, you have to write and apologize to Mr. Chu Foon and pay him some money." They said, "There is nothing in our laws which says that we have to do that." Mr. Vice-President, I do not know if the Minister could tell me whether there is something in this legislation which can protect against that happening again. If there is nothing in the legislation, can we then find a way of covering that kind of situation?

Mr. Vice-President, I said I wanted to deal with perspectives, treatment of the author, and so forth, but I know it would be very difficult to keep them from overlapping one another because I have already begun to talk about the way in which the creator is disadvantaged. I notice in the 1996 Copyright Bill which came to the Senate an attempt was made to define owner of rights. It said:

"'owner of rights' is -

(a) where the economic rights are vested in the author, the author;"

Already, this tells me that there is a possibility of the economic rights not being vested in the author. I know that is a fact of life. If I make something and sell it, I could lose some of the economic rights. However, I do not like to hear that all the economic rights have been alienated from me. I would like all copyright legislation to say, "You have the rights to this thing for 10 years." If I own the rights, my children and grandchildren own the rights in succession—in perpetuity. If I make a deal with a publisher I give him the rights for a certain number of years, and he cannot carry on that right forever and ever. The deal I am making with him is for part of my lifetime. He cannot buy the copyright for ever and ever.

Mr. Vice-President, that may be so in other countries, but I feel we should think about it and see whether we want to take part in a copyright law which allows the economic rights in my creation, to be alienated from me forever because I am given £200 advanced royalty and 7 1/2 per cent on sales. Why should they own my property for that measly sum? *[Interruption]* No, I am selling it, but for a set period. I am, in fact, leasing it. *[Interruption]* Yes, but there are certain clauses here which make it clear that the legislation is more willing to protect the licensee than me, which I would come to. It says;

"'owner of rights' is—

(a) where the economic rights are vested in the author, the author;

(b) where the economic rights are originally vested in a natural person or a legal entity, other than the author, that natural person or entity;

(c) where the ownership of the economic rights has been transferred to a natural person or legal entity, that natural person or entity;"

Mr. Vice-President, this was removed in the present version, and I feel it was removed, not because they want to say you cannot alienate your economic rights

but, because it is a very difficult question. If it is defined like that and you are pinned to it, then you are in serious trouble. However, I feel that the way to deal with the matter is not to chop it off but to face it, and work out a way of making sure that the creator can never alienate his creation forever. It means that if we have to make a contribution to copyright law in the world, at least, that is a contribution that any reasonable person would understand, and I am sure would want to go along with.

I want to talk a little now about reproduction for teaching. It is a well-established practice that if I want to work on a book that I cannot borrow from the library, or I cannot buy in the shops—it is out of print—I am allowed to make a copy for private research and study, subject to the usual understanding among scholars, that if I ever quote from it I would acknowledge where it came from. There is a limit to the amount I can quote and so forth; "private use and study," that is accepted.

As other speakers before me have pointed out, we live in a situation where most of the books we use in our schools and universities are manufactured overseas, in places where wages are higher and they are, therefore, produced for that kind of market. I suppose an Englishman could pay out £15 for a book without grumbling. In England, a Professor, like myself, would pay out £15. When I hear I have to pay £15 for a book, I say, "Oh God, I better Xerox that." Fifteen pounds to me is a large part of my salary. My salary is based upon a certain standard of living. The pricing of books that we are using is not geared to our society.

5.40 p.m.

I can understand how a parent who has to buy these books is going to grumble; how our university student who has to buy these books is going to grumble. It is hardship. Can I, a professor, looking at a book written by somebody, select what I think are the most important 50 pages and Xerox them and circulate them to my students? And then say, "You have to pay $5 for the copying and use of the department's paper." Can I do that?

Do not tell me no, because I do it. I do not charge them for the book. I tell them, "The guy who came in on Saturday and made 90 copies of these 30 pages has to be paid and I want a contribution from you to pay him." I would also tell them that the department has not budgeted to supply students with textbooks. The paper that is there has other uses and, therefore, I need a contribution. So, I do

that but I know it is wrong. It is wrong because somebody is losing royalties, but what can I do? I have these poor students who cannot afford it.

Mr. Vice-President, I make a kind of heretical and historically vengeful stand that I will do it to foreign authors but I would not do it to local authors. I do not feel that is how I want to take my revenge. That is only a rationalization because I am uncomfortable about what I am doing. I never do it in relation to local authors. In fact, I have given local authors money. I say, "Earl take this $200, boy. I Xeroxed *Jobelle* and I used it in a class and I charged them for the paper. You take the money." He would not grumble for the $200, but not all of us would do that and, I would not do it all the time. Even if I make a distinction between the local author and the foreign author it is still not a comfortable thing.

Mr. Vice-President, I feel that the clause concerning reproduction of material and what we do about reproduction of material in a teaching situation—given our economic circumstances, and given the way in which our supply of books takes place—we need to have a law that would permit some kind of liberty and yet at the same time give the author a return. You might have to distinguish between the local and foreign and say, "Well, we will give local authors 20 per cent and we will give foreign authors 10 per cent." I do not know what we are going to do but it is a problem.

I am very sympathetic to the notion that there are poor people but, I certainly do not agree with Sen. Mahabir-Wyatt that the way she is proposing to deal with it is the right way. In fact, that might be just an individual instance. I do not know if she will want to have that as a universal practice, but it is a problem. I know, if she told me that she copied *The West Indian Novel and Its Background* for a poor student, I would be livid and say, "How could you do that? You are a legislator in the land and you come here and say you are doing that?" It really is very upsetting but it is a difficult situation that we are trying to deal with.

Sen. D. Mahabir-Wyatt: But it is in the law.

Sen. Prof. D. Ramchand: I know the law allows it and that is what I am grumbling about. Law ought to think about it a little more and think about the rights of local authors, because I am not just thinking of one copy, I am thinking about doing it for a class. The problem is that one person that Sen. Mahabir-Wyatt mentioned is only one. There are hundreds who are in a similar position, so that if everybody does that for somebody who comes to them, there will be universal piracy.

What we have to do is to really look at how it is illustrating my general point that some of these laws have to be framed from our point of view and from our perspective and, with a full understanding of the social, cultural and economic situation in which we exist.

Mr. President, I have made a very short list of a number of clauses that seem, to me, to work against the creator or author. I would just like to go through them and raise the problem that each clause seems to point to. Now, in clause 26 (3), when we refer to collective works—incidentally, I want to support Sen. Mannette's argument that we should notice the difference between a compilation and a collective work and that in a compilation, the right of every author who is represented in the compilation, ought to be protected. I think the same might well be true of a collective work.

I do not like to see a piece of legislation which says that when there is a collective work the economic rights lie with the person who organized the collective work. I feel that those who took part in making the collective work deserve a share. From time to time, when I have been doing anthologies, compilations, I would say to the author, "I can pay you a flat fee of £200 for the use of this story. Not I, but the publishers, can pay you; or, I can arrange with them to give you half of one per cent on royalties." The author can either say, “Okay, I sell you this story for use in this particular anthology." Once the anthology is in print that is fine. The author can also say, “No, I want to be a collective author. I want to think of it as a collective work in which I have a continuing interest, I have a royalty in the work.”

I do not see that we should make a special law for collective work and a special law for compilation and then keep the two categories so far apart. A compilation could be presented as a collective work and, a collective work is, in many respects, a compilation and, therefore, the contributors—whether they are compilations or collective works—need to have their rights protected. In the collective work, according to the legislation here, the contributor has nothing. I feel that discriminates against the creator.

5.50 p.m.

I do not know why I should lose my rights if I publish my work, and I think my life may be endangered, and I may decide to publish my novel under the name, John Brown. Everybody knows there is nobody called John Brown. I do not think there is anybody in the world called John Brown. So I am announcing that this is a

pseudonym, but I have reasons for taking this pseudonym, John Brown. That does not take away from the fact that I sweated through and wrote the book. So why should the legislation say that if I publish my work under a pseudonym, or anonymously, my copyright exists for a shorter period than if I use my real name? I do not understand why the distinction is being made between when I publish under my own name and when I publish pseudonymously or anonymously.

If I were a suspicious man—and I am a suspicious man—I would say that the people who framed this legislation are not really interested in the authors. They are interested in the publishers, the people who have bought the rights. They would say, "He did it pseudonym; 50 years later it is all ours; he lost that." That should not be so. Throughout this Bill there is a steady pressure to disappear the author and to legislate in favour of the person to whom the copyright gets assigned on the payment of some money. So it is there in the collective work; it is there in the discrimination against pseudonymous authors.

In clause 22(1) we are told that a producer has the economic rights over the creator or performer. In clause 28, the licensee has the rights. In clause 29(1) they are even legislating for the future rights of the licensee, against the family of the man who created the thing. If you check through clauses 22(1), 23(3), 26(3), 28 and 29(1), you would see again and again the legislation working against the maker, creator or artist. I feel that this bias in the legislation is a metropolitan bias or a bias of the international agencies; people who have devised this legislation. I would certainly like to see that bias removed.

Mr. Vice-President, I have been jumping from point to point to illustrate my basic contentions and I have one thing to say again before I give a summary about the protection of folklore. I support Sen. Daly's comments about mas. I know that the last time when the Minister introduced the Bill, I raised a question about folklore which she was not allowed to answer, but she did answer and say that folklore will be dealt with by separate legislation subsequently. I have seen a draft called *Explanatory Memorandum, Protection of Folklore*, and I think that the author of this, Mr. De Freitas—I hope the Minister will correct me if I am wrong—is somebody who has been consulted about legislation in relation to folklore.

If this memorandum is representative of that view, then it seems to me to suffer from the same perspective that I was talking about, because it talks about protecting the folklore within the island. It says:

> "Any scheme for the protection of folklore should not place obstacles in the way of legitimate use or make it difficult or expensive for persons collecting or carrying out research into the folklore of the country. The draft Bill proposes, therefore, that the Commission may grant permission in two ways; first it may publish a general permission...or, perhaps the Commission might publish a general permission authorising the public performance of protected works at functions to which the public are admitted without payment of an admission charge."

It seems to me that this draft memorandum is envisaging protecting the folklore of Trinidad and Tobago from abuse by Trinidadians and Tobagonians. Now, I do not really care if somebody wants to play "soucouyant" or "lagahoo" in "Better Village." They could use whatever part of the folklore they want and charge how much money they want. The problem is, as with carnival, when people come here and steal their designs, their figures, their characters and their concepts—which brings me to concepts—they take that and put it in advertising. Do you know how many Benson and Hedges advertisements can be made with Peter Minshall? But he would not get a cent. Nobody in Trinidad and Tobago would get a cent.

So the folklore and the intellectual property need to be defended more against people on the outside than people on the inside. Again, this is what I feel is wrong with the perspective of the present Bill, that is not its philosophy at all. Its philosophy is, "Let us protect the American video clubs." So now when I go to the video club the fellow would say, "Well, Professor, next week it is $12.00 for the video, you know, because all yuh tell us we cannot pirate anymore."

We are saddling ourselves with a set of legislation here which prevents the video clubs from performing the great service that they are doing. Now this is such a small market. Do you really think that the people who are making these videos care about the Trinidad and Tobago market? But now there is a law which says you cannot make video films off the dishes, or whatever; you cannot sell them in your video clubs anymore. So what I was getting for $3.00, I now have to pay $12.00.

Mr. Vice-President: The hon. Senator's speaking time has expired.

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. *[Sen. Prof. J. Spence]*.

Question put and agreed to.

Sen. Prof. K. Ramchand: Thank you, Mr. Vice-President and colleagues.

To put it more seriously, there are certain things that are being protected by the legislation whose protection brings hardship and one of those is videos. We have heard Sen. Marshall talk about the piddling size of the domestic market, that whoever is producing the Rambo films or the Clint Eastwood films is not really interested in the little bit of royalties he will get here. What is going to happen now is a few smart Trinidadians and Tobagonians are going to write to Columbia Pictures or the Rank Organization and say, "Let me be your agent in Trinidad and Tobago to protect your videos from exploitation." The Rank Organization who never really knew that their films were being shown here, will now say to themselves like good capitalists, "Well, we were not expecting anything, so we will give this man 50 per cent. Okay, yes, you be our sole agent and give them thunder there; make sure they do not use our films and every time you give us $100.00 we will give you back $50.00."

I do not think they can afford to send somebody here to supervise, to see whether their films are being used. But now, smart Trinidadians and Tobagonians are going to be writing to all of them, saying, "Well, you know we have these copyright laws and you will need an agent down here." So the agent down here will make his little profit and it is I who will have to pay him because I am now paying $12.00 instead of $3.00.

6.00 p.m.

I feel in cases like this—and certainly I would like to make a plea on behalf of the video club operators—that the Government could find a way of making certain exceptions to these rules by saying, "except in the case of video" and so forth.

I think that some kind of negotiations can be entered into to allow the video clubs to perform the service that they are performing. They are actually contributing to family life, because now I will stay at home and watch a video. There are many families that sit around and watch a video together and talk about it afterwards. So I am appealing to the Government to think about the plight of the video clubs and think about the plight of the users of these videos and see if there is any way in which they can make some allowances for them.

The last thing I want to talk about—again in illustration of perspective, Mr. Vice-President—a lot of the copyright legislation which I have read, says that your ideas, concepts, cannot be copyrighted, so, country after country copies this

provision. But I find it is hard, because if I stand and give a lecture and I say "Ladies and Gentlemen, I have to tell you there is no such thing as the West Indian Novel up to 1960. All West Indian novels between 1950 and 1960 are collections or short stories in disguise." And I go on to elaborate this thesis and I produce an article about it. Then somebody who has heard my lecture and read my article, goes and writes a whole book about this. I feel I need protection and a way has to be found to protect me. We cannot sit and accept a decision that has been made by somebody else, that the idea cannot be protected.

Our duty as legislators and as thinkers about the intellectual workers and the other workers in the country, is to see whether we can find the right legislation to bring justice to everybody. I know law is not the same as justice, but law tries to imitate justice, and I think we should start with what is just in this situation. Do not tell me we cannot devise a law. What is just in this situation is that, if a man writes a whole book based upon an article of mine that he read, then somehow or the other my idea needs some kind of copyright protection. We just have to sit and work out some way of offering that protection. We cannot just accept the conventions that have come to us for ratification and say "If you say so we will agree".

Mr. Vice-President, I am very glad that this piece of legislation has come before us. The question of the protection of intellectual property rights is a crucial one and it is going to become more and more crucial as the various kinds of media develop. Incidentally, I learnt a new word. I was going to come and quarrel because I do not know what "reprographic" is. I checked several dictionaries and I cannot find "reprographic". Somebody told me in the coffee room that it is any kind of electronic reproduction. I do not know if that is what the Minister meant when she used the word. In the legislation you sometimes get "reproduction", and you get "reprographic reproduction". I am assuming that reprographic is any type of electronic reproduction, I do not know. Perhaps somebody will clarify it. But, there are more ways of reproducing and more ways are being devised and, therefore, there is more need for protection. Therefore, I am very happy that this piece of legislation has come before the Senate.

My main quarrels with it have to do with the perspective—and I know the conditions under which the Minister is hurrying to sign up and do it—the treatment of the author, the omission of folklore and mas, the whole question of reproduction for teaching, and consideration of self-publishing and our particular situation. So I have these very general concerns about the Bill as a whole and I

hope I have given enough examples to show where the general failings which I have indicated have led to certain kinds of regulations that are not regulations with which I would agree.

I thank you, Mr. Vice-President.

ADJOURNMENT

The Minister of Public Administration and Information (Sen. the Hon. Wade Mark): Mr. Vice-President, before moving to have this Senate adjourned, may I take this opportunity to inform fellow Senators that we shall continue with the Copyright Bill next week Tuesday We will also deal with the Free Zones (Amdt.) Bill and the Police Service (Amdt.) Bill 1997.

We also serve notice to the Senate that in March there will be two sittings on the 4th and the 7th respectively, at which time we will deal with the Protection of New Plant Varieties Bill as well as the Companies (Amdt.) Bill 1997.

Mr. Vice-President I beg to move that this Senate do now adjourn to Tuesday, February 25, 1997, at 1.30 p.m.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 6.05 p.m.