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No. 383

JOINT COMMITTEE ON COPYRIGHT
(SECOND AMENDMENT) BILL, 1992

J.C.

Copyright
(2nd Amendment)
Bill, 1992

[Laid on the Table of Lok Sabha on the 12th August, 1993]

Evidence

1993

LOK SABHA SECRETARIAT
NEW DELHI
August 1993/Sravana 1915 (Saka)

CB-II

Price: Rs. 34-00

LOK SABHA

JOINT COMMITTEE ON COPYRIGHT (SECOND AMENDMENT) BILL, 1992

EVIDENCE

[Laid on the Tables of Lok Sabha and Rajya Sabha on—24 August, 1993]

सत्यमेव जयते

LOK SABHA SECRETARIAT
NEW DELHI

August, 1993 / Sravana, 1915(S)

Price: Rs. 34-00

LOK SABHA SECRETARIAT

CORRIGENDA

to the record of evidence tendered before the Joint Committee on Copyright Bill, 1992.

Page	Line	For	Read
4	3	diomonds	diamonds
4	44	omit 'a'	
5	39	omit 'A'	
11	4	than	then
12	31	then	than
23	33	should	should be
24	28	your	you
24	29	yor	you
29	32	Notwithstanding	not withstanding anything
31		Shri Visvjit P. Singh	Shri Vishvjit P.Singh
34	7	publisher	publisher publishes
35		Shir Visvjit P. Singh	Shri Vishvjit P. Singh
39		-do-	-do-
40	10	held	hold
43		Shri Visvjit P. Singh	Shri Vishvjit P. Singh
44		-do-	-do-
52		-do-	-do-
53		-do-	-do-
54		-do-	-do-
57	18	made	make
60		Shri Visvjit P. Singh	Shri Vishvjit P. Singh
62	15	If	I
71	28	omit 'that'	
73	15	omit 'by'	

P.T.O.

Page	Line	For	Read
74	8	relinguish	relinquish
76	29	distinguished	distinguish
77	2	xpression	Expression
83	41	Law Miny.	HRD
87	34	Vanue	Venue
89	29	omit line '29'	
90	33	econcerned	concerned
93	4	If	I
93	42	adequete	adequate
104	13	from	form
107	26	on	own
112	41	pumission	presumption
115	23	S.Somaiah	S. Ramaiah
128	3	he	the
128	9	othere	other
128	32	is	in
129	40	thing	think
141	22	Shri Rameswar	Shri Rameshwar
142	13	Shri Buray Ruben	Shri Bunny Reuben
143	20	Technilogical	Technological
143	21	in	it
145	10	sahll	shall
145	23	by	be
159	11	thal the	that the
160	4	insite	insight
160	25	omit 'to'	
178	37	I	I am
180	30	transfee	transfer
189	22	audiance	audience

THE JOINT COMMITTEE ON THE COPYRIGHT (SECOND AMENDMENT) BILL, 1992

COMPOSITION OF THE COMMITTEE

Shri Syed Sibtey Razi —*Chairman*

MEMBERS

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3. Shri Anand Ahirwar
4. Dr. F. Azam
5. Shri Avtar Singh Bhadana
6. Smt. Dil Kumari Bhandari
7. Shri Gurcharan Singh Dadhahoor
8. Shri Probin Deka
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12. Shri Jai Prakash
13. Shri Shyam Lal Kamal
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15. Shri M. Krishnaswamy
16. Kum. Padmasree Kudumula
17. Shri V. Dhananjaya Kumar
18. Prof. (Smt.) Savithri Lakshmanan
19. Shri Birsingh Mahato
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21. Shri Janardan Prasad Misra
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23. Shri Rupchand Pal
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25. Shri Rameshwar Patidar
26. Dr. R.K.G. Rajulu
27. Shri Naranbhai Jamlabhai Rathva
28. Shri Bhagwan Shankar Rawat
29. Shri Kodakani Gowdana Shivappa
30. Shri P.C. Thomas
31. Shri Sobhanadreeswara Rao Vadde

Rajya Sabha

*32. Dr. Baldev Prakash
33. Dr. Naunihal Singh
34. Shri Mohammed Afzal *Alias* Meem Afzal
35. Shri Dineshbhai Trivedi
**36. Dr. R.K. Poddar

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*Expired on 17 November, 1992 and the vacancy was not filled up.
**Retired from the membership of Rajya Sabha on 9 July, 1993 and the vacancy was not filled up.

5.	Shri S. Ramaiah, Advocate and former Secretary, Government of India, Ministry of Law and Justice, New Delhi.	21.1.1993	70
6.	Indian Federation Against Software Theft, Bombay. *Spokesmen* (i) Shri Shirish B. Patel Chairman. (ii) Shri K.V.H. Padmanabhan, Chief Executive Officer. (iii) Shri J. Sagar.	10.2.1993	88
7.	Shri S. Ramaiah, Advocate and former Secretary, Government of India, Ministry of Law and Justice, New Delhi.	24.2.1993	100
8.	Shri Pravin Anand, Anand and Anand Advocates, 1, Jaipur Estate, Nizamuddin East, New Delhi.	17.3.1993	117
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10.	The Indian Phonograhic Industry, Calcutta, *Spokesmen* (i) Shri P. Chanda President. (ii) Shri S. Shidore Secretary. (iii) Shri H.S. Anand, Legal Advisor. (iv) Smt. B.B. Chib, Legal Advisor.	23.4.1993	141
11.	Indian Performing Right Society Ltd., Bombay. *Spokesmen* (i) Shri Naushad Ali, Chairman. (ii) Shri Sanjay Tandon (iii) Shri Hasan Kamal (iv) Shri Ravi Sharma	10.5.1993	156

12.	Film Federation of India, Bombay. *Spokesmen* (i) Shri P.K. Bose, President. (ii) Shri K.D. Shorey, Executive-cum-Member	4.6.1993	165
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JOINT COMMITTEE ON COPYRIGHT (SECOND AMENDMENT) BILL, 1992

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON COPYRIGHT (SECOND AMENDMENT) BILL, 1992.

(Monday, the 16th November, 1992 from 1500 hours to 1710 hours Committee Room 'C', Parliament House Annexe, New Delhi)

PRESENT

Shri Syed Sibtey Razi — *Chairman*

MEMBERS

Lok Sabha

2. Shri Anand Ahirwar
3. Dr. F. Azam
4. Shri Sharad Dighe
5. Shri Imchalemba
6. Shri Shyam Lal Kamal
7. Smt. Krishnendra Kaur (Deepa)
8. Shri Janardan Prasad Misra
9. Shri Harpal Panwar
10. Shri Rameshwar Patidar
11. Shri Bhagwan Shankar Rawat

Rajya Sabha

12. Dr. Baldev Prakash
13. Dr. Naunihal Singh
14. Shri Dineshbhai Trivedi
15. Dr. Sanjaya Sinh
16. Shri Madan Bhatia
17. Shrimati Veena Verma
18. Shri Iqbal Singh

SECRETARIAT

1. Shri R.K. Chatterjee — *Deputy Secretary*
2. Shri Ram Autar Ram — *Under Secretary*

REPRESENTATIVES OF THE MINISTRY OF HUMAN RESOURCE DEVELOPMENT (DEPARTMENT OF EDUCATION)

1. Shri R.K. Sinha — *Additional Secretary*
2. Shri M.P.M. Kutty — *Director*
3. Shri V.K. Saxena — *Licensing Officer*

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

1. Shri A.C.C. Unni — *Additional Secretary*
2. Shri Raghbir Singh — *Joint Secretary and Legislative Counsel*
3. Shri S.P. Kanwal — *Deputy Legislative Counsel.*

Witnesses Examined

Indian Federation Against Software Theft, Bombay

Spokesmen

1. Shri Shirish B. Patel, Chairman.
2. Dr. K.V.H. Padmanabhan, Chief Executive Officer.

MR. CHAIRMAN: Hon. Members, first of all I would like to welcome the new Members who have joined this Committee. I extend a hearty welcome to them and hope that their presence will add more usefulness to our deliberations. I would like to apprise the Members about the progress made by us with regard to collection of memoranda.

As you are aware, I told you in the last meeting that we received only 4 memoranda. With your permission the last date of receipt of memoranda was extended and till now we received 30 memoranda out of which 20 have been circulated to you and 10 are in the process of being circulated. We received one memorandum just today. You were pleased to authorise me to collect the memoranda / representations even after the last date of receipt of the same. I will try to accept as many as possible but at the same time keeping the practicability of disposing them of as we have to take comments of the Ministry officials also. If any of those who give representations want to be heard personally, we may like to call them also.

I decided to call the witnesses according to the subject to avoid confusion / repetition. Today, we will hear about computer software. The Federation has given memorandum and they are here to depose before us.

I am afraid, the quantum of work is heavy and we may have to sit during session period also.

I suggest that we call the witnesses now.

DR. NAUNIHAL SINGH: Sir, are we supposed to express our views before the witnesses or we would be meeting later to discuss?

MR. CHAIRMAN: If you want any clarifications from the witness you are welcome to put questions and elicit information from them. But you may not express your views on the subject which will be for the benefit of the Committee. We will have another sitting for that purpose. It will be a suggestion to the Committee.

SHRI DINESHBHAI TRIVEDI: Sir, in this memorandum they used the word 'absurd' referring to the period of 50 years. In Parliament we do not use such words. May be the period is irrelavant but he cannot use that word. I think the witness should be told.

MR. CHAIRMAN: Yes. It is his own drafting. But you may like to politely bring it to his notice. They may not be proficient in our parliamentary functioning.

I think all the hon. Members have got copies of the memoranda and the comments of the Ministry. We have circulated and we will now discuss Memoranda Nos. 1, 1-A and 3.

We may now call the witnesses.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: I would like to make it clear here, in the very beginning, that the first Memorandum which we got was from Dr. Padmanabhan and we have sent the notice in the name of Dr. Padmanabhan as the representative of your organisation. As a special case, Mr. Chairman, I am permitting you also to be with us today, but the official witness from the point of view of TA/DA who will be considered is Dr. Padmanabhan. I think you won't mind it.

Before we proceed, I would like to point out to you here that in accordance with the provisions contained in Direction 58 by the Speaker, your evidence shall be treated as public and is liable to be made public unless you specifically desire that all or any part of the evidence given by you should be treated as confidential. Even though you may desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

Now we had circulated to you a Questionnaire and you sent us the reply today. That is a brief reply and I hope that you will keep it in mind. If you let us know as we have stated in our Questionnaire something about the working of the present Bill, or if you want, to say something about it, kindly let us know about it. If you do not want to say anything, then we will come to you directly.

SHRI SHIRISH B. PATEL: The Indian Federation against Software Theft which was registered early this year was formed by the Indian Software Industry in association with the Indian Hardware Industry. NAFCOM is a founder member and MAIT which is the Manufacturers' Association for Information and Technology, is also a founder member. We have one objective and that is to curb the software piracy in India. The reason is that we believe the Indian software industry has tremendous international potential. Today we have one per cent share of the world market, we can have a much bigger share. Today we are more or less sub-contractors to western countries. We think this situation can change, but we believe the main point at which we are stopped from growing is piracy. Because of software piracy in India there is no software market in India. There is a need for software, there are software users, but there is no

market, because there is no market the Indian software cannot flourish. Those Indian industries which are internationally competitive are those industries which have a strong domestic market like diomonds and textiles. We are extremely discriminating buyers in both these areas. We are able to sell these skills in the international market. The same thing can hold with software. We do not have a domestic software market and these capabilities are not able to compete in the international market. We feel the only way to stop software piracy is to make the end user in some way responsible. As long as the offence is republishing, we will not stop piracy because software copying does not need a republisher. We can copy software in a matter of a second, it does not need a shop or any kind of expense to republish software. So we have in some way to make the end user the offender. If we make the end user liable, we can create the Indian market for software and that will lead to the development of Indian software industry. We have seen the amendment and we have a number of minor corrections to suggest. There are only two major things we have to suggest. One is that earlier the punishment was six months in jail extendable up to 3 years which, at the Judge's discretion, could be reduced to nil. We have been asking for 24 hours minimum in jail with no discrimination from the Judge to reduce that. This has been made in the present amendment—30 days minimum in Jial. Our view is that is too severe and that we will not get conviction. Unless we get convictions we will not be able to address this problem of piracy. To get convictions we feel we need a sentence which is realistic, which should not be more than 3 days, preferably one day in jail without any discretion to reduce it. That is all I have to say now generally.

DR. K.V.H. PADMANABHAN: I only want to add that from the experience of Indian software industry several users of software with computerisation spread very much, I feel that they can get a cheap copy from some tainted operators. If the Indian software industry is to progress fast in order to catch up with the rest of the world, I think the time has come to make the amendment as quickly as possible and on our behalf our request to the hon. Members of this Committee would be to help us to get this Act amended soon so that we can curb piracy from spreading in this country.

MR. CHAIRMAN: What exactly is the software in the field of computers?

SHRI SHIRISH B. PATEL: The computer is a machine and it is not able to do anything unless it has instructions. Those instructions are expressed in the form of software. A parallel to this might be Video Cassettee Player and a T.V. set. A Video Cassettee Player cannot do anything individually without a T.V. set. The difference between videos and computers is that videos are mainly for entertainment, but computers do a certain jobs for you. What does that job is the software. It has to run on a machine depending on the instructions you put in.

SHRI DINESHBHAI TRIVEDI: You mentioned that the end user should be punished if he is using a pirated software. Now, as an end user, how would I know that this is a pirated one?

Secondly, I would like to know whether any device is available technically by which you can stop somebody from pirating.

SHRI SHIRISH B. PATEL: The only way you can make sure that you have a non-pirated copy is to get a licenced copy from the manufacturer. When you buy a programme, it has got the name of the manufacturer. The manufacturer will licence it to you and you will sign a licence from the manufacturer. In every case, you will be in contact with the original manufacturer. In the system which is available in the United States of America, the terms of the licence are very much visible outside the plastic cover and once you open the licence, you are bound by the terms of the licence. So, if you are using a software without licence, you will know that you are using a pirated software.

DR. K.V.H. PADMANABHAN: When you buy a pirated copy of the software, even from the licenced shop, you will find most of the phamplats containing the instructions are cyclostyled or photocopied whereas the original would be a printed one. So, this is a rough guide.

SHRI SHIRISH B. PATEL: When the manufacturer authorises you to use a licenced copy, he gives a serial number which is a unique number. So, it is fairly easy to check with him whether it is a licenced copy or not.

SHRI DINESHBAI TRIVEDI: Today, the software industry is expanding so much that there are individuals who can develop their own programmes while working for a company. So, when an individual comes to your office and prepares a programme, how do you know that this programme is a pirated one or not?

SHRI SHIRISH B. PATEL: When the programme runs, you will see the name of the manufacturer appear on the screen. Software company need not be big. In fact, software Protection helps the smaller companies more than big companies. It is possible to find out because the manufacturer of the original programme will always take care to show his name.

As far as the second point is concerned, genuine users find it extremely uncomfortable and are hindered by such devices. The programmes are very intricate pieces that they can easily go wrong.

SHRIMATI VEENA VERMA: I am not an expert on this subject. I have a Word Processor in my house. I wanted to work in it in Hindi. So, I asked CMC A people to do the needful, but they are taking so much time to get me that programme. With that programme, I can work in Hindi on that very same machine. But somebody came and said: "I can reproduce it and I can get you this software easily". To what extent, the programme which I will get is reproduced to the end-user? Where is the limit lying? Anything can be called end-user. I do not know whether I am the end-user

or not or anything which has been provided to me is reproduced or pirated.

SHRI PATEL: I would say, in this particular instance, if the supplier takes some software, makes out a copy, obliterates the name of the original development and puts his own name and gives his licence, as far as you are concerned, you are genuine licensed user of that programme.

SHRIMATI VEENA VERMA: Are you providing U.S. type of Shrink-cram licence type?

SHRI PATEL: These licences are between supplier and the user. The Government does not come into the picture. We can have any kind of licence or agreement. Where you have got genuine copy from him and a friend of yours takes out a copy and uses it without entering into an agreement with the producer, then your friend is an offender.

SHRI PADMANABHAN: Section 63(3) says: If he uses it knowingly then he is penalised. So, If you buy genuinely from the buyer, then you are not concerned. So, you still get away from the law.

MR. CHAIRMAN: But he has to prove that he was not knowing it.

SHRI PADMANABHAN: She will be able to produce bill or licence.

SHRI MADAN BHATIA: I am not a very technical man nor have I ever used computer myself, software, hardware etc. If you look to the definition of computer programme, I want to understand the Basics. You say, Indian industry has not been able to develop because of piracy. The definition says: It is a set of instructions expressed in code etc., to perform a particular task or achieve a particular result. The consumer comes to you and says—these are instructions. You please feed into the computer and computer gives a set of instructions. Please let me know the process.

When you say, copyright should be available to these sets of instructions, what is your original about the set of instructions and to what extent people at large would be interested to get these sets of instructions, when particular individual wants only particular set of instructions?

SHRI PATEL: Suppose you wanted a programme which simply doubles the series of number like calculator, it can be done. If you want to enter the series of number and at the end you want to total it and also want to know its minimum, its maximum and the average, to perform that task the computer has to have a set of instructions which tally with the key board and perform different tasks like remembering the maximum number as the numbers are entered. At the end of the programme, you take out the maximum, minimum and the average. It is like this. It requires knowledge of that particular language, which the machine can follow. As a customer, you can come to me for your broad requirements. As manufacturer, I have to translate it into a broad programme.

SHRI MADAN BHATIA: Do you mean to say, this computer programme is in fact an invented set of instructions. The set of instructions alone can be utilised where a customer comes for giving him answer to his question. You have to make an application of those instructions to his query while feeding that information there. But for those instructions which are your sole property, that information cannot be fitted into the computer and the answers cannot be got. That is your secret. Those instructions are your secret and you want protection for that secret. Computer programme means a set of instructions expressed in words, codes, keys or in any other form, in a machine expressed in a machine-readable medium, of causing a computer to perform a particular task or achieve a particular result.

It is a sort of a middleman between the customer and the end-product. The computer programme is the invention of a particular industry or particular individuals.

May I take it that that particular invention, that set of instructions is of general application in a large field, not confined to a particular kind of information which is sought?

SHRI SHIRISH B. PATEL: For instance, if you want totals, minimum and maximum, then you use this programme. At the press of a button, you will get your balance-sheet, your sales-tax return. I will give instructions.

SHRI MADAN BHATIA: You have different set of instructions for different fields.

SHRI SHIRISH B. PATEL: Someone else with the same request may develop his own programme. It is bound to differ from person to person. We have nothing against that.

SHRI MADAN BHATIA: Who invents these instructions?

SHRI SHIRISH B. PATEL: It may be a single person or group of people. He works for an industry. The industry engages such persons on contract basis. There is a whole spectrum of size of development. This can be a bank, a limited company or a partnership or an individual.

MR. CHAIRMAN: We are still discussing on whatever you have said. Later on, we will take your suggestions section-wise.

DR. BALDEV PRAKASH: How are these instructions given?

SHRI SHIRISH B. PATEL: When the programmer expresses, they are not in hand-written or typewritten form. They are sometimes not on paper. If they are in machine readable form, it will read that an reproduce that on the screen. It may or may not be on paper. It is always in human readable form.

DR. BALDEV PRAKASH: How can an end-user will come to know whether it is hand-written, typewritten or pirated or original?

SHRI SHIRISH B. PATEL: The end user does not use them in this form. This is the form in which the machine can understand the

instructions, then it is converted by the machine into faster readable form and that is the form in which they are supplied to the user. The user uses the programme which is the final product by putting the disc into the machine and typing the instructions and the programme starts running. The user has then only to answer the questions, screen and enter, for example the numbers that the machine exposes. The machine will develop the results.

DR. BALDEV PRAKASH: Video-casettes and casettes when they are pirated, on the screen everything comes. How the end-user comes to know that this is a pirated video casette or original video casette? In the market, everybody has got casette and they are selling it to everybody.

SHRI SHIRISH B. PATEL: In the case of software, the user is using software to perform a task.

DR. BALDEV PRAKASH: Is video-casette a software?

SHRI SHIRISH B. PATEL: No. That is video. When it is used for a computer, then it is a software. It is not a software on TV.

SHRIMATI VEENA VERMA: Do you make any difference between computer programme and computer generated works?

SHRI SHIRISH B. PATEL: They are different things. The computer is an enormously versatile tool. It can do any task. Computer generated works are works of art or almost even literary works and conversations which are produced.

SHRIMATI VEENA VERMA: Are we having this kind of soft-ware in this country?

DR. K.V.H. PADMANABHAN: We have. Today in India as well as abroad, we have free ware. There is also a thing called share ware. The third type of software is called computer domain software which again is totally free. We are particularly interested only in those programmes which have to be made at a great cost. We are particularly involved in paid software, not free ware. Music and other things would be a question of mal-usage. Anything that is generated by that mal-usage programme would be a legal quibbling.

SHRI IMCHALEMBA: On the one hand, you want to make the licenced software a compulsory thing. On the other hand, you have been saying that the penalty which exists now should be reduced.

DR. K.V.H. PADMANABHAN: If I may clarify the position, presently, the Judge has the power to not give imprisonment. What we are saying is there should be a minimum of either three days or one day's punishment should be there. There should be a 24 hours in jail punishment. Deterrent action should be taken.

SHRI IMCHALEMBA: Do you not feel it will be a little contradictory? On the one hand, you are saying that deterrent action should be taken and

the action should not be delayed. In your opinion, the delay is causing much harm. We accept that position. Do you think this will help the growth of the software marketing in the country or in reducing the blackmarketing? On the other hand, you want some protection. You say only licensed software should be used.

MR. CHAIRMAN: The points which you have mentioned have been covered in the suggestions. After the general questions and explanations are over, then we can come to Section-wise suggestions. At that time, you may ask further explanations.

MR. CHAIRMAN: Now, we take up Section 2(ffc). You have suggested a few amendments to the present Bill. In the proposed Bill, it has been suggested:

> "Computer Programme means a set of instructions expressed in words, codes, schemes or in any other form including a machine readable medium, capable of causing a computer to perform a particular task or achieve a particular result."

In the place of 'in a ' you want 'including' to be substituted. Like that, in the place of 'of', you want 'capable of'.

SHRI SHIRISH B. PATEL: It is only a set of instructions expressed in some medium. The programme is originally written in a computer. In the computer, it will be in the machine readable medium. We say both the human readable form and machine readable form must be there.

MR. CHAIRMAN: The point is you want a little bit of improvement in the wording of the section.

SHRI MADAN BHATIA: These instructions are invented by technical persons like mathematicians etc. Is it not possible to invent the same set of instructions by two unconnected individuals or Companies?

SHRI SHIRISH B. PATEL: It is conceivable for a set of, say, 40 instructions. If the instructions are limited to 10 lines or 20 lines, your and my invention may be identical. We are asked to express an idea. If it is a question of a small para, then we can express in an identical way. But if it is a question of a whole essay, it will not be identical. The invention will be the same for a short period only.

SHRI MADAN BHATIA: What about the end-result? One customer comes to you and one comes to me. He is seeking the same end-result. You are using a particular set of instructions and I am using another set of instructions. I get the programme. Your customer also gets the same thing as my customer gets. How will it be possible to say that you have not used my set of instructions?

SHRI SHIRISH B. PATEL: Actually, the instructions are different. We do the same job. But your instructions are different from mine. There are two different sets of instructions. You compare it character by character. It will differ. If it differs, it is a different programme.

SHRI MADAN BHATIA: In this case, you get hold of the instructions from somebody's possession. You cannot find out the party because the end-results are disseminated in the market. How do you react now?

SHRI SHIRISH B. PATEL: Usually, the tasks are quite complicated. Let me give an example. As a shopkeeper, I make my entries into the programme. Then, it can give me my sales-tax return, income tax return, profit and loss, the balance sheet etc. in the form in which it is given. It will differ from your programme. There will be some difference. It cannot be identical.

DR. K.V.H. PADMANABHAN: First, we give the instructions to the key-board. Then, it is passed on to the Computer. It would basically differ from one programme to another. That is how we can detect. They are produced by touching a specific key. The instructions will differ from programme to programme.

SHRI DINESHBHAI TRIVEDI: Are you emphasising on the different process rather than relevance of the product?

DR. K.V.H. PADMANABHAN: Yes, Sir. There may be number of word processors but the ultimate result comes on paper. By saying that it is not, was possibly to detect whether it was by programme A or programme B or programme C. It is possible to detect at the stage of instruction. There will be difference like in an essay, paragraphs may be different.

SHRI SHYAM LAL KAMAL: There are two ways of expressing something. One is the machine readable medium and the other one is the machine non-readable medium. How can they be covered by computer programme and how are they pirated? Are those found guilty going to be legally penalised?

SHRI SHIRISH B. PATEL: When a programmer writes a computer programme, he first writes in human readable form so that it can be read by him and his colleagues and it can be written on paper. It can be written in long hand or some other way which he or his fellow programmer may be able to understand. To put it in the machine readable form, he has to type the same matter at the key board. Having done that, it is then in the disk and the computer can read back the disk. And instructions are then in machine readable form. But initially it is not.

SHRI SHYAM LAL KAMAL: Even when a matter is not put in a machine, is it not in a machine readable form?

DR. K.V.H. PADMANABHAN: One of the earliest language is the basic computer language. In that white paper is taken to give instructions to machine. If the answer is A, for example, it says go to item 20; if the

answer is B, it says go to item 40 and so on. This is all written in the English language. When it is entered into disk, all these words are converted and transformed into magnetic tape which is the machine. And than it is in the readable form.

SHRI SHYAM LAL KAMAL: The entire programme includes directions or instructions and is also a part of human readable form. And when it has to be put in the machine, then it is followed by the machine. I was told that it is to be put in the machine and it is to be deciphered in two parts whether it is machine readable or machine non-readable. If it is machine non-readable how can it be covered under piracy?

SHRI SHIRISH B. PATEL: Even when it is in long hand, it is still programmed. The invention is in deciding the set of instructions, which instructions should operate, what is the sequence of the instructions. That is all decided at the time of writing. But the invention is there.

MR. CHAIRMAN: It relates to the original writer of the software. I think, the hon. Member had a very pertinent question and he should try to be convinced.

DR. K.V.H. PADMANABHAN: The amendment itself suggests and I quote:

> "'Computer programme' means a set of instructions expressed in words, codes, schemes or in any other form, in a machine, readable medium, of causing a computer to perform a particular task or achieve a particular result."

I presume that what is written in long hand and readable by an individual will be covered by words, codes, schemes or in any other form. When it says machine readable form it includes human readable form also.

SHRI MADAN BHATIA: Kindly tell us only one thing because the whole object of this Bill is to stop piracy. If a person wants to operate the computer, what are the modes which he can apply for?

SHRI SHIRISH B. PATEL: I should first explain the steps through which a programmer goes before it becomes a useful form. First stage is when these instructions are converted into something which is only machine readable. It is sold to the user in that form. The user never sees the original set of instructions. He does not have to know anything of the programme at all. He gets the end result.

Nobody who sees the end product which has come to him for use can make out what the original instructions are. There are two distinct things. One is in human readable form and the other purely in machine readable form. Piracy can take place at either stage. If I am a programmer, I can steal your set of instructions by stealing your papers and then I can convert it into a machine readable form. It will be an identical programme or at the most I may change a few instructions and then sell it.

SHRI MADAN BHATIA: In other words, it can be done either by stealing the human readable form or the machine readable form but not by stealing the end product. So, the end product has nothing to do with the piracy. It also means that a person must have access to the human readable form. If a book has been published and is in the market, when one takes that book and give it to another publisher and republish it, then it is called piracy.

So far as your computer programme is concerned, it is a very secret property lying in your own office under lock and key. And you are in a position to feed it into your computer and your computer is able to do the juggling and make it a machine readable programme. But the person who has given to you and on whose behalf you are feeding these instructions, he is only getting the end product.

DR. K.V.H. PADMANABHAN: What he has given is not service. He has given the programme which is put in the machine and he gets his end product. He is using it like a disc. The disc can be copied in a matter of seconds.

DR. NAUNIHAL SINGH: I would like to ask you a very specific question. Who is actually the pirator or guilty of piracy? Is it those experts who are in various branches of those organizations? And if those very people are transmitting the software information to somebody else and making money out of it, whom are you going to punish? Will it be those experts or the end users which are receiving that information through that computer?

DR. K.V.H. PADMANABHAN: Today, the Copyright Act, 1957 as amended in 1984 makes the republishing, selling or hiring, which includes the computer programme, as an offence. As amended, hopefully, the computer programme will be different from the literature work and the person who would be pirating, who would basically be a man who sells the copy at a much lower cost because the cost of reproduction is very minimal then that of the original seller or the original writer.

Supposing a man who has developed the programme has priced it at Rs. 500 /- and the man who is buying it from an authorised writer or author for Rs. 500/- can in turn make a hundred copies of it and sell it for Rs. 5/- each. He is a pirator.

DR. NAUNIHAL SINGH: You have engaged an expert and he is feeding that programme in the computer. He himself is greedy enough to transmit that programme to somebody else and there may be some other end users. How are you going to catch him, who is working under your nose, which is an expert and also the end user?

DR. K.V.H. PADMANABHAN: As an employee his services are rendered to the employer.

DR. NAUNIHAL SINGH: How can you find out the guilty? Would you suggest something?

SHRI SHIRISH B. PATEL: In our view, the end user is using pirated software knowingly that it is a pirated one. When you buy a pirated book, you are not an offender because you have that pirated book on your book shelf. But it is the person who produced that pirated publication who is the offender.

What we are saying is that in software, republishing is an activity which requires no investment. It can be done by the individuals. You do not have to have somebody to sell you the pirated copy of the software. You can pirate it yourself. You may have a licensed copy and your friend can have that copy and make a number of copies of it unauthorisedly. We are saying that that friend is an offender because he is knowingly using that copy for making out un authorisedly without licence a number of copies of the software.

सभापति महोदय: मेरा ख्याल है कि माननीय सदस्य ने जो सवाल किया है, वह पूरी तरह से आप तक पहुंच नहीं पाया है, या जो आप कह रहे हैं वह हम तक नहीं पहुंच पाया है। मैं आपसे अनुरोध करूंगा कि आप दोबारा इसको रिपीट करने की कोशिश करें ताकि माननीय सदस्य की जो समस्या है और जो माननीय सदस्य महसूस कर रहे हैं कि कौन उसकी जिम्मेदारी संभालेगा और उसके लिए क्या किया जा सकता है?

SHRI SHIRISH B. PATEL: There are several levels of piracy. There is a piracy at the programmer's level where one programmer steals another programmer's instructions. That is called piracy. There is another piracy where somebody takes a programme, makes unauthorised copies and sells them to innocent customers. And the third one is where the end user knows that it is a pirated copy and uses it for his business.

Today, there is no market because of software piracy. Anything that you want is free whether it is foreign or Indian. No Indian company can bring in a product to market and expect it to sell. It will be pirated. Now, unless the industry has a market, it cannot develop products, it cannot even develop the know-how and the skills to develop the products and market them internationally. We will always remain sub-contractors to western companies who will be developing the products and selling them in international market. We will not be able to develop the skills unless there is a local market.

We are saying that the major offenders are the Government, business and the industry, whether large or small. These are the people who uses the software in large quantities. If the business users would simply pay for the software that they use, the Indian software industry, I think, would have a chance to stand on its own feet.

I do not think that we are really expected to be able to go after the individuals. I think we should really pursue the users, who gain out of it.

MR. CHAIRMAN: Dr. Naunihal Singh, are you satisfied with the reply?

DR. NAUNIHAL SINGH: My point is unless they identify a particular individual or company who are misusing or pirating or abetting the pirating, you cannot punish. And according to him, everybody is doing it, be it the Government or the industry. Then, why are you seeking protection through this Act? What for and against whom?

SHRI SHIRISH B. PATEL: We are seeking copyright protection for software and for software products against every unlawful user.

DR. NAUNIHAL SINGH: Whom do you intend to punish through this law when you cannot identify the culprit?

MR. CHAIRMAN: I think he is trying to give his view point. Now leave that matter to us. We will look into that as to how we can catch hold of the person who misuses the Copyright Act.

Now we go to Section 2 (ffb). In the proposed amendment "and/or data" is sought to be added to the original section. It reads like:

> "computer" includes any electronic or similar device having information and/or data processing capabilities.

You may please explain why you want to add these words.

SHRI SHIRISH B. PATEL: Computer centres are called data processing centres. We are just clarifying that information includes data also. Let us not leave any loopholes.

MR. CHAIRMAN: Now let us proceed to Section 14(b)(ii). The amended version reads like this:

> to sell or give on hire, or offer for sale or hire, or use any copy of the computer program, regardless of whether such copy has been sold or given on hire or put to use on earlier occasions.

Would you like to explain this further?

SHRI SHIRISH B. PATEL: Section 14 list out various things which are the property of the author. Copyright means the exclusive right to do those listed things. If I am going to prohibit unlawful use of this, there must be an exclusive right with me as the owner. The right to use the software must vest in the author. Otherwise how can he licence somebody else to use it?

SHRI MADAN BHATIA: In that case anybody who is using it will be covered under this Act. Section 14 says that copyright means the exclusive right, subject to the provisions of this Act, to do or authorise the doing of any of the listed acts. It is referring to the author.

DR. K.V.H. PADMANABHAN: Let us jump a little and go to section 63C where penalty and punishment have been prescribed. Here it is clearly prohibiting the unauthorised use.

MR. CHAIRMAN: I would like to know the meaning of selling. When you sell a thing are you going to curtail the right of the use of the buyer? When you sell it, you give him an authority to use it according to his choice.

SHRI SHIRISH B. PATEL: Sale of the copyright means full rights that goes with the copyright. When you sell me a copyright in a programme, thereafter all the rights in the programme rests in me. But what a programmer normally would do is to licence the individual user to use the programme. He will retain the ownership so that he can give the licence to another person.

MR. CHAIRMAN. Don't you think that your suggestion may create more problems and it would be very difficult for even a legitimate owner to use it.

SHRI SHIRISH B. PATEL: Here there will be no owner; he will be a licencee. He is licenced to use that programme on one machine or a number of machines depending on the terms of the licence.

SHRIMATI VEENA VERMA: One software programme can be used in different computers. So I can use it on my own and on other computers also. Will I be termed an offender in that case?

SHRI SHIRISH B. PATEL: It depends on the terms of the licence. Normally the licence that you get is for use on one computer at a time unless you have multi-user licence. In that case it is not an offence. But to use it simultaneously on ten machines is an offence.

SHRI SHARAD DIGHE: If your suggestion is accepted, namely, to put the word 'use' here in section 14, that means for all practical purposes the definition of copyright is very much widened to include even the persons using it. Not only selling or hiring, but using it also is sought to be prohibited according to your amendment. If that is made so wide, don't you think that even the infringement would be very dangerous? Section 63 provides for punishment for infringement. If using it also amounts to infringement of the copyright, then I think the person using the end-product also may be prosecuted.

DR. K.V.H. PADMANABHAN: Basically the intention is to make the law very comprehensive. Any user using a pirate copy is an offender. However a person who uses it for gainful purposes becomes a greater offender. One is a knowing user and another is a knowing user for gain and for monetary benefits. There are two aspects in Section 63. Where the word is knowing use, we can define that as a right which has been transferred from the author to the buyer. The work use is being introduced in this position itself as a definition of the author's right is a welcome thing. It naturally amplifies the scope of the Act. I agree that it gives a wider scope for the Act; but the intention is also to make it as wide as possible. The enforcement of the law naturally would differ on the capacity of the organisation or the author himself. Big authors who can afford to spend only will fight a case which may include selling, hiring or using it.

SHRI SHARAD DIGHE: You can make it more comprehensive. But while doing so, are you not running the risk of including even some of the innocent people?

DR K.V.H. PADMANABHAN: Any law is rather comprehensive. The enforcement of the law is a matter of discretion.

SHRI MADAN BHATIA: Section 14 refers to the rights of the author. But the hon. Member Shri Dighe was referring to the infringement of the rights of the author. And Section 14 does not deal with the infringement of the author. Your answer has been that right to use the programme should be included among the other rights of the author and it has nothing to do with the infringement.

SHRI SHIRISH B. PATEL: You cannot have an infringement without having something to be infringed. Unless this right belongs to the author, he cannot do it. As far as Section 14 is concerned, it is correct to say that it is also one of the rights of the author to use it. Software piracy has become more rampant in India and it is not going to be possible to check it simply with the provisions of the earlier law. Some one in Bangalore has done a software on viruses. No one can pirate it and it is something different and he was selling it at a reasonable price. Unless we are able to reach the end user, we will not be able to tackle this problem. People are having pirated books in their shelves and may be, in case of books, it does not matter. But, in the case of a software, if he does it in business, it is unreasonable. We are doing it in order to protect the Indian software industry which has a tremendous potential.

SHRI MADAN BHATIA: In business, they say that they need so much protection. They also say that in other countries this industry is very much flourishing. But, in our country, this industry is not able to flourish. Can you give us the law that is there in their countries in regard to this industry? You have compared USA and said that they were able to check piracy to a great deal.

SHRI SHIRISH B. PATEL: In US which is the most flourishing industry in the world today, software is protected both by copyright and by patent. But we do not have them.

In US, even in offices, they are not using pirated softwares. You may see them using it personally. But, you will not find them using it in offices, because they are frightened by law suits. I am aware of the law and there is no law for the end users.

MR. CHAIRMAN: I will request the witnesses to come prepared with a comprehensive note when they come for the next meeting, which can help us in arriving at certain decisions.

DR. NAUNIHAL SINGH: Mr. Chairman, Sir, the witnesses try to tell the hon. Members that America has a foolproof system. Personally I am aware of the system; I was in the States for more than a decade. I know that millions of dollar worth of software was transmited; even classified information was transmitted from USA to Russia. Even softwares were transmitted from one bank to another, without the knowledge of the

management. Now, you are trying to inform the Commitee that America has a foolproof system. Will you please now justify the statement?

SHRI SHIRISH B. PATEL; I did not say that America has a foolproof system. I only said that in offices they are not using it for the fear of law suits; but they are using it on personal basis. For that matter, America, by no means, is successful. They have the same laws, as we have. But the enforcement is different; the fear is different; the consequences of a law suit in America are different. In India, if there is a law suit, you can expect it to come after twenty years when you will be asked to pay some fine, about which nobody is bothered. We have a software industry in India which has a potential. We have zero market in software industry because everyone uses pirated software. We have to make sure that people who are using them, are using them legally.

MR. CHAIRMAN: We will decide on this point later on.

SHRI DINESHBHAI TRIVEDI: I have just an observation to make. I think we all appreciate the help we are getting from the honourable witnesses. The whole objection is to stop piracy as the industry is going to help the nation as a whole. We are all in agreement with it but I was not aware of the US laws. There is a flourishing industry of software. Our laws are the same. But they do not have any clause about the end users which you are saying should be incorporated here. Incorporating is not going to help. On the contrary, we are seeing cases where just to put somebody in the dock, a person who does not have the access can be easily trapped and seen that he goes behind the bars for 20 years or so. This is going to be detrimental for smaller people. So, we have to think 100 times before we incorporate this clause. The whole crux of the matter is implementing the present set of clauses which we presently have.

Dr. K.V.H. PADMANABHAN: If a rival plans your programme in your computer, it is possession and it is there in the memory of the computer. We are taking the use of it as an offence. We are not worried about possession.

SHRI DINESHBHAI TRIVEDI: But smaller people will be harassed.

Dr. K.V.H. PADMANABHAN: If he uses it knowingly, then he will be harassed. If two to three volumes of the same programme is present in the memory of the computer, planted by a rival, then it is not an offence.

SHRI BHAGWAN SHANKAR RAWAT: In that case, you will not be the beneficiary. The beneficiary will be those persons who want to execute a particular person.

SHRIMATI VEENA VERMA: Copies in Hindi are not available. Ultimately, we have to get it from somebody as the Government is not providing.

Dr. K.V.H. PADMANABHAN: We do not get it in the open market.

SHRIMATI VEEN VERMA: How long should we wait till we get it in the open market?

DR. K.V.H. PADMANABHAN: There are eight companies which are producing software and they are all licensees. If an agent gives it at a lower cost, the data processor in the computer will be able to tell you in Hindi or Tamil and some other languages. They are available openly and that copy is costing about Rs. 1000. There are people who are getting them, infringing them in the computers and selling them at Rs. 100 or Rs. 50 per copy.

SHRI SHARAD DIGHE: I would like you to give a second thought to the suggestion of the word 'use' because section 14 defines the exclusive right of the author. Now, as far as computer is concerned, you want to incorporate the word 'use' alongwith sale, etc. That means exclusive right to use that programme which is produced by the computer is only with the author and infringement is defined under Section 51; punishment is defined under Section 63. You are conferring upon the owner the exclusive right of using that computer programme. If it is used by anybody else even lawfully, he can be punished. Then Section 63 will not give him any defence. Any person who infringes knowingly comes under Section 51. It means that a lawful user of any computer programme will be caught under Section 63 and then you will be the sufferer. That is why, the hon. members are suggesting that your industry will be suffering.

SHRI SHIRISH B. PATEL: If the author has the right to use, then I can license you to use the programme for a fee. It means right is mine but I am permitting to use it on a fee. If you say using software is infringement, then what is infringed is in the possession of the author. How can you infringe something which is in the possession of the author?

MR. CHAIRMAN: I think we can conclude for today. I am thankful to you and your colleagues who have shown deep and keen interest in the subject. I am also thankful to the Secretariat and representatives of the HRD Ministry and Law Ministry. We shall be meeting again. You will be informed about the date in due course and other points will be discussed in the next meeting.

(The Committee then adjourned.)

JOINT COMMITTEE ON THE COPYRIGHT (SECOND AMENDMENT) BILL, 1992

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE COPYRIGHT (SECOND AMENDMENT) BILL, 1992.

(Thursday the 7th January, 1993 from 1500 hours to 1730 hours Committee Room 'C' Parliament House Annexe, New Delhi).

PRESENT

Shri Syed Sibtey Razi — *Chairman*

MEMBERS

Lok Sabha

2. Shri E. Ahamed
3. Mohammad Ali Ashraf Fatmi
4. Shri M. Krishnaswamy
5. Shri V. Dhananjaya Kumar
6. Shri Janardan Prasad Misra
7. Smt. Geeta Mukherjee
8. Shri Harpal Panwar
9. Shri Bhagwan Shankar Rawat
10. Shri Kodakani Gowdana Shivappa
11. Shri P.C. Thomas
12. Shri Sobhanadreeswara Rao Vadde

Rajya Sabha

13. Dr. Naunihal Singh
14. Shri Dineshbhai Trivedi
15. Shri Vishvjit P. Singh
16. Shri Madan Bhatia
17. Shrimati Veena Verma
18. Shri Iqbal Singh

SECRETARIAT

Shri Ram Autar Ram — *Under Secretary.*

REPRESENTATIVES OF THE MINISTRY OF HUMAN RESOURCE DEVELOPMENT (DEPARTMENT OF EDUCATION)

1. Shri R.K. Sinha — *Addl. Secretary*
2. Shri V.K. Saxena — *Licensing Officer*

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

1. Shri Raghbir Singh — *Joint Secretary and Legislative Counsel.*
2. Shri S.P. Kanwal — *Deputy Legislative Counsel.*

WITNESSES EXAMINED

Federation of Indian Publishers

Spokesmen:

1. Shri D.N. Malhotra, President.
2. Shri Pravin Anand, Advocate.
3. Shri Kanti Chaudhari, Former Joint Secretary, Ministry of Education.
4. Shri Narinder Nath, Executive Director, FIP.
5. Shri Vishwanath, Managing Director, M/s Rajpal & Sons.
6. Shri Mohan Primlani, Chairman, IBH.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Before you start, I may point out that in accordance with the provisions contained in Direction 58 of the Directions by the Speaker, your evidence shall be treated as public and is liable to be published. Unless you specifically desire that all or any part of the evidence given by you should be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

MR. CHAIRMAN: Shri D.N. Malhotra, you have sent us certain suggestions. First of all, I would like to request you to give your reaction about the general Bill and how are you going to be benefited with general laws.

SHRI D.N. MALHOTRA: We in the Federation of Indian Publishers are very happy that this comprehensive revision of the Copyright Bill has been made and many new provisions have been added to it. I want to make one point specially that so far as copyright of books is concerned, the most important part played is that of the publishers, who takes care of it on behalf of author as well as publisher. And whether the author gives a book on royalty assignment or complete copyright, the protection and the utilisation is the responsibility of a publisher. Our Federation is the apex body of Indian publishers. There are various Indian language Publishers' Association in all the States and there are State Publishers' Associations, which are federated to it. In our own association, there are about 20 Associations which are represented and we represent about 80 per cent of the total Indian publishing. Again internationally we are federated to the International Publishers' Association with its head office in Geneva. Only last year, in January 1992 we organised the International Publishers' Congress, which gave us an opportunity to come in contact with leading publishers from all over the world. We were very happy to learn that till now our interaction had been only with the countries like U.K. and USA where English is the language. We found that publishers in Spain, France and in Scandinavian countries, are all interested to have business with Indian publishers and Indian writers. Therefore, we forsee that Indian publishing is going to be global in the coming years. And from this angle also, we are looking at the amended Bill so that internationally we do not miss anything which may create a problem later on.

We have gone through the draft and we have made some suggestions to you. We will be ready to reply to the questions and also elaborate on various points, which you may ask us.

Before coming to specific issues, I would like to clarify in a general way that today India is one of the first ten publishing countries in the world. Sometimes when it is given in the press or some statements are made that the author is exploited that is a one sided and biased version of some disgruntled author, who may have come in touch with a publisher, who may be unscrupulous, who does not know the norms of publishing. So far as responsible publishers, who are members of our Federation, are concerned, they always believe in giving a fair deal to the author. We believe that there are two wheels to this chariot of writing and publishing—the author and the publisher. Some times this vitiating atmosphere leads to something as if the entire approach to the Copyright Act should be author versus publisher. It is not so. It is in the interest of both. As I said, we are the most concerned party. We are the party as the Federation of Indian Publishers to see to it that the provisions of the Copyright Act are properly spelt out, enforced and our Federation has been a member of the copyright the Enforcement Advisory Committee of the Ministry of HRD. Under these circumstances we would like you to view the role of the publishers in the field of wiriting and publishing as crucial. With these remarks, I would like you to ask us questions and we will reply them one by one.

MR. CHAIRMAN: Clause 8 of Section 19 of the Bill says:

"The following sub-sections shall be substituted, namely:

i) The assignment of Copyright in any work shall identify such work and shall specify the rights assigned and the duration and territorial extent of such assignment.

ii) If the rights assigned under Sub-section (1) are not specified, it shall be presumed that the assigner has assigned all his rights under this Act."

Your suggestion says:

"In the proviso it has been provided that if assignee does not exercise any of such right within a period of one year from the date of assignment, the assignment in respect of such right shall be deemed to have lapsed after the expiry of such period. In this connection it is submitted that the assignment of copyright is to be distinguished from licensing rights. The assignment of the copyright is a total sale and if the author assigns his copyright nothing is left with him unless in agreement to assign the copyright he expressly stipulates the rights which will continue to vest with him. The proposed Bill provides that the assignment will lapse after the expiry of one year if the assignee does not exercise any of his rights assigned. The assignment is always made for some consideration and if the assignor has taken consideration the assignee will be hit hard if the rights assigned to him lapsed and the author does not return the money paid to him by the assignee..."

Would you kindly let us know the specific suggestions?

How much period should be given?

DR. NAUNIHAL SINGH: Mr. Chairman, before that I would like to ask one question. The Chairman of the Publishers' body has explained in clear terms about the relationship of the publisher and the author. I happened to be one of the authors writing all along. I have seen that the publishers would never disclose, would never make a commitment as to how many copies he is going to print out. It is a misery to me till today, why is it so when there is such a good cooperation between the publisher and the author and it has got to be continued in the right spirit. Why is it not mentioned clearly in the contract? Therefore, it gives a lot of doubt and it suspects the credibility of the publisher. Instead of 500 copies he may have published 5000 copies and made money out of it and the author has suffered. This is my point.

SHRI D.N. MALHOTRA: The Authors' Guild of India, since its inception, and our Federation of Indian Publishers have formed a Joint Committee, which is called Good Office Committee of Authors and Publishers. If any author brings a complaint like this, it is discussed there and if the publisher is at fault, we use our good offices to see to it that the publisher gives you the correct information. As I have already said, there are some publishers, there are people in every profession, who do not behave and are unscrupulous. A model agreement between the author and the publisher has been published in the latest issue of the journal of the Authors' Guild. That has again been printed. We always caution authors directly and through the Authors' Guild who ask them to go to proper publishers so that they are not cheated or duped. We as responsible publishers get a bad name if an author is cheated by any publisher. We mention in the royalty statements given at the end that 5000 copies were published; 3,200 copies were sold; royalty is 10 per cent; total face value is given and ten per cent of that has been sent to you as cheque.

Next year we take that balance and send the other royalty statement for the previous year. The misfortune is that there are some people who parade about as publishers but they are not publishers, they are jobbers. If any author gives us any complaint, we see to it that it is taken care of. May I tell you that when for the first time this Good Offices Committee was formed, Justice G.D. Khosla was the Chairman of the Authors' Guild. At that time also I was the President of the Federation. Five cases were presented in the first meeting. We always ask the President of the Federation and the Chairman of the Guild to preside over the meetings turn by turn. Chairman of the Authors' Guild, Mr. Khosla found that the first two complaints were frivolous where the authors had said that so and so did not send them the royalty account though the book had been published only a month ago. When we found from the publisher, we were told that the manuscript was given to them only three months ago. Before we came here, we were discussing with a leading science research books. He said it takes him a number of years to get a proper manuscript ready for press. So, if an author becomes impatient and says that the book is not

published, then he is not practical. As regards the other point regarding the number of copies published, we can always look into the matter.

DR. NAUNIHAL SINGH: Sir, it is just a lip service and it is a post mortem activity. It is not a fair game. In the contract it should be specifically mentioned that 1,000 copies will be published so that both the publisher and the author know it clearly. But it is not mentioned. In the Good Offices Committee, it is always the publisher who wins and never the author. I shall bow my head if the publisher can provide one particular case where the author has won the case in the Good Offices Committee.

SHRI D.N. MALHOTRA: There are many cases, not even one. We can cull out the entire records of the Authors' Guild's files and our files and we can send you a list by the time of your next meeting.

MR. CHAIRMAN: O.K., you supply us with a detailed list as the hon. Member has suggested.

SHRI VISHVJIT P. SINGH: I agree with the hon. Member. Your prefatory remarks themselves show a certain bias because in your prefatory remarks itself you have said that the publisher is the most important link in the entire chain. According to you, the publisher is more important than the other.

SHRI D.N. MALHOTRA: So far as the utilisation of the copyright is concerned, he does it on behalf of the author as well as the publisher.

SHRI VISHVJIT P. SINGH: You started your remarks by saying that publishers are the most important aspect of the entire chain. That shows a certain bias. Secondly, in your memorandum itself, the bias is pretty clear. In the very first para you are talking about the assignee and saying that "if the rights are curtailed to a particular time period". You do not want to specify the time period at all. Chairman asked you to give us a specific time period. Now you say that it would take him two to three years to prepare a manuscript for publication. Look at the poor author. It is his labour which you are exploiting. Once he has signed the contract with you, the poor man is at your mercy. We are trying to rectify that situation. In the memorandum, you also talk about foreign rights and say that you are quite capable of looking after the foreign rights. You want that this should comprehensive and that all international rights should be given to you. So, your entire memorandum is biased—totally in favour of the publishers and totally against the authors. For heaven's sake, please be reasonable about this whole affair. Let us allow the author some right. If you have any such list of unscrupulous publishers or jobbers as you call them. Today the author does not know which publisher to go to. As far as he is concerned, he goes from one publisher to the other. There are a few publishers who control the entire market and most of the other publishers are very very small. So, he is most of the time stuck up with a small publisher. What is your explanation for all this.

SHRI D.N. MALHOTRA: May I humbly say that this view about the publishing activities also is one sided? There are cases where an author goes to a publisher and he does not get a fair deal. But India being one of the top ten publishing countries in the world, could not have achieved that position if publishers of India had been misbehaving or had been unfair to the authors all the time. There are publishers where the authors go again and again. Therefore, I would not like to use the word 'poor author'. We highly respect them. What I said is that so far as the utilisation of the copyright is concerned, it is the publisher who does it on behalf of the author as well as the publisher. Therefore, the publisher is more involved to see that the copyright is fairly done on behalf of the author as well as on his own behalf. I may submit that I must have signed literally over 1,000 agreements with authors. I had no dispute at all with any one. There are leading publishers sitting with me here who never had any problem. The publishers have given royalty worth lakhs of rupees to authors. We come to learn of the cases where the publishers have not given a fair deal and we discuss them in the Good Officer Committee meeting of authors and publishers. In the National Book Policy report also this has been discussed. We also want the publishers should be registered. It is only in this way that we can take care of those publishers who do not behave properly. As I said earlier, it is not correct to say that the author is exploited by the publisher.

SHRI VISHWANATH: I would like to make a few observations. A sweeping statement has been made that the Authors' Guild is perhaps a phoney body. I do not hold any brief for them. It has a membership of more than six to seven hundred authors throughout the country. If there is something wrong, it is for the authors to decide or to take action. We understand that your are going to meet the Authors' Guild of India tomorrow and I request yor to raise this issue with them. They are not our spokesmen. They are there to fight for the rights. We have no objection to it. We always insist that all should work together in mutual interest. The agreement should contain about the number of copies to be printed. We are for it. In the model agreement which has been drafted—which took a long time to prepare—it is there. Justice Khosla was involved with the Authors' Guild. They took expert legal opinion. We saw to it that everything is fair to both parties. In the model agreement we mentioned about the number of copies to be printed.

I think we should have a licence to publish instead of copyright. We have been advocating this. The situation is that the publishers are malaigned. On our own we cannot function. The author has to be there and then only the publisher comes. The reason why we get complaints about publishers is that everybody is now an author like everybody is a bathroom singer. Many authors have come up. Everybody wants to see his work in print. There are some other type of authors who pay for the printing? Such people run into problems. In that process the publisher—community gets bad name. A fair view should be

taken. It is not correct to say that we are biased. If an author is biased about his work, we are biased about duty. 'Bias' is not a dirty word. If we put forward our view, do not call us biased. We want to be fair to all. We are open to suggestions.

SHRI VISHVJIT P. SINGH: Sir, two specific questions regarding time-frame and territorial rights are not answered.

MR. CHAIRMAN: They have told their point of view. Whatever the witnesses have said has been noted. We shall keep it in mind when we finally decide about, it. The witness said that hon. Member said sweeping remarks. I am sure the hon. Member does not mean it in that way. We have got memoranda from all people. We will look into them at the proper time.

SHRI DINESH BHAI TRIVEDI: The very fact that we are here, proves that we have lot of respect for the publishers and without them obviously the authors cannot function. Both of them are necessary. Then only readers will get the benefit of good write-ups. I do not think there is any doubt about it. Let us not start with that mind of note.

I am sure the hon. Members definitely do not mean it in that way.

I would like to ask as to what constitutes the good office committee and do you have authors also in it and who are part of that committee? Do you give some kind of publicity to the committee so that the information about it reaches the authors so that they can ventilate their grievances? I shall be happy if these questions are answered.

SHRI D.N. MALHOTRA: Sir, I submit that this is a committee of the representatives of the Federation of Indian Publishers and the Authors' Guild of India. There are three representatives from the Authors' Guild and three from our federation. Dr. Singhvi was the Chairman and Dr. Karan Singh was the Chairman earlier. Justice G.D. Khosla was there on behalf of the Guild. The president of our federation is alternatively chairman of the committee. As the name itself suggests, it is a Good Office Committee. In the last meeting, I said that the publishers are not there representing the cause of publishers and the same is the case with authors. We are here to help each other. There was a case of a publisher from Allahabad who was not genuine. We sent one of our publishers to look into and give some advice to him. This committee does such work.

I suggest that we will send a detailed report to you of the working of the committee. The journal of the Authors' Guild also richly praises the committee. It is read in foreign countries also. I submit that everbody cannot be satisfied. We do our best. If there is a case in which they go to court we try to help them to resolve the problem. I will send a detailed note to the committee.

श्रीमती वीना वर्मा: जैसे आपने कहा था कि पब्लिशर्स राईटर्स के इन्टरेस्ट का ध्यान रखते है और publishing is going to be on large scale, India is the first in the publishing

ficld. भारत को इस स्तर पर लाना कि ग्लोब्ल में दसवीं पोज़ीशन हो, उसके लिए आपको बहुत-बहुत धन्यवाद और Indian Publishing will be global. उसके लिए भी शुक्रिया। पब्लिशिंग तो ग्लोबल हो गई लेकिन लेखक कहां हैं। आप कैसे कहेंगे कि ग्रीव्ड पार्टी ऑथर है या पब्लिशर। इसके लिए मैं यह कहूंगी कि क्या इंडियन पब्लिशर्स फैडरेशन ने ऑथर्स की रायल्टी बढ़ाने के लिए कभी सोचा है? रायल्टी, जो सौ साल पहले 15 प्रतिशत थी, आज भी 15 प्रतिशत है। आप रीप्रिंट करते हैं तो उसको साढ़े सात प्रतिशत देते हैं। हार्ड बाउंड और पेपर बैंक की एक और टैक्नीक निकाल ली है। उसमें भी फर्क करते हैं। फस्ट प्रिंट के रीप्रिंट में भी रायल्टी कम करते जाते हैं।

एक सरकारी खरीद है, उसमें भी लूपहोल है। राईटर को पता ही नहीं लगता है कि कब कितनी पुस्तकें खरीद ली गईं। उसको रायल्टी का हिसाब ही नहीं मिलता। खरीद बल्क में हो जाती है। लेखक की सालों से रायल्टी नहीं बढ़ी है।

आप मॉडल कॉनट्रेक्ट की बात कर रहे हैं। इंडियन पब्लिशर्स फेडरेशन पहले भी मॉडल कॉनट्रेक्ट की बात उठा सकता था। जब बिल आया है तब बात की है।

कितनी कापी छपीं, यह भी कॉनट्रेक्ट में पता नहीं होता है। लेखक को यह भी पता नहीं होता है कि कॉनट्रेक्ट एक हजार कॉपी का हुआ है और कॉपी पांच हजार छपी हैं। जैसे-जैसे हजार कॉपी बिकेंगी, चाहे वह दस साल में बिके या बीस साल में बिके, उस पर लेखक को रायल्टी मिलेगी। आपके बीच में कॉनट्रेक्ट हुआ है, आपने एक मेनूसक्रिप्ट खरीद ली है और उससे आपका पब्लिशिंग हाऊस चल रहा है। लेकिन लेखक की हजार किताब, जो कि कॉनट्रेक्ट में है, उसमें उसको रायल्टी धीरे-धीरे दस साल में मिलेगी। लेखक की एग्रीव्ड पार्टी कौन सी है? एक तरफ आप खुद ही कह रहे हैं कि पब्लिशिंग ग्लोबल है, वर्ल्ड में दसवीं पोज़ीशन में है, तो एग्रीव्ड पार्टी दोनों हो सकती हैं। लेकिन ज्यादा कौन है? आपने जो कॉनट्रेक्ट में बात की कि हजार कॉपी प्रिंट करेंगे, हार्ड बाउंड और पेपर बैक को भी डिफरैनशिएट करेंगे, क्या आपने कभी इस पर विचार किया है? हजार कॉपी का कॉनट्रेक्ट हो और ऑथर को सम्मानजनक ढ़ंग से ऐडवांस में पेमेंट मिल जाए, क्या कभी इस पर सोचा है? आपकी कॉपी बिके या न बिके, यह ऑथर की जिम्मेदारी नहीं है। वह बीस साल तक एक हजार कॉपी के बिकने का इंतजार करता है। क्या आपने कभी लेखक की बेहतरी के लिए सोचा है? जब कॉपी रीप्रिंट होती है तो उसका लेखक को पता ही नहीं होता है। लेखक का इंटरेस्ट आपका इंटरेस्ट है लेकिन ऑथर का इंटरेस्ट भी बना रहे, क्या उसके लिए आपने कभी सोचा है?

सभापति महोदय: मैं आपकी बात को ही सब्सटैनशिएट करना चाहता हूं। कलैक्टिव ऐफर्ट जो इस एक्ट में दिया गया है और उसको आगे बढ़ाने की बात कही गई है, आप क्या इस पर अपने विचार देंगे कि कॉपीराइट सोसाइटी में जिस तरह से शंका और असुविधा लेखक को हो रही है, उसमें कुछ फर्क पड़ेगा?

श्री डी० एन० मल्होत्रा: मैं नहीं समझता कि इस तरह का कोई केस हो सकता है कि एक हजार कॉपी बीस साल तक चले। यदि ऐसा होता तो पब्लिशिंग भी नहीं चल सकती है। यदि आप टैक्स्ट बुक्स को ही लें, मेरे पास और दूसरे अच्छे पब्लिशर्स के पास बहुत ज्यादा कॉपी बिकती हैं।

मॉडल कानट्रेक्ट आज से 15 साल पहले बना था जब श्री डी० आर० मनकेकर इसके सैक्रेटरी जनरल थे। तब यह सरकुलेट किया गया और उसके मुताबिक काम हो रहा है। यदि लेखकों को कुछ तकलीफ हुई है तो वे हमें बताएं लेकिन उस चीज को लेकर हम सारी पब्लिशिंग कम्युनिटी को गलत नहीं कह सकते।

सभापति महोदय: क्या आपके यहां इस तरह का कोई तरीका है कि आथर्स गिल्ड से या कुछ कोआर्डीनिशन रहे जिससे एक-दूसरे को अपनी परेशानी कह सकें? मैं इस बिल के संबंध में नहीं बल्कि जैसा आपने कहा कि बहुत-सी चीजें आपसी आदान-प्रदान से सामने आ सकती हैं, जरूरी नहीं है कि सब कुछ एक्ट में ही प्रोवाइड कर दिया जाए, तो क्या ऑथर्स गिल्ड से किसी स्तर पर आपसी बातचीत होती है?

श्री डी० एन० मल्होत्रा: हमारी आथर्स से हर तरह की सांझी बातें होती हैं। अभी जैसे यह बात हुई कि यूनिवर्सिटी ग्रांट्स कमीशन कम ग्रांट दे रही है तो दोनों ने मिल कर सोचा आथर और पब्लिशर दोनों का इंट्रस्ट है लाइब्रेरी को स्ट्रेन्थन किया जाए। हम प्राइम मिनिस्टर के पास जाएंगे और कहेंगे कि जहां भी कटौती होती है किताबों के बारे में होती है। इस तरह की बहुत सी चीजें हैं। यह कम्प्लेंट्स तो साइड की चीजें हैं, जिसको आप इम्पोरटेंट समझते हैं इस तरह के केसेज़ हमें बताइए।

श्रीमती वीना वर्मा: इस तरह के केस हैं जैसे लेखक के मरने के बाद 50 वर्ष तक प्रेमचंद नहीं छापा। इसी तरह से अभी विश्वभारती सब के सामने हैं क्योंकि वे 20 साल और बढ़ाना चाहते थे। क्यों नहीं लेखकों या पाठकों को यह हक होना चाहिए कि किताबें बढ़ें, सब के सामने आएं। 20 वर्ष मांगे, 10 वर्ष किए गए, उस समय भी मैंने आवाज उठाई कि यह सब पब्लिशरों के लिए होना चाहिए एक हजार कापी हैं जो 10 साल तक नहीं बिकती हैं, इंतजार करना पड़ता है। कोई एक किताब आउट आफ प्रिंट हो गई तो उसको छापने के लिए तैयार नहीं हैं। प्रेमचंद 50 वर्ष पूरे हुए सस्ते दाम पर छप गई और एडवांस में छाप ली गई तो आथर्स को नुकसान होता है। वह गरीबी में मर जाता है। 50 वर्ष तक रायल्टी नहीं मिलती, 50 वर्ष बाद पब्लिक प्रोप्रटी हो जाती है। क्या उसके वेलफेयर के लिए कुछ किया है? इस तरह से यह जो अमेंडमेंट बिल ला रहे हैं, किसी तरह से आथर्स के इंट्रस्ट को सेफगार्ड करने के लिए क्या आपके पास कोई और प्रपोज़ल है?

सभापति महोदय: मैं मेंम्बरान की तवज्जह इस बात की तरफ दिलाना चाहता हूं। ये जो बातें कह रहे हैं ये अपने केस को यहां पर रिप्रेजंट कर रहे हैं। इनके केस को सुनने के बाद आर्थस गिल्ड से मिलें तब हम बात कर सकते हैं।

श्रीमती वीना वर्मा: पहले हमें यह समझना चाहिए कि आथर और पब्लिशर का रिश्ता क्या है?

सभापति महोदय: यहां तो यह भी बैठे हुए हैं इनसे भी हम सवाल कर रहे हैं। हमारे यह अधिकारीगण यहां बैठे हुए हैं— जो बातें हो रही हैं इनसे भी बराबर हम पूछते जा रहे हैं। हर आदमी अपनी बात को वहां पर कहे उसके बाद जो यह कहना चाहें, कहें।

श्री विश्वनाथ: रायल्टी बढ़ाने के बारे में बात कही गई, क्यों नहीं सोचा गया। ये जो नार्म्स हैं यह थ्रू आउट दी वर्ल्ड हैं। 10 से 15 परसेंट से ज्यादा रायल्टी कहीं भी नहीं है, अमरीका में भी नहीं है। यह सोचना कि रायल्टी की परसेंटेज क्यों नहीं बढ़ाई गई। मुझे लगता है कि कुछ एक इकनोमिक्स ऑफ पब्लिशिंग है। उसको जानेंगे तो अगर रायल्टी बढ़ा भी दी जाए, कोई बात नहीं है। लेकिन आज जो समस्या है कि किताबें बिकती नहीं हैं, हमारी जो कामन प्राब्लम है। हमारा तो खुला दिमाग है। इस काम के लिए हम नहीं आए थे लेकिन कोई बात नहीं है, हर चीज का मैं जबाव देने को तैयार हूं। जहां तक मेरा अनुभव है मैं आप सब के लिए जानकारी के तौर पर कहना चाहता हूं कुछ बहुत अच्छे लेखकों को, जिनका बड़ा नाम था उन्हें लगा कि पब्लिशर ठीक नहीं होता। उन्होंने सोचा कि खुद ही पब्लिश करें जैसे जैनेन्द्र कुमार, उपेन्द्र नाथ, यशपाल, उन्होंने अपने पब्लिशिंग हाउसेस खोले। हमें बहुत अच्छा लगा। उसके बाद हम उनसे मिले वे हमसे कहने लगे कि किताबें तो बिकती नहीं हैं। हम तो गलतफहमी में थे। मेरे निकट संबंधी हैं क्योंकि ये सब गलतफहमी होती हैं।

किताबें बिकती नहीं हैं यह हकीकत है। आज मैं अपनी बात कह रहा हूं मुझे यह कहने में कोई संकोच नहीं है।

सभापति महोदय: मेरा ख्याल है हम आपके प्वाइंट्स समझ गए हैं।

डा० नौनिहाल सिंह: यह तो बहाना है कि एक हजार की जगह पांच हजार छप जाती हैं। They are the richest people in the world and some people are very poor also. If it is not so, then how are the publishers flourishing in the whole world? आप पांच हजार कह रहे हैं पांच हजार छपी होंगी। यह अलग बात है। अगर वे छपती नहीं हैं, बिकती नहीं है तो फलरिश कैसे करते हैं।

MR. CHAIRMAN: We have noted that point and when we go clause-by-clause, that point will come up. We will see how we can suggest to protect the rights of the authors. Secondly, there is a contract between the writer and the publisher and what the contractual parties decide, something about it has been said in the Act itself. If further clarification is required, we will discuss it later on. Tomorrow, we will discuss with the Authors Guild and we can see how we can protect the interests of both the parties. If something new is required, we will discuss when the withnesses are not there. Now, I would request Mr. Bhatia to come to the specific points.

SHRI MADAN BHATIA: Mr. Malhotra, we have seen your memorandum. Basically, you have made four suggestions with regard to the proposed Amendment Bill. Two suggestions relate to the proposed amendments in section 19; one suggestion relates to the proposed amendment in section 19(A) and one suggestion relates to the proposed amendment in section 57. I shall confine myself to the suggestions which you have made. Your first suggestion is that the proviso to Sub-Clause 3 of Clause 8 of the Amendment Bill which says that the rights of assignment shall lapse after the expiry of one year if the assignee does not exercise any such right within that period. It is a harsh Clause. If this period of one year is enhanced to two years, will that satisfy the publishers or not?

SHRI MALHOTRA: We think that this Clause should not be there.

SHRI MADAN BHATIA: When you say that assignment is a total sale, do you mean to say that the consideration which you pay is the total amount which you are required to pay for getting the rights to publish and net royalty?

SHRI MALHOTRA: There are two ways. It is on a continuing basis. The author has spent his energy, and time in writing. The publisher spends the money on his creative way of designing the book and getting it printed, getting it bound and distributing and marketing and selling. If the copies sold are 20,000 both are the sharers. If they are 1,000 both are losers. But

in certain cases, as it is in our publishing company which does not like to buy on a lumpsum basis. But some author says "My book is on royalty basis with you. But today I have decided that instead of that you pay me a lumpsum amount and I want to give you the complete copyright". Actually that big lumpsum amount to be given to the author is a strain on me.

SHRI MADAN BHATIA: This Clause is meant to protect those authors who have to be paid on the publication of their book on the basis of royalties. Do you mean to say that because assignment is an outright sale, therefore, this Clause should not be there?

SHRI MALHOTRA: It does not apply to them.

SHRI MADAN BHATIA: This Clause is meant to protect basically the authors in the prevalent practice that they are paid by royalty on the basis of the books which are actually published and sold. Do you concede that so far as literary works are concerned, there is no reason to say that period of one year is not enough?

SHRI MALHOTRA: No.

MR. CHAIRMAN: You have suggested in the memo that the time-frame should be two years. Now you say that two years is also not reasonable. What really has made you to reach such a conclusion?

SHRI MALHOTRA: Later on, we had discussions with other publishers who take much more time.

MR. CHAIRMAN: What usual time you take when you enter into an agreement or contract with the assignee in printing a book?

SHRI MALHOTRA: It differs from book to book. If it is a noval, it takes one year. Every publisher has his own publishing programme. The book would be published depending on the programme. He cannot say that the book will go to the press tomorrow. But in case of those books, pictorial books where lot of editing is required, lot of pictures are to be collected, it sometimes takes more than a year as in the case of science books.

SHRI MADAN BHATIA: Suppose I suggest that this clause should be retained as it is and it should be further provided notwithstanding contained in this proviso in the case of technical and scientific works, the parties may, by mutual consent extend the period of one year provided however, the period shall not be extendable beyond a period of two or three years so that when this contract is entered into, the writer of a technical book may know and the publisher will explain the difficulties in regard to the book saying that it is not possible to publish it within a period of one year. And so you must agree that your right will not lapse after a period of one year. You must give us more time. If you say that some books may take three years, the writer must also have his views because the object is to strike a balance. Supposing it is drafted like this, what do you say?

SHRI PRAVIN ANAND: To start with the last question, if on reconsideration we have suggested that this proviso should be deleted, it is because that we find that the objective which this proviso seeks to subserve is the very objective which we wish to propagate. We do not wish to take a selfish, one-sided, imbalanced attitude. We wish to have a balanced provision which balances and takes into account all authors and publishers. If the objective is to prevent authors from being exploited, there is a considerable overlap betwen this proviso and the amended Article 19(a).

SHRI MADAN BHATIA: Article 19(a) is entirely on a different plain. I have put a question. Supposing it is worded like this, what is your reaction? You should be specific to the question.

SHRI PRAVIN ANAND: As an alternative, what I would say is, subject to the contract to the contrary this proviso be retained not only in the case of scientific books but in all cases. We would like to say that this proviso applies to all work. It does not apply to litrary works. It applies even to computer software. We would say where the parties have contemplated a contract to the contrary that should be added subject to the contract to the contrary provided the proviso holds.

SHRI MADAN BHATIA: This goes against the very spirit of this proviso. This proviso is based on the presumption that there is inequality of bargaining power between the publisher and the author. It is for this purpose that this proviso is being introduced to protect the publisher. But at the same time you have pointed out certain difficulties. We want to have a balancing act and for that purpose, I am suggesting, if this amendment is made to that effect that you have pointed out, the difficulties with regard to scientific works, technical works, you cannot be given unlimited period to exploit copyright. There must be some limit. You know about one case which was decided in England where the publisher was not making use of those rights and with the result, a the author was also not in a position to give those rights to somebody else and he was left in a lurch and he went to the court. It is to meet those situations that this amendment is being made.

SHRI PRAVIN ANAND: I would just like to place things in perspective to point out that this provision is applicable not only to the literary works but to all works. Therefore, I say that they should be given longer period. As far as publisher's interest is concerned, we would say that if the provision is retained in its present form, then one of the greatest hurdles is in the right and any right under Section 14 comprises a bundle of rights.

MR. CHAIRMAN: How would it be possible to identify that this job or this book will take this much of time? In this proviso, a general sub specification has been given. Could you help us to know about it? There could be some rationale in your suggestions that as there are some works, so it would not be possible to get it done in one year. Is there not any apprehension that under the cover of that there may be some exploitation?

SHRI D.N. MALHOTRA: My colleague has referred to another thing that it is not one right and it is a bundle of rights which is called as copyright. If the publisher publishes a book but he has not been able to sell the right of that book anywhere in the world, that can be made an excuse for the author to get the annulment.

MR. CHAIRMAN: Let us reach certain conclusions as stated earlier. I would like to inform you about this aspect.

SHRI MOHAN PRIMLANI: ī would like to inform you about the limitation on the publishers' right to bring out a book. If you put some limit there is no problem. If you lay down certain limitations for the publisher to bring out a book, you will be limiting the publisher to bring out a good book and it will be full of errors. It is a partnership between the author and the publisher. Identifying a period is quite undistinct. What is a manuscript?

So at what point do you really say the manuscript is complete?

SHRI VISVJIT P. SINGH: At the time of signing the contract. That is the point.

MR. CHAIRMAN: My point was rather different which you are trying to evade. I agree with your point that one year period is not a reasonable time; it should be two years. But now you say that it should be extended beyond two years. And you yourself are saying that there should be a time limit. If you enter into agreements with ten parties at a time, then you will make your priorities. You print one and leave nine others at one time. What will happen to the rest? We want your help. If you feel that you are having certain difficulties with these provisions, kindly convince us.

SHRI DINESHBHAI TRIVEDI: There is one very important aspect which we seem to forget. There are many authors who just cannot keep waiting. He gives his book for printing to make his sustenance out of its sale proceeds. How practicable it is if you could pay him some advance money in the interim period of one year and two years? If you extend the period further you may have to pay a little more advance, so that he can sustain himself. Sustenance is also a basic factor; otherwise the author will not have his creativity for the next book. You will have many books because you are in the business; but the author will have not too many books to fall back upon. In that case would you consider giving him enough amount of advance, so that he carries on?

DR. NAUNIHAL SINGH: Give the author also some bargaining power. Let him also survive.

SHRI D.N. MALHOTRA: As we had mentioned earlier, bargaining power does not depend on the author or the publisher. It depends on the saleability of the book. There are authors to whom the publishers make a beeline and give them huge advances. It is mainly because of the popularity of the author and the saleability of his book.

MR. CHAIRMAN: We are trying to reach to certain conclusions and so you should help us. You have suggested that if you are not able to print a book on time the author should return the money which you have given as advance to him. What is the logic in this suggestion? Please be brief and try to convince us.

SHRI PRAVIN ANAND: The Copyright Act is a very delicately balanced statute. It is after the pattern prevalent in various other countries. One of the basic conditions of a good law is that you should draw on the experience of other countries. Like it or not, it is very helpful in the courts of law.

MR. CHAIRMAN: I am happy that you are a practising lawyer. But it is not a court. I think we are not here for listening to the arguments and all that. We want to know the main thrust of your approach.

SHRI PRAVIN ANAND: The main thrust is that there is no such proviso in any law in the world. Secondly the law being balanced has already provided for a licencing provision.

SHRIMATI GEETA MUKHERJEE: You were saying that this time limit should not be there because it is not there in any international law. I believe, our Parliament is supreme as far as our laws are concerned. Secondly somebody said that this is a particularly legalistic area. But every law involves legalistic areas.

Firstly you said that you are formulating a model rule and then you said you have a ten year model rule. In that model rule why could not there be a provision for time? After all the publishers are also not ignorant people; they are very learned people. What will be the fate of the manuscript that is given to them? Whatever the time factor be—there may be a little flexibility—by and large they have to adhere to it. What is the difficulty in mentioning the number of copies? Later on if the number exceeds, we can say the least is this. At least the lowest number should be there.

SHRI D.N. MALHOTRA: As far as the number of copies are concerned, let there be a provision in the agreement that the first edition will be of 1000 or 2000 or 10000 copies. Secondly, as you yourself have explained very clearly, let there be a proviso and let the publishers having signed the agreements not sit over it. It is heir job to publish it.

SHRIMATI GEETA MUKHERJEE: Let there be a time limit for the authors also. Why do you think that the time limit cannot be observed?

SHRI D.N. MALHOTRA: If you want the time limit, let it be for two years; but that should be with complete manuscript.

SHRIMATI GEETA MUKHERJEE: Is manuscript the main problem.

SHRI D.N. MALHOTRA: Yes. I am afraid that people do not have any idea of what goes on in a publishing house think that the author gives the manuscript to...

SHRIMATI GEETA MUKHERJEE: Who are those people who do not have the idea?

SHRI D.N. MALHOTRA: I am speaking generally. They think that the manuscript is taken from the author and the publisher gives it to the printing house. A lot of work goes on in the publishing house. To check the manuscript, to edit it, to cross-check it, it takes time. I will give an example. In one case, he has brought out the statistics of so many people in different countries of the world; there was a wrong somehwere; He received a notice saying that the publisher had have cheated him. So, now, he is checking everything; and it takes a lot of time.

MR. CHAIRMAN: Let us go to the next point. About the period, it has been stated. It shall be deemed to be five years from the date of assignment. You have reservations about this proposal also. What is your point?

SHRI PRAVIN ANAND: It should be 25 years.

SHRI MADAN BHATIA: What, according to you, is the balancing period?

SHRI PRAVIN ANAND: 25 years is the balancing period.

MR. CHAIRMAN: Are you saying this from your personal experience or from the experience which you have gained from the court of law? Are you involved in the industry itself? Are you an affected party?

SHRI PRAVIN ANAND: I am happy for the question. The experience is based upon the provisions in other laws of the world.

MR. CHAIRMAN: We are trying to reach some conclusions. We want your cooperation and help in arriving at it. If you want to drag on like this, it will not be possible to understand the point. We may lose the opportunity of this meeting. If he is a general witness, then he has to seek the permisison; he must come as a separate witness. Let the persons who are really involved in the industry give the evidence. There is no point in just arguing like this.

SHRI PRAVIN ANAND: I apologise and I will not speak after this.

MR. CHAIRMAN: If you want to give us certain information, you are most welcome. The Committee want to know the real difficulties of the persons, who are involved in the job. That would be a valuable exercise and we will not be wasting the time.

SHRI D.N. MALHOTRA: He is involved in the industry and he is attending to most of the copyright cases. We consult him.

MR. CHAIRMAN: Consultancy is not being permitted here. We are not listening the witness as an advisor or in any other capacity. We want to help you, really. We have to keep the interest of all the parties concerned. We want a direct reply to the questions. You may try to convince us as to

why the time limit should not be there, etc. Please do not quote what other countries are doing and make it as a basis for your argument.

SHRI MADAN BHATIA: Why do you want 25 years' time? I do not know why are you objecting to this. There is nothing which prevents you from having a contract for longer period. The main object is only to protect the unwitting authors, that is all.

SHRI D.N. MALHOTRA: When the publisher more copies, he tries to sell the copies as many as possible; it is just like the case of royalty.

MR. CHAIRMAN: Now we move to clause 9 of the Bill, section 19-A. Could you elucidate a little more:

> "(1) If an assignee fails to make sufficient exercise of the rights assigned to him, and such failure is not attributable to any act or ommission of the assignor, then, the Copyright Board may, on receipt of a complaint from the assignor and after holding such inquiry as it may deem necessary, revoke such assignment."

SHRIMATI GEETA MUKHERJEE: I think, they have suggested an analogous expression of the Patents Act of the United Kingdom that it should be re-worded. We shall see whether it is satisfactory or not.

Really speaking, although in the earlier part they are objecting to it, but later on. they seem to be conceding, yes, it may be desirable to have it. But it should be re-worded so that there should be no dispute. We shall see whether this requires re-wording.

MR. CHAIRMAN: Now we come to clause 11 of the Bill: section 34(1).

SHRI VISVJIT P. SINGH: I want to know about the territorial part. You are wanting that all international rights should vest with you and you do not want this section to be there: provided if the territorial extent of the assignment of the rights is not specified, it shall be presumed to extend within India.

You want to extend it all over the world. That is totally incorrect. Would you explain why do you want such a clause which goes against the very right of the author to sell his work abroad? Why do you want to exploit the work and not just the author himself?

SHRI D.N. MALHOTRA: If there are writers who want to sign their contracts with several countries by themselves, they are free to do so. But mostly it is the publishers who go to Frankfurt Book Fair. It is the publishers who are in contact with the publishers all over the world.

As I mentioned, 11 months back, we made contacts with publishers of so many countries. We are in a position to exploit the copyright in the interest of the author as well as the publishers. If it remains in the

confines of the author only, neither the author nor the publisher will gain in our country.

SHRIMATI GEETA MUKHERJEE: For outside things, they can have a separate contract. What is the difficulty?

MR. CHAIRMAN: I would like to draw your attention to page 7 about amendment to section 19:

> "(5) If the territorial extent of assignment of the rights is not specified, it shall be presumed to extend within India."

It is very simple. You specify the territorial area in the original agreement. If you do not specify, then it will be in India. What is the objection? What reservations do you have?

SHRI D.N. MALHOTRA: I have no reservations. The point was about my referring to the word 'global'. We are going global. We have great opportunities all over the world. Therefore, this should be automatic. If an author gives these rights to the publisher, it is to their advantage.

SHRIMATI GEETA MUKHERJEE: What is the difficulty about separate contract?

MR. CHAIRMAN: We have provided something which is already there. Now we are taking their reaction. Can you convince us? You tell us. You have said, you are going global.

Now, ignorant author gives you his manuscript. He is under the impression that you will print it and sell it into India only. Suppose he does not know anything that you are going globally and you will sell it outside India also. Now you can say that whatever I am selling in India, your claim is on the soil of Indian territory only. If you go outside, your claim does not exist. We want to protect that interest. An author must be protected.

Suppose you take the manuscript. And you publish it globally and you do not give him the royalty outside the territory of India. If you are going globally, you specify in the agreement originally.

Is the writer being given certain protection under this Act or the publisher is being given protection? This is the same to us.

SHRI D.N. MALHOTRA: It is all right. It could be either way. If he did not have this line, we could have it automatically. Otherwise, those publishers who have contracts internationally will put it in the agreement.

SHRI VISHVJIT P. SINGH: We have no objection to this.

MR. CHAIRMAN: I think some case is there in the High Court regarding this. So, how about Clause 11 of Section 34 of the Bill?

SHRI D.N. MALHOTRA: This is in the interest of the copyrights society. Our society is also establishing a reprographic society in the total interest of the great diffusion but if the author can take back the rights for

collection of royalty for his work without any notice, then that society cannot work. Perhaps, more on this point should be said by the Authors Guild but we thought that it would be unreasonable. So, some period should be specified.

SHRI MADAN BHATIA: We shall ask Authors Guild about this point.

MR. CHAIRMAN: If the Copyright Society provides some rules, then, I think, there is no need for providing in the Act.

Now, we come to Section 57. This is also optional.

SHRI D.N. MALHOTRA: I think there is no need for this.

MR. CHAIRMAN: Mr. Bhatia, have you got to say anything about Section 57(i)?

SHRI MADAN BHATIA: I think they have said that this should be worded along the lines of Article 6 of Berne Convention. We shall consider this when we sit together. I do not have to ask any question now.

MR. CHAIRMAN: Suppose the Department says that with this provision, they have tried to protect the interest of the artistes a little more effectively, then could you react to this?

सभापति महोदय: इस सिलासंले में डिपार्टमेंट का यह कहना है कि हम आर्टिस्ट को कुछ ओरिजनल प्रोटैक्शन और देना चाहते हैं जो कि मौजूदा एक्ट में मौजूद नहीं हैं, तो क्या आप ऐसा समझते हैं कि उनको प्रोटैक्शन मिलना चाहिए या मिल सकता है, आप क्या कुछ बताना चाहेंगे इस सिलसिले में?

श्री डी० एन० मलहोत्रा: सर, जैसे रॉयल्टी का सवाल था, ज्यों-ज्यों तरक्की हुई, लेकिन रॉयल्टी का रेट नहीं बढ़ा या ऑथर को रेम्युनरेशन नहीं मिला, इस संबंध में मैं यह कहना चाहता हूं कि यह रॉयल्टी की दर बढ़ाने से नहीं मिलेगा। यह काम तो ज्यादा सर्कुलेशन से होता है। विदेशों में जहां लाखों की तादाद में पुस्तकें बिकती हैं वहां रॉयल्टी की दर अपने आप बढ़ जाती है।

हमारे देश में तो पुस्तकें इतनी तादाद में बिकती नहीं हैं इसलिए रॉयल्टी की राशि कम रहती है। इसके लिए तो ज्यादा तादाद में पुस्तकें बिकें इस प्रकार का हमें प्रयास करना चाहिए।

अगर हमें इकनौमिक स्टेंडर्ड ऊंचा करना है, तो उसके लिए लिट्रेचर, आर्ट रीडिंग हाबी को बढ़ाना चाहिए। उसके लिए हमारा फैडरेशन नैशनल साहित्य अकादमी और अन्य इस प्रकार की संस्थाओं के साथ को आपरेट करता है।

हम भी चाहते हैं कि हमारी जो किताबें हैं वे सब जगह बिकें।

सभापति महोदय: इसको आप पर्टीकुलरली इसी सिलसिले में नहीं देखें, बल्कि आर्टिस्ट की दृष्टि से भी देखें और फिर बताएं कि क्या मुनासिब है?

Then we will look into it.

SHRI MADAN BHATIA: Mr. Chairman Sir, there is no specific difference in the amendment which is contained in the Bill and which they are proposing except that in our proposed amendment, we have also provided that if there is any distortion, mutilation or modification of the

work of the author, the author is entitled to claim damage. I think it is fair enough that he should be able to claim damage if his work is mutilated. This provision is there in the Article of Berne Convention. I do not think that we should raise any objection.

SHRI D.N. MALHOTRA: India is one of those countries which have signed the Berne Convention and Universal Copyright Convention and our image is very high so far as copyright is concerned. We suggest rewording but the objective is the same.

MR. CHAIRMAN: I would request Mr. Sinha to elicit the point a little more.

SHRI R.K. SINHA: Article 6 of Borne Convention provides for the author to object under three conditions, namely, mutilation, distortion and modification. This is in addition to the economic rights and the occasions to which he can object would have to be derogatory. What we have provided is that he can restrain from claiming damage which is a very effective weapon with the author. We have provided it as more objection. It is not only the question of economic rights, which may be mentioned incontractual form, but his entire copyright is involved. So, it becomes a more effective weapon so far as the author or the piece is concerned. It is not only on a derogatory occasion. But all occasions which would be prejudicial to his honour or prestige will be covered under this Section. By this way, we are trying to make it more effective.

MR. CHAIRMAN: I thank all of you who have come here and enlightened us on certain points. It was a lovely discussion and the Committee have been informed on certain points on cross-examination of the witnesses. I thank all the hon. Members for the interest they have shown. This shows that they really want to reach certain conclusions and we are hopeful that by their assistance and cooperation, we will come out with our stand in Parliament.

SHRI D.N. MALHOTRA: I thank you on behalf of our Federation for giving us an opportunity to express our views before the honourable Committee.

The Committee then adjourned.

JOINT COMMITTEE ON COPYRIGHT (SECOND AMENDMENT) BILL, 1992

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE COPYRIGHT (SECOND AMENDMENT) BILL, 1992.

(Friday, the 8th January, 1993 from 1500 hours to 1730 hours, Committee Room 'C', Parliament House Annexe, New Delhi).

PRESENT

Shri Syed Sibtey Razi — *Chairman*

MEMBERS

Lok Sabha

2. Dr. F. Azam
3. Shri Gurcharan Singh Dadhahoor
4. Shri M. Krishnaswamy
5. Shri Janardan Prasad Misra
6. Smt. Geeta Mukherjee
7. Shri Rupchand Pal
8. Shri Sobhanadreeswara Rao Vadde

Rajya Sabha

9. Dr. Naunihal Singh
10. Shri Dineshbhai Trivedi
11. Shri Vishvjit P. Singh
12. Shri Madan Bhatia
13. Shrimati Veena Verma

SECRETARIAT

Shri Ram Autar Ram—*Under Secretary*

REPRESENTATIVES OF THE MINISTRY OF HUMAN RESOURCE DEVELOPMENT (DEPARTMENT OF EDUCATION)

1. Shri R.K. Sinha — *Addl. Secretary*
2. Shri V.K. Saxena — *Licensing Officer*

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

1. Shri Raghbir Singh — *Joint Secretary & Legislative Counsel*
2. Shri S.P. Kanwal — *Deputy Legislative Counsel*

WITNESS EXAMINED

Authors Guild of India, New Delhi

Spokesmen

1. Shri J.C. Batra, Vice-President
2. Shri Rajendra Awasthy, Secretary General
3. Shri H.K. Kaul, Member of Executive Committee.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: Before you start, I may point out that in accordance with the provisions contained in Direction 58 of the Directions by the Speaker, your evidence shall be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence given by you should be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

MR. CHAIRMAN: Before coming to the specific points, we would like to know about your general opinion on the Bill which is containing many amendments to the original one.

SHRIMATI VEENA VERMA: You may also please tell us how you represent the authors as the Authors' Guild of India.

MR. CHAIRMAN: Are you a registered body; if so under which Act? What are your general and specific activities in the field of writing?

SHRI VISVJIT P. SINGH: I have no problem as far as Mr. Rajendra Awasthy is concerned. But your Vice President is a Legal adviser. Has he come here in his capacity as your legal adviser or is he an author himself?

SHRI J.C. BATRA: I am an elected Vice President and I am an author myself.

I have been associated with the Authors Guild of India, right from the very beginning as a member. As an author myself, I am also an editor, besides being a lawyer.

SHRI RAJENDRA AWASTHY: The Authors Guild of India was established 17 years before. We are a registered body under the Society of Registrar. We have been carrying on our activities for the last 17 years in a very different direction and dimension, not only in the copyright matter or in the royalties, but in general, for the welfare of the writers. We have been fighting for the cause of the writers, with individuals with Government organisations and with various departments. We have our seven branches which we call chapters, working in this country. They are at: Madras, Trivandrum, Bangalore, Hyderabad, Dehradun and Delhi. All these chapters work on the local basis, to boost up their local

demands and give them sufficient grounds for readership and for publication purpose and also for advancing their own languages.

We bring out a quarterly journal called Indian Author; and I am glad to provide you certain copies. We have also published a directory of members. It is incomplete because more members' names have been added now. We have 1300 members of all the languages of this country. It is not a society of Hindi, or Oriya, or Punjabi, or Tamil, or Telugu. We have members from all the languages from Goa to Mizoram; and so we represent all the 16 or 17 languages of this country.

Every year we held a convention and we are fortunate enough to get the cooperation of the highest officials. Shrimati Indira Gandhi had inaugurated one of our Conferences; Shri Morarji Desai had inaugurated other conference; Shri Hidayatulla and Shri Shankar Dayal Sharma, as Vice-Presidents, also inaugurated our conferences. We have been inviting well known figures as special guests which include Mahadevi Verma and Kannada writers, Oriya writers, Tamil writers also. By the way, the Governor of Maharashtra, who has resigned now, is our member of our Madras chapter. He is a very active member.

During the last 17 years, since we have started our organisation in a very modest way, we succeeded gradually in enrolling more members and in bringing them closer. We have recently discussed the problem of communalism in this country and the role of writers. We have also discussed the facility for the writers—about the prices of paper and other matters. Earlier to that, we have discussed the constitutional validity and the writers role in the upliftment of this nation. Then, we have discussed the object of the writers and their service to the nation because we know that what the Government or other organisations cannot achieve and attain, the writer, perhaps by his writing, can achieve and attain; and can form the public opinion. We would not claim that we have already formed a public opinion; but we have been trying in a very modest way and getting people involved, people of very high standard, including the Chief Justices and the writers mainly the writers of multi-languages.

Then, we have our fraternal relations with foreign agencies such as London Society of Writers. They also bring out a journal on authorship which is being published from London. We have our fraternal relations with the American Guild of Writers, Australian Guild of Writers. When the USSR was existent we had direct connections with them. We had entered into so many contracts for the exchange of their literature. We have published their literature in our country in English and about our country in their languages, for which we have undergone bilingual agreement. We have published a series of books. We have collected works in Hindi short stories, collected works in Telugu short stories, in Tamil short stories, in Gujarati short stories, in Malayalam short stories, in Punjabi short stories and in Bengali short stories. We have so far published

ten volumes like this. We did not go further after this because of lack of funds.

Our funding is through the subscription which we charge from our members which is a very modest one; it is only Rs. 100 per year. Every year, for our convention, the Ministry of Human Resource Development gives us a grant and through that grant, we meet the TA and DA. The rest of the arrangements we do through our own resources—through advertisements or through the help of the influential people. We have writers and editors who are quite influential people. They try and help us from many angles. We publish, after each convention, certain resolutions and certain proceedings. We send it to the various Ministries that are concerned with those resolutions and also to the Human Resource Development Ministry. They have taken note of them and they have replied to us stating that matter was been looked into and that something being done.

I think that this is the only organisation in this country which represents the writers of all the languages. There is no other organisation. There are separate organisations—organisations of Hindi writers, of Punjabi writers, for Bengali writers, for Tamil wirters; but the unification is only done by the Authors Guild of India. We are the most primary body and the only of its kind. Therefore, we perhaps speak about the writers in this country. Very, very famous writers are our members. We invite them, discuss things with them, hold meetings with them. We hold many seminars, many conferences, including Afro-Asian Writers Conference which was held here in the India International Centre; and in Tashkent, where I went to represent India, several times, to give our views to those people. We exchange our views.

Perhaps, our Members of Parliament, who are of course politicians, may not be very well aware, except a few ones who are very close to literature, that there are so many problems for literary writers in this country.

MR. CHAIRMAN: You explain your difficulties to us. We are here to listen to your difficulties. You give us your problems.

SHRI RAJENDRA AWASTHY: Please do not think in that way. I may be excused if any such impression has been created.

MR. CHAIRMAN: You Please carry on.

SHRI RAJENDRA AWASTHY: It is a welcome thing then. All of you are people of so much understanding. I must congratulate you and the Government also for making the proposed amendments in the Copyright Act. Unfortunately, the Copyright Act that was there. Carried so many discrepancies. Moreover, the working still needs to be proved.

MR. CHAIRMAN: We will come to the working of the previous Act. What are your difficulties? And how are you helping the writers in overcoming these?

SHRI VISVJIT P. SINGH: We are not on the Act at the moment. We are not discussing either the previous Act or this Act. We want you to confine your peroration to the working of the Authors Guild of India which you were doing till five minutes ago.

Just tell us about the Authors Guild of India and what you have been doing in favour of the writers.

SHRI RAJENDRA AWASTHY: We are a welfare organisation giving sufficient encouragement and sufficient opportunities to the writers of this country to come up and make their name. We even get publishers for them. We get the royalties for them. We are helping them in that way also because of our association with other writers well known in the foreign countries.

We have sent so many of our important literary works outside. I think, that is not a small achievement. Our work going outside and their work coming inside and one agency handling the work is an achievement for all of us.

We simply submitted the difficulties which we had. It is for you to hear it further. This organisation is trying to do as much as possible with our limited resources.

MR. CHAIRMAN: Do you have any other organisation like this of yours which is trying to protect the interests?

SHRI RAJENDRA AWASTHY: There is no organisation representing all the languages. Only our organisation has branches throughout the country.

MR. CHAIRMAN: Are you helping them in collection of the licence fee and all that?

SHRI RAJENDRA AWASTHY: We give them 25 per cent of the money which we receive as subscription.

DR. NAUNIHAL SINGH: Well, we heard what Authors Guild of India have been doing—rather infrastructural kind of thing. But as one of the hon. Members said briefly and pointedly in a very simple fashion we want to know *vis-a-vis* publishers. What distinctly have you been able to achieve for the benefit of the authors which otherwise would not have been achieved, which has benefited in their welfare. You have used the word 'welfare'.

Secondly, is there any promotional activity? We try to encourage entrepreneurs in other fields, industry, etc. Have you also done some promotional activities for the prospective writers to encourage them to come into the field?

SHRI H.K. KAUL: I would like to mention that the Authors Guild of India has bilateral relations with the Federation of Indian Publishers. We

have been discussing the problems of authors, especially all cases where the royalties are not paid. So, there are certain cases. This Committee meets from time to time. This is one activity with the AGI. It is in relation to the problems of authors.

Another is that we developed a model contract which we try to enforce over the last 12 years for our membership and publish it in the journal. We try to enforce that the publisher should follow this model contract. It has been seen that authors are generally exploited especially when their manuscripts do not get published. So, we wanted to see that a standard contract was implemented. So far, even the Government of India or its agencies did not produce any model contract. This was a contract which was agreed to by the Federation of Indian Publishers and the Authors Guild of India. We try to promote it. Instantly, there are not many authors and publishers to accept it, the reason being that there are problems. Authors have problems. Publishers have problems.

DR. NAUNIHAL SINGH: Do you have a model contract form?

SHRI J.C. BATRA: We have got it in this latest issue.

SHRI VISVJIT P. SINGH: Is this the same as the one circulated by the Publishers' Association?

SHRI H.K. KAUL: We have been publishing it over the last 12 years. This is jointly agreed to.

DR. NAUNIHAL SINGH: Is it followed by all the publishers?

SHRI H.K. KAUL: That is the pity that it is not followed because we have no enforcing agency.

DR. NAUNIHAL SINGH: Is it widely known to all the authors?

SHRI H.K. KAUL: We have our limited means for promoting or publicising it through the journal. Since we cannot afford advertisements in newspapers, we cannot publish it. Otherwise, we would very much like that it is published in the newspapers. The authors know it.

DR. NAUNIHAL SINGH: As you carry out many other activities, at least, you could insert a clause or a sentence that we have a model form, if you like to have, you could ask for it or you supply them.

SHRI H.K. KAUL: I would like to mention that the Copyright Board has been here for a decade or so. They have not put one advertisement to educate the authors and to find out what their problems are. They have so much fund. But with limited funds, it is very difficult for the AGI to have advertisements and go across and reach the real authors.

SHRI VISVJIT P. SINGH: Which is the largest association of authors in the world? Which is the parent organisation?

SHRI H.K. KAUL: PEN is the largest.

SHRI VISVJIT P. SINGH: Are you affiliated to PEN?

SHRI H.K. KAUL: We are not supposed to affiliate because of PEN in Bombay who are much close to them. We have bilateral relations. We exchange ideas.

SHRI VISVJIT P. SINGH: You mentioned that you have your association with other authors.

SHRI H.K. KAUL: But we are not members. The membership fee of PEN is very high which we cannot afford. That is the problem.

SHRI VISVJIT P. SINGH: How much is the fee?

SHRI H.K. KAUL: I would not off-hand know the fee.

SHRI RAJENDRA AWASTHY: PEN, unfortunately after the death of Mr. Wadia, has no identity and it is functioning in a very small way. They wanted affiliation fee of Rs. 10,000.

SHRI VISVJIT P. SINGH: How much do you get from the Government of India?

SHRI RAJENDRA AWASTHY: May be Rs. $1^1/_2$ lakhs to Rs. $2^1/_2$ lakhs.

DR. NAUNIHAL SINGH: What benefits have you been able to secure? Are there one or two specific cases where they would have faltered or the writer would have faltered it you had not intervened?

SHRI RAJENDRA AWASTHY: I am giving you the names. Soviet Union became member of the Geneva Convention much much later. They refused to give any royalty for in their publications published before 1963. After 1963, they agreed to give the royalties. Now we have got royalty for Krishan Chander, Rajinder Singh Bedi and Yash Pal. The royalty was a very large amount because Mr. Chander was a very popular writer in the Soviet Union. We fought for this case. I went so many times to Russia and had meetings with the Director (Copyright). Ultimately, they said that becasue of friendship with India, we would accumulate the money here in Russia. And if any writer visits the country, he can have that amount. Even the amount of other writers will be given. These are the three major writers: Krishan Chander got Rs. 86,000. Yash Pal got Rs. 62,000. Rajinder Singh Bedi got about Rs. 34,000 which he would have never got. We got the money through our efforts.

In India, we have a writer from Orissa, Mr. Venkatesh Iyer. His case was also finalised since long. He got the money. In the case of Kamla Devi Chattopadhayay, the publisher bluntly refused to pay anything. She did hard work for her book. We got full royalty though we got it after her death. It has been given to the trust. We have a representation from former Chief Justice of Punjab and Haryana, Shri G.D. Khosla. We have taken up the case and we have got a reply from Allahabad that he has sent the royalty statement. There are many cases where we have achieved success.

DR. NAUNIHAL SINGH: If a contract is signed between the author and the publisher for printing out 1000 copies and the publisher prints out

5000 copies, then what mechanism have you got to ensure that such things do not happen? Have you got any system where you have been able to catch such publishers? If so, give instances.

SHRI H.K. KAUL: We have been trying to impress upon the publishers right Since 1979 that they should, alongwith the statement of royalty, give a certificate as to how many copies of the book are printed. But, in the absence of a particular law, we have not been able to enforce it. But AGI have tried to impress upon that this should be done. If there is a provision in the Copyright Act, then this can be done easily.

MR. CHAIRMAN: Then we can look into this point.

SHRI RUPCHAND PAL: You have stated that Authors Guild is basically a welfare organisation for authors. May I ask you whether this organisation plays any self-regulatory role on the lines of the Press Council? For example, if any book is against the salient features of the Constitution or constitutional rights of other people, or harming the Indian people of their culture, then can your organisation intervene and ask the author or exercise some sort of a control over him?

SHRI H.K. KAUL: There has been an instance in the post, in the Press Council, where we tried to solve the problems of authors. But in general, there is no communication between what the Press Council and the Authors Guild does.

SHRIMATI GEETA MUKHERJEE: How does the Press Council come in here?

SHRI H.K. KAUL: We do not limit the freedom of the authors. We are trying to promote their freedom and interest. There is a general contract between the author and the publisher. So, until and unles the book is published, the AGI would not know about it.

MR. CHAIRMAN: We should try to concentrate on whatever provisions we have. We can have more explanations later on.

DR. NAUNIHAL SINGH: They have supplied us a booklet. They are publishing as 'Are you in search of a publisher?' Here, the benefit is for the publishers and not for the authors.

MR. CHAIRMAN: I would like to explain to the witnesses as to why questions are put by Members. It may look to you that we are going beyond the Clauses and Sections of the Bill. In certain suggestions, you have claimed that you should be given certain rights on behalf of the authors. That is why, Members are trying to convince themselves as to whether you are really managing things as at present. So, you should not take it otherwise.

SHRI J.C. BATRA: May I answer the hon. Member as to why we have put this suggestion in our booklet? More often, we find that our authors' books are not published by the publishers in their locality or region. They

feel lot of difficulties in publishing their books. I have a manuscript which is worth of publication and which will make a very good market but I do not have a publisher. In that case, they do write to us to find a proper publisher for them. We do this sort of service for the sake of the authors and then we look for the publisher who will be willing to accept his work. This is one of the welfare schemes for which AGI is in existance. I do not think that there is anything objectionable if we are promoting the publisher. If authors are new, their work is not easily accepted by the publishers. In fact, I know quite a few budding authors who face difficulties in this regard. The publishers demand money in advance for publishing. So, AGI is trying to help the authors publish their work.

SHRIMATI GEETA MUKHERJEE: It is written in this advertisement that assistance will be provided to work in Hindi and English languages. If your main activity is in accepting Hindi and English, then how will that help authors of other languages as ours is a very big multilingual country?

SHRI RAJENDRA AWASTHY: To begin with, we have published ten volumes of other languages; we got them translated. It is just a beginning because it will be a vast area if we take all languages at a time. I can assure that we are covering all the languages.

SHRI RUPCHAND PAL: You are doing translation also. Is this your main achievement till today?

SHRI RAJENDRA AWASTHY: This is one of our achievements, Sir.

श्रीमती वीना वर्मा: पब्लिशिंग व्यवसाय तो ग्लोबल होता जा रहा है और इंडियन पब्लिशिंग वर्ल्ड में दसवीं है। दो साल पहले बुक फेयर हुआ था। मैंने पढ़ा था कि पहले वह सातवें नम्बर पर थी और बाद में 17वें नम्बर पर चली गयी। अब मुझे यह जानकर खुशी हुई कि इंडियन पब्लिशिंग फिर से दसवें नम्बर पर आ गई है। पब्लिशिंग व्यवसाय ग्लोबल तो होता चला जा रहा है लेकिन दूसरी तरफ लेखकों की यह बड़ी शिकायत है कि उनके इंटरस्ट का ध्यान बिल्कुल नहीं किया जा रहा है, वे बिल्कुल बांडेड लेबर की तरह हैं, खेतीहर मजदूर की मजदूरी भी बढ़ गई है। लेखक को जो रायल्टी दी जाती है, उससे अधिक कापियां छापी जाती हैं, बेची जाती हैं, री-प्रिंट होती हैं, अनुवाद होती हैं, इस तरह की बहुत सी समस्याएं हैं। इसी तरह से लेखक की मृत्यु के बाद पहले 50 वर्ष का था, अब 60 वर्ष का हो गया है, उसके बाद पब्लिक प्रापर्टी साहित्य माना जाता है, इस तरह की समस्याएं हैं। विश्व भारती पब्लिकेशन है, वे चाहते हैं, जैसा कि आपने मेंशन किया है कि उनको रिवर्ट न किया जाए, तो क्या आपने लेखकों के, आथर्स के वेलफेयर के लिए कोई ऐसी बाडी बनाने की कोशिक की, जिसके द्वारा नए लेखकों की किताबें छपें। पब्लिशर कहते हैं कि लेखकों की हालत यह है कि वे हमारे पास 5000 लेकर आते हैं और कहते हैं कि यह किताब छाप दीजिए, हमको कुछ नहीं चाहिए, सिर्फ 50 कापियां दे दीजिए, ऐसे समय में आप आथर के लिए क्या करते हैं। 17 साल हो गए हैं इस वेलफेयर बाडी को, मैं मानती हूं कि आपने बहुत से काम किए हैं, लेकिन छोटे लेखक जो आप तक नहीं पहुंच पाते हैं, उनकी आप कैसे जाकर मदद करते हैं। आपका जो विज्ञापन देखा है, वह भी पब्लिशर्स के हित में है, तो आपने आथर्स के लिए क्या किया है। आप चाहते हैं कि आपका नामिनी सरकार में हो, बोर्ड में हो, तो आप इस चीज को कैस जस्टीफाई करेंगे?

श्री राजेन्द्र अवस्थी: मैं इस बात को फिर से दोहराना चाहूंगा कि यह विज्ञापन पब्लिशर्स के हित में नहीं है, लेखकों के लिए हैं, क्योंकि जब लेखक हमारे पास आएंगे, तब हम पब्लिशर के पास जाएंगे। आपकी शिकायत जायज है कि हिन्दुस्तान का लेखक केवल लेखक बन कर जिंदा नहीं रह सकता।

श्रीमती वीना वर्मा: बहुत से पब्लिकेशंस की शिकायत आई है कि भाषा के पब्लिकेशन बंद हो रहे हैं। हमारा सर्वे भी यही है कि हिन्दी के पब्लिकेशन बंद हो रहे हैं। हिन्दी का पब्लिकेशन चलता रहे, हिन्दी की पुस्तकें और पत्रिकांए चलती रहें, इसके लिए उनके इंटरेस्ट को सेव करने के लिए आपने क्या किया है?

श्री राजेन्द्र अवस्थी: आप सब को मालूम है कि मैं भी एक बहुत बड़े प्रकाशन घराने से जुड़ा हुआ हूं, वहां की भी एक पत्रिका बंद हुई है, यह भी आपको मालूम है। इसका कारण पत्रिका का स्तर और सर्कूलेशन है, जिसके लिए वहां के संचालक जिम्मेदार हैं, हम लोग जिम्मेदार नहीं हैं। उन लोगों ने उस पत्रिका को बंद कर दिया। एक और प्रकाशन गृह है, बहुत बड़ा है, उन्होंने भी बहुत सी पत्रिकाएं एक साथ बंद कर दी हैं। इसमें मेरे ख्याल से आथर्स कोई रोल प्ले नहीं कर सकते।

श्रीमती वीना वर्मा: आपकी संस्था आथर्स के वेलफेयर के लिए है, तो आप किस तरह से लेखकों के इंटरेस्ट को कायम रखेंगे, जबकि बड़ी संख्या में पब्लिकेशंस बंद हो रहे हैं, छप नहीं रहे हैं।

SHRI RAJENDRA AWASTHY: I would divide this question into two parts. One is with regard to statistics according to which we are the Seventeenth in the world with regard to publishing. The problem is that the statistics which come from the National Library are totally wrong. Something very drastic needs to be done by the Government of India to see that the Delivery of Books Act is more functional.

The second issue is what the Authors Guild could do for promoting authors. In the absence of a good Copyright Board, authors generally have a secret or direct arrangement with the publishers. They do not go to the Authors Guild generally. We have been trying to approach them.

MR. CHAIRMAN: You have stated in your memorandum that your representatives and the representatives of other associations such as the Publishers' Association, Media, etc. should be on the Copyrights Board. Basically, Copyrights Board is a quasi-judicial body. How can you explain your claim for your representatives to be there on the Board?

SHRI RAJENDRA AWASTHY: I would very precisely like to tell you that complaints coming before the Copyrights Board are or will be connected with the rights of publishers and press. For example, a book is out in the market and I as an editor of a magazine take a protion of the book and publish it in my magazine. Now, press may not be aware of the Act. We don't know whether royalty is paid to the author or not....

MR. CHAIRMAN: But these are matters of adjudication. Copyrights Board will decide the claims.

SHRI H.K. KAUL: In the past, when the Copyrights Board has been functional, no efforts were made to reach out to the Board because there is no representatives of the authors on the Board. We say that the problems faced by authors may not be understood by the Board unless

there is a representative of the authors on the Board itself. In the same way representation of publishers, editors, etc. also helps. While the decision can be taken by the Chairman of the Board who is a High-Court judge, representation of these associations, etc. will certainly help.

SHRI J.C. BATRA: This Copyright Board is essentially to protect the interest of the copyright and author is the main person involved because he is the original. If his interests are to be watched, then his representation on a body like Copyright Board is a must, especially when the Board has to adjudicate whether an agreement or a contract between the author and the publishers is fair or not, whether proper royalty is paid or not and so on. He might say that my royalty has not been paid. As far as quasi-judicial function is concerned, we have no dispute about it. It is prescribed that the Chairman should be a person who is a sitting judge of the High Court but as far as other Members are concerned, there is no qualification laid down and there is no prescribed guideline about it. It is suggested that the Press Council of India, representative of various journalists, Parliamentarians and people of these different categories must be represented on the Board.

MR. CHAIRMAN: I doubt if the Press Council of India is a quasi-judicial body.

SHRIMATI GEETA MUKHERJEE: I am a member of the Press Council of Indian and its status is not that of a quasi-judicial body.

SHRI MADAN BHATIA: Section 19(a) says that the Copyright Board is not meant to consider the rights of the author, owner or the publisher. Copyright Board is to decide a dispute which may be raised by a particular author against a particular publisher. The dispute is now to be decided by a specially constituted Board, which is the Copyright Board. Just as earlier the disputes between two Government servants used to be decided by courts, now administrative tribunals have been constituted. Your suggestion is tantamount to saying that in the administrative tribunals there should be a representative of the Government servants. This will be open to challenge. This will mean that the Board includes individuals who have bias or are likelyhood of bias in favour of the author.

SHRI J.C. BATRA: Hon. Member is well aware that he is comparing the administrative tribunals with the Copyright Board, which has representatives of Government servants, retired or even to be retired Government servants. It is not the body which will be dealing with the complaints royalty matter and disputes but also it will work for the welfare and protection of copyright. In that Board which is concerned with the copyright of an author if it has an expertise of a person who is author himself it would rather add to the strength. The person who is sitting on the Board will not be determining his own cases but he will be determining the cases which have been brought before the Board. He can only explain to his other colleagues the difficulties of the author. So, it helps the Board to settle the matter amicably rather than prejudicial to the

interest of the author or to the publisher. We even have suggested that the publisher should also be represented on the Board.

MR. CHAIRMAN: Mr. Bhatia has mentioned that the Copyright Board will be a quasi-judicial body. My doubt is suppose the representatives of author or publisher are there on the Board, there will be the confrontation in the Board itself. I think the persons who are not directly involved in the dispute must decide the dispute.

SHRI VISVJIT P. SINGH: Yesterday we examined the Federation of Indian Publishers and the Authors Guild. There is no problem between them.

SHRI MADAN BHATIA: You said that their expertise will be the source of help. Do you know the procedure whcih is being followed? If any expert evidence is required, the Board on its own can call some expert from the Authors Guild and his evidence will be the source of help to the Board.

MR. CHAIRMAN: Why do you want to increase the number of Members from 8 to 14?

SHRI R.K. SINHA: The Board which is constituted by the Chairman to adjudicate on any dispute must have a minimum number of three Members. We found that with three Members the bench was not getting duly constituted. We have, as Members of the Copyright Board, individuals like the Secretaries of Law of different States so that if there is an Eastern region bench then two or three secretaries of the Eastern region States, could be present as Members of the Bench. When we found that it is difficult to constitute the Bench properly, the Chairman said, if he could have a larger number of Members on the Board, he would be in a position to constitute this Bench so that hearings take place in a smoother fashion and the postponement of hearings will not be necessary. It was as administrative problem in our mind, that is why we went in for this increase.

MR. CHAIRMAN: Now, we come to Clause 9.

You have welcomed it. You have further said that the delay in payment as per the agreed terms will also entitle the owner to revoke the agreement.

SHRI RAJENDRA AWASTHY: The royalty statement that we get from our publisher is of the previous year. Upto March, 1992, they will give us the royalty statement some time in September or October and not earlier. It means by September, may be, the whole Edition of my book would have been sold off and that I would get the royalty next year. We must either get an advanced royalty or properly the royalty paper should be submitted to us.

The other thing is about the publication which the publishers do. We do not know how many number of copies they publish. There is no law at

present. We have been fighting for this cause that they must mention the number of copies, In foreign countries, the contract is very small. Whenever a novel is published in Czche they say they are keeping half of the copies with them out of one lakh copies and the rest half, they will send. As soon as the novel is out, they will give you another half. After that, they will go in for second edition. They say they do not want any middlemen. In those countries, the law is very smooth.

Take the case of a particular work. If the work is got sold, the publisher will keep the manuscript for five years. We discussed this thing sometime back with these publishers. Therefore, we have made a suggestion that if the manuscript submitted is not put within two years or something like that or for such time which you may think proper, the writer should have the authority to take back the manuscript or the publisher should publish the book or can take some action against the publisher. But allowing the publisher for long duration, the author is at a disadvantage debarred. Then, if the first Edition is over, many, publishers do not go in for second Edition. If at all they go in for second Edition, they will take four years and so on. In such condition we request very much to safeguard the interest of the writers. So, some limit should be fixed may be one year or two years. If one Edition is over, then within one year or two years, the publisher has to go in for the second Edition or return the rights to the owner.

SHRI DINESHBHAI TRIVEDI : Mr. Chairman, you see Clause 4. Is this particular Clause protective enough or is not protective enough? It seems that it is not protective enough. That is why they are asking for it. You may please clarity this.

SHRI J.C. BATRA : This is only a model contract and most of the time even this agreement is not reduced into writing.

Secondly, what is the concern of the author about publishing a work when he should get a royalty in due time? We are saying that undue delay in payment of royalty should be a ground of revocation of the agreement with the publisher. This is our emphasis. If there is an undue delay in payment of royalty, that itself is harsh on the author. He cannot subsist. He cannot get any return. The publisher has even sold the book and he is not giving him the royalty. We are suggesting that this amendment should be incorporated.

SHRI DINESHBHAI TRIVEDI : You did not think it fit to enter that particular Clause also in that part of your model agreement.

SHRI RAJENDRA AWASTHY : The point is very simple. It is hard and difficult for us to persuade the publishers. Because they have their own ground. Whatever we can do we have done it in persuading them. But your ground is very correct. For further persuasion, we need your help.

SHRI H.K. KAUL : The publishers are not accepting this model contract. That is the problem. The model contract is much letter, that is why we are introducing some amendment.

SHRI RAJENDRA AWASTHY : Long are a Committee was formed under Justice G.D. Khosla. It included representatives from the Ministry of Human Resource Development, representatives from the Authors Guild of India, Publishers Association and so on. We had jointly pointed out this thing.

Mr. Khosla has legal background. This was discussed in so many sittings, ultimately, we came to the conclusion and chalked out this model contract. Whenever the Ministry wants, we send this model contract. There are some publishers who are avoiding this contract. But most of them, I am told do not want to enter into any agreement. But there are certain publishers who have taken up this point.

SHRI MADAN BHATIA : In fact the point that we are making is about 19 (a). The author should also have the right to revoke the agreement if the royalty is not paid.

I think your apprehension is not necessary because it is covered by clause 2 (ixx) (a); it takes care of it. This is clear from the latter part of clause 2. So, it is possible for the author to make a complaint that the royalty is not paid. Therefore, the publisher is not meeting obligation under the deed of the assignment and this should be revoked.

SHRI J. C. BATRA : In the initial five years, revocation cannot happen. One has to wait for five years. If this proviso is removed, then the difficulty is taken care of.

SHRI MADAN BHATIA : But before the expiry of five years, the Board can make an order for the payment of royalty. Time grace of five years is given to the publisher. But if he continues to misuse this, then he runs the risk of his assignment being revoked.

SHRI J. C. BATRA : Due to advancement of technology, all the things are becoming out of date so soon. The proviso is not at all necessary rather this proviso is to help him waiting for five years.

About royalty, he cannot choose another publisher for publishing his works.

श्रीमती वीना वर्मा : अभी आपने कहां कि रायल्टी की दिक्कत होती है और इंतजार करना पड़ता है, फिर आप चाहते है कि उसका रीवोकेशन हो। क्या नहीं आपने बताया कि बाहर जो किताब छपती है उनमें पहले से रायल्टी ले लेते हैं। आधी बाद में प्रिंट होने पर ले लेते हैं। दो इंसटालमेंट में पूरी रायल्टी मिल जाती है। यह मॉडल कॉनट्रैक्ट है, इसमें इस तरह का सजैशन या क्लॉज क्यों नहीं रखा गया कि ऑथर्स को रायल्टी देनी चाहिए। वह पांच साल इंतजार क्यों करें? रीवोकेशन तो तब होगा जब उसको रीप्रिंट की जरूरत हो। एक बार एक हजार कापीज़ का हो गया तो वह उसी पर रहेगा। बेचना लेखक का काम नहीं है। कॉनट्रैक्ट बेसेस पर जैसे बाहर के देशों में है, वैसा ही आपने मॉडल कानट्रैक्ट में जरूरी क्यों नहीं समझा कि इस तरह से रायल्टी दी जाए।

श्री राजेन्द्र अवस्थी : हमने इस बात का प्रयत्न किया था। यहां पर तो प्रिंट ऑर्डर भी नहीं बताते हैं। हमने एडवांस रायल्टी के लिए भी प्रयत्न किया था, बोर्ड में प्रकाशकों की ओर से लगभग 5 सदस्य थे और वे नहीं चाहते थे। हम कोई झगड़ा नहीं करना चाहते थे। इसलिए यह नही हो पाया।

श्रीमती वीना वर्मा : रायल्टी की पेमैंट छोटे ऑथर को जा रही है और उसी से उसकी जीविका चलती है। आप लेखक को उसका न्याय दिलवाये, चाहे 15 प्रतिशत ही हो, उसकी जो मेहनत है वह उसे समय पर मिलनी चाहिए।

श्री राजेन्द्र अवस्थी : गए हुए नाहते थे लेकिन जब और रादश नैगार नहीं हुए तो हमने सोचा कि फिलहाल जो भी कॉनट्रैक्ट बना सकते हैं वही क्यों न बना ले।

श्रीमती वीना वर्मा : तब इसमें मॉडल कॉनट्रैक्ट नहीं है।

MR. CHAIRMAN : You kindly see page 7 of the Bill. I think your problem is covered under this section.

SHRI RAJENDRA AWASTHY : If we go on making a complaint every time then the period of five years will be over.

SHRI MADAN BHATIA : You see your memorandum. Both are in fact covered by 19(a). Now you are raising a new point.

SHRI RAJENDRA AWASTHY : We have come here to give our ideas.

SHRI MADAN BHATIA : According to you, what should be the period?

SHRI J. C. BATRA : Previously, there was no period at all. Anything which is harsh today may be harsh at any time. Reasonable period should not be more than one year.

SHRI RAJENDRA AWASTHY : It is a very long period. It should be shortened.

MR. CHAIRMAN : The publishers say that it should be increased. These laws are not meant for one section. We have to keep a balance. The proposed amendment is trying to make a balance on the past experience.

SHRI H. K. KAUL : The technology is changing very fast. Now the manuscripts are getting ready on the computer. In stead of increasing it, it should be reduced. Section 57—This is in connection with the Author's special rights. You have welcomed most of the provisions. The modality and provisions, under which these rights are, are not clear. This seems to be spelt out properly. You say that it had not been spelt out properly. What really do you mean by that?

SHRI VISVJIT P. SINGH : This is more comprehensive.

SHRI J.C. BATRA : Here also the thing which hurts the author is the proviso to this Section which has been added newly. The proviso provided that the author shall not have any right whatsoever is given under Section 57. It has been taken away by the proviso provided that the author shall not have any right to restrain or to claim damages in respect of any adaptation of a computer programme to which clasue (aa) of sub-Section (1) of Section 52 applies.

So our submission on behalf of the author is that this proviso is not required at all. The author should have the right even for adaptation on

computer or otherwise. This proviso takes away all what has been given. This should be removed.

MR. CHAIRMAN : Proviso to which clause (aa) of sub-Section (1) of Section 52!

SHRI J.C. BATRA : We have studied Section 52 that takes off our adaptation through computer programme. Our submission is this right should also be vested with the author. He should be able to exercise that author's right over the adaptation through computerisation or otherwise. It should not be regulated by this proviso. His power should not be taken away.

SHRI R.K. SINHA : The reason why we added this clause was totally different. We have included computer software in a big way in this amendment and we thought that if there is a software programme of a particular company that may need adaptation to suit client's own needs. If he does on a personal floppy that does not attract copyright.

What we are trying to say is where somebody has adapted computer software to suit his own needs the owner of that software should not penalise him for that purpose.

SHRI J.C. BATRA : There is no explanation given in Section 57 and secondly what has been kept in mind is only performing rights and adaptation of authors who are writers or poets and their statutory rights.

So my suggestion is, please review this provision. The proviso is not required. Whatever is given in Section 52 should remain and he should have the inherent right. This takes care of the rights of the assigner and the assignee.

SHRI VISVJIT P. SINGH : Some explanation will have to be added. This becomes too general.

SHRI J.C. BATRA : Thank you very much. Some explanation is required.

SHRI VISVJIT P. SINGH : I agree with you completely.

SHRI J.C. BATRA : Thank you.

SHRI VISVJIT P. SINGH : I have seen your theme but. I find it little mystifying on the whole I think your submissions that you have made are very much in favour of the author and on the whole this memorandum of yours is very good.

There are in fact two things which I find and which are very very good. In your clause 2 at page 2, that is to my mind, I find it an interesting suggestion, which has been made and no matter my personal view is that this is a good suggestion. No. 3 projects a contract...

MR. CHAIRMAN : No no, you take one by one. If you want to ask something on 1 then you please ask.

SHRI VISVJIT P. SINGH : O.K. why do you want to limit it to 50

years when your Authors' Guild and you are in favour of the authors? Why do you want to shorten the term of the copyright?

SHRI RAJENDRA AWASTHY : It is 50 years all over the world.

SHRI VISVJIT P. SINGH : There are many countries where it is 70 years.

SHRI RAJENDRA AWASTHY : If 50 years is the limit then it can be consumed in the family and after 50 years let it become a public property. If the writer is still alive after 50 years that means he is a great writer, like Premchand, etc.

They hav become great writers during this period of process of elimination and if they have become great writers we thought it better that they must become a public figure and should reach everyone.

SHRI J.C. BATRA : It is mainly because of public interest that an author like Tagore should be made public and after the author of such repute the entire public should not be barred from knowing the author's work after 50 years. It is a standard time fixed by most of the nations.

My submission is that there is no special case to enhance it to 60 years because it will not serve public interest.

SHRI R. K. SINHA : This matter came up for a decision before the close of last year. From 31.12.1991 was the date by which the copyright Vested in the works of Gurudev got into the public domain and there were two schools of thoughts. One was that allowing the works to pass it to public domain would increase the exploitation and perhaps a large number of people would get to know about it; the other point of view expressed very strongly by Vishwabharti was if the copyright for all the Gurudev's works taken away then it would lead to spoiling of the cultural heritage and lead to decline in the pristine value of the Gurudev. And the Government after weighing all the pros and cons thought that we should preserve the cultural heritage and the pristine value of Gurudev by giving an extension of 10 years. Vishwabharti wanted it for 20 years but Government extended it for 10 years.

MR. CHAIRMAN : I think you have no difference of opinion on this.

SHRI RAJENDRA AWASTHY : We have no difference of opinon but books of Tagore have already been published by so many publishers.

MR. CHAIRMAN : In various countries there is no difference for this duration. A few countries are having 50 years but now our Act has provided 60 years. I think it has already been amended.

SHRI MADAN BHATIA : Suggestion No. 2 where the contract between the publisher and author should be made obligatory. We are coming to No. 2...

SHRIMATI GEETA MUKHERJEE : May I make a second clarification on point No. 1, as of question of 60 years of Vishwabharti. To

be very frank I was also one of them. It was for the financial interest of Vishwabharati. Honestly speaking, no pristine value, etc. is there.

There is another point that Vishwabharti is not a private institution or a particular person. Also, Rabindra Nath Tagore was in Vishwabharati. This was also another thing why this controversy was started. If it is a person, then for 60 years the copyright can be there. But there was another school of thought. At that time there was a big tussel. Therefore, if a person is having it, his family or so and so or such such, then can we not make two categories?

SHRI R.K. SINHA : It will not be possible.

MR. CHAIRMAN : It will be discriminatory. I think Shri Sinha wants to say something more about the papers.

SHRI R. K. SINHA : I wanted to explain the reason. If we go to Section 52, at page 13, in Clause 17, it says,

> "That the following acts shall not constitute an infringement", and it says,
>
> > "(aa) the making of copies of adaptation of a computer programme by the lawful possessor of a copy of such computer programme, from such copy—
> >
> > (i) in order to utilise the computer programme for the purpose for which it was supplied; or
> >
> > (ii) to make back-up copies purely as a temporary protection against loss, destruction or damage in order only to utilise the computer programme for the purpose for which it was supplied;";

The very nature of computer software is such that these things are necessary, which is de-bugging, and others. So, for computer software if we say that de-bugging will not constitute an infringement of the copyright of the author or the original copyright. Since it is there, in order to protect this, Section 57 had to combine that proviso. Otherwise Section 57 includes all these. Since we have already stated in 52AA that it will not be an infringement, we have to have that clause to protect this provision.

SHRI VISHVJIT P. SINGH: That is clear from that clause.

MR. CHAIRMAN: We will decide when we come to that. Now we go to statement No. 2.

SHRI MADAN BHATIA: You have said that the contract between the publisher and an author should be made obligatory. Can you imagine a situation when a publisher can publish the book of any author without a contract?

SHRI H.K. KAUL: I would like to submit that there have been

hundreds of cases where publishers have published the manuscripts of authors without any contract and we have seen that the authors are at their lowest ebb when their manuscripts are is ready and they have no publishers. They are madly in search of a publisher and surrender to the publishers. They want to see their name in print and they submit to the publishers. This is the problem which is compelling the authors and there is an element of exploitation on the part of the publisher. At this juncture if there is some provision in the Bill itself then the authors are protected.

SHRI MADAN BHATIA: If you look to Section 19 of the Act, there cannot be any assignment of the copyright unless it is written down.

SHRI H.K. KAUL: What actually the hon. Member will want is that whatever transpires between the author and publisher should be written down. But it is not happening that way.

SHRI MADAN BHATIA: If it is happening so, it is infirngment of copyright. The remedy is to proceed for infringment of copyright.

SHRI H.K KAUL: Our authors are so poor that they cannot go against them.

SHRI MADAN BHATIA: You have to ensure it

MR. CHAIRMAN: It is not in the case of authors and writers only, it is happening in the case of any artist, any person who originates something and makes commercial use of someone else, and he can go for copyright.

SHRI H.K. KAUL: What we want is that there is an implied contract which was agreed to between the authors and publishers. This can be adopted in the copyright form and it can be obligatory on the part of the authors and the publishers whenever they enter into an agreement for publishing any work.

MR. CHAIRMAN: Can you tell us how the law can enter into a private contract and how it can be made compulsory?

SHRI VISHVJIT P. SINGH: The law provides for oral contract even today.

SHRI DINESHBHAI TRIVEDI: I am again little confused here. If I understand correctly, you have just submitted that it is heavily falling in favour of the publisher and for some reasons, may be they are valid or strong, you could not have your way there. It gives me a feeling— I may be wrong—that the model contract is more detrimental to the author's case if there is a model contract. Supposing I am an author and if I were to get some kind of an agreement with the publisher, the publisher may say, "Sorry, I do not accept your contract, you have to go through a model contract." So, if in fact I want to have a model, 50 per cent of the royalty has to be given in advance as soon as I submit my manuscript. You are not giving me an opportunity to take it to another publisher by making it compulsory. I fail to understand how it protects the rights of the authors.

SHRI J.C. BATRA: There is an amendment being carried out, at page 6 of the Bill, in Clause 8. Section 19 of the Act will be amended and the clause about the assignment of copyright will be:

"(a) The assignment of copyright in any work shall identify such work, and shall specify the rights assigned and the duration and the extent of such assignment.

(b) If the rights assigned under sub-section (1) are not specified, it shall be presumed that the assigner has assigned all his rights under this Act."

This means that it is in favour of the publisher.

Supposing if the assignee does not exercise such rights within a period of one year from the date of the assignment, the assignment in respect of such rights shall be deemed to have lapsed after the expiry of the said period. It further says that if the period is not stated, it shall be deemed to be five years from the date of assignment. My feeling is that everything is in favour of the publisher.

We are only submitting that instead of presuming in favour of the publisher we should made an agreement obligatory. When there is no agreement it is in favour of the publisher. If there is an agreement both the parties could have clear terms. What is happening in practrice is that the publishers either they ask the authors to sign on dotted lines, or alternatively ask the author to leave the manuscript with them and that they would publish it at their convenience. And nothing is there in writing. Ninety per cent of the cases are without contract.

SHRI DINESHBHAI TRIVEDI: We seem to be digressing from the point I have made. You have sugested that the model contract should be there.

MR. CHAIRMAN: Model contract is not at all obligatory.

SHRI H.C. BATRA: We want that this should be obligatory.

SHRI DINESHBHAI TRIVEDI: Somewhere there should be an indication. It is likely that the publisher will take undue advantage of this model agreement. Are you suggesting that this forms a part of the Act?

SHRI H.K. KAUL: I said that it could be adapted or adopted because the Copyright Board can make changes whatever necessary.

SHRI RAJENDRA AWASTHY: In regard to signing of the contract, 60 per cent of the publishers do not sign any contract. When the poor author comes with a complaint to me, I ask him: "where is your contract?" If he has not signed the contract, the poor author cannot be protected as per the law.

MR. CHAIRMAN: What should happen in such cases?

SHRI RAJENDRA AWASTHY: We have already suggested that in such cases it will be presumed that the contract has been signed and a minimum royalty of ten per cent will be payable by the publishers.

SHRI R.K. SINHA: The apprehension of the Authors' Guild is that the proposed amendments to Section 19 are loaded in favour of the publishers, I think, is not correct because the publishers are sure with the wordings of this Act on two grounds: If the assignment is not carried out within a period of one year, then it lapses automatically. There were some disputes about the wording "lapse", whether it is a legal word or not. But the meaning is that the assignment is over. They also said that the period of five years is far too short considering the fact that the copyright exists for a period of 50 years. Your main objection seems to be in regard to Section 19(3), which says that if the rights are not specified, then it will be permitted that the assigner has assigned all his rights under this Act. That is a normal presumption of the law. If you are silent, it is either nothing is there or the whole of it is there. So, we specified that the whole of it is there. But we protected the authors by saying that the assignment is to be carried out within a short period of one year, for which there will be a lot of objections. I think, the Act is a balance between the two.

SHRI RAJENDRA AWASTHY: Now if the poor writer does not get a proper response from the publisher, unless there is a contrary proviso in the law we presume that the contract has been signed. Otherewise, the writer is going to be exploited.

MR. CHAIRMAN: Do you not think that stringent provision has been put in this Act? Many writers and authors may not get their work done and there will be a lot of hesitation from the publishers to enter into a contract.

SHRI H.K. KAUL: I submit that in this case, the publishers will be choosy and they will not be publishing rubbish words and only good books will be published.

SHRI MADAN BHATIA: Sub-section 2 of Section 19 says that the assignment of copyright in any work shall indicate clearly rights proposed to be assigned. It must specify what are the rights which are being assigned. Sub-clasue 3 says that unless the rights are specified, it will be presumed that rights are assigned. You have apprehension that this presumption is loaded against the authors. You will notice that this presumption is qualified by three proposed amendments. If the assignee, that means the publisher does not exercise any rights within a period of one year, that means he does not publish this, then all his rights of assignment shall lapse. This right was not at all there before. This is totally in favour of the author, against which there has been a very strong representation from the publisher. And this is not subject to modification or change even by a contract. Even if the publisher wants that the period of one year should be increased to five years, the statute says 'no'. This is one protection which is being given to authors as a proviso to Sub-section

(3). Secondly sub-section (4) is drafted completely in favour of the author. It says: that if the period of assignment is not stated, it shall be deemed to be only for a period of five years from the date of assignment and no more. It also says that if the territorial extent of the assignment of rights is not specified; it shall be presumed that you have assigned your rights only for India and not for abroad. These provisions take care of the basic apprehension which an author may have; 1. that the publisher may not publish the book at all for a number of years; 2. that he may hang on to the assignment for the whole period of 50 years even if the period is not specified; and if the territorial extent has not been mentioned, he may have the right to publish it abroad and not paying any royalty at all. These things were taken care of.

MR. CHAIRMAN: The royalty standard should be 10 per cent. How have you reached to that?

SHRI RAJENDRA AWASTHY: I have said 'minimum'.

MR. CHAIRMAN: The copyright rule should also be made a cognizable offence.

SHRI RAJENDRA AWASTHY: May I say the Additional Secretary is sitting here, there is one Registrar, Copyright. It goes on changing beacause they are all IAS people. The officers have been changing. Earlier, there was a lady officer who took a very great interest. We were going to make a headwork. But as soon as she was sent for further training to America, eyerything remained where it were. Then another officer came. We have five complaints and they made these complaints to the Copyright Board. The member is present here. I would say that it not defunctioning.

MR. CHAIRMAN: Do you want further protection which is already there in the Act?

SHRI RAJENDRA AWASTHY: We would like Registrar (Copyright) to start functioning. He should not be a IAS man. He should be there at least five years. He should start functioning. He is not functioning as of now. The cases are lying pending.

DR. NAUNIHAL SINGH: Even if you provide in the law that a contract should be signed between the two parties that is between the publisher and the writer, it might become infructuous and remain in the Statutue Book only and still the writer may not get his dues. I would like to ask the question what are you going to do what would be your mechanism?

SHRI J.C. BATRA: The contract acts as a witness even if it is not fulfilled. We know there were some problems. AGI has a legal cell and it looks into it.

MR. CHAIRMAN: Now, we will switch over to suggestion 4.

Now, you are suggesting that the AGI should be recognised by the Government agency for collecting royalty of the authors.

SHRI RAJENDRA AWASTHY: The writer does not go direct to the publisher. There is a middle man; there is a news agency. They handle everything. We only wanted to become a handling agent between the writer and publishers.

DR. NAUNIHAL SINGH: Would you charge some commission on it.

SHRI RAJENDRA AWASTHY: No, Sir.

SHRI VISVJIT P. SINGH: This is a very interesting thing which has come. Now, you want to redefine your role.

SHRI RAJENDRA AWASTHY: Please do not misunderstand us. When the writer goes direct to the publisher, he may have some difficulties.

MR. CHAIRMAN: Please go through Section 33 which may clarify the situation and I think there is nothing more to be said from your side on this. I quote:

> "The Central Government may, having regard to the interests of the authors and other owners of rights under this Act, the interest and convenience of the public and in particular of the group of persons who are most likely to seek licences in respect of the relevant rights and the ability and professional competence of the applicants, register such association of persons as a Copyright society subject to such conditions as may be prescribed."

I think, it is very clear now.

SHRI H.K. KAUL: These Sections 33 and 34 envisages only Copyright societies in respect of performing works. It is not envisaging Copyright society of writers/poets.

MR. CHAIRMAN: The law itself is very clear.

SHRI H.K. KAUL: It talks of licences. We are talking of royalty collection. It is not issuing licences only. We do not issue licences. The Authors Guild of India should also be registered as a society to collect royalty on behalf of authors.

MR. CHAIRMAN: Then, you apply under the rules.

SHRI H.K. KAUL: This Section envisages actually the society of performing works.

MR. CHAIRMAN: Don't treat this Act as a vain exercise. How this can be provided in the Act, that we are trying to see. If you fulfil the conditions, you go through this job also. We have no objection to that.

SHRI RAJENDRA AWASTHY: If you add only one word 'including the creative writing', that will serve the purpose. Our submission is that

it should have some other word, other than licence. It should include royalty or creative writing also.

MR. CHAIRMAN: O.K., we will see what should be done.

In your suggestion No. 5, you say that there should be provision in the Act about two separate bodies - Copyright Enforcement Agency and Copyright Vigilance Agency. This

SHRI RAJENDRA AWASTHY: Sorry, Sir, this is a very wrong impression created that we want to take over the work. Authors' Guild of India will be a larger body which will be deciding.

SHRI DINESHBHAI TRIVEDI: I think, Sir, they are here to give their suggestions. It is up to us whether to accept their suggestions or not. I think at this stage there is no point in casting any aspersions on them.

SHRI J.C. BATRA: When there is a dispute between an author and a publisher, then, instead of going to the Copyright Board, there should be some sort of a conciliation procedure prior to the complaint. So, we want a conciliation sort of Committee of authors as well as of publishers. If we fail to resolve it, then the matter can be taken to the Copyright Board.

SHRI DINESHBHAI TRIVEDI: You are a body of authors. I do not know whether you have the infrastructure to do this sort of work. Vigilance is a specialised work, conciliation is a very tough work.

SHRI J.C. BATRA: This is a body of dedicated people.

MR. CHAIRMAN: Now we would like to switch over to suggestion No. 6. Would you please explain it in brief? You want that the text books and other books should be treated at par. What is your argument for this?

SHRI H.K. KAUL: Once a book is published, it becomes a text book. Generally the publisher knows that this book is going to be a text book and if he says it is a text book, the royalty would be less. We want that the royalty should be at par with other books. There should be no distinction between the royalty payable to other books and to text books.

MR. CHAIRMAN: O.K. Now we go on to suggestion No. 7. You are saying something about the next edition.

SHRI J.C. BATRA: Normally when a book is given to a publisher, it is a particular book for a particular period. When the next edition comes, it is actually a new work or at least some added qualities are there. So, he should be free to go to some other publisher. It should be automatic that the assignment is only for one edition, not for subsequent editions because it is an improved work. Normally the author adds something to it. So, he should not be compelled to remain with the same publisher. So, our submission is that it would protect the interests of the author as well as the publisher.

MR. CHAIRMAN: This can be taken up at the time of signing the contract.

SHRI RAJENDRA AWASTHY: If you see the contract, it is mentioned there that the Copyright vests with the writer. But the publishing right vests with the publisher and there is no time limit for that.

MR. CHAIRMAN: Anyway, we shall go to suggestion No. 8. Does Clause 7, section 14(a) (i) not serve your purpose?

SHRI RAJENDRA AWASTHY: It comes not very much if there is the electronic system. In the new process of computerisation, the entire work can be taken out on it.

SHRI H.K. KAUL: I would like to add to it. What happens is that through the electronic mail system, once a manuscript is passed on, there is no control of the author. In between the text can be further edited, spoiled, changed etc. We feel that the author should have the original manuscript with him. It should not be changed. This is my view.

MR. CHAIRMAN: Let us look into item No. 9 of your memorandum. If feel that it is not relevant to the discussions we are having. You are talking about the Delivery of the Books Act.

I must thank you very much for the cooperation which you have extended to the hon. Members of this Committee to reach certain conclusions. I also thank the officials of the Law Ministry and Ministry of Human Resource Development, who took keen interest.

I welcome you for a cup of tea outside.

Thank you.

(The Committee then adjourned.)

JOINT COMMITTEE ON THE COPYRIGHT (SECOND AMENDMENT) BILL, 1992

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE COPYRIGHT (SECOND AMENDMENT) BILL, 1992.

(Tuesday, the 19th January, 1993 from 1500 hours to 1630 hours Committee Room 'D', Parliament House Annexe, New Delhi)

PRESENT

Shri Syed Sibtey Razi—*Chairman*

MEMBERS

Lok Sabha

2. Dr. Faizal Azam
3. Shri M. Krishnaswamy
4. Shri Birsingh Mahato
5. Smt. Geeta Mukherjee
6. Shri Rupchand Pal
7. Shri Rameshwar Patidar
8. Shri Bhagwan Shankar Rawat
9. Shri P.C. Thomas
10. Shri Gurcharan Singh Dadhahoor

Rajya Sabha

1. Dr. Naunihal Singh
2. Shri Mohammed Afzal Alias Meem Afzal
3. Dr. R.K. Poddar
4. Shri Madan Bhatia
5. Shrimati Veena Verma
6. Shri B.K. Hariprasad
7. Shri Iqbal Singh

SECRETARIAT

1. Shri S.C. Gupta — *Joint Secretary*
2. Shri R.K. Chatterjee — *Deputy Secretary*
3. Shri Ram Autar Ram — *Under Secretary*

REPRESENTATIVES OF THE MINISTRY OF HUMAN RESOURCE DEVELOPMENT (DEPTT. OF EDUCATION)

1. Shri. M.P.M. Kutty — *Director (BD)*
2. Shri V.K. Saxena — *Licensing Officer*

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

1. Shri Raghbir Singh — *Joint Secretary and Legislative Counsel.*
2. Shri S.P. Kanwal — *Deputy Legislative Counsel.*

WITNESSES EXAMINED

Cable Net Work Association, New Delhi

Spokesman:

1. Major J.S. Kohli (Retd.) — *President*
2. Shri Rakesh Datta — *General Secretary*
3. Shri Ranjan Kapoor — *Vice President*
4. Shri Umesh Kakkar — *Treasurer*
5. Shri Narinder Narula — *Member*

(The witnesses were called in and they took their seats.)

MR. CHAIRMAN: Before you start, I may point out that in accordance with the provisions contained in Direction 58 of the Directions by the Speaker, your evidence shall be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence given by you should be treated as confidential. Even though you might desire your evidence to be treated as confidential. Such evidence is liable to be made available to the Members of Parliament.

You have sent us a memorandum in which you have stated that in the proposed Amendment Bill, certain obligations have been specified against you, but you feel that adequate protection has not been provided in the Act.

First of all, I would like to know from where you have drawn this inference that necessary protection had not been given to you under this Act and what specific obligations have been provided in the amending provisions of this Act.

MAJOR J.S. KOHLI: First of all, we would like to tell you in brief about our Association. This is a new organisation. It is barely three months old and our experience in the cassette industry over the past year and a half has been that the industry depends mostly on hiring cassettes or paying for the rights of the cassette distributors who have the monopoly over these items and have taken most of us for a ride.

At present, it can be said that this industry is in its infant stage. In Delhi itself, more than 100 raids have been conducted over the last one and half years. Some people have been put behind the bars and prosecution against those people under Copyright Act has been initiated.

The problem lies with the operators. This is a very small time operation. The operators work in small colonies in Delhi and outside. They are not rich and they do not have education. Therefore, they have no knowledge of the working of the Copyright Act, with the result that even if an operator wants to pay for the copyright, he is facing difficulties at times.

We want the Copyright Bill to be very simple. It should contain a clear stipulation that if I show something for which I have not paid royalty, I get caught. More often than not, there have been raids due to no fault of ours or of the cassette operators. A raid on an operator leads to loss of his good reputation.

Our aim of meeting you is that you would be able to determine a parity for us. It is a monopoly item. They would charge as they like. A small operator, transacting a small business, cannot pay rate asked for. At the same time, he has to please his subscribers.

MR. CHAIRMAN: How many cases have been filed against you on account of the copyright?

MAJOR J. S. KOHLI: In Delhi alone, at least 100 cases have been filed during the last one and half years.

MR. CHAIRMAN: How many Members are there in your Association?

MAJOR J.S. KOHLI: We have about 1,200 Members operating in Delhi. We are at the moment operating Cable TV.

MR. CHAIRMAN: What is the status of litigation?

MAJOR J. S. KOHLI: This litigation is going to take years. We are quite in a web now. They have, of course, come out on bail. But the cases will linger on for six years. It is tension all the while for us.

MR. CHAIRMAN: Don't you specify your terms when you enter the suppliers for Copyright?

MAJOR J. S. KOHLI: There are just two suppliers in Delhi and they do not cover every cassette that is available. We have to survive in the field. Everything that is new in the market we have to give to our subscribers. The price being asked from them is prohibitive. The small operator in Delhi is not in a position to meet those terms. That means, no person who is small can get into this business. You have to have adequate amount of funding before you enter into this.

MR. CHAIRMAN: What kind of protection do you want?

MAJOR J. S. KOHLI: The protection that we want is that whatever is available in this cassette medium should be adequately publicised as to

who is the Copyright owner. More often than not, we are not clear who is the owner.

DR. R. K. PODDAR: It is my understanding that on all cassettes, audio or visual, there will be a printed card showing who holds the Copyright.

MAJOR J. S. KOHLI: By and large, the video piracy in our country is rampant. We are in a vicious circle. My subscribers want me to show a cassette of feature film. If we go to the market, the original is not available.

DR. R. K. PODDAR: Why?

MAJOR J. S. KOHLI: We are victims of the piracy and of the non-availability of information and of high price.

DR. R. K. PODDAR: You are not victims. You should not do something illegal to satisfy your customers.

MAJOR J. S. KOHLI: But it is not available legally.

DR. R. K. PODDAR: You should get. You should show those cassettes which are legally available.

MAJOR J. S. KOHLI: We have to buy a thing which is genuine.

DR. R. K. PODDAR: You can see easily on the cassettes whether there is some Copyright holder.

MAJOR J. S. KOHLI: As far as cassettes are concerned, there are two kinds of rights. We are victims of circumstances and the two rights are confusing. One is home-viewing right. You may see printed on a cassette that a company holds the home-viewing rights. But the law is very ambiguous on that. It cover, the right of cassettes to be sold or for home-viewing. Gradually, as video libraries came, it picked up business. Earlier, the law was imposed on them and raids were conducted on the video libraries. But gradually it became a fact that law is not very effective. Video library is a part and parcel of this. These cassettes are not supposed to be re-distributed to libraries.

DR. R. K. PODDAR: Can you identify the section of the law?

SHRI RAKESH DATTA: I am sorry I am not in a position to do that. We wanted to request you to give us some more time.

MR. CHAIRMAN: If you want to give specific answer, you send it in writing. If this section is connected with you, it may be affecting your interest. You please send us your proposal.

SHRI RAKESH DATTA: We will do that.

As I was mentioning, the second right is the cable rights. Cable right means that the supplier of that right sells it further to the cable operators and offer authorised home view rights. There is confusion in it. The suppliers who supply the cassettes to us, they make it very ambiguous whether they are holding the home view right or the cable right of these cassettes. People who hold home view rights also sell the cable rights. This

has been proved as there were many companies who sold their cable rights to us and they charged us hefty amount. One is the Media who sold us the cable rights and charged us heavy amounts because they never held cable rights. There are two or three companies, like Magnum, Gold, IBC, Star Shine etc. All these companies gave us long list of cassettes of which they held the cable rights. We will submit the list to you and you will find that there are at least 30 to 40 cassettes which are common one. NFDC also gives us a list of cassettes of which they are having the cable rights. But the situation remains ambiguous. Each one is asking heavy amounts and we do not know whom to pay the money. If we pay to one organisation and the other one claims that we are pirating the rights. We are only charging Rs. 150 from the subscribers and we cannot pay that heavy amount. That is our problem.

DR. R. K. PODDAR: We should call the cable right holders also here.

SHRI MADAN BHATIA: When you go and buy the cassettes for being shown on the cable, do you first enquire whether that person or organisation has the cable rights of the cassettes or not?

MAJOR J. S. KOHLI: There are, as on date, two companies in the field. These are the multi-crore projects and the cable operator is a small fry. As an association we asked them to give us an affidavit to the association that the picture he is giving us is a correct one and he has the cable right of it. They have employed ex-police personnel who are conversant with the rules and they bring with them the police people and take away the equipment and put us behind the bars for 24 hours and then they sell the rights.

SHRI MADAN BHATIA: Supposing there is a particular picture that you want to show on the cable. Do you go to the person who hold the cable right or do you go any other persons? How do you make it sure that you are going to the right person? Do your confirm it from that person?

MAJOR J. S. KOHLI: We just take whatever he gives.

SHRI RAKESH DATTA: We have no choice.

SHRIMATI GEETA MUKHERJEE: If there are several common lists, who should enquire those lists? Even NFDC is claiming the cable rights regarding the video films. You should submit about it in writing to us.

MAJOR J. S. KOHLI: NFDC is selling its rights to three parties. NFDC has got rights over all the English films. Supposing I want to have these English films I cannot have it without taking Hindi films. English films are separately not available. The government organisation in collaboration with the private firms are forcing the rights on us.

SHRI RUPCHAND PAL: Please submit a detailed note about NFDC.

MAJOR J. S. KOHLI: Right, Sir.

श्री नरेन्द्र नरूला: पिछले साल एन एफ डी सी ने हमको कहा था कि रैड-कैड लाईसेंस चाहिए तो आपको जी॰पी॰सी॰ का लाईसेंस लेना पड़ेगा।

SHRI RUPCHAND PAL: It has now come under OGL. Last time it was done by NFDC. There may be difference between what is being done this year and what was done previousiy.

MAJOR J. S. KOHLI: It is going on still in the market. Whatever the Government is doing, if they put it in the OGL, we can show that. The Government, in collaboration with private firms, is selling us their licences.

MR. CHAIRMAN: Please submit a detailed note on this and we will look into this.

DR. NAUNIHAL SINGH: The language used in Memorandum No. 7 by Major Kohli is general and vague. They are simply accusing the terms and conditions of distributors, they are absolutely one-sided and they have not mentioned which provision in the Bill is against them or what they want in turn. He should be very specific.

MAJOR J. S. KOHLI: Ours is a new organisation and this is our first exposure to a Parliamentary Committee. We are not well-versed with the procedure. We shall comply with the requirements that you have given us.

MR. CHAIRMAN: How much time do you require to submit a detailed note?

MAJOR J. S. KOHLI: Two weeks, Sir.

MR. CHAIRMAN: Please go through the whole Bill and the proposed amendments to it. Please tell us which sections are going to affect you and which sections need improvement. Basically in this Bill we are looking into the question of the copyright of the originators of a particular piece of art, piece of work, and all that. The piracy problem that you have mentioned is also finding a place in the Bill and the penalties proposed for their infringement would serve your prupose. But kindly send us a note and we will see what we can do for you under the purview of this Bill.

SHRI MADAN BHATIA: First you said that when you enquire, they inform that they have got the Cable Rights and on the basis of their certificate you take the cassette from them. This should be a defence to you, you have obtained a certificate from the Cable Rights holder saying that he is selling this cassette to you.

MAJOR J. S. KOHLI: We have tried this and failed.

SHRI MADAN BHATIA: You see the Bill and tell us whether you would like to suggest any amendment in the light of what has been discussed today.

DR. R. K. PODDAR: Do you broadcast anything besides video cassettes? Do you broadcast any news item?

MAJOR J. S. KOHLI: Apart from film cassettes, video magazines like Newstrack, Eye Witness, etc. we do not broadcast anything else.

DR. R. K. PODDAR: After the 6th December incidents I am told that

something of this sort has started. There is one cable network agency in Calcutta in Salt Lake area. They just put in their cable network saying that twenty thousand muslims are coming to make riots. It is very dangerous. Do you also indulge in these things?

MAJOR J.S. KOHLI: We are under the Vasant Kunj police station area. We have a contact with them and if the police wants us to flash something, we do oblige them. We are useful to the society in that whatever is desired by the authorities we convey it to the people who come under our network. On our own we do not broadcast anything.

DR. R. K. PODDAR: Is your society only Delhi based?

MAJOR J. S. KOHLI: Yes Sir. We are very new. Even our Articles of Association is being drafted. We are still in the process of getting it registered. We want to register it under the Society's Act.

MR. CHAIRMAN: Do you coordinate with other cable networks in the same city or in other cities also?

MAJOR J. S. KOHLI: No Sir. We only get feelers. Nobody is organised well any where in this field. We are making an effort to unite and present our point of view.

MR. CHAIRMAN: I am thankful to you for giving us certain information.

(The Committee then adjourned.)

JOINT COMMITTEE ON THE COPYRIGHT (SECOND AMENDMENT) BILL, 1992

RECORD OF EVIDENCE TENEDERED BEFORE THE JOINT COMMITTEE ON THE COPYRIGHT (SECOND AMENDMENT) BILL, 1992

(Thursday, the 21st January, 1993 from 1100 hours to 1230 hours, Committee Room 'C', Parliament House Annexe, New Delhi)

PRESENT

Shri Syed Sibtey Razi — *Chairman*

MEMBERS

Lok Sabha

2. Shri E. Ahamed
3. Smt. Dil Kumari Bhandari
4. Shri Gurcharan Singh Dadhahoor
5. Shri M. Krishnaswamy
6. Shri Janardan Prasad Misra
7. Shri Bhagwan Shankar Rawat
8. Shri Sobhanadreeswara Rao Vadde

Rajya Sabha

9. Dr. Naunihal Singh
10. Shri Dineshbhai Trivedi
11. Dr. R. K. Poddar
12. Smt. Veena Verma

SECRETARIAT

1. Shri R. K. Chatterjee — *Deputy Secretary*
2. Shri Ram Autar Ram — *Under Secretary*

REPRESENTATIVES OF THE MINISTRY OF HUMAN RESOURCE DEVELOPMENT (DEPARTMENT OF EDUCATION)

1. Shri R. K. Sinha —*Addl. Secretary*
2. Shri M. P. M. Kutty —*Director (BP)*
3. Shri V. K. Saxena —*Licensing Officer*

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

1. Shri A. C. C. Unni —*Addl. Secretary*
2. Shri Raghbir Singh —*Joint Secretary and* —*Legislative Counsel*
3. Shri S.P. Kanwar —*Deputy Legislative Counsel*

WITNESS EXAMINED

Shri S. Ramaiah— *Advocate and former Secretary, Government of India, Ministry of Law and Justice, New Delhi.*

(The witness was called in and he took his seat.)

MR. CHAIRMAN: Before you start, I may point out that in accordance with the provisions contained in Direction 58 of the Directions by the Speaker, your evidence shall be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence given by you should be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

Before we come to your suggestions which you have sent to the Committee, what is your experience about the enforcement of the existing Act? From your suggestions we have seen that you have made an indepth study of these proposed amendments. What is your reaction in general but in brief about the overall amendments which are being proposed, leave aside this particular amendment?

SHRI S. RAMAIAH: The Copyright Act was passed in 1957. It was a comprehensive legislation. Until 1983, we did not find any necessity for making any amendment. The Berne Convention and its Paris Act (1971) gave certain translation rights to the developing countries. Accordingly, we choose to amend the Act in 1983. It was a comprehensive amendment which gave certain rights of translation and reproduction to persons in the developing countries.

Subsequently, we had another amendment to curb video piracy; and we increased the punishment also in respect of video piracy to a substantive extent and made offences cognizable so that we could effectively prevent piracy that prevailing in the country.

Subsequently, of course, last year, as you may be aware, we have increased the term of copyright in all the works from 50 years, after the death of the author, to 60 years. That is the minimum. But I think the present amendments are two-fold. One, to give effect to the model provisions of the Berne Convention which was adopted by the World Intellectual Property Convention as a result of the diplomatic conference to propose some model provision[illegible] copyright. The second one is we have acceded to the Cinema[illegible]ic Convention, or the Rome Convention. We wanted to make [illegible]nendments in the law. In addition the Bill proposes the right of re-[illegible]hts of performance and we have

also proposed for the constitution of these societies to give effect to the collective administration of the authors' rights. These are the main amendments proposed in the Bill.

I would like to mention that alongwith this Bill Govt. had also introduced the Copyright Cess Bill. That would be a related Bill, a dependant Bill; that Bill has not been referred to this Committee. Certain amendments would be needed in the Copyright Cess Bill also and as such the Bill also should have been included in the terms of reference of this Committee. If the Committee permits, I can mention those amendments which may be relevant.

I have given a memorandum indicating some amendments to incorporate the intention behind the model provisions and certain clarifications. I have also indicated separately some drafting and other amendments. I do not want to go through each and every amendment and take the time of the Committee. I would not repeat all the comments. But I would like to mention in certain cases some important points to make my intention clear.

MR. CHAIRMAN: As you yourself have said, you have given certain suggestions about some provisions and also about drafting. They will be looked into.

SHRI S. RAMAIAH: I have not made any particular suggestion about Drafting.

MR. CHAIRMAN: We would like to ask for some elaboration. About Clause 2, Section 17, you have expressed your reservations about the cinematograph film, or sound recording and all that, where according to the present amendment the person who physically does the work for himself, and a person who is employed by an employer are different. That is the definition of producer and referred to the first category of the person; in case he does work for an employer, the employer should become the author of the work. So, if you see the clause and section, as far as we understand, it is only for a cinematographic film, and the sound producer. The producer is defined as the person who has the responsibility for the work. These two categories of work would normally be contributed by a single employee working for himself. It may be a group of employees also, generally it is used by a company. So, the idea envisaged by you seems to be far-fetched and may create complications in the Act. Would you like to explain?

SHRI S. RAMAIAH: I agree with the suggestion made in the Bill that a person who creates or puts in his intellectual contribution should be the author of the work. The producer as defined, which you have mentioned in regard to the Berne Convention is the person who gives his effort to produce a certain thing, should be the author of the work. But at the same time, it would be all right only in respect of certain works, that is to say literary works and artistic works. In respect of a cinematographic film you

will find that the Director is the real person. He will do everything but the actual film is done by the producer. So there is a difference between the producer and Director of the film. Even the Berne Convention, in Article 4 says that "the author or the person who creates the work is the owner". But here the Convention allows, national laws to give copyright to the persons who physically create it, the original onwer, it uses a neutral expression, 'owners of the copyright'. That is the word used in the Convention. The owner of a copyright enjoys the same right as the author of the original work. This sentence not only indicates the position but it also makes it clear that the rights of the owners of the copyright are obtaining with the author of the copyright.

I would put it to the Committee, that in the conditions prevailing in our country, should we not create a distinction to make it clear that a producer is the author or owner of the film is the owner of the copyright?

Secondly, in Section 17, it is mentioned that when by the owner of a film approaches the Director to make a film, he is doing it on behalf of the owner or employer. In respect of those cases, who should be the author of the copyright? We should make that clear. On the one hand a person who produces or makes a film is the producer. On the other, the contract provides a different intention. We will have to make a distinction between person who works for himself and who works under the direction of his employer, and if it be so, if a producer is employed by the onwer of the film then it would make a distinction between the author and the producer.

SHRI NAUNIHAL SINGH: Who is the producer and who is the author?

SHRI S. RAMAIAH: The person who invests money does not have to worry about the production of the film except to arrange the capital. He can keep a Director or a producer to make a film.

SHRI NAUNIHAL SINGH: Do you mean to say that the position of the Director and Producer should be segregated so that it would be apparent, who owns the copyright? In your opinion, is it the producer?

SHRI S. RAMAIAH: It depends on the individual case.

SHRI NAUNIHAL SINGH: In case as you indicated, just in case it is implied, specifically or otherwise then the Director also co-opts with the production activity and may have the similar rights as the producer who invests.

SHRI S. RAMAIAH: There is a distinction here. Supposing a person who is not called a producer, he is the owner. He supports the film production.

And he engages a person under contract for production. As per your definition, he is the producer and on whom you are conferring the title as the author of the work. As per your definition itself the person who initiates and all that will not be a producer, may be a owner. To make a

distinction between these two, Section 17 is already very clear, that is, one who does it for himself and who does it on behalf of somebody else. As per your definition, it may not be the producer, it may be the owner who holds the copyright. We must make an amendment to say that the producer is the author of the work and the owner of the copyright is somebody else.

SHRI E. AHAMED: Here it is mentioned that the owner of the copyright in a work may relinguish any rights by giving a notice in a prescribed form.

SHRI S. RAMAIAH: Section 17 of the Copyright Act 1957 says:

> "Subject to the provision of this Act, the author of a work shall be the first owner of the copyright."

That would mean it specifically says the producer. That is the definition.

DR. R. K. PODDAR: What will happen in case of a joint production? Some Director or some author comes into an agreement with a producer, say the Central Government.

SHRI S. RAMAIAH: If the Central Government arranges a film, they should be the owner of the copyright.

DR. R. K. PODDAR: Can you make it as joint copyright owners?

SHRI S. RAMAIAH: That will be a collective work, which you have defined. It depends on the contract between the Central Government and the person who makes it.

DR. R. K. PODDAR: Sometimes the State Government also enters into an agreement.

SHRI S. RAMAIAH: In either way, work of joint authorship will come.

MR. CHAIRMAN: We proceed to Clause 2 Section (v).

SHRI S. RAMAIAH: Before we do that, I would like to make some additional comments on this.

It is proposed to change the definition of 'architectural work' of art to work of architecture. My comment on Clause 2(b) is that as consistent with the Berne Convention, if any person makes a work or creates a work, the quality of the work is immaterial, the mere production of work, which is original and immediately he gets the copyright facility.

MR. CHAIRMAN: Firstly we should finish the suggestions made by you and then you can make additional suggestions.

In Clause 2 Section (v) you have stated that there should be a definition about 'computer generated programme'. They have already provided the definitions about 'computer' and 'computer programme'. Keeping in view the vast development and rapid development in technology, I want to know whether it is really necessary to define 'computer generated programme'.

SHRI S. RAMAIAH: Computer programme is different. But dramatic and musicial work, which is computer generated, needs to have definition on two accounts. Firstly, we do not know what 'computer generated' is. Even in WIPO, they have defined it. Secondly, the author of a 'computer programme' means the author who will be different in a computer generated programme. The author is the person who causes the work to be created. To make a distinction as to what is meant by computer generated, the definition of 'computer generated' is necessary. That is may point.

MR. CHAIRMAN: Would it not be difficult to reach certain specific defintiion about 'computer generated programme'?

SHRI E. AHAMED: Then, will the computer be like a cinema?

SHRI S. RAMAIAH: You can feed certain things into the computer in the form of a disc or in the general hardware itself. And you can retrieve certain information, which you have stored. The programme is called software. And whoever makes the programme is the author under copyright.

SHRI E. AHAMED: According to Cinematographic Act, the man who is investing is the author. My learned colleague has put a question, whether the producer or the Director is the owner and you have said that owner is separate, the producer is separate and the director is an employee.

SHRI S. RAMAIAH: Here it would not be identical. Computer hardware can be owned by anybody else. You can feed many materials. Each material will be fed by different authors. There will be a separate author for each software programme, which you feed into the computer. That is why we are saying that even in respect of materials which are stored in a computer, so far as computer programmes are concerned, we can say in respect of the programmes stored into the computer that they are all works of joint authorship.

SHRI E. AHAMED: So, the position of the owner will be that of the studio.

SHRI S. RAMAIAH: Studio is taken on hire for the purpose of shooting a film. Studio does not come into the copyright at all.

MR. CHAIRMAN: Would you like to suggest something in connection with the computer programme keeping in view the technological development, development in artificial intelligence and programming machines?

SHRI S. RAMAIAH: Instead of my giving a definition, I will read out a few lines from the WIPO South Pacific Copyright Workshop, organised by the World Intellectual Property Organisation (WIPO) in co-operation with the Government of Papua New Guinea and with the assistance of

the United Nations Development Programme (UNDP) Port Moresby, October 22—24, I quote:

"The recognition of the fact that the notion of "collective works" is related to the above-mentioned ever more widespread phenomenon of works resulting from numerous and, sometimes, indirect contributions, leads logically, to the question of whether the category of the socalled "computer-generated works" could not also be considered to be a part of that phenomenon. (The socalled "computer-generated works" are opposed to the category of "computer-assisted works," the latter being considered "regular" literary and artistic works in the case of which the human contributions can be more or less easily identified.)

The Copyright, Designs and Patents Act, 1988 of the United Kingdom is the first national law to include provisions on the socalled "computer-generated works." According to Section 178 of the Act, "computer-generated" in relation to a work, means that the work is generated by computer in circumstances such that there is no human author of the work." Under Section 9(4) of the Act, "in the case of a literary, dramatic, musical or artistic work which is computer-generated, the author should be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken," and, under Section 12(3) of the Act, the term of protection of such a work is 50 years from the time when it was made".

Why I have raised this particular point is that the definition should be given as to make a distinction between the "computer-generated works" and "computer-assisted works". That is why the distinction is there.

DR. NAUNIHAL SINGH: Even today music is also computerised. How do you distinguished?

SHRI S. RAMAIAH: You have made a point which I also wanted to make. As I said earlier, we have to make a specific distinction what is meant by "Computer-Generated Works".

DR. NAUNIHAL SINGH: When you say Computer-Generated Works, it will include that particular activity which is Computer Generated.

SHRI S. RAMAIAH: The authorship might change. In a "musical work", it matter a lot.

DR. NAUNIHAL SINGH: If the authorship changes, that can also be computerised.

SHRI S. RAMAIAH: I will make the point clear here. Under the definition of 'Computer programme' which is a normal computer and in respect of a programme which is a 'musical work' the author would be an author who creates the work whereas in 'Computer-Generated Works', the definition means that the work to be created is generated by a computer. That is the distinction between the two. In most of the cases, it would be the same person. But, there can be two separate persons also.

DR. NAUNIHAL SINGH: Computer-Generated Work is a different xpression which connotes a different meaning.

SHRI S. RAMAIAH: If the Committee feels, I have no quarrel.

DR. NAUNIHAL SINGH: Computer generation does mean that there is no need for further redefining. I think, then more litigations will arise.

SHRI S. RAMAIAH: That is why in my definition I had mentioned in respect of a Computer-Generated Work, there is no human author of the work. We have to make a distinction. That is a definition which has been indicated by the WIPO South Pacific Copyright Workshop.

DR. NAUNIHAL SINGH: How is it that there is no human author?

SHRI S. RAMAIAH: It may be a different person.

DR. NAUNIHAL SINGH: How can it be amended?

SHRI S. RAMAIAH: In respect of 'musical work' in the computer, there can be a rearrangement.

DR. NAUNIHAL SINGH: But, it could be caught also.

SHRI S. RAMAIAH: If the Committee feels that the Computer Generation makes the meaning clear then I have no objection.

श्री भगवान शंकर रावत: जिसकी आवाज कम्प्यूटर में जाएगी, उसके दूसरा कोई कॉपी करता है। वह चोरी होगी।

SHRI S. RAMAIAH: But, there also we have amended that in respect of rearrangement, alterations also can be a part of the work. It is not necessarily that we have to steal the work and do something. Even a person who rearranges can also becomes an author.

DR. R.K. PODDAR: For example, there is a good story. Now, computer meachine creates animated films. That is a computer generated piece of work which the author of the computer never visualise. Then what happens in that case?

SHRI S. RAMAIAH: It depends on the animated story whether it is a literary or dramatic becuase the definition is not here. But, in respect of Computer-Generated Works, the definition is different.

DR. R. K. PODDAR: You want that we should make the distinction.

SHRI S. RAMAIAH: It is becuase the authors may be more than one.

SHRIMATI VEENA VERMA: Please, tell us the specific areas where you want to define the computer, programme, computer-generated programme and what is the exact definition about the computer generated programme, computer intelligence and self-programming.

SHRI S. RAMAIAH: Madam, you have raised a number of points. I will explain one by one. So far as the Bill is concerned, except a minor

alteration, which is a gross omission, the definition of computer-gererated programme should be all right. But, since you have mentioned that computer is being used everywhere, I would like to mention here that there is one thing which is called artificial intelligence which has come recently. The computer itself is capable of giving new ideas apart from what we feed into the computer.

That has not come to India so far. It has not been regulated yet by any law although diplomatic conferences are going on for giving a model law on artificial intelligence.

MR. CHAIRMAN: That is the reason why in the proposed amendment they want to leave it at present in that form. You already said artificial intelligence and all that has not yet come in this country. By keeping the pace of development of technology it must have been decided so.

SHRI S. RAMAIAH: I submit that one can never say that. We import more sophisticated computers. Any person, who can operate them, can import them and produce any musical work and in such cases it will be difficult. We have not got them. But there is no objection if somebody brings any sophisticated equipment. Some disputes may arise till the act is amended.

SHRIMATI VEENA VERMA: I have a computer or word processor which has a voice. My son operates it. He makes alterations and tries to do some designing also, though not for commercial use. How to define such things? Can they be called computer-generated programmes? Please explain.

SHRI S. RAMAIAH: I have not suggested any definition for artificial intelligence. I have suggested about computer programmes. I have suggested some slight changes in the Bill. I think they are to be considered for effective functioning. I can say that much.

MR. CHAIRMAN: Shri Ramaiah, do you know that W.I.P.O. has still not reached to certain conclusions about artificial intelligence and all that? It is true that British law has provided some law about it. W.I.P.O. is a leading organisations. It might be possible that the drafters of these amendments might have kept this point in view. They might have though that after W.I.P.O. arrives at certain definite conclusions, they can incorporate them.

SHRI S. RAMAIAH: It is only in respect of artificial intelligence. In respect of computer generated programme, W.I.P.O. is aware of the details. As I mentioned, they have not finalised the details to codify the complete system.

श्री भगवान शंकर रावतः यह बताइए साउंड में, इसमें प्रोड्यूसरों के साथ-साथ जो फाइनेंस कर रहे हैं, कनाइवेंस दोनों मिलकर कर सकते हैं। इसलिए लाइबिलिटी दोनों की होनी चाहिए।

श्री एस० रमैयाः ऐसा है बेर्न कनवेंशन में वे पहले अपना दिमाग प्रोड्यूस करना चाहते हैं।

श्री भगवान शंकर रावतः मेरा कहना यह है कि वह इस बात के लिए प्रेरित करेगा कि वे किसा प्रसिद्ध व्यक्ति की आवाज कॉपी कर लें जिससे उसकी कमर्शियल वायेबिल्टी बन जाए।

श्री एस० रमैयाः साउंड रिकार्रिडंग बताएंगे कि वे एच०एम०वी० जैसे प्रोड्यूसर म्युजिक को कॉपी करके उनसे ले लेंगे। वे एप्रोच करते हैं ऐसा कर दो हम कर देंगे।

श्री भगवान शंकर रावतः मैं दूसरी बात कह रहा हूं यहां ऐसे सौदागर मौजूद हैं जो लालच देक्रर प्रोड्यूसर को कह सकते हैं ऐसी आवाज देकर करो।

श्री एस० रमैयाः यह दूसरी चीजें हैं।

श्री भगवान शंकर रावतः ऐसा यहां होता है इसलिए मैं कह रहा हू।

SHRI S. RAMAIAH: The point raised by hon. Member is simple. Supposing EMI or producer of a record produces a record of somebody else saying that it is the record produced by some famous musician or singer, that is piracy. The person can take up the matter.

MR. CHAIRMAN: Supposing there is a Hindi song in a film and it is converted into some regional language, will it also be piracy?

SHRI S. RAMAIAH: It is a translation which can be done.

MR. CHAIRMAN: Let us proceed further. In Clause 2 (ii)(v) you had suggested about the definition of cinematography or audio-visual programme. You said it should be according to W.I.P.O. definition. In the proposed amendment they are trying to bring a little wider definition about this particular area. Why do you want that it should be restricted as per W.I.P.O. suggestion?

SHRI S. RAMAIAH: As you know, cinematography film is projected by a projector. Each action or each saying or whatever it is, is a combination of a length of film in one particular shot. In a frame it will not be visible. Any saying or song is not related to one film but it is a series of related images. That has not been covered in the amendment.

MR. CHAIRMAN: The proposed definition of cinematorgraphy film means:

I quote:

> "Any work of visual recording on any medium produced through a process from which moving image may be produced by any means and includes a sound recording accompanying such visual recording and cinematograph shall be considered as including any work produced by any process analogous to cinematography including video films".

They have tried to cover cinematography as well as video films which is not being specifically covered in W.I.P.O. definition.

SHRI S. RAMAIAH: Sir, I will read W.I.P.O. definition:

> "Audio-visual work is a work consisting of a series of related images and accompanying sounds, if any, which are intended to be shown by appropriate device".

I feel that it is a very short and sweet definition which brings everything into it. That is my first point.

Secondly, here I agree that there are 3-4 changes which you have made in the definition which are welcome. You included 'any medium'. The medium is only film as of today. In future it can be slides also which is a static image. To that extent the definition 'any medium' is wide. I agree with you to that extent.

The question is of reproduction. It is already reproduced. I respectfully submit that my suggestions may kindly be considered keeping in view the overall position. That has to be made clear and as per the definition, it is drafted. There are three or four 'includes'. That is why I wanted to make the language slighly better. Those are my amendments and instead of having so many 'includes', the question is whether we can adopt the definitions as suggested by WIPO.

MR. CHAIRMAN: Now, we go to clause 2(v) of the Bill. You have suggested that "communication to the public" in the Bill is needlessly restricted by using the words "for being seen or heard or otherwise enjoyed by the public". In the proposed amendment "public" is adequate enough to show the intention of 'being enjoyed by the public'. Would you please explain this a little more?

SHRI S. RAMAIAH: "Communication to the public"—if you mention this in the beginning, the question would arise that it is not a communication whereas if the question arises at a later stage, we will have to prove whether it is enjoyed by the public. In the definition of the WIPO, it is stated: "Communicaiton of a work to the public is the making of the work available to the public through means other than distributing copies." The whole process which is needed and which leads to the making available the work to the public is communication and the work shall be considered communicated even if no member of the public actually receives or listens to the work. But how do you prove it? That is why I said the latter part of this, "regardless or whether any member of the public actually sees, hears or otherwise enjoys the works so made available" is necessary. But if you add to the latter portion, the former position is inconsistent. In the first portion you say that it should be capable of being seen or heard or otherwise enjoyed by the public, in the latter part you are saying "regardless of whether any member of the public actually sees, hears or otherwise enjoys". For the earlier question you have to find out whether a person has seen it or not. By the earlier one you have to prove that somebody else has seen it and a communication is necessary.

DR. NAUNIHAL SINGH: There is a contradiction here. If you say, the former position is to be omitted...

SHRI S. RAMAIAH: If the former position is to be retained, it is obligatory to prove whether somebody has seen it or not.

DR. NAUNIHAL SINGH: It is much better rather than a blind insertion of the latter position.

SHRI S. RAMAIAH: The earlier portion is making any work available to the public. It is already there. That alone can take care of it

DR. NAUNIHAL SINGH: 'Available' means something different from 'seen or heard'.

SHRI S. RAMAIAH: If it is made available to the public, it can be either seeing or somebody seeing it, which is qualified.

DR. NAUNIHAL SINGH: I think it is much better. But the latter portion, I think, is redundant and you say, it should be removed.

SHRI E. AHAMED: The latter portion is unnecessary. The former portion is very important.

SHRI S. RAMAIAH: It is a question of subjective satisfaction.

SHRI E. AHAMED: Without adducing the evidence, how can a man be guilty of the offence? It is giving more arms to the Executive. It is not correct. When a man is brought to the court of law and charged with the offence, it is the duty of the prosecution to prove that he has committed an offence.

DR. NAUNIHAL SINGH: It becomes a blind law which is unjustifiable.

MR. CHAIRMAN: You have further suggested that "place of residence including residential rooms of any hotel or hostel shall be deemed to be communication to the public." This Explanation is not satisfactory and there should be simply 'room' which should serve the purpose.

SHRI S. RAMAIAH: "Place of residence including residential rooms" is enough. Secondly, even without any residential room it brings out the objective.

DR. NAUNIHAL SINGH: What about the open house?

SHRI S. RAMAIAH: It is a communication. I am not saying that open house should not be covered. You say, 'open house' also should be included. My point is 'residential rooms'. That has already covered the explanation.

MR. CHAIRMAN: In the Explanation it has been suggested that residential rooms should be there. He is asking 'why residential room'? It should be only "rooms". Why not a dining hall or a lobby? That is not a residential room.

SHRI S. RAMAIAH: That is not prevented. I am only suggesting the omission of "residential rooms". It does not mean that the communication

to the public in an open room is not a communication.

MR. CHAIRMAN: Would the Department like to enlighten us on this? Why it should be restricted to this?

SHRI S. RAMAIAH: Even without "residential rooms" we can include everything. My point is being misunderstood. I am not saying that communication in a wide open space is not a communication. This occurs in the Explanation. In the main definition, 'communication' is clear. The explanation is only to make it clear. For instance. There is a cable television which is shown in the room of a hotel. For that also the explanation is provided here. In their anxiety to make it more clear they suggested "residential rooms". My suggestion will not go against the objective.

DR. NAUNIHAL SINGH: I agree with the first part of your suggestion. The expression "rooms of any hotel or hostel" is not proper.

MR. CHAIRMAN: Why should we restrict ourselves to "rooms" only? As he has suggested, if you keep "hotel or hostel", that is sufficient.

DR. NAUNIHAL SINGH: It should be open. We should not restrict it to any room.

SHRI SINHA (*Additional Secretary, HRD*): The earlier Act did not provide for this. There were some instances where communication from the cable network through room was sought to be treated as private communication and it was not liable to infringement of copyright. That was the stand taken by some of these people. Of course, there were court decisions in favour of what is now being said in the amendment Bill. In the Bill we wanted to make it more clear. The idea is, wherever people play that should be taken care of as communication to the public through the cable and other network. It is a matter of interpretation whether privacy content should be added or not.

SHRI RAMAIAH: In any part of the hotel, if it is communicated, it is communication to the public and the offence will come. That is why, I said, "residential room" is not necessary.

DR. NAUNIHAL SINGH: You are restricting if only to the rooms of hotel. Why do we not extend to open space?

SHRI RAMAIAH: It is already convered by the main definition. It is only explanation.

MR. CHAIRMAN: In clause 3, you have mentioned about sufficient quantities. To declare whether such issue or communication to the public is of an insignificant nature, it is felt, that the definition should include the attribute of making available to public the copies in sufficient quantities.

SHRI RAMAIAH: By this provision, you have cast an obligation on the Copyright Board to look into the matter whether actually sufficient

quantities were made availble to the public depending on each work. Whereas in the actual publication, it is not required. By mere publication of one copy, it is published. So, unless you specifically mention in the definition itself, the Copyright Board cannot go into that question. It must be of adequate quantity and sufficient to meet the requirement of the public.

MR. CHAIRMAN: I think, it may differ from one particular work to another.

SHRI RAMAIAH: That is why, it has been given to the Copyright Board. But unless there is provision in the law, how can they do?

SHRI SINHA *(Additional Secretary, HRD):* I wanted to say why we have omitted "sufficient quantity" here. Although copyright Board would adjudicate as to whether something has been communicated or not, in the technological transformation, any work which is stored in a computer system which is subject to retrieval by various people, it would tantamount to publication. There can be one work which could be beamed through satellite system the world over. That could be communication to the public. Therefore, the number of copies is a matter which varies from case to case. That is why, we did not bring in that element.

SHRI RAMAIAH: How could you ask the Copyright Board to do this, when they do not have the power? It is not mentioned in the definition.

SHRI SINHA: They will have to adjudicate as to what is communication to the public.

SHRI RAMAIAH: The Board has been given the duty and obligation to give a decision in a particular case that publication is not adequate because the issue of number of copies is not sufficient. To give such a decision, you should give authority in section 8. Even WIPO has mentioned like this.

DR. R.K. PODDAR: It is not only quantity but for what purpose it is being done should be considered. It may be for not profitable purpose like education. In a college or University, sometimes one chapter is xeroxed and given to the students.

SHRI RAMAIAH: In the existing section 8 itself, it is made clear. In the case of literary, dramatic or musical work, the issue of copies of the work, either in whole or in part, to the public in a manner sufficient to satisfy the reasonable requirements of the public having regard to the nature of the work, would mean publication. Unless you provide this, you cannot ask the Copyright Board to determine whether the publication has been proper or not.

DR. R.K. PODDAR: We can also define the nature of work.

MR. CHAIRMAN: I have got your point.

SHRI SINHA: *(Addl. Secy, Law Miny.):* I only mention the report. The term 'publish' means that copies of the work have been made available to the public provided that the copies have been such as to satisfy the

reasonable requirement of the public having regard to the nature of the work.

SHRI UNNI *(Addle. Secy, Law Miny.):* For same reason, publication has been defined separately in Section 3. We did not put any additional thing in it. We only confine a definition to the concept. In Section 3, this concept is made use of for certain purposes. That has come in Section 3 and the powers of the Copyright Board are provided in the proviso. In Section 3 itself, if you provide "Copyright Board will take action", it may not be a definition.

SHRI S. RAMAIAH: I do not say that. There is a difference between adding a term in the definition Clause and including it as a substantive provision. Here publication is a substantive provision. That is why, they have not included it in the definition clause. If you include in the definition of publication in the definition Section, it has no meaning. But Section 3 is a substantive provision which has to be gone through by a Copyright Board.

That is why, it has been included in Section 3 and not in the definition clause.

I am not saying that Copyright Board should be authorised to do work of Section 3. Section 3 has to be strengthened and amplified to say that this is made available in sufficient quantities to the public. Then it is only publication. I want to include the scope of publication. I am not saying that Copyright Board has to decide under Section 3. What you have mentioned are Copyright Board's duties in Section 3. It is all right. You should amplify Section 3 so that Copyright Board will know what it has to do when the question arises.

SHRI SINHA: In Section 6, it is stated that the Copyright Board to take a final decision whether it is a publication or not. The model law also stipulates that in so far as a work is stored in a computer system and if it is based on retrieval system, it amounts to publication. That need be only one copy. If we mention sufficient number of copies in the definition in Section 3 itself, then it would not take care of this aspect.

SHRI S. RAMAIAH: For that the answer would be to include computer rather than saying everything else. You add that also here. You say a work is considered to be published if it is stored in a computer system and is made available to the public by any retrieval means. You add that there. You have to specifically authorise the Copyright board to decide that question.

Clause 6

MR. CHAIRMAN: You have stated that it should be specified. The Chairman of the Copyright Board should be a Member of the Bench. It has not been clearly stated in the proposed amendment.

SHRI S. RAMAIAH: The Copyright board is authorised to hear any case by Bench. If the Chairman is not a Member of the Bench what

will happen? He will constitute a Bench of which he is also a Member. Then only he can decide.

SHRI SINHA: You can look at the earlier Act. Section 12 (3) proviso 1 says:

> "Provided where there is no such majority, if Chairman was one of the Members who heard the matter, the opinion of the Chairman shall prevail. If the Chairman was not one of the Members who heard the matter, the matter shall be referred to him for his opinion and that opinion shall prevail."-

SHRI S. RAMAIAH: You include that. I have no objection.

SHRI SINHA: Whether he is Member or he is not Member, his opinion prevails. That is what has been included. We are saying in the new Act that where there is no majority, the opinion of the Chairman should prevail. If he is not a Member, automatically a reference has to be made to him. You have to put the case to him. We are trying to cover both the provisions of the earlier Act into one.

SHRI S. RAMAIAH: Why are you shy of making a reference to the Board? If a case is reffered to him for his opinion, how will he form his opinion without a hearing will he go through the papers and give his decision.

SHRI E. AHAMED: We will discuss it later. He has given his views. Secretary also explained the position. I fully agree with the Secretary's view in this matter. So, we will decide it later.

MR. CHAIRMAN: We will form our opinion and we will give our opinion later on.

Clause 8

MR. CHAIRMAN: Clause 8 (3): As regards rights, you feel that it is too much. Therefore, this new sub-Section should be omitted. You feel that the stipulation which envisages that the assignment shall be deemed to have lapsed, if the assignee does not exercise any of the rights as specified in the assignment within a period of one year, is also farfetched and the period is too short for many purposes. It appears from the proposed amendments generally that the rights are being stated. In exceptional cases, it is not being done. What is your explanation about it?

SHRI S. RAMAIAH: My only point is one year is too short a period. The whole assignment is valid for a year. The Copyright Board can revoke the assignment only after a period of five years. In the proviso, you can make it for five years.

MR. CHAIRMAN: What should be the reasonable time?

SHRI S. RAMAIAH: Five years is a reasonable time. You may not be able to take any action for putting all the assignments within one year. Even in respect of any other place elsewhere, where assignment is given

for translation reasonable period of five years or three years is given. As a copyright owner, you can assign many rights. If I write a book, I can give to one publication in English. I can give for translation to some other person and to a third person, I can give to a cinematic person to produce a film. Supposing in one assignment I had not indicated this, do you mean to say I lose all the rights? It does not mean anything.

MR. CHAIRMAN: You please see Section 19 (2). In general cases, rights and everything have been assigned.

SHRI S. RAMAIAH: No copyright owner will assign all the rights. He will assign one of the rights.

MR. CHAIRMAN: But what about Section 19 (3)?

SHRI S. RAMAIAH: But that provision is not there in the existing Act. This is a new provision. Sub-section (2) should specifically mention about what are the rights which are proposed to be assigned. If the rights assigned are not made clear, you cannot say that all the rights are assigned. That is my limited point.

SHRI DINESHBHAI TRIVEDI: I also do feel that there is some import in this argument.

SHRI SINHA *(Additional Secretary):* We have re-drafted this particular Section 19 taking into account the conflicting interests of two groups whom we have already heard before this Committee, the authors and the publishers and we have to do a little bit of tight rope walking. In some cases we have leaned in favour of authors and in other cases we have leaned in favour of publishers so as to strike a harmonious balance between the two conflicting groups. When we say that nothing is mentioned in the assignment of rights, it means rights are not many. The word used here is 'presumption' and not that it is transferred automatically. What would be the presumption if nothing is mentioned? What parts would be transferred and what that presumption would tantamount to? Unless things take place within one year, it will lapse today.

SHRI E. AHAMED: That will create more difficulties.

SHRI S. RAMAIAH: Under the law there are two kinds of presumptions. One is rebuttable and the other one is the irrebuttable. If it goes to a court of law it will be struck down. I do not understand about the object of such a drastic thing.

DR. R.K. PODDAR: All the rights should be specified.

MR. CHAIRMAN: I also feel that this has not been specified. If it is not done, then it will be very difficult to reach certain conclusions. How should we mention it?

SHRI S. RAMAIAH: You have only to say that assignment is invalid. Under the provisions you are now saying that assignment is not valid

unless it is specific. It means, if it is not specific assignment is invalid.

SHRI A.C.C. UNNI: Another important consideration which weighed with us while putting this was that we are certainly giving the owner of the copyright the right to transfer his right. While doing so, he will know what he is doing. The only provision we have put is, he will specify about the assignments. If it does not do so, it is not a workable proposition. It means a person who is assigning his rights should specify what his intentions are at the beginning itself. Unless he specifies he gets the presumption that he has transferred all the rights so that it is properly administered. It does not bar him also to reformulate his assignment and rights within one year.

SHRI DINESHBHAI TRIVEDI: One premise is that publishers are a little more organised than the authors. Many a time, authors may not be technically so sound as to know about the rights which are there. It is because of sheer lack of knowledge. We have got to specify the rights in this case.

SHRI S. RAMAIAH: Even otherwise, if specific conditions are not included, leave it as it is.

DR. NAUNIHAL SINGH: It is surprising that the representative of the Law Ministry is using the word 'presumption'. We are interested that it should be specifically mentioned.

SHRI S. RAMAIAH: The very argument that you have asked him to specify is enough to indicate that various rights should be assigned. Rights should be specified.

SHRI E. AHAMED: The Committee cannot say what should be presumed by the Board and make a provision for presumption. We are now making some law with specific provisions. Why should we presume anything? That is not correct.

MR. CHAIRMAN: Okay, we will see this while finalising the issue.

Shri Ramaiah, we appreciate that you have done a lot of work on this Bill and the proposed amendments. The Committee has really got many things new from you. Your expert opinion also will be very useful. I think we will write for a couple of more meetings with you because you have given us a very big memorandum. The date of the next meeting will be finalised later, keeping in view the availability of the meeting vanue and all that probably it will be in the first week of February. Kindly make it convenient to attend the meeting. Thank you.

SHRI S. RAMAIAH: I am in the hands of the Committee Sir.

(The Committee then adjourned.)

JOINT COMMITTEE ON THE COPYRIGHT (SECOND AMENDMENT) BILL, 1992

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE COPYRIGHT (SECOND AMENDMENT) BILL, 1992

(Wednesday, the 10th February, 1993 from 1500 hours to 1700 hours Committee Room 'C', Parliament House Annexe, New Delhi)

PRESENT

Shri Syed Sibtey Razi—*Chairman*

MEMBERS

Lok Sabha

2. Shri Anand Ahirwar
3. Dr. F. Azam
4. Smt. Dil Kumari Bhandari
5. Shri Gurcharan Singh Dadhahoor
6. Shri Sharad Dighe
7. Shri M. Krishnaswamy
8. Shri V. Dhananjaya Kumar
9. Shri Birsingh Mahato
10. Shri Rupchand Pal
11. Shri Rameshwar Patidar
12. Shri Bhagwan Shankar Rawat
13. Shri P.C. Thomas

Rajya Sabha

14. Dr. Naunihal Singh
15. Shri Mohammed Afzal *alias* Meem Afzal
16. Shri Dineshbhai Trivedi
17. Dr. R.K. Poddar
18. Shri Vishvjit P. Singh
19. Shri Madan Bhatia
20. Shri B.K. Hariprasad
21. Shri Subramanian Swamy

SECRETARIAT

1. Shri R.K. Chatterjee — *Deputy Secretary*
2. Shri Ram Autar Ram — *Under Secretary*

REPRESENTATIVES OF THE MINISTRY OF HUMAN RESOURCE DEVELOPMENT (DEPTT. OF EDUCATION)

1. Shri R.K. Sinha — *Additional Secretary*
2. Shri M.P.M. Kutty — *Director*

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

1. Shri Raghbir Singh — *Joint Secretary and Legislative Counsel*
2. Shri S.P. Kanwal — *Deputy Legislative Counsel*

WITNESSES EXAMINED

Indian Federation Against Software Theft, Bombay

Spokesmen:

1. Shri K.V.H. Padmanabhan, Chief Executive
2. Shri Shirish B. Patel, Chairman
3. Shri J. Sagar

MR. CHAIRMAN: The memoranda which were received by us and the comments from the Ministry, which were not received earlier have been received. Memorandum No. 33 and 41 have been circulated to you. I would also like to bring to the notice of the hon. Members that we have fixed meetings on 24th and 25th also when we will hear the evidence of Shri S. Ramaiah. We will be meeting at 3.00 P.M. and I request all of you to attend these two meetings also.

MR. CHAIRMAN: Before you start, I may point out that in accordance with the provisions contained in Direction 58 of the Directions by the Speaker, your evidence shall be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence given by you should be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

(The witnesses were called in and they took their seats)

MR. CHAIRMAN: You may circulate it along with the other note. Last time we discussed at length certain points in general and few of the suggestions given by you about the particular sections. We reached upto Section 30—A. We would like to have further understanding of your suggestions.

SHRI S.B. PATEL: The question last time asked was, whether the copyright owner should have the right to use all his softwares. It does not matter very much. We can drop this particular provision, if you like but I think if you are saying that unauthorised use is an offence then the right to use must be something which vests in the Copyright owner.

MR. CHAIRMAN: We switch over to Section 33 (1).

What have you to say about Section 33(1)?

SHRI S. B. PATEL: No one should be compelled to become a member of the Copyright Society. Every one should be independent to have his own business.

SHRI MADAN BHATIA: Whether the Central Government should have these powers or not.

SHRI S. B. PATEL: There is no harm in having these powers.

SHRI MADAN BHATIA: What is your reaction to the Central Government being given these powers to suspend registration of the society?

DR. K. V. H. PADMANABHAN: Any cooperative society is likely to be abused or mismanaged. We do not see any particular disadvantage in it. There is a possibility of any group of people going wrong. There should be a provision for correction. We do not object to that.

DR. NAUNIHAL SINGH: Why do you insist that everybody should become a member of the society?

SHRI S. B. PATEL: I feel that an individual should not be obliged to be a member of the society, if he feels he can conduct his business independent of the society.

DR. NAUNIHAL SINGH: Then there is no need of the Government.

SHRI S. B. PATEL: There is no society which undertakes this on behalf of the industry as a whole.

MR. CHAIRMAN: Have you gone through Section 33(1)?

SHRI S. B. PATEL: It is not clear from this; we are only clarifying it.

HON. OFFICIAL (*Ministry*): It is not necessary for every individual to become compulsorily a member of the Copyright Society; it is optional. But if he chooses to become a member of the Copyright Society, then he will have to conform to the rules and regulations.

SHRI S. B. PATEL: If that is the interpretation, I have nothing to say.

SHRI MADAN BHATIA: So far as Section 30 is concerned, it gives a right to the owner of the Society to give a licence. So far as Section 33(1) is cconcerned, it deals with a person who carries the business of giving a licence.When a person wants to carry on the business of giving a licence, then and then alone Secion 33(1) comes in.

SHRI S. B. PATEL: That is acceptable.

MR. CHAIRMAN: What have you to say about Section 52(1)?

SHRI S. B. PATEL: There is a typographical error. It is copies or adaptation.

As far as second modification is concerned, it is a mistake in the Bill; it is not a mistake in the amendment. In the next line, it should not be a computer programme by the lawful possessor but by the lawful user.

SHRI R. K. SINHA: Sir, on this question of computer programme, the question of use or authorship has always been in dispute. According to the Berne Convention it is the person who creates the author. His rights are to be protected and not the person who uses that. So one is to come within the ambit of Berne Convention. Use is not the right to be protected. The manner in which the use is to be protected is through the process of reproduction rights. This question has been debated all over the world in various countries and it has now generally been accepted that the element of use is covered by a reproduction right and the question of right as it has been given in the Berne Convention is the one that should be protected. If one is to follow the Berne Convention strictly then we cannot use that word use. We are trying to protect it through the reproduction rights.

SHRI JYOTI SAGAR: What we have proposed in line with the existing practice is when we grant a licence in copyright we grant a licence to use. So here possessor is used as a person. Somebody who has possession of that particular programme and what we are saying is that it should be in the line as a licensed user. So we have actually to see how it is on the concept or contrary to the Berne Convention, whether it should be possessor or user.

SHRI RUPCHAND PAL: I think user is a term in computerware which is used in such cases, a most appropriate term.

SHRI R. K. SINHA: The use of it can also be covered under the Rental Rights. That part is being taken care of.

SHRI S. B. PATEL: We are not adament of this issue. We are taking the user as a correct term.

SHRI DINESH BHAI TRIVEDI: Just to clarify this particular point, please make me understand, is it that supposing I buy a particular software programme, that I become the owner of that programme and it means I have a very limited use for that and that would depend on what kind of agreement we have. Am I right?

SHRI S. B. PATEL: Yes, one would be having a licence to use the programme.

SHRI DINESH BHAI TRIVEDI: But you see in India what happens when we pick up a software, there are no agreements, no understanding, at the best within that software package you could have some sort of insertion. If that is so then is that what you call a licence?

I am saying this because there are no agreements etc. for that.

SHRI S. B. PATEL: The American system is that they have a printed licence which is on the software and the whole thing is shrink-wrapped in

clear plastic. So through the plastic you can read the warning and it is like "please read this licence, if you do not accept the terms of licence please return this package unopened but if you open the package you are deemed to have accepted the licence." Under Indian conditions we may require the user to sign. You will be asked to sign before you buy the software.

SHRI DINESH BHAI TRIVEDI: This would become a complicated thing.

SHRI VISHVJIT P. SINGH: This is exactly the system which is followed everywhere and not only in America. Whenever you buy a software if you buy it in India you will read on the floppy that you are bound by the terms.The licence is enforceable by law and the laws which exist within various countries and even in the USA itself the amount of software misuse that takes place is unimaginabale. They have not been able to enforce it. If you are talking in terms of enforcing you can only catch people when you find them doing something wrong. In actual effect people will do it in any case because software theft cannot be prevented and it is like lending a book.

Similarly as far as computer software is concerned it is impossible. We have raids here where I know there is a book. I have even bought a book giving details of software which is available and it is openly published and you know exactly how many floppies are there. They charge you the money for the manual and floppy separately and that is when you are keeping openly pirated software. People are scared of viruses so they go for original floppy. So how can you get undertaking in writing?

SHRI S. B. PATEL: The piracy rate differs in various countries. In America the piracy may be of 30 per cent. It India it is 98 or 99 per cent. That is a significant difference.

SHRI VISHVJIT P. SINGH: And the other difference is the same software which is available for 20 dollars abroad is available for Rs. 10,000 here. That is very much a part of the term. When I want to buy a software, I do not buy it in India because I find it difficult to buy here.

SHRI S. B. PATEL: That is a fact because customs duty is there on that.

SHRI VISHVJIT P. SINGH: It is not the customs duty. Take Exel or Windows from America, this time it was on discount and I bought it from them. But we have to pay duty here for the same programme.

SHRI S. B. PATEL: May I say Mr. Chairman that amending the copyright is only a part of the whole thing. We are well aware that amendment laws are not enough and that the price of software is exorbitant. I think the Indian industry stands to gain by having world software at reasonable prices because that will be helpful in checking piracy too.

SHRI VISHVJIT P. SINGH: What you charge the American companies in terms of rupees is nominal and what you charge the Indian consumer is fantastic for the same software.

SHRI DINESH BHAI TRIVEDI: If remember last time, please correct me if I am wrong, you did mention that the Government itself is one of the violators, the Department of Electronics or I do not remember which Department you had mentioned. What is the best way to stop piracy? What suggestions could you give on that right?

SHRI S. B. PATEL: We have incorporated these suggestions in these amendments to the Copyright Act.

SHRI DINESHBHAI TRIVEDI: It is not only that the implementation part is more important. We have got to be strict in enforcing the implementation.

SHRI S. B. PATEL: That is true.

DR. K. V. H. PADMANABHAN: Mr. Chairman, I fully concede the points made here. One of the demands which we have made is to create a deterrent. It is not in the Act now. The very fact that there is a deterrent punishment plus the threat of being held in jail would itself deter the people who are likely to violate the rules. Even individuals in the Government may consciously or unconsciously be violating and using illegal copies supplied to them. The aim of this Act is, it is presumed, that at least it is quite conceivable to have the infrastructure needed for this. Even in the Western countries the violation is only 25 to 30 per cent. Even if we can reach to the present level from 90 per cent, we would have done much better. Even in the Indian conditions, the industry has been spending time and energy to produce the software, but what is done abroad may not be really applicable to Indian conditions. It is our hope. I do not think that we can reduce it to 10 per cent. Because there are always the people who will try to take it backward. But it is hoped that people—who are in majority—who are maintaining high standards know about the pirated software and I think they will immediately cleanse their computers.

SHRI JYOTI SAGAR: I think instead of the Government doing it, now the public must be made aware that this is something literally anti-social, it is as bad as illicit weapons or illicit drugs. Normally from the Indian perspective, when we are looking at software exhibits as those costing one billion dollars, we cannot achieve any uniformity unless we have a very very strict law here. The industry is able to develop because today, Exel, as the hon. Member has mentioned as an example, does not turn out to be as good as it should be. In fact, the Indian industry is aware of Exel and they go in for it. That has to be stopped. We cannot solve our problem. Even if our software is available, there are still problems.

MR. CHAIRMAN: But adequete protection has been provided in the Act against piracy. Do you think that it is not sufficient?

SHRI JYOTI SAGAR: I will take you through some of the cases that we have mentioned. I think the hon. member has mentioned that a raid had taken place in the last year or so. Some premises were raided in March 1991 in June 1991 and again a third raid had taken place in January 1993. He is still active. He is actually putting out a catalogue. He promises to supply the copies if the software is available. The *modus operandi* is he takes the original and asks us to come at five o'clock in the evening. When we go there it is there in a brown package. The problem is that we have to see the linkages with the local system. In the case of March 1991 no significant developments have taken place. Nothing happened. Not even one single effective direction has gone through. In that scenario we are keeping the copyright as it was 10 or 15 years ago. We are trying to get it strengthened and a number of users find that there are so many illegal things going on. They should be aware that the people who are indulging in these things are doing something which is wrong. The users have to be told about this.

MR. CHAIRMAN: The amendments are there. It might have to be done according to the due process of law.

SHRI JYOTI SAGAR: We are suggesting, under Section 63, the amendment may be made for stringent punishment. We are trying to suggest that people who use and possess illegal copies of floppies may be punished but for business, that should be an exception.

MR. CHAIRMAN: That is understood. We know that.

DR. K. V. H. PADMANABHAN: I just would like to add one thing. We are also talking to the Department of Electronics, and also Department of Human Resource Development for excepting all such cases for ascertaining all such transactions and special categories. That matter is being dealt with by the Ministry. If there is any delay in the judicial process the purpose will be defeated.

SHRI VISHVJIT P. SINGH: I think this is provided in the proviso to Clause 63C which says:

> "Provided that where the computer programme has not been used for gain or in the course of trade or business, the court may, for adequate and special reasons to be mentioned in the judgment, not impose any sentence of imprisonment and may impose a fine which may extend to fifty thousand rupees."
>
> This is because, on the one hand you want to provide a deterrent punishment and on the other hand you want to find a way out. This matter will put an end to the question whether this was used for gain or not.

DR. K. V. H. PADMANABHAN: We have two situations. One is when the rights of the copyright holder are to be protected from violations. The other is when we do not have such powers as to disturb the innocent people or innocent usage. This is a recent development. Our suggestion is that if a professor is using it for his research it may be an exception. Somebody using it in his business premises for commercial

purposes must be differentiated from a professor using it for research purposes.

SHRI VISHVJIT P. SINGH: I do not think that it is mentioned in terms of business premises. That would make things more complicated.

SHRI S. B. PATEL: I think it is known that in the business premises programmes the loss of software takes place as it is generally done in office-cum-residences. It is not an unknown problem. On the other hand we have to protect this from the misuse of the apparatus. Use of software where the users are known the Government should make efforts to reach the users. To what use it is put is a different matter. The danger of misuse is always there. I think, protection from misuse has some substance.

SHRI RUPCHAND PAL: I think, "someone using it for profit" should be a better expression.

SHRI S. B. PATEL: That can be better.

DR. K. V. H. PADMANABHAN: Let us make it a condition that a company can use it for gain, if it is for business.

SHRI VISHVJIT P. SINGH: There is just a proof that it has nothing to do with business. Here is somebody who is using software for purposes of accounting. But he says 'my business activity is not accounting.'

SHRI JYOTI SAGAR: I think the hon. Member is right.

SHRI VISHVJIT P. SINGH: If you really want to bring out this tendency, you have to re-word it. The moment you say this, then this will be misused.

SHRI R. K. SINHA: The proviso clarifies thus:

> "Provided the court may, for adequate and special reasons mentioned in the Judgment impose a sentence of imprisonment for a term of less than 6 months or a fine of less than Rs. 15000."

This is Section 63 of the Earlier Copyright Act. We found that as a result of this provision in many of the cases, shall I say in most of the cases, offenders have been let off with a very insignificant fine. So, in order to restrict the discretion of the court to bring it down further, we have added this. We also did not want to unnecessarily penalise the innocent offender and that is why we said that it should be linked to profit or gain. Then only the punishment would be less.

SHRI S. B. PATEL: I think we support that.

MR. CHAIRMAN: Now we proceed to Section 53A on page 16 where it says:

> "(1) In the case of resale for a price exceeding ten thousand rupees, of the original copy of a painting, sculpture or drawing, or of the original manuscript of a literary or dramatic work or musical work, the author of such work if he was the first owner of rights under Section 17 or his legal heirs shall, notwithstanding any assignment of copyright in such work, have a right to share in the

resale price of such original copy or manuscript in accordance with the provisions of this section:

Provided that such right shall cease to exist on the expiration of the term of copyright in the work."

DR. K. V. H. PADMANABHAN: This is purely grammatical. It should be "original".

MR. CHAIRMAN: In every case you said that the original copy should be there. I think you mean that original version should be there.

SHRI R. K. SINHA: There is no other reason why we have used the word "copy" there. Original may also imply the same thing, but we wanted it to be more explicit.

DR. K. V. H. PADMANABHAN: 'Original' has got some significance. The word 'copy' can be misinterpreted to mean that a copy has also been made. For that purpose we want to avoid the word "copy". It is purely grammatical.

SHRI VISHVJIT P. SINGH: We can take a view on this.

MR. CHAIRMAN: Now we go to Chapter V of the Act. It is Section 22.

DR. K. V. H. PADMANABHAN: The present term is 60 years. Since there are other issues raised by the Government that there should be some uniformity to the world Conventional laws. We have no objection to withdraw it. We are satisfied with 60 years, though it has become obsolete now.

MR. CHAIRMAN: You have submitted Memorandum No. 3. There has been some repetition of the same thing which you have already stated in your previous memoranda. So, we are not taking it up. But the general observation which you have made in Memorandum No. 3, I think, is some improvement.

SHRI S. B. PATEL: It is internationally accepted. It is not American.

DR. NAUNIHAL SINGH: When you speak, actually the pronunciation is such and the sound is same. So, why do you change the whole garb of it?

SHRI S. B. PATEL: We don't mind. Only India will be using a different spelling.

MR. CHAIRMAN: Now, we come to Chapter VII, Section 33.

DR. K. V. H. PADMANANBHAN: We have finished it.

MR. CHAIRMAN: Now let us come to Section 66C. This also has been just covered providing for a minimum punishment of one month's imprisonment. Do you feel that the minimum sentence of imprisonment is too much? The message is to be put across to the public that we are

serious in arresting persons indulging in software theft. But you want to say that the minimum punishemt should be three days' imprisonment.

SHRI S. B. PATEL: The minimum punishment of one month imprisonment is so severe that the Judge will not convict the person. Software piracy has been so rampant in India that no Judge is going to feel that putting the Chairman of a Corporation in jail for one month is a deserving sentence. In fact, we were asking for 24 hours in jail because it is enough deterrent. The Judge has no power to reduce that. That minimum sentence should be 24 hours in jail and that we feel is a sufficient deterrent.

SHRI VISHVJIT P. SINGH: There is a company which has 20 computers and it has to buy 20 copies of the same software. But, they buy one copy and make copies for other computers. So, how do you treat that?

SHRI JYOTI SAGAR: Under the existing law, it is an offence because it is a reprodуction and back-up copy is defined in a different way.

SHRI VISHVJIT P. SINGH: How do you identify the copy as a back-up copy?

DR. K. V. H. PADMANABHAN: The industry has given a way out for this sort of a situation. There is a thing called 'site licensing'. When you are given site licensing, it is permitted to use it on a multiple number of units in the same site and not in a different site. This is already existing in India.

SHRI S. B. PATEL: It is in practice. We have recently bought software from a company and they have permitted us to use it in 30 computers.

MR. CHAIRMAN: So, you want that the minimum term of punishment should be reduced.

DR. K. V. H. PADMANABHAN: We would like the word '24 hours' to be introduced.

SHRI S. B. PATEL: Actually we are going after the Chairman of a Corporation or the Chief Executive. He will be embarrassed enough even by 30 minutes' detention. But, if it is one month, my apprehension is, we will not find a Judge who will put a Head of the Department in jail for one month.

MR. CHAIRMAN: We will consider that suggestion.

Then, section 64 says:

> "Any police officer, not below the rank of a sub-inspector, may, if he is satisfied that an offence under Section 63C in respect of the infringement of copyright in any work has been, is being, or is likely to be, committed, seize without warrant, all copies of the work, and all plates used for the purpose of making infringing copies of work, wherever found, and all copies and plates so seized shall, as soon as practicable, be produced before a Magistrate."

SHRI JYOTI SAGAR: There are two suggestions. We would like to add Section 63 or 63C, because 63C is creating a separate offence. That must be added here, because otherwise the police will have no power. Section 63 today refers to an infringing copy, but legal copy is not an infringing copy. That is the distinction.

SHRI VISHVJIT P. SINGH: The words, 'or is likely to be' will open up a major Pandora's box.

SHRI JYOTI SAGAR: At the moment, it says the police may seize all the plates. Now, there is no use of plates.

MR. CHAIRMAN: We will look into that.

SHRI DINESHBHAI TRIVEDI: Initially we had some discussion on this particular point that we must ensure that this does not become a point of harassment to the innocent people. So, we have got to ensure some sort of a safeguard.

DR. NAUNIHAL SINGH: The words 'is likely to be' will create a lot of problems.

SHRI R.K. SINHA: The reason why we left it unchanged is, the words 'likely to be' would be relevant only where there are evidences like the commision of an offence. There is a mechanism by which the books can be printed and things like that. What I am trying to say is 'is likely' also to be proved that an offence is going to be committed. When the police officer gets a tip off, it is not only he arrives when the actual act has been committed or is being committed, but there is enough evidence to prove that the act is likely to be committed.

SHRI RUPCHAND PAL: Such a provision is frequently misued by the implementing authority. "Is likely" provision is a dangerous provision and bad in law.

SHRI MADAN BHATIA: The idea of "is likely to be" is this. Suppose there is a work and some publisher or printer prints copies of that particular work. The infringement will come actually when it is distributed. But when he is printing that particular work, he is doing for the purpose of distribution. Simply printing will not constitute offence. But the object of this provision "is likely" is to give pre-emptive power to the police for the purpose of nipping the evil in the bud.

MR. CHAIRMAN: When the offence is being committed or already committed, then the law enforcing agency could come into action.

SHRI RUPCHAND PAL: It is the subjective interpretation. The provision of "is likely" may have such a subjective interpretation that it may lead to infringement in the fundamental rights of the people.

"In respect of the infringement of copyright in any work has been, is being" up to this, it is all right.

SHRI MADAN BHATIA: Whenever there is power of search given to the police "is likely" is always there.

DR. RAGHBIR SINGH: I think, this particular thing "is likely" is in total conformity with the criminal jurisprudence in this country. There are provisions in the Cr. P.C. also when there is "apprehension" also, police can take action.

SHRI VISHVJIT P. SINGH: I have got original software in my house or in my business premises. I have a large number of copies which I have made for my future use and not for distribution. But, it can be wrongly interpreted and said, "you are going to distribute them."

MR. CHAIRMAN: It is all right. When we are going to the clause-by clause examination, we will look into it.

You have suggested that there should be definition of magnetic or optical disc, tapes or other such media which should be added at the end of section 2 of the Act. I think it is a general definition which covers this also.

SHRI S.B. PATEL: It is merely to remove any ambiguity. If it covers these things then it is all right.

MR. CHAIRMAN: Do you think there is any need to provide definition about computer generated work in the Bill; if so, who will be the author of computer generated work using artificial intelligence self-promoting agency?

SHRI S.B. PATEL: We have no comment on this.

I think, this applies to computer generated music, computer generated drawings. This has nothing to do with our computer generated drawings. Those are the results of use of software. A person who uses software to produce this kind of work may want this work to be protected. It is the end-product that one produces. Regarding that we have nothing to say.

MR. CHAIRMAN: Is there any possibility of computer programme being sold or given or hired by middlemen other than the author for use by customers? If so, whether it has to be protected?

SHRI S.B. PATEL: That will automatically be protected because the owner of the copyright will authorise merchant licensee to distribute the programme. There will be written agreement to that effect.

MR. CHAIRMAN: On behalf of the Committee, I thank you very much. You have enlightened us on very relevant points. You have been very helpful and your deliberations and information given to this Committee will be used while compiling our final report.

(The Committee then adjourned.)

JOINT COMMITTEE ON THE COPYRIGHT (SECOND AMENDMENT) BILL, 1992

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE COPYRIGHT (SECOND AMENDMENT) BILL, 1992

(Wednesday, the 24th February, 1993 from 1500 hours to 1720 hours Committee Room No. 62, Parliament House, New Delhi)

PRESENT

Shri Syed Sibtey Razi—*Chairman*

MEMBERS

Lok Sabha

2. Shri Probin Deka
3. Shri Sharad Dighe
4. Shri Shyam Lal Kamal
5. Kum. Padmasree Kudumula
6. Shri Bhagwan Shankar Rawat
7. Shri Kodakani Gowdana Shivappa

Rajya Sabha

8. Shri Dineshbhai Trivedi
9. Shri Vishvjit P. Singh
10. Shri Iqbal Singh

SECRETARIAT

1. Shri R.K. Chatterjee—*Deputy Secretary*
2. Shri Ram Autar Ram—*Under Secretary*

REPRESENTATIVES OF THE MINISTRY OF HUMAN RESOURCE DEVELOPMENT (DEPTT. OF EDUCATION)

Shri R.K. Sinha—*Additional Secretary*

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

1. Shri A.C.C. Unni—*Additional Secretary*
2. Shri Raghbir Singh—*Joint Secretary, Legislative Counsel*
3. Shri S.P. Kanwal—*Deputy Legislative Counsel*

WITNESS EXAMINED

Shri S. Ramaiah— *Advocate and Former Secretary, Government of India, Ministry of Law & Justice.*

(The witness was called in and he took his seat.)

MR. CHAIRMAN: Before you start, I may point out that in accordance with the provisions contained in Direction 58 of the Directions by the Speaker, your evidence shall be treated as public and is liable to be

published, unless you specifically desire that all or any part of the evidence given by you should be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

Mr. Ramaiah, you are welcome to this sitting of the Committee.

We have reached upto Clause 10, Section 39(a). You have said in your memorandum that the proposed new provisions of Section 19 and Section 19(A) introduced by Clause 3 of the Bill will become applicable to licence as well as to the assignments. As licence and assignment are of different character, there will be difficulties in the application of this new Section 19(A). Would you like to explain it in detail?

SHRI S. RAMAIAH: Assignment is governed by Section 19; and licence is governed by Section 30.

There is a separate section for the issue of licences. Section 19(1), which has not been amended by the Bill, provides for the assignment of copyright by the assignor and it should be in writing. So, the provisions of section 19, are made applicable to licences. If so, he should exclude sub-section 1 of Section 19 as sub-section (1) of Section 19 and sub-section (1) of Section 30 are identical.

In Section 19(A), disputes with respect to assignment of copyright are provided. Licences are given in different conditions, if you see Section 30. Unless section 30 is also amended on the lines of the amendments you are proposing, to section 19 the application of sections 19 and 19A to licences as proposed Section 19A will not be identical.

SHRI R.K. SINHA: The way the logic has been developed, one can have no possible disagreement. The only thing that I would like to bring to the notice of the Committee is that the new section 30(A) says necessary adaptations or modifications. One can argue that these have not been spelt out. So, that should have been clarified. But those are things which can evolve.

SHRI S. RAMAIAH: The nature and character of assignment is different from licensing. When an assignment is made, the assigner ceases to have all the rights the work except moral rights. In the case of licence, the licence has been given only to exploit a particular right. Basically, there is a difference between assignment and licence.

The second thing is that under section 30, there is a very innocuous provision about licence that it should be written and signed, whereas under section 19, you have made so many provisions now. Strictly speaking, these are not applicable unless section 30 is also amended to that extent.

You also mentioned that this will be applicable to the future assignments whereas section 30A apparently means that it will apply to the existing licences and it will not be retrospective but for a future point of time. These are the difficulties which would arise if you make provisions in the section relating to assignments and licences also.

SHRI VISHVJIT P. SINGH: You feel that if that is not done, you will be in trouble?

SHRI S. RAMAIAH: What I was trying to say is that for the assignment, we have made certain detailed provisions. But in relation to licence, it is only a document which has to be signed by him or the authorised agent. So licence is a very restricted provision. Assignment is a detailed provision. In an assignment, the entire proprietory right of a copyright is given to the assignee.

SHRI VISHVJIT P. SINGH: I would refer to Clause 10 of the Bill.

"After section 30 of the principal Act, the following section shall be inserted, namely:—

> "30A. The provisions of sections 19 and 19A shall, with any necessary adaptations and modifications, apply in relation to licence under section 30 as they apply in relation to assignment of copyright in a work".

What you are trying to say is that assignment part has been well taken care of and the licence part is not taken care of. But this Clause takes care of that because it specifically mentions "shall with any necessary adaptations and modifications apply in relation to licence under section 30". Does this not satisfy you?

SHRI S. RAMAIAH: I will put a hypothetical instance. There are no guidelines for modifications and the Committee on Subordinate Legislation would object to it. In respect of assignment, the term is specifically mentioned that it should be for one year or so. In respect of licence, there is no specific period mentioned. The Copyright Board going into the various disputes in respect of licence could not be dealing with them and may say that no order of revocation shall be made within the period of the said assignment.

SHRI VISHVJIT P. SINGH: You cannot do that in the case of licence. This provision is very adequate. What more do you want? You want some kind of limitation on the rights of the licence, on the giver of the licence or

limitations of the holder of the licence. What is your objective here? Define your objective and then you can proceed.

SHRI S. RAMAIAH: The object would be provided by a separate section providing for licence also instead of having a section like that.

SHRI VISHVJIT P. SINGH: That is purely a question of framing. Let us not go into the question of framing now. What do you wish to achieve beyond the objective of framing because framing is a different issue all together? That is an issue on which you are saying that clauses as framed will not be acceptable legally, to the Committee on Subordinate Legislation. It will be subject to wider interpretations and will cause problems. The Committee's intention and the Government's intention is that this clause takes care of it. So, whose interest are you wanting to protect by accepting this?

SHRI S. RAMAIAH: Amendment to section 19 says:

> "The assignment of copyright in any work shall identify such work, and shall specify the rights assigned and the duration and territorial extent of such assignment."

Supposing we read 'Licence' instead of 'assignment', that is a substantial provision through this provision, Section 19(2) unless you specifically provide an amendment under Section 30.

SHRI VISHVJIT P. SINGH: We are going round the same thing. Again, you yourselves have admitted that there is a vast difference between licence and assignment because there is a difference. This clause very clearly say, "shall with necessary adaptations and modifications." Those adaptations and modifications will apply to the licence in question. When you talk of licence you talk in terms of specific time period. Accordingly that will apply.

SHRI S. RAMAIAH: I will frame my answer with your permission by asking a question; what about Sub-Sections (2) to (6) of Section 19 with respect to licence. These provisions are not applicable to the licence.

SHRI R.K. SINHA: The idea was whether it was licencing or giving assignment, this is the right vested with the holder of the copyright and he can, after seeing these provisions which relate to assignment, take it as guidance. If he wants to put these conditions, to whatever extent, he can put it in the licence. It is only intended to give some guideline. It was provided only with the intention of giving some guideline to the copyright.

SHRI S. RAMAIAH: Certain rights are provided in Sub-Section 2 to 6. Are they not substantive rights; should they not be specifically provided for in the licence? Without providing for these provisions, how can you provide for a dispute or decision with respect to these? You cannot provide for this right by reference.

SHRI M.P.M. KUTTY: Why don't you make corresponding amendments in Section 13 also?

SHRI S. RAMAIAH: Supposing the provisions of Section 19, Sub-sections (2) to (6) are made applicable to the issue of licences, then where is the point of dispute?

SHRI R.K. SINHA: All right we have got your point.

MR. CHAIRMAN: We now move on to Clause 11.

SHRI S. RAMAIAH: I will give my objection to the chapter instead of reading all these things. It will be easier.

As you know, this chapter provides for the establishment of Copyright societies or in other words, what we call as collective administration of authors' rights. All over the world, representatives of authors and owners of copyright from association of themselves to look after their interest. That is what we are proposing to do. We would not be able to work the basic structure of this chapter. First point is any person or association of persons can apply to carry on the business. Of course with reference to any particular right, because even in respect of a particular class of work dealt with under the Act, you can have so many assignments of right. So the Society or Association of Persons should indicate while asking for registration the right in respect of any work that they are going to undertake under the copyright Act.

Regarding the existing performing rights societies, I would mention that they are all provided in the existing law. They have been mentioned here and I quote: "Shall be deemed to be copyright societies". It has not been mentioned as to how long they shall be deemed to be so. It cannot be for an indefinite period. If the intention is that they would perform indefinitely under this Chapter, then would the conditions of registration apply to them also? Of course, you have provided for a saving Clause. This alone would not be sufficient. If you make the existing performing rights societies also performing societies under the new Chapter, it could only be a temporary affair. It should be made operational for a period. After the said period indicated in the law, they have to again apply to the Central Government for registration as a Society under the new Chapter. Then only there would be a uniformity with the existing performing society and the new performing society which you are proposing to form under the new provision.

I do not know how many performing societies are there at present. There could be so many. I do not know whether you have gone through Statutes or Articles or Memoranda governing those societies. They are all doing this. Because under the existing provision, the Central Government has given permission to those performing societies to do certain things. They have been asked to levy fees also. They will continue to do that. But if you make them come under the purview of the new provision, they should also be asked to get registered under the Act.

No person or association of persons is included under Section 33. I still do not understand what is meant by person or association of persons. It includes an artificial person like campanies or firms. If you have referred to the association of persons, then there is no necessity of referring to person there. Because one person cannot form a Society. It could be a group of persons. Under the Copyright's Act, the societies that you are going to register, can form a sort of cooperative society to look after the interest of the members constituting it. That should be specifically mentioned there.

The Association of persons would mean, where they are already registered or incorporated under any other law for the time being in force. Take the examples of societies or companies. They may or may not be having the legal status. Or they will have a legal status only after the registration is made. That is important. This should be done in order to have a regulatory provision for the societies.

SHRI R.K. SINHA: Regarding Association of persons, I would mention here that we have made only Association of Individuals. Regarding registration part, even if they are registered as a part of the society, they will not have the same right under the Copyright Act. Even if they are registered under some other Society for coming under the purview of this provision, they will have to get permission of Society for registration.

As regards existing society, we did not want to disturb it. We did not want to get themselves registered again. After these provisions come into force, of course, they will have to register again after five or six years. If it is required under the rules that they will have to renew it, then, they will have to do so. It does not exclude them from further provision or regulatory provisions under the Act. Initially, they are not asked to register again.

SHRI S. RAMAIAH: You cannot allow them to continue for a long time under this dispensation.

MR. CHAIRMAN: I want to have one clarification. How will you be able to estimate their status and standard?

SHRI R.K. SINHA: They are able to satisfy the demand of the owners. They will be a sort of leading organisations. Their status will be protected. We do not want to disturb them.

SHRI S. RAMAIAH: They are doing very well. Coming to the new dispensation, there may be some difficulty. When you are imposing control, then it will be difficult for them to continue.

SHRI R.K. SINHA: They are doing a good job. We should not try and put them to the rigour of getting a fresh registration. After all, they are

there and it is a question of recognising them for the purpose of amendment. There is no difficulty in asking them to register afresh.

SHRI S. RAMAIAH: By registration, you are not casting any obligation or doing something which you are not expected to do. Fees you have not provided; it is a omission. They are not losing anything.

SHRI R.K. SINHA: The effect that flow after registration have been recognised by stating that they would be deemed to have been registered. They do not stand to lose anything.

SHRI S. RAMAIAH: On the contrary, they would stand to gain. And you are conferring certain privileges.

SHRI R.K. SINHA: If the institutions of agents actually start operating here in a manner they are operating in the West, then what could happen? When an agent registers as a person and say, I would look after the copyright, what could happen there?

SHRI S. RAMAIAH: An agent cannot look after the interest of so many.

First of all a person under any law means an individual person and an artificial person, leaving alone that it will be one company. If it is individual person, he comes and says that I would represent it. The whole idea of the society is it is owned by the owners the copyright and that the said owners as society issue licences to export the rights.

SHRI VISHVJIT P. SINGH: This is exactly, what I am asking you. What is it to form a company or a society and saying that this is going to look after the interest of the author? What is there to prevent?

SHRI S. RAMAIAH: There is an objection here that it is not specifically mentioned in the law here. Registration of the society by the Central Government it self would look after the interests of the members constituting it, unless the members or the substantial majority of the members are having copyrights. Central Government could not or would refuse to register.

SHRI VISHVJIT P. SINGH: Supposing the agent signs to the society by representing and gets those rights and says that register my society, then what will be the problem?

SHRI S. RAMAIAH: After the commencement of this provision, all the owners of copyrights should become the Members of a society. It is applicable all over the world. They also share the profits of the society.

SHRI R.K. SINHA: The various reasons that we said, we put them, give them a deemed status. One was we did not want to put them into any problem, making them apply for registration and things like that. Another situation, I am talking about is a hypothetical situation. There is a society which is working today very well, tomorrow when it would be required under the statute to the registration as a copyright society, there could be a

possibility that somebody else may set up another society and come to Govt. that along with that you register us also. Now we are required to register only one or two because we do not want to have a large number of copyrights for the same type of work or for the same right. That could create confusion in the nascent state.

SHRI S. RAMAIAH: As per your statement itself that you cannot have more than two. You should definitely not allow the societies to register.

SHRI R.K. SINHA: The possibility is that the new ones may try to force. We did not want to get involved.

SHRI S. RAMAIAH: By registration under the Act, he gives a different status.

MR. CHAIRMAN: For getting the status. Any more point on this.

SHRI VISHVJIT P. SINGH: Where is the objection of the Department and of the hon. Witness to the registration of multifarious society and why are we insisting on it. Let there be just one or two or three as we are envisaging. Why not envisage a large number of them?

SHRI S. RAMAIAH: Supposing for a particular right there are so many societies, there may be a competitive spirit and each would underact the other then this would affect the ownership of the owner.

SHRI VISHVJIT P. SINGH: On the contrary the owner would benefit. I am sorry this reverse approach does not apply.

If there are three societies competing for the right, is it correct to say that the highest bidder would get it? Please clarify.

SHRI R.K. SINHA: May I clarify that later on we have said that where there are voluntary licences we are going to levy a cess and collect it through our on mechanism. That cess will be handed over to the societies for disribution. If there is a multiplicity of societies there is a difficulty for Government to do it. If there is only one society in one region then within that region the cess can be distributed. But if in the same region there are three societies how would we appropriate it? Therefore, we ourselves wanted to restrict the number of cooperative societies.

SHRI S. RAMAIAH: We have provided for suspension and cancellation of the societies in sub-section (4). Of course, it has been mentioned:—

> "(4) The Central Government may, if it is satisfied that a copy-right society is being managed in a manner detrimental to the interests of the owners of rights concerned, cancel the registration of such society after such inquiry as may be prescribed."

I have two to three questions. One is, the existing society is deemed to be registered under this provision. Sub-section (4) and (5) are applicable to an existing society. Then, if an inquiry is to be made, the principles of natural justice should be observed.

SHRI R.K. SINHA: It is understood that the principles of natural justice would be observed.

SHRI S. RAMAIAH: It has to be made clear. You are not providing for re-registration.

SHRI R.K. SINHA: A provision for re-registration could be there.

SHRI S. RAMAIAH: In sub-section (5) suspension of a society for a period of one year is there. Is there a possibility of extending this period by one more year?

MR. CHAIRMAN: Yes; sub-section (5) provides for one year.

SHRI S. RAMAIAH: One year is the maximum. Suppose at the end of one year if you want to extend it, can you do it?

SHRI R.K. SINHA: We restricted the period so that the final decisions are taken within that period.

SHRI S. RAMAIAH: Under Sction 34(2) proviso, there is a provision against discrimination.

MR. CHAIRMAN: It shall be competent for a copyright society to enter into agreement with any foreign society or organisation administering rights corresponding to rights under this Act, to entrust to such foreign society or organisation the administration in any foreign country of rights administered by the said copyright society in India, or for administering in India the rights administered in a foreign country by such foreign society or organisation.

Provided that no such society or organisation shall permit any discrimination in regard to the terms of licence or the distribution of fees collected between rights in Indian and other works.

SHRI S. RAMAIAH: The copyright society registered under this provision will have the authority to enter into negotiations with any other collective administration in any country, so that the members of our society could extend the same rights to the members of the foreign society. That means if you enter into an agreement with any foreign society, the members of that copyright society will have the same copyright here as our members are having. So, their rights are protected. So, where is the question of discrimination coming. In a question of negotiations with the other countries, the payment of fees, royalties may not be identical in all the countries. This would prevent our freedom for the society to enter into any contracts.

SHRI R.K. SINHA: The objective was very simple. It is a part of the convention also to give the same treatment to a foreigner. We give them equal treatment. At the same time, we do not want anything to go against our own copyright holders. We do not want Indian copyright society to enter into agreement with any foreign society to disadvantage to our copyright society.

SHRI S. RAMAIAH: After all, we could always provide. We are providing a set of royalties locally. He will get his royalty for the exploitation of his work in India. In most cases, our work will not be in demand. Secondly, there is no convention on this aspect.

MR. CHAIRMAN: You suggest how could it be done?

SHRI S. RAMAIAH: The provision could be omitted.

MR. CHAIRMAN: You want that this should be eliminated.

SHRI S. RAMAIAH: What do you mean by discrimination? Two persons similarly situated should not be treated differently.

SHRI R.K. SINHA: There is an apprehension in our mind that if we do not give this proviso, there would be a tendency among the copyright society. This is a new experiment, which should be operated in other copyright societies.

Therefore, we did not want our copyright holders to be at any disadvantage vis-a-vis others. There could be a tendency among the Indian copyright society to under-sell and to go in only for the foreign copyright because that is a very lucrative market. So, we did not want that sort of a situation to crop in.

SHRI S. RAMAIAH: The objective is laudable but, at the same time, can you cite one instance where this provision is there? We are entering the arena now. So, we should offer better terms to get our works here. Of course, that is a policy matter.

Then, coming to new Section 34A at page 9, I have two objections. One is if it is an existing society, they will be automatically deemed to have been registered. So, there is no appointment necessary. Secondly, by merely appointing them, they do not get the registration status. So, why don't you provide that?

Coming to sub-clause (2), here my major objection is that there is a related Bill which I mentioned the other day, that is, the Copyright Cess Bill. This Bill enables the Central Government to levy a cess either in the nature of the Central Excise or Customs, on hardware manufactured in India or, as the case may be, imported from elsewhere. That cess will be utilised for payment as royalties to the musicians or whoever it is—to the same class of work. When a cess is being provided, how do you say that you will provide the cess only to the society appointed under section 34A. The societies registered under section 33 will also have the right to get the cess, they would also be paying royalties and they should also have the money from the cess. Supposing under section 33 there is a registered society called phonographic society. There are so many singers who have given records and royalties have to be paid to them. You are importing tape recorders or record players or such other things and you levy a customs duty as a cess, or you impose a cess on locally produced video

tapes or taperecorders. That cess is to be given to a society which deals with singers and musicians and is registered under section 33. It is not sufficient that you give the cess only to the society appointed under section 34A. It will be objected to.

SHRI R.K. SINHA: The reply is what I have stated here, that is, the logistics of handling of the cess and the distribution of cess money. If we take in a large number of societies, the Central Government would find it extremely difficult to apportion it in an equitable manner.

SHRI S. RAMAIAH: I will ask a simple question. Can you apportion the handloom cess to manufacturing of some other item?

SHRI R.K. SINHA: The cess for that particular right would be distributed only to that society and to no other society.

SHRI S. RAMAIAH: It should be related to that particular class of work. Immediately after your law is brought into force, even an owner of a copyright will go to the court saying it is discriminatory.

SHRI R.K. SINHA: That is why I said for a particular class of work we will recognise a society or two societies.

SHRI S. RAMAIAH: It will be difficult to implement. You will have to distribute the cess equitably to all the societies whose members are from the association. For instance, a person who gives a video record or a tape record is entitled to a portion of the royalty from out of the cess which is collected. I think it will be the same.

MR. CHAIRMAN: Thank you. Are there any further sections that you want to discuss?

SHRI S. RAMAIAH: Sir, I want to suggest some changes in Section 34(A)(iii). It is mentioned in the Bill as follows:—

> "The copyright society shall, subject to such rules as may be made in this behalf, frame a scheme for determining the quantum of remuneration payable to individual copyright owners having regard to the number of copies of the work in circulation."

I made some—changes in it and I suggested them for approval.

SHRI VISHVJIT P. SINGH: There is a small problem. There has to be some administrative expenses. What about them?

SHRI S. RAMAIAH: We have provided for them earlier. It is mentioned.

SHRI VISHVJIT P. SINGH: I think what you are saying is in a different context. You are talking of framing a scheme. It is in Section 34(A)(iii). Can you please clarify?

SHRI S RAMAIAH: I may submit that what you are saying is about distribution of fees which would be after deduction for administrative expenses. I submit that it is provided for.

I may submit that I am only qualifying the word 'fees'. I am not objecting to the distribution of the fees. It is very clear how it is to be given. The fees will be collected by the owners of a society.

I am only qualifying the word 'fee'. That is all.

SHRI VISHVJIT P. SINGH: What is the exact combination that you are aiming at? You just suggested a formulation. Could you repeat it?

SHRI S. RAMAIAH: All fees collected by a corporate society shall be distributed among the owners.

SHRI VISHVJIT P. SINGH: You have to have a scheme or quantum of distribution and that has to be decided as per clause 34(3) and this comes only subsequently.

SHRI S. RAMAIAH: Fees also must be collected under the scheme.

SHRI VISHVJIT P. SINGH: Otherwise, it will open a Pandora's Box. Your view is that all fees should be collected. Is it not?

SHRI S. RAMAIAH: We are only saying that any corporate society is authorised to collect fee only in accordance with the scheme framed by the Central Government. I am only saying that in the scheme which you are going to frame we will provide that 'the fee should be collected by the society.' I am only reiterating what would be contained in this scheme. That is all.

SHRI VISHVJIT P. SINGH: What I find in your provision is a mandatory obligation on the part of the society in the manner in which you have framed your formulation. It somehow turns out that every little bit quantum of whatever is collected will all have to be distributed if we follow your combination.

MR CHAIRMAN: Now, let us come to clause 36A.

SHRI S. RAMAIAH: There should be drastic changes. It is mentioned, 'any rights or liabilities in any work'. It should be made clear that those rights or liabilities will be flowing out of the existing rights. And those rights and liabilities are being enforced immediately before the commencement of this provision. These two clarifications are necessary.

SHRI R.K. SINHA: Later on it does say that "any rights or liabilities in any work in connection with a performing rights society which had accrued or were incurred on or before the day prior to the commencement of the Copyright (Second Amendment) Act....."

SHRI S. RAMAIAH: 'Before the commencement' is all right. But it is not said 'on the day immediately proceeding.'

SHRI VISHVJIT P. SINGH: We know it, and as you yourself have mentioned, the society's function at the moment is a slightly different kind of functioning. The functioning envisaged in future is going to be totally of a different nature.

SHRI S. RAMAIAH: But the idea is the same.

SHRI VISHVJIT P. SINGH: But it will be more disciplined. They will be coming under certain discipline and certain scrutiny, they will be performing according to certain prescribed norms which are not there at the moment in this assumption. If somebody at the moment, any organisation or group of organisations or individuals have under pressure assigned certain rights to a society which is already registered, would it not be fair to allow that individual or those individuals or the group of individuals to get a fresh lease of life rather than suffer the consequences of what they have signed over in the past?

SHRI S. RAMAIAH: I agree. My objection earlier is to say that all the existing societies should be registered, even after the commencement of this. The same objection will come here also.

SHRI VISHVJIT P. SINGH: There is no question of any length of time. The Society will be scrutinised by the Government.

SHRI S. RAMAIAH: Any Member of the Society can always tell the Society that "My rights have been taken over by undue influence." That can be looked into and rectified. At the same, in respect of the existing Societies which are be deemed to be registered, we can refuse registration.

SHRI VISHVJIT P. SINGH: I give you the example of an artist who is dead, whose works are available, whose children are minors and whose widow is living in some remote area. She does not have the right because the empowerment is not there. If the empowerment is not there, how will you exercise the right? I tend to agree with the Department rather than with you on this point.

SHRI S. RAMAIAH: The Department view is that they should have it here. This is only for the purpose of not bringing suddenly on any particular day whatever the rights are there. It is only to continue the existing rights for some more time that this provision is made. It is a saving Clause and a transitional provision and if at any time the Central Government finds that any of the rights of Copyright holder are being jeopardised by the existing Society, it has its own ways of doing by refusing registration and asking them to cancel the licence and to ban a new Society. Such things can be done.

SHRI VISHVJIT P. SINGH: We will discuss this further.

SHRI S. RAMAIAH: Yes.

MR. CHAIRMAN: Yes.

Sections 37 and 38

SHRI S. RAMAIAH: Section 37 and 38 deal with the broadcasting and reproduction rights and performance rights. I mention in this connection that this pumission is also there in the Act. There is a broadcasting right

under the existing Section 37. The new Section 37 is almost on the same lines as the existing Section. I have no objection in reproducing that. But we have come a long way from the incorporation of the original Section 37. Today we are Members of the Convention. I find that in both the Section 37 and 38 there is no reference to the obligations under the Convention. I will cite one small instance. Take the case of national treatment. It is not there. What is the obligation which you have made in joining the Rome Convention by making a provision here? In Section 39A, you have made certain other sections applicable.

MR. CHAIRMAN: Section 38 is also on the same lines, I suppose. Have you given some specific suggestions in your note?

SHRI S. RAMAIAH: Yes.

SHRI R.K. SINHA: The Ministry is looking into that. The other thing is that we have not yet joined the Rome Convention. After this, we will be joining it.

MR. CHAIRMAN: It is better to look into it now itself.

SHRI S. RAMAIAH: For example, you want to go to them regarding any issue. They may say that first we have to amend our Act and then we should go to them.

SHRI VISHVJIT P. SINGH: We have a specific clause in the Constitution which clearly states that once we join a Convention, then the rules of that convention will apply to us and all the existing laws will have to be amended in accordance to that. We have that Constitutional provision. So, it is possible for us to sign the agreement of such nature and do any subsequent legislation which is required. That position is well-known all over the world. So, there is no problem as far as India is concerned. It may be difficult for the other countries.

MR. CHAIRMAN: What about Section 38?

SHRI S. RAMAIAH: If you include the performer's right or the broadcast reproduction right. I would only say that you should also include the other right, that is, the rights to producers of phonograms. Sound-recording is a different thing. You may examine that. I have made some drafting changes in both the clauses which you may consider.

SHRI VISHVJIT P. SINGH: We have made sufficient changes and all the devices get covered in this. Simply adding one thing is not going to suffice it. The definition should be comprehensive. Otherwise, it will become redundant.

SHRI S. RAMAIAH: Definitions have been made in such a way that it will include, except artificial intelligence, almost all the existing advancements including reproduction and reprography.

SHRI VISHVJIT P. SINGH: We have alredy taken care of that in the defining clauses. Since it is already there, it is merely adding one clause.

SHRI S. RAMAIAH: The specific definition should be given.

SHRI VISHVJIT P. SINGH: I think, the Department may consider it.

SHRI S. RAMAIAH: This Clause 39A is only a re-production of the existing section. Perhaps, we may consider adding some more sections in it.

MR. CHAIRMAN: Could you tell us which section specifically?

SHRI S. RAMAIAH: It is about national treatment. I said clause 4 and 52 can be added.

MR. CHAIRMAN: Could you submit a note after going through it?

SHRI S. RAMAIAH: I can do that.

This performer's right has been drafted, as I mentioned earlier on the same lines as broadcasters' production lines rights. But they have not taken into account the decision we have of the Supreme Court in the case of Shri Devanand in which Justice Krishna Aiyar has specifically observed for that certain rights should be given to performers. He has given it under various clauses. That is landmark judgment. Since we do not have the provision in the law, the court decided otherwise. He did not have the rights. I would recommend that if you implement that decision and workout certain rights here, apart from joining Rome Convention, it will be very good.

MR. CHAIRMAN: Which case did you refer to?

SHRI S. RAMAIAH: I had referred to the Fortune Films vs Devanand case, AIR 1979. The judgment still stands and it is a very good judgment.

SHRI VISHVJIT P. SINGH: Is it a solitary judgment or was it based on other judgments also?

SHRI S. RAMAIAH: There are no other judgments on performers. Shri Devanand, acted in a film called "Insaniyat" or something like that and he wanted to have certain rights from that performance. The court rejects his plea but at the sametime, they made a statement stating that the Government should provide for these rights to performers.

SHRI S. RAMAIAH: At page 15, under Section 52B, you have said that:

> "the reproduction of any work shall be subject to the payment of remuneration to the owners of rights in such work under the provisions of section 34A."

That means, the distribution of proceeds out of reprographic rights also should be dealt with as if you are distributing the rights through Copyrights' Societies. The same provision can be made for the right of resale. That is my point. All over the world, they have been doing like that. The proceeds of resale and proceeds of reprography are channeled through the Copyrights' Society.

SHRI R.K. SINHA: But in the case of reprography, we are going in for involuntary licensing and are trying to collect it through cess. How do we do it?

SHRI S. RAMAIAH: On what items would you like to collect it through cess?

SHRI R.K. SINHA: On the hardware, photocopiers, reprographic materials and things like that.

SHRI S. RAMAIAH: I can say that already the market is flooded with so much of reprographic material.

SHRI R.K. SINHA: It can only be done prospectively.

SHRI S. RAMAIAH: But, then, would you get enough of money?

SHRI R.K. SINHA: The way we want to implement this was through that method. Otherwise, it becomes extremely difficult to implement it, because there are so many photocopiers.

SHRI S. RAMAIAH: But in the Copyright, have you specifically included reprography also? The existing Act defines these very words as "duplicating equipment" but you have used the words "reprographic equipment" here. Both are similar but that has to be tied up.

SHRI R.K. SINHA: The resale might not come. That is what I was saying.

SHRI VISHVJIT P. SINGH: Government envisages single point collection rather than multiple point collection. It is a major problem.

SHRI S. SOMAIAH: In most of the countries, right of resale and reprography are channeled through the Copyrights' Societies.

SHRI VISHVJIT P. SINGH: The provisions are there, but how effective have they been abroad?

SHRI S. RAMAIAH: I can say this much that the collection of cess on hardware is there because it was not possible for us to collect it on software. It is done in some other countries in Eastern Europe.

SHRI VISHVJIT P. SINGH: We are finding it difficult. In those countries where software is used to be collected, it is impossible for them to collect it.

SHRI S. RAMAIAH: For software, there is no provision at all.

SHRI VISHVJIT P. SINGH: Are you talking about the re-sale of software?

SHRI S. RAMAIAH: There is a related Bill, that is, Copyright (Cess) Bill, where we have provided for collection of cess in the nature of Central Excise on hardware produced in India; and a cess in the nature of customs duty on the import of hardware. These are the two duties. The proceeds of these duties will be handed over to the copyright societies for distribution

to the concerned owners of copyright. That is the scheme. So, it is a related Bill called Copyright (Cess) Bill; I do not know whether the Bill has been referred to the Committee or not.

MR. CHAIRMAN: I think, your suggestions on this particular Copyright Bill is over.

SHRI S. RAMAIAH: Yes.

MR. CHAIRMAN: Thank you very much; we will take into account your suggestions on this Bill. On some other day, we will have your suggestions on the Cess Bill. Thank you very much.

(The Committee then adjourned.)

JOINT COMMITTEE ON COPYRIGHT (SECOND AMENDMENT) BILL, 1992

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE COPYRIGHT (SECOND AMENDMENT) BILL, 1992

(Wednesday, the 17th March, 1993 from 1500 hours to 1600 hours Committee Room 'D', Parliament House Annexe, New Delhi)

PRESENT

Shri Syed Sibtey Razi — *Chairman*

MEMBERS

Lok Sabha

2. Dr. F. Azam
3. Shri Probin Deka
4. Shri Imchalemba
5. Shri Shyam Lal Kamal
6. Smt. Krishnandra Kaur (Deepa)
7. Shri M. Krishnaswamy
8. Shri V. Dhananjaya Kumar
9. Prof. (Smt.) Savithiri Lakshmanan
10. Smt. Geeta Mukherjee
11. Shri Rameshwar Patidar
12. Shri Bhagwan Shankar Rawat

Rajya Sabha

13. Dr. Naunihal Singh
14. Shri Dineshbhai Trivedi
15. Shri Vishvjit P. Singh
16. Shri Madan Bhatia
17. Smt. Veena Verma

SECRETARIAT

1. Shri R.K. Chatterjee—*Deputy Secretary*
2. Shri Ram Autar Ram—*Under Secretary*

REPRESENTATIVES OF THE MINISTRY OF HUMAN RESOURCE DEVELOPMENT (DEPARTMENT OF EDUCATION)

1. Shri R.K. Sinha, — *Additional Secretary.*
2. Shri M.P.M. Kutty, — *Director.*

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

1. Shri Raghbir Singh, — *Joint Secretary and Legislative Counsel.*
2. Shri S.P. Kanwal, — *Deputy Legislative Counsel.*

WINTNESS EXAMINED

Shri Pravin Anand, — *Advocate, New Delhi*

MR. CHAIRMAN: Before I call the witness, I want to apprise the Committee of the work that we have already done. Till now, the Committee held 9 sittings from 15th September, 1992, to 24th February, 1993. The Committee received 15 memoranda on the Copyright Bill from various interested organisations, associations etc. All these memoranda and comments thereon of the Ministry have been circulated to all the Members of the Committee. The Comments of the Ministry on the Memoranda Nos. 8B, 8C, 15A, and 18A are yet to be received from the Ministry for circulation to the Members of the Committee. As soon as we get from them, we will circulate it immediately.

Further, the Committee have so far considered 6 memoranda in the course of oral evidence and 6 memoranda during study tour visit to Bombay. The Committee would hear oral evidence of witnesses in respect of 9 memoranda received from 9 organisations/individuals. The balance 20 memoranda already circulated to the Members would be left for the Members of the Committee to go through them and make use at the time of clause by clause consideration of the Bill. After the evidence is over, the Committee will hold clause by clause consideration of the Bill and the various provisions of the Bill.

In view of the above position, we have very little, very limited time with us. The Parliament is in Session. Also, we have to take evidence of a number of witnesses on various memoranda and all that. So, I would request the Members to express their views as to what we should do. Further, there will be a break as far as the sitting of the Parliament is concerned. We will not be able to sit for a couple of days.

SHRI DINESHBHAI TRIVEDI: We may have to ask for extension.

MR. CHAIRMAN: We have to see that at the earliest possible time, we should do it. After the Session is over, we have to sit continuously for 4-5 days. Many Members told me that it is very difficult to be with me for a long time having discussions etc. So, if you agree, we should send a request. We have to send a request for extension of time to the Lok Sabha till the end of the last week of the Monsoon Session. That will be quite right. So, the Committee decides that the request should be sent to the Lok Sabha for extension of time up to the last week of the Monsoon Session.

(The Witness was called in and he took his seat.)

MR. CHAIRMAN: Before you start, I may point out that in accordance with the provisions contained in Direction 58 of the Directions by the Speaker, your evidence shall be treated as public and is liable to be published, unless you specifically desire that all or any part of the

evidence given by you should be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

Would you like to say something in brief before we come to the clauses on which you have sent your suggestions?

SHRI PRAVIN ANAND: I would say, broadly, this is a very forward looking modern piece of legislation, very timely and very effective. That is my general impression about the legislation. I have about five specific points to make. As and when you indicate I will speak about those specific points.

MR. CHAIRMAN: On Page 2, you have said something about the definitions of artistic work in relation to any work, any use of such work involving its re-arranging or alterations. It is not necessary to further amend Section 2C.

SHRI PRAVIN ANAND: The point I said was that only the definition has been changed. But in the object clause it is indicated that the purpose is that architectural work of art has to be protected irrespective of artistic import. If that is the intention, then, that intention is not subserved by this amendment. For that, we have to bring about the words "architectural work of art" in Section 2C (i) because there alone does the expression "whether or not any such work possesses artistic quality" occurs. That expression does not occur in sub-section 2. Therefore, by simply amending the definition of architectural work of art, we would not achieve that object. We would have to put that expression "whether or not any such work possesses artistic quality".

SHRI R.K. SINHA: What we have tried to do is to change the words "architectural work of art" which per se imply that that particular work of some artistic quality. Therefore, the words "whether or not any such work possesses artistic quality" does not occur in section 2C (ii) of the original Act. Now we have changed this into "work of architecture."

Now, here, it is a question of interpretation. The very word "architecture" would include something which has artistic quality. Any functional building as such will not qualify for definition within the work of architecture. The word "architecture" has a certain connotation and it is really a matter of interpretation by your Courts as to whether this would require further change or not. But that was our intention. The work of architecture is what is embodied in the other Acts also. Architectural work of art does not find mention in the British Act also. That is why, we wanted to have a uniform phraseology.

SHRI PRAVIN ANAND: Sir, what I thought was that if that expression "whether or not any such work possesses artistic quality" occurs in one clause but does not occur in the subsequent clause, the interpretation which is likely to be given, rightly or wrongly, is that since

it occurs in one clause but does not occur in the latter, then the legislative intention is not to subject the latter clause to that expression and by that interpretation the object which is indicated will not be subserved. Therefore, perhaps, that one line could come after "work of architecture".

DR. NAUNIHAL SINGH: You seem to have confused the whole thing. Can you kindly clarify as to what is the intention behind this?

SHRI PRAVIN ANAND: Sub-clause two deals with it. It says:

> "...architectural work of art is difficult to interpret; in some cases, it is inconsistent with the general copyright principle that the aesthetic merit of the arachitectural work is of no account. After replacement of this, by the word 'art' the other authorities will not be required to consider the aesthetic merit of the work. But the only question is whether as a original work, it is a well-known concept in copyright law".

This is the intention of the Bill. Accordingly, it is intended that the architectural work of art should be protected, whether there is any aesthetic merit or not. The existing law defines the artistic work as paintings, etc. That expression had a qualifying expression whether or not any such work possesses artistic quality. Therefore, this qualifying expression was missing in the next clause. Here, in the existing law, the architectural work of art does not have the qualifying expression 'whether or not any such work possesses artistic quality'. Therefore, by changing 'architectural work of art', to 'work of architecture', and by not adding, 'whether or not any such work possesses artistic quality', we have not achieved the intended purpose.

MR. CHAIRMAN: It has been stated in the Berne Convention also.

SHRI PRAVIN ANAND: But, this expression should qualify both. If it does not qualify, then the normal interpretation of law would be that in one clause it may qualify and in another it will not. That is why, that is missing. So, I suggest that this phrase should come after 'work of architecture'.

DR. NAUNIHAL SINGH: Is it correct that if an art is devoid of the aesthetic quality, then it is not artistic work?

SHRI PRAVIN ANAND: In the existing law, it is still protected.

DR. NAUNIHAL SINGH: If there is no aesthetic merit, then it is not artistic.

MR. CHAIRMAN: The objective of the law is to give protection to the original work. Is it so?

SHRI PRAVIN ANAND: That is right, irrespective of whether it has aesthetic merit or not. 'Aesthetic' is a subjective test.

Clause 2

MR. CHAIRMAN: You know the dutiable equipments will, most of the

time, be specified by the Government from time to time. It is not necessary that it should be spelt out.

SHRI PRAVIN ANAND: I think, it is not necessary. You are quite right that that will be spelt out by the Government. The point that I was trying to make was that under the existing language even hard disk or a floppy drive would be subject to cess because a floppy drive of a computer is also a duplicating equipment inasmuch as you copy from a floppy drive to another floppy drive. So, it was only by way of explanation. If it is the intention, then it is fine to retain the language like that. But if that is not the intention, then suitable modification may be considered by the Committee.

Clause 20

MR. CHAIRMAN: You have said something about the moral right.

Would you kindly see clasue 2(v) of the Bill at page 2 — communication to the public?

SHRI PRAVIN ANAND : This clause refers to copyright which is the economic right. The moral right refers to the author's special right which is the moral right, which is irrespective of copyright, which is a separate right from copyright. Here I may assign my copyright in a manuscript to a publisher as an author. Yet I retain my moral right namely, the right of paternity. Nobody else can put his name on my book. Nobody can distort the contents of my book.

SHRI MADAN BHATIA: There is no such right as moral right.

SHRI PRAVIN ANAND: The Berne Convention calls is moral right and in case moral right is the nomenclature, it is wrongly adopted.

MR. CHAIRMAN: Could you explain the following a little further?:

> "Communication to the public means making anywork available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing copies of such work regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available."

SHRI PRAVIN ANAND: Let us take the case of a sculptor. Let us assume that a famous sculptor makes a sculpture for the Delhi Zoo and he creates it in such a way that it is supposed to blend with environment of animals, fauna and flora. Let us assume that the Zoo authorities decided to bring it down and put it in a busy bazaar. The point is, whether the creator, under the proposed amendment, would be able to do anything about it or not. Under the existing law, without the amendment, he can stop this because he may say that even though he is not the owner of the copyright of the sculpture, but he is the owner of the special rights under Section 57 which will remain for times to come. He can exercise his rights under Section 57 and restrain somebody from doing so. The amendment

states that the failure to display the work according to the author's satisfaction is no longer regarded as the author's moral right. The person who changes the location may say that he is displaying but the failure to his satisfaction is not going to be regarded as violation of his moral right.

MR. CHAIRMAN: What will be the parameter as to what will be his satisfaction?

SHRI PRAVIN ANAND: That is one of the reasons why this proviso should be re-written. There is no parameter to judge it. So, under the existing law, the parameter is defined as any change or modification which is prejudicial to the author's reputation is a violation of the author's special rights.

SHRI MADAN BHATIA: This is not the amendment which you have suggested. You made only one suggestion in your memorandum.

SHRI PRAVIN ANAND: I consider the proviso to be good but the explanation I have given is my view.

MR. CHAIRMAN: We have noted down your suggestion.

SHRI R.K. SHINHA: The reason why we added this explanation is because we had certain problems. Take the case of the mural paintings in Vigyan Bhawan. There was some mutilation or distortion and then the authorities had to put them in some other place. Under the existing law, the painter claimed damages for not displaying it to his satisfaction and for distorting the painting. This puts us in a difficult situation. Each artist can then claim that his work of art should be displayed in a manner in which he likes and this is difficult to accommodate. That was the reason why we went in for this.

SHRI PRAVIN ANAND: Unfortunately, I cannot comment because I happen to be the lawyer in this case.

SHRI DINESBHAI TRIVEDI: Is not there any agreement or contract between the artist and the assignee?

SHRI PRAVIN ANAND: Under the law, a contract does prevail. But very often it so happens that either the contract is not complete or the artist is unbale to take care of certain things, as a result of which, the contract misses out on important details. In that eventuality, the law provides for certain presumptions. Let us assume a case in the context of Section 57, where there is a contract and in that contract, the assignee of a copyright says to the author that he has assigned his copyright to him and he is free to do whatever he wants, with that work of art. For example, just because I got the copyright assigned to me, should I do something like adding a moustache etc., to the painting, which would hurt the reputation of the artist? Though I am otherwise entitled to do such things, the law says that I cannot do it irrespective of what is contained in the contract.

SHRI DINESHBHAI TRIVEDI: Here you are talking about tampering

with the original work. What we are talking here is, with regard to the location of a painting or sculpture. In this context, can there be a contract whereby the artist would say that he would do the work provided if it is displayed at a particular place?

SHRI PRAVIN ANAND: The reason why I gave one example is because it is mentional in the section itself, "Any other distortion, any mutilation or any other modification." The sculptor might consider that they are changing the layout from what he consider to be a correct background. This might amount to modification for him.

SHRI MADAN BHATIA: So, your argument is that so far as the sculpture is concerned, nobody can take the risk of displaying it without following the instructions of the sculptor.

SHRI PRAVIN ANAND: If the sculptor has contemplated a particular situs, to change the situs so as to cause prejudice to his honour or reputation would be wrong.

SHRI DINESHBHAI TRIVEDI: But, whether in terms of the contract this should be included or this should not be included and if it is not then is it incumbent on the user not to modify the sculpture this way or that way? Is it implied or it should be specified in the contract that if you insist on improving the situs then this would be prejudice to the honour of the sculptor?

SHRI PRAVIN ANAND: If one of the author waives his right and say that you are free to put the sculpture any way you desire, then it is all right.

MR. CHAIRMAN: There is a substance in the hon. Member's suggestion. If it can be provided in the agreement itself, there will be no problem. It is up to the original property right holder to use his own discretion.

SHRI MADAN BHATIA: If he is so particular about the display in a particular manner, then he can mention it in the contract itself, otherwise, if there is any variation he will drag the person to court.

SHRI DINESHBHAI TRIVEDI: Suppose there is a clock designed for this particular room and if at a particular time this room is not used for a long time and, therefore, you wish to remove the clock from this room and put it in other room, but then the sculptor might say that he had designed this clock only for this particular room and hence you connot remove it from this room.

MR. CHAIRMAN: Besides this, would you like to give any other suggestion?

SHRI PRAVIN ANAND: Sir, the proviso which was inserted to Section 45 of the existing Act has in practice created enormous difficulties.

You see in the proviso itself. The intention of the Intellectual Property

legislation of this country as also globally has been that the Copyright law and Trade Mark law are separate. They are not inter-linked. This is a provision which inter-links them. Take the example of Colgate Tooth Paste. In the carton itself, there is a Trade Mark of Colgate. In that situation, where you have an artistic work, it is capable of being treated as a Trade Mark and the whole list comprises, cartons, wrappers, labels and nothing more. We are concerned in this provision about cartons, wrappers and labels. The law says, that if somebody wants to get the copyright registered, he will have to first make an application to the Registrar of Trade Marks who will then give a search report and that search report would have to be presented before the Reistrar of Copyrights and then only will that Copyright be registered. This is what this provision says. Now my suggestion is that this inter-linking of the two was not there before 1984 and this inter-linking has created great practical difficulties. Therefore, the suggestion is that this should be deleted. I will give the reasons.

Sir, Berne Convention to which we are Members obliges us to have least formalities while registering copyrights. This is the provision which requires a basic formality. So it goes against the fabric of our obligation to Berne. This is point number one.

Secondly, in actual practice, suppose Colgate developes a new carton today and they wish to register the carton. They apply for a search report from the Trade Mark Registry and the Trade Mark Registry discovers that some small person has applied for Colgate in relation to shoes and then the unusual provision is that, the search report of the Trade Mark Registry will indicate that Colgate application for shoes. Because there is a citation, the moment that search report is presented to the Registrar of Copyrights, copyright will not be granted. So, the true owner has been prevented by this provision from even getting his own carton registered because whereas in Trade Marks, goods are relevant, in Copyrights goods are not relevant. So we are in a sense, by all these provisions, using Trade Mark tests for copyright, which was not the intention, In actual practice, there is not a single business house who has a carton or wrapper and has found this provision useful. That is my experience although it was not a subject matter of this Bill. So, I thought that is my obligation to say so.

DR. NAUNIHAL SINGH: It is a sensible thing to be considered.

MR. CHAIRMAN: Thank you very much for giving the Committee very valuable suggestions.

SHRI PRAVIN ANAND: I am grateful to you for this opportunity.

MR. CHAIRMAN: Thank you.

(The Committee then adjourned.)

JOINT COMMITTEE ON COPYRIGHT (SECOND AMENDMENT) BILL, 1992

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE COPYRIGHT (SECOND AMENDMENT) BILL, 1992

(Friday, the 19th March, 1993 from 1500 hours to 1650 hours Committee Room 'C', Parliament House Annexe, New Delhi)

PRESENT

Shri Syed Sibtey Razi — *Chairman*

MEMBERS

Lok Sabha

2. Shri Probin Deka
3. Shri Imchalemba
4. Shri Bhagwan Shankar Rawat

Rajya Sabha

5. Dr. Naunihal Singh
6. Smt. Veena Verma
7. Shri G. Swaminathan

SECRETARIAT

1. Shri R.K. Chatterjee—*Deputy Secretary*
2. Shri Ram Autar Ram—*Under Secretary*

REPRESENTATIVES OF THE MINISTRY OF HUMAN RESOURCE DEVELOPMENT (DEPARTMENT OF EDUCATION)

1. Shri R.K. Sinha—*Additional Secretary*
2. Shri M.P.M. Kutty—*Director*

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

1. Shri Raghbir Singh—*Joint Secretary and Legislative Counsel*
2. Shri S.P. Kanwal—*Deputy Legislative Counsel*

WITNESSES EXAMINED

Indian News Paper Society, New Delhi

Spokesman

1. Shri Paresh Nath
2. Shri Yunus Dehalvi
3. Shri S Bhushan Jain

MR. CHAIRMAN: I welcome all to this Sitting of the Committee.

(The witnesses were called in and they took their seats.)

MR. CHAIRMAN: Before you start, I may point out that in accordance with the provisions contained in Direction 58 of the Directions by the Speaker, your evidence shall be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence given by you should be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

We have gone through the contents of your memorandum. You want that the definition of reproduce should be provided in the new amendment; if it is not provided, then there would be a confusion.

If you go through clause 3 on page 4 of the Bill, you will find that there is no need for any further definition of reproduce and all that.

SHRI PARESH NATH: I don't think this section is sufficient because in section 14, the right of publication has been removed; and the definition given under section 3 is not used in the Copyright Act elsewhere except under certain different provisions.

Earlier, this definition clause was there along with it. There was section 14(1)(c) which is not supposed to be amended. So, after the amendment, after the removal of the word 'publication' this definition clause has lost all the meaning.

MR. CHAIRMAN: I would request the Department to respond to this.

SHRI R.K. SINHA: Sir, it is true that Section 14(1)(a)(ii), relates to published work. That was one of the rights enshrined in the earlier Act. In place of that we have given the right to issue copies of the work to the public, not being copies already in circulation. Now what we have done is to substitute the right to publish the work by the right to issue copies of the work to the public.

SHRI PARESH NATH: Where have we used the definition in Section 3? Definition of Section 3 is there but we .....

SHRI R.K. SINHA: What I am trying to say is that publish here also is the right to publish as a certain connotation. It was that connotation that is taken care of by the right to issue copies of the work published.

SHRI PARESH NATH: I agree, but my query is when reproduced includes publication then why do you define publication. The definition of the word publication is Section 3 is now redundant because you do not have that right anywhere, because you do not use those words. Then why do you define this? Under Section 3, you must define the word reproduced. Once you define and if you say that reproduce includes publication then it will also include sound recording, etc. Then you must remove the clauses 2, 3, 4, 5, and 6. Not only 14(1) A but also b, c, and d. You must remove it. There are three or four types

by which a copy right can be used. One is the print media, visual media, etc. You want to have other two medias specifically mentioned like cinematograph, etc.

SHRI R.K. SINHA: Actually the reason why Section 3 is needed is because elsewhere in Section 52 and in Section 17.....
Let me see the contents, if in Section 17 the word publication has been used.

SHRI PARESH NATH: You can use the word reproduce there also. The most important section is section 14. If you remove the word publish from there then Section 3 becomes redundant. I think the two have to be there. We have not been able to understand the reason, the word publish, not to its effect.

SHRI R.K. SINHA: The Wipo Model Laws do not use the word publish. They use issue of copies to the public.

DR. NAUNIHAL SINGH: May I mention one thing? If you read again this clause 3 on page 4 of the Bill? It does define in so many words. What actually you intend to have the meaning of reproduction as introduced? It clearly says, Publication means making a work available to the public by issue of copies. If copies are not made, you can have reproduction. If there is reproduction, copies are made by reproduction. It, already in so many words has been described and you say that reproduction does not imply or include reproduction. Actually it defines the word reproduction which you want here. How will you make the public aware of those copies unless it is reproduced?

It does show that it has been reproduced. 'Publication' means making a work available to the public by issue of copies or by communicating the work to the public. How copies shall be made if there is no production process? So, there is a reproduction process. You simply want to put a new word. But the meaning is already there. The word reproduction is already defined there. So, there is no use of putting the new word here.

SHRI PARESH NATH: The problem is not Section 3.

MR. CHAIRMAN: You are worried about Section 14. Under Section 14 (1)(a) sub-clause(ii) the words 'to publish' are perhaps to be removed. Once you remove these words what is the purpose of retaining the definition of publication under Section 3. This is the basic section which gives the Copyright or which defines what the Copyright is.

SHRI R.K. SINHA: I would like to draw the attention of the witness to the earlier Section 3 which is now sought to be amended by a new Section 3. There one of the important criteria was that the number of copies should be sufficient to satisfy the reasonable requirements of the public having regard to the nature of the work. We have done away with that. We have said that you issue copies to the public. So, the definition of the publication has become wider in that sense. The Copyright is not

in regard to the publication or to publish or in regard to issue of copies. The argument that one can take is that if that is the intention then why do we use publish in Section 17. We are using he word publish there. It is not a question of drafting problem.

SHRI PARESH NATH: Compare the two enactments, before the amendment and after the amendment, they will say that there is a legislation intend to remove the word publish and the legislature was aware that it is removing the word. The basic structure of the Copyright is being removed..... I will agree, if all othere sub-caluses are removed. Then it is all right. If we remove to communicate the work by broadcast or by loudspeaker etc., whichever is suitable to the legislature, then it is all right. But, if we remove only one caluse and retain all the clauses, then it will definitely create some problems somewhere.

SHRI R.K. SINHA: I do not anticipate any problem if we compare the earlier sections. We have given a new connotation to the word publish by this Section 14(a) (ii), to issue copies. In Section 3, we have defined what publication means.

SHRIMATI VEENA VERMA: The publish word is used when a original thing is published or in print media once it is published it is called publication. Then the number of copies are produced. It is called the second edition, third edition or the number of copies.

MR. CHAIRMAN: They want to govern both, the second issue or the third issue, whatever you call it, as well as the original printing of the report or journal, whatever it is.

SHRI PARESH NATH: The word 'reproduction' need not be defined.

MR. CHAIRMAN: What exactly do you suggest to solve your problem?

SHRI PARESH NATH: I think you retain the word 'to publish the work'. The amended section 3 is acceptable because it clarifies what publication is. I would suggest that the words 'to publish the work' should be retained in the proposed sub-section (3) also.

MR. CHAIRMAN: 'To publish the work' was there is the principal Act. It will cover issues also.

SHRI YUNUS DEHALVI: Every subsequent publication is a publication by itself.

DR. NAUNIHAL SINGH: Reproduction is something different. When you publish again, say, second edition or third edition, that is publication. If the second edition carries some amendments, it becomes publication.

SHRI YUNUS DEHALVI: Reproduction is purely a mechanical process which precedes publication. First we have to make copies, then make them available to the public.

SHRI PARESH NATH: Within reproduction, there are various categories. One is making sound recording, another is cinematogrphy, third is making tele film. These are all reproductions.

MR. CHAIRMAN: I think it is just an improvement in the definition.

SHRI PARESH NATH: I think when the word is removed, the improvement does not help us.

DR. NAUNIHAL SINGH: My suggestion is that the word 'reproduction' should not become part of the law. It will create a lot of confusion.

SHRIMATI VEENA VERMA: From one media to the other media, it should be publication, not reproduction.

SHRI PARESH NATH: My suggestion is that if in the definition of publication in section 3, as amended, the word reproduction is substituted for publication, it will serve the whole purpose.

DR. NAUNIHAL SINGH: I would suggest that we should not use the word 'reproduction'.

MR. CHAIRMAN: We have got your point. It is related to broader picture, artistic work and all that. What is your viewpoint on that?

SHRI PARESH NATH: Sir, there is one typographical mistake with regard to 14(1)(c) sub-clause (4). I think it should be read as sub-clause (2) only.

MR. CHAIRMAN: Are you talking of section 14(c)?

SHRI PARESH NATH: Yes Sir, There also the word 'publish' is used. I think in case of artistic work the word should not be used. My objection is that you are including it for cinematograph and sound recording also as communication.

SHRI YUNUS DEHALVI: Sir, in that case a library lending a book would be communicating its contents to the borrower and perhaps violating Copyright Act as proposed. It is a very wide term. Please do not include libraries.

MR. CHAIRMAN: How can you say that a library lending a book would be communicating in the context in which we are discussing the Bill?.

SHRI YUNUS DEHALVI: The modern concept of libraries is not merely confined to a dead place where books are kept and one has to dust them and read. The modern libraries procure works of great persons and other modern things.

MR. CHAIRMAN: I got your point. What I feel is that if a person takes a book from the library, this is not for commercial use. It is used by an individual. Unless it is not used for commercial purpose, I do not thing it comes under this act.

SHRI YUNUS DEHALVI: Sir, for example, if I need a particular scientific monograph which is available in a library in Washington or Tokyo I ring them up and they send the monograph by electronic mail to me for which they charge me. Under the proposed amendment it would attract the provisions of the Act. That will be a communication.

MR. CHAIRMAN: I do not think so. Unless it is commercially used it cannot be a communication.

SHRI YUNUS DEHALVI: Sir, I am looking from library's point of view. It is existing for the sole purpose of making works available to public. if I want something today I get it by FAX.

MR. CHAIRMAN: That is true. If you use it for commercial purpose, if you get some gain from out of it, then it will be communication. If it is for your individual knowledge in that situation I think it will not be communication.

SHRI YUNUS DEHALVI: When they are charging me for it.

DR. NAUNIHAL SINGH: Libraries are meant for that communication. The communication has already taken place as soon as a book is published, as soon as it has gone out of the publishing house. The communication is complete. It is not a question of going to library.

SHRI YUNUS DEHALVI: The second act of communication is taking place when the Library makes something avilable to me.

DR. NAUNIHAL SINGH: That is the function of the Library.

SHRI YUNUS DEHALVI: Suppose you substitute a video library for this. There are thousands of such libraries in Delhi itself and they stock films of various types and say, 'We exist for the purpose of making them available.

DR. NAUNIHAL SINGH: If it is for your use, then it is Okay. But if you are using it for commercial purpose, to gain something out of it, then actually the whole thing starts.

MR. CHAIRMAN: May I draw your attention to Section 52(1) and also page 23 of the Act where it is stated. 'The making of not more than 3 copies of the book.... etc. What is your comment?

SHRI PARESH NATH: Our main objection is the removal of the work.

SHRI R.K. SINHA: The word 'publish' is there is the old Act. We can say to make it more general because if you take the earlier definition of 'publication', then a subjective satisfaction about publishing it, getting it in sufficient quantities was involved. That has been done away with. So, you get greater protection now rather than what you are getting earlier and this is on the basis of what the World Intellectual Property organisation has suggested as model law—we want to enhance the scope of permission.

SHRI PARESH NATH: The only thing is that it is because you are the two other media simultaneously. If this goes, there is absolutely no harm.

But if you continue to retain the two then of course the publication should be retained. I think it is creating confusion there.

SHRI R.K. SINHA: In the case of cinematography also, the words used are: 'communicate it to the public'. We are not restricting the scope of protection.

SHRI PARESH NATH: It, in fact, bars it. Section 52 deals with a kind of situation where a publisher buys a painting of Mr. M.F. Husain, for example. He owns the painting as well as the copyrights along with that. If you remove the word 'publish', the newspaper publisher may not be able to use the painting as a photograph in the newspaper. My only objection is, when the word is there and it is not restricting the definition of copyright, then why should it be removed?

SHRI R.K. SINHA: We have defined what 'publish' means.

MR. CHAIRMAN: You have bought the painting of Mr. M.F. Husain as a publisher for the purpose of publishing it.

SHRI PARESH NATH: We publish hundreds of cartoons and hundreds of illustrations which are of artistic work. For example, after the Ayodhya incident, everybody published sketches of what had happened, because no photograph could be taken.

SHRI R.K. SINHA: Following that example, you buy the painting or a cartoon and you want to publish it. Under Section 14(9)(ii) instead of the word, 'publish', we have used the word, 'right to issue copies'. What I am trying to say is, when we say right to issue copies, we have not specified the medium through which it has to be done. You are more worried about the print media, the print media is also covered.

SHRI PARESH NATH: So, you do not enumerate them also.

SHRI R.K. SINHA: We have taken note of the words "through communication in public."

SHRI PARESH NATH: The words "To include the work in any cinematograph film" in p. 6 sub-Clause (4) are also not noted. If you remove these words, then there will be no problem. Then it will mean that the production itself includes everything. My suggestion is that instead of defining it in detail, the word 'reproduction' should be somewhere defined and the copyright would be only the right to reproduce. Already it is defined in the same way but in parts. Whenever you are defining something in part, there is likelihood of leaving some part or the other.

SHRI PARESH NATH: It is already included in 'reproduction'. Your contention is the word 'publication' is not noted. If 'publication' is included, then cinematograph is also included in that.

SHRI SINHA: It should be substituted by the words "to issue copies of the works to the public", 'Public' may be read as "issue copies of the work to the public."

Then the media is not defined. It could be any media, print media, cinematograph, whatever it may be.

MR. CHAIRMAN: I have got your point. You have mentioned "To communicate the work to the public." It includes the print and print media and all that other media. In Clause 4 "To include the work in cinematograph film" would mean that cinematograph film also is a media of communication.

SHRI PARESH NATH: Specially as given to the cinematograph film.

SHRI YUNUS DEHALVI: The difficulty is that some forms of communication are specifically mentioned and some forms are now being excluded. By comparison, any court will come to the conclusion that the legislature intended that publication should be removed and this specific right could be printed only in this category and not in the category of yours. That is the conclusion we want to remove.

SHRI SINHA: If you look at the original Act, that also included artistic work, reproduction, publication of the work in any cinematograph film. We are not changing any of the rights except we are making publication a wider right. That is all.

MR. CHAIRMAN: You are removing the word "Public."

SHRI YUNUS DEHALVI: All other forms of a communication are being specifically mentioned. Only the word 'public' is being removed.

MR. CHAIRMAN: You have removed it while amending "To publish". They say that the court may interpret that you are not coming in that category to include that work. Only in cinematograph film, the pictures could be used and not in other communication.

SHRI YUNUS DEHALVI: By inference, any court will be led to believe that this was the intention of the legislature.

SHRI SINHA: There were certain rights given earlier. We do not want to interfere with those rights. Our intention is to enlarge the rights and not to curtail them. Earlier the rights were given. The word 'Public' relates specifically to the print media. How do you publish a thing? You publish it through printing. Earlier it was limited to the print media. We are now giving a general connotation to issue copies. If you are issuing copies to the public, then it becomes synonymous to publish it and we are saying that what used to be "Having been published", is equal to "Issue of copies." Media, through whatever process it is issued, is left open. We are making it wider.

SHRI YUNUS DEHALVI: If this view is accepted, then the other Clauses have to go.

MR. CHAIRMAN: I request the Law Ministry to let us know.

SHRI RAGHBIR SINGH: If we retain these words "To publish it" as they are and keep the definition which we put in Clause 3, will that serve that purpose?

SHRI YUNUS DEHALVI: That will be sufficient.

SHRI RAGHBIR SINGH: It leads to the same conclusion which you reached. The phraseology which has been used there in the respective entries in 14, it has been the same as in the amended definition.

SHRI PARESH NATH: The word 'publish' is removed from that entry.

MR. CHAIRMAN: We will see how we could improve the drafting. Now we proceed to another suggestion.

SHRI PARESH NATH: If the intention or if the wordings in Section 19(1) are actually implemented, you will find all of us here behind the bars.

MR. CHAIRMAN: "No assignment of the copy work unless it is in writing signed by the author or his duly authorised agent."

SHRI PARESH NATH: The newspapers do not get any assignment generally in their favour. There is no amendment proposed to it. The newspaper industry has escaped notice of this amendment. This was added by Act 23 of 1983. This means that every article, letter, photograph submitted by a staffer to the newspaper, there should be document, because copyright does not get assigned unless and until it is in writing. I would like to draw your attention to Section 63 which says about the offence. For example, if a person sends me something to be published in the Letters to the Editor and I publish it without getting into a written agreement. Have I committed an offence and can I be punished under Section 63?

MR. CHAIRMAN: I think, no.

SHRI PARESH NATH: That way, articles written in all the newspapers are written by outsiders. There are certain protections under Section 17(b). If I reproduce something from a book, I want to have some sort of right for that.

MR. CHAIRMAN: In your nature, it is not possible to get into agreements. This is not being done. How will you suggest that it could be possible?

SHRI PARESH NATH: According to Section 17(1), any contribution to the newspapers should be treated on par with other things.

MR. CHAIRMAN: So far as I understand, if you print an article, you become the copyright owner.

SHRI PARESH NATH: The problem is, when an article comes, it is printed and it takes ten to fifteen days to despatch the cheque to tell the person that it is accepted.

MR. CHAIRMAN: I appreciate your difficulty.

SHRI PARESH NATH: If we want to get everything in writing, the newspapers in one day get 30 to 40 items. If I want to re-use it after 20 years, where shall I look for the document? How shall I store it?

MR. CHAIRMAN: This can be easily taken care of under Section 17 (a).

DR. NAUNIHAL SINGH: It should not be accepted for publication without the assignment.

SHRI PARESH NATH: But without a written assignment we cannot use it.

DR. NAUNIHAL SINGH: *Suo motu* you cannot agree with the content and intent of those articles in any way. Still you do not own any responsibility of whatever is published. Why do you claim that it should be sent so that you get assignment and get some right?

SHRI PARESH NATH: The very fact of publishing another person's article is using the copyright invested in him. Mr. X has written an article. He has a copyright. He sends it to the newspaper. The newspaper may or my not agree with it. But when it publishes it, it means, he is making a pecuniary advantage of it.

DR. NAUNIHAL SINGH: It is not the case always.

SHRI YUNUS DEHALVI: It is the newspaper which is using it for its own purpose.

SHRI PARESH NATH: What I am saying is that the newspaper is using the copyright of the author without having that particular right of publication assigned to him.

SHRI R.K. SINHA: Normally, whenever any person sends an article to you for publication in the newspaper, obviously, it is always accompanied by a letter which says that he has written an article and he requests you to kindly publish it. There is a request from the author to the newspaper for publishing it in your editorial or whatever it is. Will that be treated as an assignment?

SHRI PARESH NATH: If you see Section 19(1)(2) as amended, then it will not be.

SHRIMATI VEENA VERMA: Unless it is assigned or it is covered with a letter duly signed, they do not publish it. We are giving the authority just to publish it.

SHRI PARESH NATH: But you are not transferring the copyright even for that one publication.

MR. CHAIRMAN: Section 19(2) says:

> "The assignment of copyright in any work shall identify such work and shall specify the rights assigned and the duration and territorial extent in such assignment."

DR. NAUNIHAL SINGH: My submission is that they are not seeking the assignment rights for other purposes.

MR. CHAIRMAN: If the law would have been implemented and had somebody claimed the copyright, then they would have been behind the bars. They themselves had accepted it.

DR. NAUNIHAL SINGH: Normally the author writes that "May I request that this enclosed article to this letter be considerd for publication." It is the language that is used. And then, they do publish. So, what is the harm there?

MR. CHAIRMAN: I do agree with you. But if you see Section 1 here, it says that:

> "assignment of copyright in any work shall identify such work and shall specify the right assigned and the duration and territorial extent of such assignment."

SHRI PARESH NATH: That means, the law will read something like this. To the Editor, *Hindustan Times*, a person writes a letter saying that he is sending an article on the "Problems of Indian Budget" and the article contains 17 pages. He will further say that he will allow the *Hindustan Times* to publish it only once, that is, till such and such date and such and such time. Then, the newspaper will retain this paper for the whole term of the copyright, that is, till the death of the author plus 50 years.

SHRI R.K. SINHA: The point that I was trying to make was that for publication in the newspaper, normally, an article is accompained by a letter and then you publish it. Then why do you want the copyright to be transferred to you? Why should not the author retain his own copyright? But for any subsequent publication, you can seek the approval of the author. So, why do you want that?

SHRI PARESH NATH: I will draw your attention to Section 17.

DR. NAUNIHAL SINGH: When the author sends a letter requesting you to publish his article—he has made a lot of efforts by typing it, by using his brain and his ideas to draft it— and you do not have even the courtesy to return it, if you do not publish it. All it requires is to put a one rupee stamp and return it to the author. Why?

SHRI PARESH NATH: I do not want all the rights.

SHRI R.K. SINHA: Why do you want to have more rights than that? Why do you not benefit the poor people?

SHRI PARESH NATH: I have nothing against it. 52M only says about an article which has been published elsewhere. This reproduction is different from what has been there under Section 40. The copyright of the works on Mahatma Gandhi is still with Navgjivan Trust. If we reproduce it, that is exempted from 52M. But, if an article comes to the newspaper publisher himself, it is not covered under 52M.

DR. NAUNIHAL SINGH: Whatever you have pointed out is so open, that reproduction in a newspaper magazine or other articles of current economic, political, social or religious topics, is possible unless the author of such article has expressly reserved himself the right of such reproduction. So, you go on reproducing unless he reserves the right. Now, why do you specifically want the assent, etc.

श्री भगवान शंकर रावत: अखबार के लिए प्राविज़न है कि जब आर्टिकल छपेगा तो उसका मेंशन करते हैं?

SHRI PARESH NATH: I will clarify the point to the hon. Member. I will not pay anything to the author under 52M. So, if I do that, I do not have to even pay anything to the author. This is the intention. So, it does not apply to the case which I am advocating.

DR. NAUNIHAL SINGH: In that case, you have to seek the permission from the original publisher or you have to seek the permission from the original writer.

MR. CHAIRMAN: The existing law is such that they generally do it putting the phrase, "It is reproduced with thanks", like that.

DR. NAUNIHAL SINGH: There is a little difference. If the original pubisher reproduced it, it is different and if somebody else reproduces, it is something different. If that is reproduced by somebody else, then permission has to be sought from the original publisher.

MR. CHAIRMAN: That is true. I am trying to understand why the person, who has not originally printed, should also be given this exemption when this exemption is being given to a magazine which has paid nothing to the original writer? I am not clear.

DR. NAUNIHAL SINGH: Here an hon. Member is a publisher of my article. If she reproduces, then the freedom is there. If I reproduce in my paper, then actually I have to seek permission from this publisher. I have to say: 'by arrangement with so-and-so'.

MR. CHAIRMAN: I want your help to come to some conclusion. They reproduce it for another magazine. They got it sold for lakhs of ruppes. That poor author is not entitled to charge anything from them. In spite of that, they have not paid a single pie to the author. Other one has paid. They have reproduced in their magazine and newspaper.

DR. NAUNIHAL SINGH: My point is proved. He must seek the permission from the original publisher. He will ask: how many copies are you publishing? The original publisher might like to have a chunk of flesh.

SHRI R.K. SINHA: The point that possibly the honourable witness is saying is that when an author sends his article to the newspaper and it is accompained with a letter requesting him to publish, it gets published. In lieu thereof, the author is paid for that article. Then, the point that is sought to be made is that as soon as it is published, the copyright of the

author should be deemed to have been transferred to the newspaper for use later on. Correct me, if I am wrong.

SHRI PARESH NATH: I will redraw the scenario. The article comes to the newspaper whether with a letter or without a letter. The newspaper uses it. As soon as it uses, whether it has paid or not, it can use the copyright. It is vested in the author. Now, was this used under an assignment? As of today, it is not under assignment. Until and unless the assignment is like 91 and 92, it is not an assignment.

SHRI R.K. SINHA: Therefore your contention is that since the newspaper uses, it acquires copyright to that article.

SHRI PARESH NATH: That is what I want.

SHRI R.K. SINHA: My point is, why should the author lose his copyright. It is just becuase he has got it printed in your newspaper?

SHRI PARESH NATH: I will draw your attention to 17-A.

SHRI R.K. SINHA: The author, if he so wishes, should be free to use it either in other newspaper or in another magazine or in a journal.

SHRI PARESH NATH: Please go through 17-A. Within that also, there is a line: in the absence of any agreement to the contrary.

DR. NAUNIHAL SINGH: That is different.

श्रीमती वीना वर्मा: चेयरमैन साहब, कविता की किताब छपी। लेखक की कविता है। अगर आप दूसरी एडीशन छाप रहे हैं तो आपको परमिशन लेनी पड़ती है। यदि दूसरा एडिशन आल्टरनेटिव, सैकिण्ड या अंदर निकालना चाहते हैं तो आपको लेखक की परमिशन लेनी पड़ती है। जब एक बार आर्टिकल छप जाता है तो दुबारा छपने के लिए आपको फिर लेखक से परमिशन क्यों लेनी पड़ती है? उसको री-प्रोड्यूस कर दीजिये।

श्री परेश नाथ: मैं तो पहली बार की बात कर रहा हूं, आप दूसरी बार के बात कर रही हैं। पहली बार जब लेखक का छपा तो उसको वह अधिकार नहीं है, उसे वह अधिकार चाहिये।

श्रीमती वीना वर्मा: एक अधिकार आप एक साथ कैसे ले लेंगे?

सभापति महोदय: आपके कहने का मतलब यह है कि पत्र लिखकर आता है, वह एसाईनमेंट नहीं है।

SHRI YUNUS DEHALVI: If an article is submitted to a newspaper for publication, that should be deemed to be an assignment and that assignment should not be in terms of Section 19(1) and (2). We do not want a permanent assignment but we want to be protected from the penal clause.

MR. CHAIRMAN: We all agree that an article which is being sent for publication will create problems and complications under Section 19 (1) and (2) and 'deemed to' may be nullified by amendment 2.

SHRI PARESH NATH: In case the first owner of the copyright is under Section 17(a), then Section 19(1) would not come into it and in the case of a newspaper, that right may be given with some saving clause.

SHRI YUNUS DEHALVI: Alternatively, when an artists' work may be photography, making cartoons or drawing portrait, etc. and when it is submitted to a newspaper with an intention of having it published, then that should be deemed to be an assignment for the first publication in that newpaper or periodical or magazine and that is the intention of the author. So, it is implied that he wants it to be published and that assignment need not be in writing.

MR. CHAIRMAN: We will see to it. Now, we will proceed further.

SHRI PARESH NATH: That clause of Section 19(2) and (3) will apply to all publishers.

MR. CHAIRMAN: You can say that the purpose is not clear.

SHRI PARESH NATH: Suppose there is an event hapening today and a photograph has been taken. It may not be useful now or it may not be relevant but after one year, it may become more relevant. If a person is elected as an MP, a photograph is taken; a newspaper takes it and makes payment for it. But it will be more useful if that MP becomes a Minister or the Prime Minister. That photograph will be of a younger age. We do want to use it exclusively. Another example is that of Pamella Bordes. There were lot of publications about her. When she was a model, nobody bothered about her but when she become notorious, then her photographs were in great demand. Do we have to go back to the photographer and seek his permission to re-use the photograph?

SHRI YUNUS DEHALVI: We buy the photographs just to help the person. In this way we invest in hundreds of photographs. Later on, one or two photographs may achieve eminence and we use them for publication. After having bought the article, we may not use it for quite some time. We may use it after two or three years. After having bought the right to use it, why should the right be limited to just one year?

MR. CHAIRMAN: You may purchase a photograph today for an insignificant sum of Rs. 10/-. After ten years, the person in that photograph may become a VVIP and you may print it in your magazine. Because of that rare photograph, the worth of your magazine may be enhanced ten-thousand times more. Now, our question is this. Why should you not recognise the copyright of that particular photographer, whose work increased the worth and prestige of your magazine? You have invested in the original creativity of a person. And this Bill is intended to protect the right of intellectual property. Why should you deny the right of the original creator?

SHRI PARESH NATH: As stated by my freind, we buy hundreds and thousands of photographs. Most of them are of no value even after a year. We may use just one or two photographs after a year. For that also, should we seek the permission of the artist?

SHRI YUNUS DEHALVI: Sir, your point is very valid. I invest in intellectual property and in a plot of land. Would you rather prefer that

publishers invest in intellectual property or should they invest in stocks and shares or in land? In our organisation, every day we buy material from various persons, with the idea that we may use it after five years. Even when we do not want the material at that point of time, from the point of view of helping that artist, we buy the material. Most of the time, we may not even use the photographs, etc. In this way, what are doing is social service. Now, if you take our right to use it after some time, we may as well shift our investment from intellectual property to some other areas.

MR. CHAIRMAN: I have no comments if you want to shift your investment pattern. The purpose of law is to keep balance between things. You may argue that one year is not sufficient and more time may be given. But you cannot say that you will not recognise his copyright.

SHRI PARESH NATH: It seems that the thinking of this legislation is that the author is a weak person.

MR. CHAIRMAN: He is vulnerable.

SHRI PARESH NATH: I don't think so. If an author feels that he is vulnerable, he does not observe to be an author.

MR. CHAIRMAN: We are considering these things from the particular point of view of Copyright. What you are giving are some other arguments. We will certainly keep your problems and suggestions in view. As I said we have to keep balance.

Now, we will go to reprography. What are your views?

SHRI PARESH NATH: We have only said that printing machines may be included in it. We suggest that Clause (x) of the Bill of page (4) may include photo-composing, and offset printing machines. These are the latest ones. I hope the Government's idea is not to put cess on newspapers. Please make a specific exemption in the case of printing machines.

SHRI R.K. SINHA: The apprehension seems to be that under the definition of reprography, modern system of printing will not be included. There need not be such an apprehension. This is only an enabling Bill. The items on which a cess would be levied, would be notified by the Government separately. These items are not mentioned in the Bill. The intention of the Government is only in regard to photo-copiers and things like that and not to printing as such. So, there should be no apprehension at no stage that printing is going to come within the purview of the Cess Bill.

SHRI YUNUS DEHALVI: Why not? The Legislature can make its intention clear. If the Government comes up with such a thing in future, they might intentionally or unintentionally cover printing machines.

SHRI R.K. SINHA: Reprography skills— the printing mechansim.

SHRI YUNUS DEHALVI: Please say so in the Bill. We here say in this very room but why should not the Legislature make its intention clear? At this stage we are pointing out. We suggest that an exclusive Clause may be there that Reprography does not include printing machines, offset or photo-composing or at least in case of newspapers, periodicals and books are concerned.

MR. CHAIRMAN: I thank you very much on behalf of the Committee that you have enlightenend us with very interesting points and we will keep them in our mind. I use them while finalising our Report.

I thank the hon. Members and particularly Mr. Swaminathan that he was very kind enough to be present here in the Meeting. Now, let us adjourn.

SHRI YUNUS DEHALVI: I thank you on behalf of the Indian Newspapers Society. Thank you very much for listening to us.

(The Committee then adjourned.)

JOINT COMMITTEE ON THE COPYRIGHT (SECOND AMENDMENT) BILL, 1992

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE COPYRIGHT (SECOND AMENDMENT) BILL 1992

(Friday, the 23 April, 1993 from 1500 to 1645 hours in Committee Rom 'C', Parliament House Annexe, New Delhi)

PRESENT

Shri Syed Sibtey Razi — *Chairman*

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3. Dr. F. Azam
4. Smt. Dil Kumari Bhandari
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14. Shri Mohammed Afzal Alias Meem Afzal
15. Dr. R.K. Poddar
16. Shrimati Veena Verma
17. Shri Iqbal Singh

SECRETARIAT

Shri Ram Autar Ram—*Under Secretary*

REPRESENTATIVES OF THE MINISTRY OF HUMAN RESOURCE DEVELOPMENT (DEPARTMENT OF EDUCATION)

1. Shri M.P.M. Kutty — *Director.*
2. Shri B.S. Dhillon — *Under Secretary.*

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

Shri S.P. Kanwal — *Deputy Legislative Counsel.*

WITNESSES EXAMINED

The Indian Phonographic Industry, Calcutta

Spokesmen:

1. Shri P. Chanda, President
2. Shri S. S. Shidore, Secretary
3. Shri H.S. Anand, Legal Adviser
4. Smt. B.B. Chib, Legal Adviser.

MR. CHAIRMAN: The Motion for extension of time for submission of our report was moved in the Lok Sabha on the 22nd April, 1993 and the House has granted extension, till the last date of the Monsoon Session. In fact, we have to speed up our discussion. We are hopeful that we will be able to finish by that time.

A meeting was fixed with Shri Buray Ruhen at 3 p.m. in Committee Room 'C'. Due to some unavoidable situation and due to some other urgent utilisation of the accommodation the Hon. Speaker has given instructions that the accommodation could not be used. So, we had to cancel it.

Now we will take the evidence of the Indian Phonographic Industry, Calcutta.

(The witnesses were called and they took their seats.)

MR. CHAIRMAN: Before you start, I may point out that in accordance with the provisions contained in Direction 58 of the Directions by the Speaker, your evidence shall be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence given by you should be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

MR. CHAIRMAN: Before we go to the suggestions made in your memorandum. I would request you, if you like, to say something in general, about your industry as well as your past experience with the Copyright Act.

SHRI PRADEEP CHANDA: We have made a fairly detailed submission on the recommendations and given some comments and suggestions to the Committee. We are very happy that we have been given some time by the Working Committee that was set up by the Ministry in which we suggested an amendment. I think we will take the opportunity here and your time to explain our working. As an industry we move in several areas. We are a creative agency with some social responsibility for recording which we consider is as important as production of a high quality records. Corrective quality checks, go a long way in our search for new talents which is the objective found to be highlighted as a group in our country and it is our privilege to be able to preserve and disseminate the very important works of art and we have done so far more than 98 years in this country. We necessarily have to keep pace with the technical advances

constantly being made in this field for prevention of the infringement of Copyright. That is why Copyright protection is so vital for our industry.

In terms of Copyright the concept of Copyright has been recognised since 1911 and Copyright applies in the case of musical works, in the literary works and more important, records for sale. Records have been protected all along as independent works, because the record is not just a literary work but it has some place for the artists' performance plus the technical capability that goes in arranging or creating the records.

Our experience for quite some time has been that the Copyright Act of 1914 and 1957 which was amended in 1984 did have certain weaknesses. We have been in the industry association since 1936 and we have been trying to point out these weaknesses to seek amendments to make it stronger.

Regarding the industry today it has a total production of about Rs. 600 crores. It provides the livelihood to a large number of people, running into many about a million. But more important than any thing else, it preserves our heritage, cultural and musical heritage not only in this country but in the world as well. Technilogical achievements have made in necessary that some amendments have to be made which were made in 1957 and in 1984. They halted the infringement of Copyright to a certain extent. But there were some weaknesses.

When we discussed the amendments proposed this time we have welcomed them. The Act provides for the provision of rental rights in providing Copyright in forms of dissemination, that some fees can be collected by the authors. One of the major points we found was that there was some controversy interpretation of the Bill because of the wording in the Bill about the right in records.

They found that unscrupulous people have actually misused the provisions to mislead the public and a new amendment which is provided for amendments to make, a conversion recordings subject to the Copyright owner's permission is very welcome. The reason why we have made this written representation and today we have sought time from you is that some of the words in the proposed amendment may leave some scope for doubt or confusion. We believe that some clarity is required, especially in terms of protection of record as a Copyrightable product. The new definition does not necessarily define the record as a Copyrightable item on its own and we understand that it is not the intention to dilute the current Copyright regime. We, therefore, want that the definition of Copyright of records remains unchanged.

MR. CHAIRMAN: Your note says:

> "One of the weaknesses as perceived by us of the new definition of sound recordings is that it does not clearly recognise Copyright in records on the Copyright ownership of record companies by virtue of their ownership of original plates."

Would you kindly refer to Clause (2) Section (b)? I think, that covers your point of view. It is at page 4 of the Bill. It says:

> "(xx) 'sound recording' means a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced,"

So, keeping in view the technological developments and all that, it appears, there is no need for further definition of any thing which you have suggested.

SHRI P. CHANDA: I will tell you the reason as to why we raised this point. Kindly see sub section (xii) on the same page. It says:

> "(uu) 'producer' in relation to a cinematograph film or sound recording, means a person who takes the initiative and responsibility for making the work."

Sir, record is a separate work altogether. Therefore, the initiative and the responsibility to make the record could be somewhat different from the sound recording. That is why, we wanted it to be clarified.

SHRI M.P.M. KUTTY: The new definition of 'producer' given in (uu) is intended to cover the author of the record also irrespective of the technology used in the earlier definition, where "plates" were used. So, we are proposing to tie up the definitions of both the producer of sound recording and the author.

SHRI P. CHANDA: Our submission is that record is a term which indicates that there has to be necessarily recording from which further copies are made irrespective of the technology. There is always the first recording. If we can accept that as the definition of record, then a problem *vis-a-vis* the definition of sound recording arises. Please refer (iv) (f), which says:

> "(f) "cinematograph film" means any work of visual recording on any medium produced through a process from which a moving image may be produced by any means and includes a sound recording accompanying such visual recording and "cinematograph" shall be construed as including any work produced by any process analogous to cinematography including video films."

It says that it includes sound recording. There could be some dispute later on. The earlier definition of 'sound track' was included but now it is excluded. There could be some dispute as to who is responsible for sound recording. I think, that is why the author of record was defined very clearly in the earlier Act.

MR. CHAIRMAN: This cassette recording and all that was not available at that time when the enactment was made in the existing Act. Does it not cover that? Do you want some separate plate?

SHRI P. CHANDA: What we are saying is that any time you can make a copy. There is a original plate or tape for digital recording, from which copies are made available. Recording companies create plate and the ownership of that devolves the Copyrights on the record. So, what we wanted to suggest is that it is very clear that the record is treated as a separate work.

MR. CHAIRMAN: Now, we sahll take up Clause (2), where you have said Sub-clause (vi) in Clause (d) of Section 2 of the Existing Act should be retained. Please see the revised definition proposed in Clause 2(iii) which does not tie up with the particular technology like the existing one.

SHRI P. CHANDA: That is right. Please read it in conjunction with section (uu) and I quote:

> "producer, in relation to a cinematograph film or sound recording, means a person who takes the intiative and responsibility for making the work."

SHRIMATI VEENA VERMA : If you can explain from the lay man's point of view, that would be very good. What is the definition of record and sound recording?

SHRI P. CHANDA: If you were to take the basic recording, the persons involved in that recording would by lyricist who has written the word, the composer who has composed the music and who is performing when the recording is taking place and the recording company which is arranging, making it into recording, making it into an original plate from which the further copies are made. That is one source of music that goes into recording.

Another source is when a film producer makes a film. Then, he gets the right. He has also composers, lyricists. Therefore, the music contained in the film can be assigned to a recording company.

SHRIMATI VEENA VERMA : You mean to say that music record is separate and sound recording is separate.

SHRI P. CHANDA: Yes.

SHRIMATI VEENA VERMA : To whom are you responsible for royalty?

SHRI P. CHANDA: We are responsible to the producers or to the artists, as per the contract and even to the performing artists. For film track, it would be paid to the producer and quite often to the artists and to the music director as well.

SHRI M.P.M. KUTTY: The international convention which are modelled on the WIPO model act that provides a definition which is more or less in line with our Bill. It says:

"An 'audiovisual work', is a work consisting of a series of related images and accompanying sounds, if any which are intended to be shown by appropriate devices."

Does it meet the definition in the manner what you have said?

SHRI P. CHANDA: We go to section 2. Clause W of the existing Act should be retained.

SHRI P. CHANDA: This is an explanation on the first one.

MR. CHAIRMAN: Is it not so that the work record in the Existing Act is outdated, obsolescence of the technology and new definition of the sound recording is required under Clause 2? You have explained it. I think, it has been covered. Now, we switch over to Clause 2 where you further say:

"Act the end of the proposed definition of musical work the words but does not include any words... to be sung, spoken or performed with the music, or sound-recordings."

As you have suggested, will it not be just taking away the right of the composer? You see Clause 2, page 3 of the Bill and I quote:

"Musical work" means a word consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music."

SHRI P. CHANDA: At page 19, we had recommended, I quote:

"This can be done by including at the end of the proposed definition musical work the words, but does not include any words to be sung, spoken or performed with the music or sound recordings."

MR. CHAIRMAN: Your suggestion is that this should be added. But we feel that if it is done, the right of the composer may be affected.

SHRI P. CHANDA: The composer's rights are defined separately, which is on page 5 of the proposed amendment—section 14A, line 24. The composer will assign the rights to the producer or the recording company, as the case may be, as the rights of owner. So, the rights are well protected.

MR. CHAIRMAN: But if your suggestion is accepted, then what will be the effect? Even then it will remain the same.

SHRI P. CHANDA: It will still be his right assignable by him.

SHRIMATI VEENA VERMA: At the end of clause 5 also, you are saying: "but does not include any word". If you do not have any word, then how will you make the translation of the work? A piece of music is composed with both music and words. So, you cannot include one and exclude the other. You have to take into account the composer also.

SHRI P. CHANDA: This is already in the amendment.

SHRIMATI B.B. CHIB: Sir, what has happened is that the Indian music cannot be written. To make sure that even though it cannot be written, it does enjoy protection. It goes on to say that though it cannot be written, these musical works will not include literary work. So, we are saying that because you have excluded literary work from unwritten musical work, you will kindly exclude sound recording also because it essentially means the same things.

SHRIMATI GEETA MUKHERJEE: When music is played, often it is with some wordings in it. So, I am also not clear how that sound-track will not be accompanied by any words.

SHRIMATI B.B. CHIB: A musical work is separate and a literary work is separate. The combination of the two is recognised as a combination of musical and literary work. Any song has lyrics to it which is recognised as literary work and it has a tune which is recognised as a musical work. All of this has to be reduced to writing. Indian music cannot be written. Since it cannot be written, just to avoid any conflict, we have said that any litrary work which you will perform with the tune, is not a musical work but it will continue to be as such.

SHRIMATI VEENA VERMA: Since we have got high technology, there is no need to write it down.

SHRIMATI B.B. CHIB: That is what the amendment has recognised. But just to avoid any conflict, it has been said that any litrary work which you will perform with the tune, is not a musical work but it will continue to be as such. Our suggestion was since by way of abundant caution you have excluded literary work, you should also exclude sound recording because sound recording also is not, at the same time, a musical work.

MR. CHAIRMAN: Now we proceed to clause 10. You suggest that section 30A in the new Bill should be deleted. But we feel that while the protection is enjoyed by the assigner, why should the licensor also not get the same type of protection? Could you be a little more explanatory on this ground, because we could not get your point?

SHRIMATI VEENA VERMA: You can say what are the difficulties in retaining Clause 38A.

SHRI S. SHIDORE: My submission will be that there is a basic difference in the concept of assignment and of licence. In our Copyright Act itself there is a chapter on licence. Licence of this nature will be diluted by transfer of certain rights. It is very much watered down concept in law.

SHRI M.P.M. KUTTY: Please see at Section 30-A. It provides flexibility. Whatever the practice that is being followed will not change.

SHRI P. CHANDA: Our suggestion is so far as our area is concerned, clause 38 becomes redundant. We are talking about copyright assignment. That is the reason why we recommended this.

MR. CHAIRMAN: Let us see.

Let us now take up Clause 11. You have a note on this. Would you kindly explain what is the problem?

SHRI P. CHANDA: The way we read it becomes mandatory which is against to the principles of copyright.

MR. CHAIRMAN: Please refer to 33(1) on page 7. It means copyright comes into force on its own. You gave a note on this point also. Can you elaborate on it?

SHRI P. CHANDA: This does not allow an individual to exercise his own option to licence. It becomes a collective decision.

MR. CHAIRMAN: What does the official from Law Ministry say?

SHRI S.P. KANWAR: In earlier evidence the same point was raised. The consensus at that time was that it is not necessary.

SHRI M.P.M. KUTTY: The point raised is use of certain words. The emphasis is not brought out. The matter requires detailed examination.

SHRI P. CHANDA: This is the opinion from us. If that is the intention we are happy.

MR. CHAIRMAN: Let us look into clauses 33(4) and 33(5). Is it not necessary that some sort of control from the side of the Central Government should be there to check exploitation and other things?

SHRI P. CHANDA: Copyright Societies are public bodies with members meaning the concerned creative people. The Societies accounts are subject to Audit by public audit firms and that should be treated as adequate control. With due respect I would say that the more bureaucratic controls there are, the more complex they become. The copyright societies are acting responsibly subject to the local laws of public auditing and accountability to the members. That should be adequate.

SHRIMATI VEENA VERMA: Other societies are doing autonomous work. Their record is not so much good.

MR. CHAIRMAN: What to do with this? So, if you go through Section (4) and Section (5) on page 8, you will find that they say as follows:—

"(4) The Central Government may, if it is satisfied that a copyright society is being managed in a manner detrimental to the interests of the owners' rights concerned, cancel the registration of such society after such inquiry as may be prescribed."

"(5) If the Central Government is of the opinion that in the interest of the owners' rights concerned, it is necessary so to do, it may by order suspend the registration of such society pending inquiry for such period not exceeding one year as may be specified in such

order under sub-section (4) and that Government shall appoint an administrator to discharge the functions of the copyright society."

SHRI P. CHANDA: I do not think we have any query on the spirit of this in the draft. We were just saying that this kind of copyright society which should be responsible not to the Government, but to its members. I take your point that if there is any major mismanagement, obviously there has to be a control. But if such control is there, then the Central Government can step in and ensure that the management is changed. Probably that would be an ideal solution.

MR. CHAIRMAN: We go to clause 40, Section 38(1), (2) and (3) confers certain rights to performer who must give consent to the exploitation by means of a recording visual or sound of his performance. It is not clear as to why it is not recorded. Do you want that the record should also be given?

SHRI P. CHANDA: Yes, Sir.

MR. CHAIRMAN: If you kindly see Section 38(3)(d) on page 11 of the Bill, it says:

"communicates the performance to the public otherwise than by broadcast, except where such communication to the public is made from a sound recording or a visual recording or a broadcast,

shall, subject to the provisions of section 39, be deemed to have infringed the performer's right."

SHRI S. SHIDORE: Section 38(4) says:

"Once a performer has consented to the incorporation of his performance in a cinematograph film, the provisions of sub-sections (1), (2) and (3) shall have no further application to such performance."

What we tried to submit was that it in fact lays down very clearly that when the performer had given his consent for incorporation of his performance in a cinematograph film, the rights enumerated in the section earlier will not come into play any further. This is obviously so because the performer has been paid the valuable consideration for giving the performance for inclusion in the cinematograph film. While this provision is quite acceptable and logical so far as cinematograph film is concerned, probably it has escaped the attention of the framers that a performer also performs sometimes only for sound recording and in case he gives the consent, he does get his valuable consideration. In that event. on the analogy of cinematograph film the performer's right is not there. If this is provision for cinematograph film had not been there—this submission would not have arisen. If the clause is there, the question arises whether the performer only for sound recording continues to enjoy rights under sections 38(1), (2) and (3). Obviously, the answer is 'No'. But it does create a certain ground for future confusion. So, our submission is, just add the word 'record' in this.

SHRI M.P.M. KUTTY: While we feel that the right of the recording industry is adequately protected by sub-clause (a), it is not the intention to terminate the composer's right in the manner you have extended by adding the word 'recording' along with the cinematograph film. This is not according to the international conventions accepted all over the world, and in particular, I would refer to Article 19 of the Rome Convention which terminates the performer's right. It does not terminate by sound recording. That is the reason why we have not included the word along with 'cinematograph film'.

SHRI S. SHIDORE: The Rome Convention concerned itself with the rights of performers phonogram producers and broadcasting organisations. It did not concern itself with the rights of cinematograph film. Obviously, it was felt necessary now. This is my reading of the Rome Convention. It was felt necessary to specifically mention in the Rome Convention that once the performer has given his consent for the Cinematograph film performance, then certain rights enumerated will have no further application. The basic reason being Rome Convention did not concern itself with the Cinematograph producers. There was obviously an apprehension that the Cinematograph producers' rights, might be either questioned or might not be accepted no heard. Now, here, we are making a law for different segments of the copyright regime. We are very much concerned about the Cinematograph film producers as we are producers of sound recordings. Therefore, the addition of the word 'record' here is not going to take away the right.

This body, viz. the Indian Phonographic Industry, has been consistent in trying for, lobbying for and requesting for rights to performers. We have repeatedly, as the files in the Shastri Bhawan would show, urging the Government to join Rome Convention. We are a body of record companies who want the performers to be protected. Therefore, we will do nothing which will trample upon the rights of performers. Our submission is why—I do not know for whatever may be the reason—the word 'record' has been missed out. Now, we have followed the Rome Convention. The Rome Convention basically did not concern itself with cinematograph producers rights and that is why it was felt necessary to add that Clause there. Here we are making a law of our own which should stand on its own feet.

MR. CHAIRMAN: Clause 7—It is relating to Section 14(e). You see page 6—In the case of a sound recording—(i) to make any other sound recording impeding it; (ii) to sell or give on hire or offer for sale or hire, any copy of the sound recording embodying it; of whether such copy has been sold or given on hire on earlier occasions.

SHRI M.P.M. KUTTY: Are you only proposing a drafting improvement?

SHRI H.S. ANAND: Yes. There is no substantial improvement. It is a question of language.

MR. CHAIRMAN: Section 55(2)—It is little discriminatory with the recording industry. Is that so? Anyway, you first see page 29 of the Principal Act. You read Section 55(2) with Section 52(a). I think, the relevant presumption regarding your industries is also available.

SHRIMATI B.B. CHIB: There are certain presumptions that are allowed to be drawn only for literary, dramatic, musical and artistic works while sound recordings in the films are left out. As it stands now, currently, there is no move to cover it. We have requested that the same benefit be given to records and films so that the name of the owner is presumed to be the person whose name is there; and who does the work.

You see Section 55(2). When a book is now seized or has to be shown to be infringing, the author can stand up and ask the court to presume that he is the author because his name is on the book. He should not be asked to give any further proof.

MR. CHAIRMAN: You read Section 52(a).

SHRIMATI B.B. CHIB: It relates to statutory information to be given by a record publisher. However, the court is not asked to presume anything from that information. The court is not empowered to make any presumption. That is only a statutory requirement which has been from us.

MR. CHAIRMAN: Okay, we will see. Now, we will go to the burden of proof. About this, whether it requires that the complaint proves that the copies are infringing and therefore, really to drive home the extent of gravity of infringement, each and every copy should be proved—is that so?

SHRIMATI B.B. CHIB: When we move the Court, we say that the accused has infringed our right. We have a certain right. That means a person authorised by us can make or do anything in those copies. When we go to the court complaining that a person has infringed our copyright, we have to prove many things.

Firstly, we have to prove that the work that we have seized or we are holding up is infringed. We have to prove the *locus standi* that we are the authors and we are the owners of the work. Since a right for this work was given only for 60 years, we have to prove that that right is still subsisting which has not expired. Once it expires, it goes into what is called public domain. Anybody can copy it. We will have to prove that it is still subsisting. It is still within 60 years. Then, we will have to even prove that it is published even in India or in any other country, whose work India recognises as a copyright in our country.

These three things in any case are proveable; they are not impossible to prove. Sometimes over 300 cassettes are seized and each of those cassettes may contain some song or some other programme. So, we have to prove three hundred different times that we are the author; the copyright is subsisting; we have to keep proving that. This is used

practically against us to delay the case; it is going to take 10-15 years to prove that we are the author of a particular work.

Conviction is very important to curb this offence. The Indian Act itself has provided. The court presumes the existing of those facts and the accused is always given an opportunity to rebut it. We have prepared a text which we have circulated. In this we have shown that in India copyright offence is also an economic offence.

As a matter of fact, in the UK Act, in the Canadian Act and in certain other Acts, in South Asian countries, these presumptions are drawn. The court is asked to presume that these facts exist; that the person did it knowingly. We have to prove two things. We have to prove all the facts; and then we have to prove that infringement itself was knowingly done. These things are true, because we would not go to the court unless they are true. We go to the court only when we have a genuine complaint. These presumptions exist in the UK Act, in the Canadian Act and even in other Acts.

If you turn to page 10 of the extract that we have provided you will find that the UK Act was amended in 1988. This UK Act is very clear. The court will ask the accused to prove by what authority did you make this.

We want to go to the court to prove that these are correct so that we do not have to produce the witnesses.

MR. CHAIRMAN: Most of the courts know different laws. They take these presumptions.

SHRIMATI B.B. CHIB: The rules are very complicated. Many legislatures have asked the courts to draw presumptions. You have been presumed guilty. The court asks you to prove that you are not guilty.

MR. CHAIRMAN: We have got your point.

Section 51(b) on page 4. Now you see your own memorandum. You see the last paragraph.

SHRIMATI B.B. CHIB: He goes to the court and says that somebody has left them there. We have to prove that somebody has not left them. But again we have been asked to prove that we have put them. They were there for the purpose of trading. These cassettes are not displayed on the racks; they are found in cotton. They claim in defence that somebody has left them there; we do not know. They do not give the name of somebody. If somebody has left them there, it means they are trading them. It is just to ease the burden. To give them no means of escaping their liability.

MR. CHAIRMAN: Now you say that affidavit by or on behalf of the copyright owner to be tendered as a *prima-facie* evidence of the copyright substance and ownership unless the contrary is proved. These are channel procedures. How these enactments could provide such things?

SHRIMATI B.B. CHIB: Our copyrights specifically have to make provision for evidence to be taken before the courts take it because as things stand correctly unless any particular act empowers the court to take any evidence, this is to ease the burden in the court. We have submitted in our abstract a provision from the Singapore, Malaysia and Hongkong Priacy Act to ease the burden again and to ease the process. They have provided that evidence can be taken on affidavit and whatever is delivered on it is presumed to be corrected but the accused is given an opportunity to prove it wrong.

MR. CHAIRMAN: What is the provision in other laws of the land?

SHRIMATI B.B. CHIB: It is allowed in civil, of course, but in criminal it is very rare. It has to be of a formal nature.

MR. CHAIRMAN: Now something about unlabelled articles. You have said in the last pages of your suggestions under Section 52(a) and read with Section 68(a)...

SHRI P. CHANDA: Here under Section 68(a) the manufacturer and the year of publication, the problem is that when we conduct a raid on a shop then the question arises is the dealer is guilty and not the publisher. If the dealer has got a cassette or an LP in this shop then is the dealer guilty? Very often the reading is, it is not so.

MR. CHAIRMAN: When you enter into a contract with a dealer do you not provide it there that if any unlabelled articles and cassettes etc. are found in the shop he would be liable and not the publisher?

SHRIMATI B.B. CHIB: Section 68(a) also says that any person under Section 52(a) shall be punishable, since Section 52(a) can only be violated by the publisher. Therefore, often the interpretation of Section 68(a) is that the dealer is not guilty or not culpable.

SHRIMATI VEENA VERMA: If the dealer is having an illegal cassette in his shop?

SHRIMATI B.B. CHIB: By having an illegal cassette in the shop the dealer can take the defence that it is illegal to the extent that the name and address of the publisher is not there and that is the publisher's fault, not his. So the action can be taken against the publisher and not against him as a dealer.

SHRIMATI VEENA VERMA: The end user will be guilty because he has brought the thing.

SHRIMATI B.B. CHIB: Even then he is not. The law does not say that he is necessarily guilty.

MR. CHAIRMAN: What is the position, you please explain?

LEGISLATIVE COUNSEL: The point that arises is what is the channel through which you are screening your product. If it is through the publisher? There is a subsequent contract between the publisher and the

distributor which you could make it obligatory for him to put these safeguards in the sub-contract. If you are publishing directly well, you are already taking care of this. But it comes only if within a subsequent channel it is being marketed. This should be taken care of at your end for the original contract.

SHRIMATI B.B. CHIB: Very often the publisher is not aware when we are enacting the policy. The publisher is read as the record manufacturer or the cassette manufacturer and if therefore, a publisher who is making an infringing copy and such cassettes are held, the shopkeeper may say that you catch the publisher for that and not him, that is the problem. What we will recommend is that anybody displaying such cassettes should also be held guilty.

MR. CHAIRMAN: Now the last point at page 16 and 17 of the Bill, that is Section 63.

SHRIMATI B.B. CHIB: May I answer that? At the moment it says that whoever knowingly infringes will be guilty of this offence. Our suggestion is and our experience with 'knowingly' is that it requires an absolute degree of proof that he actually knew. Our suggestion is that this standard be made reason to believe as has been done in various other legislations because reason to believe is defined in our Indian Penal Code. It is very often used in our provision and reason to believe means if a person is said to have reason to believe, he has sufficient cause to believe that he knows. It just lowers the standards of proof required by us because we are not dealing with all innocent traders. It again requires various people to be called as witnesses. So we are saying, just let us show that he had sufficient cause to believe and then the court presumes that he had reason to believe even under the Indian Penal Code receiving stolen property. This offence is also stealing the property. The words are natural or reason to believe. This requirement or this standard in receiving stolen property in other legislations is reason to believe, so that you can prove both.

MR. CHAIRMAN: Is it not very difficult to reach to the conclusion when a customer goes to the shop and purchases knowingly?

SHRIMATI B.B. CHIB: We do not, however, move against the customer, we move against the traders. Piracy is by traders. As the Section stands the courts have to be convinced that the person who is trading in it he know that he was trading in infringing copies. I will give you an example. A week before we supplied copies of 'Hum' which is of HMV recording to a dealer. A week later he was copying the same done by XYZ. Then how do you know that XYZ is supplying infringe copies. He should be brought into evidence. If we can show that he has sufficient cause to believe that would be enough to hold him guilty of offence.

This is the reason given about the standard costs in the U.K. Act, the Canadian Copyright Act, Singapore and Malaysian Acts and Hungarian Acts. All these countries note that the trader is not innocent. The trader knows that it is a crime, and we should be allowed to show that it is a crime. He must know that it is a crime.

MR. CHAIRMAN: Any more questions to be asked? No.

Thank you very much. We will look into all the suggestions made by you.

(The Committee then adjourned.)

amendments have already been submitted to this august body. I have a firm faith in this body because it is people's representative body. This is a law-making body. We take it as a last refuge for our sufferings to end.

That is what I have to say. If anything else is required, if you ask the question, Our General Manager, Shri Sanjay Tandon will reply.

MR. CHAIRMAN: You had suggested that there should be a new addition in Section 13 (4) of the principal Act in which you mentioned 'public exhibition'. What do you mean by 'public exhibition'?

SHRI SANJAY TANDON: Public exhibition is public performance of musical work in the film, viz. screening of the film in public, either in the theatres or through Cable in the homes.

MR. CHAIRMAN: The film producer enters into a contract or agreement with you. It is known that the film will be exhibited after production. What specific thing do you want to derive from these clauses?

As a layman, to understand your viewpoint only, I am asking you this question. Exhibition of the film is the right of the producer.

SHRI SANJAY TANDON: There are three categories of authors which the Copyright Act recognises. One is the original literary, dramatic or musical work owners. Second is in respect of cinematograph film owners. And third relates to records owners. These three categories have been given separate rights under the Act, under Section 14. Section 14 (1)A gives eight such rights to the musical work creator Section 14 (1) (c) is in respect of cinematograph films and it gives the owner of the film four rights, such as to make a copy of the film, to show the film, etc. These are the rights which have been given to the owner of the film, viz. the producer in the context of the film. His right is with respect to the film as a whole. He is the owner of the product.

Now, we are the owners of the musical work and Section 13 (4) very specifically states:

> "The Copyright in a Cinematograph film or a record shall not affect the separate Copyright in any work in respect of which or a substantial part of which, the film, or as the case may be, the record is made."

This is the text of the law. Section 13 (4) makes it very clear that the right in a film or a record will not affect any separate right which exists for any other work of which it has been made up of, for example, the musical work. Incorporation of musical work in the film does not affect the right of the producer. Similarly, the producer does not and should not affect our right. We have given a right to the producer to make a cinematographic film out of the musical work. By virtue of our giving him this right, he gets four rights. Section 14 (1) (c) gives these four rights, which are in addition to the rights given to the author of musical work. Under Section 14 (1) (a) eight rights are given to the musical composer.

The moment a producer gets a right from the composer to make a film he makes the film, incorporates the music in it, performs it in public or makes a record of it and then broadcasts it by whatever means. So, he gets the secondary right, that is only after the author of musical work gave him such a right he gets another right. Hence these two are complementary to each other.

The question that now comes in everybody's mind is when a film is shown in the theatre why should the composer of the musical work come in picture? The answer to that is the theatre owner has to take permission from two persons; one is from the producer because the film is the property of the producer. Second permission that the has to take, which is specified in Section 13(4) is from the author of the music of that film. Under Section 13(4) it specifically says that the right in a film shall not affect the separate copyright in any work that has been incorporated in the film or record, as the case may be.

DR. NAUNIHAL SINGH: If I have understood the stand presented by you, there are certain constituents of the film as a whole and one of it is the contribution of the composer and the writer.

So, what they are trying to elucidate is that these rights, despite the fact that they have contributed towards making of the film, they should not be so construed as an enclave so that the creative original rights of the composer are jeopardised. They should not be allowed to be jeopardised. Though they have contributed in making of the film, they still stand aloft. Their identity should stand aloft. That should remain as their creative original right. That should not die out despite the fact that they have given life to the production of the film.

So, they need to be protected. So, for that matter, permission should be sought from the composer or the writer. Separate permission is needed as the producer seeks permission to demonstrate his film. Simultaneously, the producer who is carrying within the impediment, the composers' creativity as well as the writers spirit and content, they should also take permission from these two constituents, both the composers as well as the writers. This is what they want to say.

SHRI HASAN KAMAAL: What he says is the crux of the problem. This practice of taking the permission from the composers and authors, had also existed in this country till the 1977 judgement of the Supreme Court of India. Before that, this practice was there. So, we are not asking a new thing. We are just asking for the restoration of old tradition, customs and law. The 1977 judgement jeopardised our right and this interpretation totally threw us away from that arena. So, what we want is the revival of the position and status of composer that was there before the Supreme Court Judgement of 1977.

DR. NAUNIHAL SINGH: I have already become a Member of this Copyright (Amendment) Bill, I had been to the US. I had an occasion to

meet the Chairman of the Copyright Board, I understood. The whole process that continues there. Mr. William Hughes is there, who is a Congressman, for the last eight terms. I talked to him at length. I know him. I wanted to have an insite into it. He said, they have provided these things. They are practising very nicely. There is a good coordination and harmony among the composers, writers and producers. Why don't you provide it, he told me. I said, it is on the anvil. It is for the whole Committee to consider it. I think they have a substance in whatever they have stated.

MR. CHAIRMAN: In the Bill, there is a revised definition of composer and so on. Don't you think that it gives a legal authorship to composers who do not enjoy it at present today? Have you gone through it?

SHRI SANJAY TANDON: You see our chart no. 2.

MR. CHAIRMAN: We will see to it later on. You see Pages 2 and 3.

SHRI SANJAY TANDON: The two definitions sought to be included in the Amendment Bill do not actually give us a right in practical circumstances.

AN OFFICIAL FROM THE MINISTRY: His right is strengthened in the context of the Act.

DR. NAUNIHAL SINGH: First they look at the basic working and then they play the music. Without that, no music will come up. In the same way, it is already implied in it.

SHRI HASAN KAMAAL: In the judgement of 1977, there is another misconception about the Indian music not being written. It is to totally wrong. Right from the inception of the Indian music, there are notations. They gave notations of different ragas and different contemporary songs. The 1977 judgement gives an impression that Indian music is no music. But it is not that. There was no tradition of publishing this notation in India. But every song has got its own notation. In order to remove this misconception, we requested to add these things in the definition of the composer.

SHRI SANJAY TANDON: Even earlier the definition of musical work has given us a right. As far as musical work was concerned, it was recognised.

Except that what it said was the musical work is a work which is a combination of melody and harmony, either printed or reduced in writing. So it has been going on ever since the Indian music is in vogue because it is on the mechanical tape.

Secondly notations are required by the musician to play that music what the 1977 judgement says is that for an Indian work to be recognised as a musical work, it has to be reduced to some sort of a writing. So there is nothing new in the proposed definition of musical work about whether it requires a graphical notation or not. It is still with us.

However, it is a good positive approach by the Bill. But it will not affect us in any positive way at all.

MR. CHAIRMAN: You have further suggested that Clause B of the proviso, Section 17 of the principal Act be deleted. I would request you to go through Clauses 8, 9 and 10 of the amending Bill. Is it not helping you? Is it not spelling out the conditions of the contract and all that? Would you like to let us know more about this?

SHRI SANJAY TANDON: Our proposal to delete proviso B to Section 17 of the principle Act was to further strengthen the provision of Section 13(4), because inadvertantly the proviso B to Section 17 speaks about photographs, painting, cinematograph films etc. it does not speak of musical work at all. If you see the context of the proviso B to Section 17 it does not mention it.

But unfortunately, the 1977 Judgement has again created a lot of difficulties. It has misinterpreted this proviso B also and it applied this proviso B to us though it does not apply at all. Proviso B does not mention musical work at all. It is proviso C which affect us. It has nothing to do with musical work at all. But the 1977 judgement unfortunately has applied that proviso B to us and there by the producer says, "once I give you consideration under Proviso B, I become the owner of the musical work," which is not the case.

OFFICIAL OF THE MINISTRY: The Bill has also sought to amend Section 14 Clause 7—The rights of the film makers and the rights of the composers are given separately. As we see it, there is no conflict between these two rights. Nor the 1977 judgement, as we have understood, is set up in the conflict between the two provisions of the Act.

Apart from this, why both these rights have been incorporated in the Act is, that it is in consonance with the international convention to which India is a party.

Particularly the Berne Convention is relevant. If you recall Article 144 of the Berne Convention, it is clear. I will just quote sub-clause (i):

> "Without prejudice to the Copyright in any work, which may have been adopted or reproduced, a cinematograph work shall be protected as an original work. The owner of the copyright in a cinematographic work shall enjoy the rights as the author of an original work, including the rights referred to in the proceeding Article."

This right is included in the musical right. The film maker has got the exclusive right to do whatever he likes or whatever is given to him.

SHRI SANJAY TANDON: Yes, you are absolutely right. But that is only in respect of the film of which he is the owner. We recognise that right and honour it. But we definitely do not see why his work treads upon our copyright.

As you rightly said, Part I of the Convention says that it is obligatory. Taken together with the producer's rights. even our rights are still intact. We cannot stop him from showing that work in public. Yes, we cannot tell a producer "You do not show it in public; but show it only to us." We cannot enforce it also. It is not in our power. What the Berne Convention says is very clear.

SHRI M.P.M. KUTTY: In addition to the rights, the cinematography work implies that the producer is the owner of the film, at least for that product.

SHRI SANJAY TANDON: The answer to the second part of your question lies in the present amendment, given in sub-clause (i). All that this clause does is, it lays down a guideline for the producers, but in a way, to snatch away our rights. We understand that a composer and an author should enjoy a right, because they are the weaker sections of the community. After all, protection of the weaker sections is a must.

Clause 8(3) is very very dangerous. Even if we get our rights it would be snatched away from us through the other door. Clause 8(3) says:

> "If the right assigned under sub-section (1) are not specified, it shall be presumed that the assigner has assigned all his rights under this Act."

It is there in the proposed Bill. The present Act tells us that if there is a contract, it will be governed by the contract. If there is no contract, then in the absence of an agreement to the contrary, if the producer is the employer under the Act, then the owner of the musical work is the producer, which we do recognise and that is very right. But if he gives the making of musical work on a contract basis, then the composer is the author. But the proposed clause is very dangerous. The law presumes itself. It says, "Mr. Producer, in case your contract does not specify the right. You will be given all the rights." What will the producer of a cinematograph film do? He will only say, "Mr. Composer, Please do not enter into any contract. Do not specify any of the rights."

Then the rights are with the producer.

So, the benefit of assumption should go to the assigner and not to the assignee. Here, the assignee is getting the presumption. The assignee gets all the rights. The person, whc gives his rights, does not have any say at all. We have suggested to this august Committee that it should be the otherway round. If there were no rights specified at all and if there was no contract, then the author is presumed to have retained all the rights except the right for which he is giving it to the person concerned. For example he is giving a right to the producer, the producer's business is to make a film. Therefore, the author is presumed to give that right of making a film to the producer. Similarly, if he gives a right to the record manufacturer, it will be presumed that he is giving the right to make a record, and all the

other rights are still with him. And that will ensure that the weaker section is protected. And if at all the producer or the record manufacturer wants the other rights, then he should ask the composer and the author to specify those rights. Then, both the parties will be aware of what they are giving in writing and what they are taking.

DR. NAUNIHAL SINGH: Sir, the witness in Bombay and here have mentioned that there is a lot of fluid situation. When we are processing this Bill and when we are putting a fortified law, I think, there is a strong feeling that there should be a standard or rather a model contract, which we can incorporate that here in the Annexure. If that is there, then the persons may not be able to run away or cheat the composers and the writers. They will be bound down by that contract. Otherwise, all these assumptions can be used goodly or badly. They have been used more often badly. I think, this Committee will be doing a good deed and wonderful deed if a model contract is put here and thereby you will be solving many problems of this particular society and the weaker section.

MR. CHAIRMAN: Do you have any standard format of an agreement at present?

SHRI SANJAY TANDON: Earlier CMDA had made a model contract but then that is lying in the cub board, and rats are eating it. The producers never give any contract at all.

SHRI HASAN KAMAAL: There are two practices in the film industry. Firstly, there would be no contract. We would just work on the films. If there is a contract, it would be modified by the producers. So, you can imagine that we cannot have any sort of a model contract. We, the authors and the composers of the film industry, and even outside the film industry, would very much welcome if this august body propagatees or gives us a model contract and we give you an assurance in advance that we will abide by it.

MR. CHAIRMAN: What have you to say about Section 19(2)? Would you like to eludidate further?

SHRI SANJAY TANDON: The other Sections 19(2), (4) and (5) are irrelevant for us. That does not quite affect the enforcement of the right as such. It just looks into the working of our right. But the most important and the dangerous one is Clause 3 of the present amendment of Section 19, sought to be amended now. As rightly said by Shri Hasan Kamaal, if there would be a model contract framed, that would discipline the entire film industry.

MR. CHAIRMAN: Could you enforce it?

SHRI SANJAY TANDON: The Law Ministry has to see it.

SHRI HASAN KAMAAL: There are guidelines for the labour. The Government comes into the picture when there is a dispute between labour and management. I would like to know why not here also.

MR. CHAIRMAN: What about the amendments in Section 19 (3)?

SHRI SANJAY TANDON: Clauses 9 and 10 are very good to the Copyright Act itself. We do not find anything objectionable there at all. These are very good suggestions.

DR. NAUNIHAL SINGH: The Chairman is pointing out towards Section 19(3): I quote:

> "If the right assigned under sub-section (1) are not specified, it shall be presumed that the assigner has assigned all his right under this Act."

SHRI SANJAY TANDON: That is what I have already submitted. I have humbly stated that that is the most dangerous provision of this amendment Bill. We will be better off without it. We have given the proposal saying that it should be the other way round.

DR. NAUNIHAL SINGH: The presumption is very dangerous.

SHRI SANJAY TANDON: Of course, we are better off without that. That was Clause 4 of our submissions on page 13 which we have submitted to this august Committee. I draw your attention to the same.

MR. CHAIRMAN: Regarding composers and musicians, this present amendment and existing law is not according to the Berne Convention.

SHRI SANJAY TANDON: That is right. The intention of the law is according to the Berne Convention. But the practical applicability of the law is totally against the Berne Convention.

MR. CHAIRMAN: Some special treatment has to be given.

SHRI SANJAY TANDON: We do not want anything special from this august House. We have appealed to this House to please give us what is existing in other parts of the world for the same community. We are asking nothing extra.

We leave it totally to this august House. We are not asking for anything new.

MR. CHAIRMAN: O.K. We thank you very much.

SHRI HASAN KAMAAL: We are also thankful to you for giving us an opportunity to present our viewpoint. We have full faith in you and in this august body and we are very sure that this time we will get justice.

(The Committee then adjourned.)

JOINT COMMITTEE ON COPYRIGHT (SECOND AMENDMENT) BILL, 1992

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON COPYRIGHT (SECOND AMENDMENT) BILL, 1992

(Friday, the 4 June, 1993 from 1500 hours to 1800 hours in Committee Room 'D', Ground Floor, Parliament House Annexe, New Delhi)

PRESENT

Shri Syed Sibtey Razi — *Chairman*

MEMBERS

Lok Sabha

2. Shri Anand Ahirwar
3. Dr. F. Azam
4. Shrimati Dil Kumari Bhandari
5. Shri Probin Deka
6. Mohammad Ali Ashraf Fatmi
7. Shri Imchalemba
8. Shri Jai Prakash
9. Shri M. Krishnaswamy
10. Shri V. Dhananjaya Kumar
11. Shri Birsingh Mahato
12. Shrimati Geeta Mukherjee
13. Shri Rameshwar Patidar
14. Shri Bhagwan Shankar Rawat
15. Shri P.C. Thomas
16. Shri Sobhanadreeswara Rao Vadde

Rajya Sabha

17. Dr. R.K. Poddar
18. Shri S. Viduthalai Virumbi
19. Shri Madan Bhatia
20. Shri B.K. Hariprasad
21. Shri Iqbal Singh

SECRETARIAT

Shri R.K. Chatterjee — *Deputy Secretary*

Shri Ram Autar Ram — *Under Secretary*

REPRESENTATIVES OF THE MINISTRY OF HUMAN RESOURCE DEVELOPMENT (DEPARTMENT OF EDUCATION)

1. Shri S.V. Giri—Secretary
2. Shri M.P.M. Kutty—Director

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

1. Dr. Raghbir Singh— *Joint Secretary & Legislative Counsel.*
2. Shri S.P. Kanwal— *Deputy Legislative Counsel.*

WITNESSES EXAMINED

I. Film Federation of India

Spokesmen:

(i) Shri P.K. Bose, President

(ii) Shri K.D. Shorey, Executive-cum-Member

II. The Film Writers Association

Spokesman:

Shri Satish Bhatnagar

(The witnesses were called in and they took their seats.)

MR. CHAIRMAN: Before you start, I may point out that in accordance with the provisions contained in Direction 58 of the Directions by the Speaker, your evidence shall be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence given by you should be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

MR. CHAIRMAN: As you know, we had an informal meeting in Bombay and you had enlightened us on very important points relating to your memoranda. I would like to request you to be very brief and give us an idea in general about your problems as well as your experience with the existing Act. Later on, we will take your suggestions clause-by-clause or section-wise. Now, you can proceed.

SHRI K.D. SHOREY: I hope the memoranda which we had submitted even before Bombay meeting is with you and with all the hon. Members.

MR. CHAIRMAN: You have said somewhere in your memoranda in Clause (D) of Section 2 and I quote:

> "It should be made explicit that this authorship of the producer shall be encompasing all avenues and channels including live stage shows etc."

Would you like to elucidate it further?

SHRI K.D. SHOREY: Actually it is in layman's language. However, we will submit that the most pertinent submission today is about performing rights in which we have amendments. First, we will take performing rights.

MR. CHAIRMAN: Please specify all those avenues and channels which need to be made explicit in the authorship of the Producer.

SHRI K.D. SHOREY: What we mean is that when the film is made it includes story, music, lyrics, dialogue etc.

SHRI MADAN BHATIA: Which precise clause are you referring to in the amendment Bill?

MR. CHAIRMAN: 'In relation to cinematograph film the sound recording, the producer...'.

SHRI MADAN BHATIA: You are referring to the definition of the author in the amendment Bill!

SHRI K.D. SHOREY: It is the definition of the author we are discussing.

MOHAMMAD ALI ASHRAF FATMI: At the moment we are discussing the old one — when a producer to any story or lyrics or the music once gives music, lyrics or dialogue, the basic thing is, if you purchase from him you become the owner of what he is giving to you.

SHRI K.D. SHOREY: Yes.

MOHAMMAD ALI ASHRAF FATMI: This means that you want to purchase the basic rights from the writer or the composer.

SHRI K.D. SHOREY: Even in the proposed amendment we thought that in relation to cinematograph film, it is the producer who becomes the owner.

OFFICIAL FROM THE MINISTRY: We are discussing only the definition of the author and this amendment in clause 2(v) meant to characterise the film maker who is classified here as producer, as the owner of the creative work *viz.* the film. There are other definitions of author in relation to literary work, dramatic and musical work and so on. The rights for these various categories of authors are given elsewhere in the Act. Section 14, clause 7 gives it. Here it is only a question of the definition of the ownership which is now being discussed.

SHRI MADAN BHATIA: So far as the clause is concerned, it says "In relation to a musical work, the author means the composer." So how would you say that in relation to a musical work, apart from the composer anybody else should also be described as author?

SHRI K.D. SHOREY: The sum of the whole Act is not that the composer composes the tune so he is the first owner of the copyright but when he assigns that authorship to me as producer, I become the author.

SHRI MADAN BHATIA: You do not become the author, you become the assignee of the rights of the author.

SHRI K.D. SHOREY: Virtually it is the same thing.

SHRI MADAN BHATIA: It will not come within the definition.

SHRI K.D. SHOREY: This is in the proposed amendment 'in relation to cinematograph film sound recording, the producer'. Sound recording, of course, is music composed by the producer.

SHRI MADAN BHATIA: This is with regard to the film. But with regard to this that the composer is the author of the musical work, he has therefore the rights to assign his rights in the composition which he creates. He can assign these rights to the composer. He can, just like the author of a book, assign his works to the publisher. It is just like the relationship between the publisher and the author of a book. Similarly it is the relationship between the producer of a film and the composer of a musical work.

SHRI K.D. SHOREY: With all respects to the hon. Member, I would say it is not similar because of the uniqueness of the film industry. You will kindly read the definition of author as well as the producer both in the present Act and the proposed amendment.

In the present Act minus the amendment, the Act says that a producer is the author when his picture is completed. Now the proposed amendment says, when he initiates the film he himself becomes the author of whatever is in the film.

SHRI P.K. BOSE: For the film the composition has been composed according to the producer.

SHRI MADAN BHATIA: In the definition he cannot be included; it is the definition of the author. It is only defining what the author means. It has nothing to do with the subsequent dealings.

SHRI K.D. SHOREY: With all respect, the law even at present says the similarity between the producer and the author is totally distinct and different from the definition of relationship between the producer of the music composer.

SHRI MADAN BHATIA: This is only defining these terms with regard to the various works. That is all. This definition has nothing more to do.

SHRI K.D. SHOREY: But we can proceed further.

MR. CHAIRMAN: The author has different categories. Films come under (V), 'in relation to cinematograph film, the owner of the film and the time of its completion.' I think nothing has been amended under this.

SHRI K.D. SHOREY: We are very grateful to you, for we have long been saying that it is not only completion of the film. The proposed amendment says the producer is the author and also he becomes the author when the film is initiated.

SHRI MADAN BHATIA: You deal with that clause separately, not with this definition.

SHRI K.D. SHOREY: Yes, I followed your point.

MR. CHAIRMAN: This amendment does not talk about the completion. 'In relation to cinematograph film or sound recording the producer.'

Is it adequate?

SHRI MADAN BHATIA: This is adequate.

SHRI K.D. SHOREY: It is quite adequate.

MR. CHAIRMAN: The suggestion to be incorporated in Clause (J) of Section 2, is as follows:

> "Clause (J) of Section (2) should be made more explicit to clarify that "Exclusive Licence" shall pertain only to that part of the Copyight which is assigned to an assignee and shall not pertain to the whole spectrum of copyright unless the assignee parts with the whole spectrum of his copyright."

Do you not think the words "any right" in Section 2 (J) of the existing Act would take care of it? I think, it takes care of your work.

SHRI K.D. SHOREY: Section 18 and other sections, as you know, tell us that the copyright has a wide spectrum of rights.

Section 18 clearly shows that there is a spectrum of copyright out of which I can give something and cannot give some other thing.

MR. CHAIRMAN: Do you want that it should be more explicit?

SHRI K.D. SHOREY: I drafted this memorandum and I personally felt that it is all right to say that the assignee shall have the right over that part of copyright which the assigner assigns. If I am not taking your time, I may say that the film industry is having a big row with Cable T.V. people and it is still going on.

SHRI M.P.M. KUTTY: As we all know, copyright, in fact, is a bundle of rights and it is not just one right actually. And by this definition of "Exclusive Licence", we are trying to make it clear that the holder of a right need not assign exclusively all the rights.

SHRI K.D. SHOREY: Shri Kutty, that is the intention. There is no doubt about the intention. I am only particular about the word used "any".

SHRI MADAN BHATIA; Why the word "any" has been used would be clear if you turn to section 14 where in copyright means any of those rights. So, it means any of those right which are comprised in section 14. "Any right" does not mean "all rights." You are thinking that "any" means "all rights" and it does not mean that.

SHRI K.D. SHOREY: Then, it is fine. As I said, a big row is still going on in the film industry.

SHRI MADAN BHATIA: It is clear from this that "any right" means "any of the rights contained in section 14". "Any right" does not mean "all rights mentioned in section 14."

SHRI K.D. SHOREY: But there is ambiguity in the usage of the word. Already more than one case is pending in the court where the cable right owners are saying—we said that they have only cable right or home viewing right—and from our point of view they have misused this definition and they have submitted to the court that once the word "regular licence" is used, it means they have a spectrum of copyrights. I do not want to waste your time without any background. Your intention is very clear.

MR. CHAIRMAN: Shri Kutty explained their department's point of view that "any right" means that there are a certain bundle of rights and it is only a few of the rights and not all the rights.

SHRI K.D. SHOREY: Our submission is that because of the experience in the courts, the Law Ministry or your Secretariat may think of any other better phrase because the courts have not yet taken any decision and *prima facie,* interim relief has been given to cable owners. They have all the exclusive rights in the films. The intentions are clear. You are exactly saying what we wish to say and that is very kind of you. But is there any way out to phrase it more clearly?

SHRI MADAN BHATIA: What you mean to say is that it should say that exclusive licence means a licence which confers on the licensee or on the licensee and persons authorised by him to the exclusion of all other persons any of the rights comprised in the copyright, in a work. What you mean to say is that it should say that exclusive licence for any of the right specifically covered.

SHRI K.D. SHOREY: We would not have bothered you if there were not a thousand cases pending in the High Courts.

SHRI K.D. SHOREY: Sir, here we would like to seek your indulgence. Our submission is that not only the proposed amendment, but also the spirit of the whole concept is in sub-section 3 of Section 19. Sub-Section (1) of course says that "Copyright assignment has to be in writing for being valid." I come to that later. Sub-section (2) Says:

> "The assignment of copyright in any work shall identify such work, and shall specify the rights assigned and the duration and territorial extent of such assignment."

That is fine. Now, the Sub-section (3) Says:

> "If the rights assigned under sub-section (1) are not specified, it shall be presumed that the assigner has assigned all his rights under this Act."

My submission is that the legislators mind is clear that unspecified rights remain with the assigner. Although it is a step forward but it is not a very big step forward. You may kindly consider our submission in view of the fact that even today, as you have very rightly said, over 90 per cent of the work is done without any actual contract inspite of this sub-section (1) of Section 19 which has been in force for all these years. This is the ground reality. Our submission is that if you think that an unspecified assignment

is no assignment, then, would it be possible for you to accept our plea that if an assigner shows any document saying that he is assigning the work and that he has paid the author or the assignee for all the rights with full remuneration, it would be a safe presumption? That can save a lot of trouble. I hope I am clear.

MR. CHAIRMAN: You have stated that ninety per cent of the contracts are without any written agreement. If there are certain disputes, then how do you get justice from the courts?

SHRI K.D. SHOREY: I have been in the film making field for the last twenty years. Maybe there may be a dispute in one out of ten thousand cases but the ground reality is that there is no contract between the Music Director and the Producer. We pay them and get the receipt for full and final payment. Nobody has ever disputed that. But now awareness is coming and may be tomorrow there may be some problems.

MR. CHAIRMAN: Someway or the other, you are also the author of a film. If there is no agreement in black and white, it may create problems in future. In the past it may not have been so difficult but now, as you yourself have said, since consciousnes is coming, there may be problems and if some such protection is given through law, I think that will be better.

SHRI K.D. SHOREY: My submission is not to challenge what is proposed. Whatever you have proposed is very fine. But suppose there is no contract, then instead of throwing away everything, is it possible to provide in the law that in the absence of a contract as envisaged in Section 19, if the remuneration has been fully paid, that will amount to assigning the Copyright?

SHRI MADAN BHATIA: We are not dealing with one particular industry, we are dealing with the law which is to be applicable in all fields of Copyright. Section 19 clearly says it must be in writing. If you have not been following this law and still people have been accepting it, it is up to them. But Section 19 remains unchanged. People can, in good faith, do anything they like. But if the dispute arises, then the law must take care of it.

SHRI K.D. SHOREY: I said, let the whole section 19 remain as it. What I am submitting is, to my mind it is not legal, it is a contradicting provision. My submission is, is there any harm if we provide that in the absence of a contract, if remuneration has been paid to an author and if there is documentary evidence to show that, then it is presumed that he has given the Copyright?

SHRI MADAN BHATIA: I think this will not be possible.

MR. CHAIRMAN: I think you must have gone through the contents of Clause 8 and section 19. Till now we have not been convinced to share your point of view. Could you enlighten us a little more?

SHRI K.D. SHOREY: I do not have anything more than what I have submitted, Sir, My submission was that the proposed sub section (3) itself visualises a contract in which specific Copyrights have not been mentioned and, therefore, the law would say that you have given all rights. It is very logical. I am only saying that there is not much difference between what sub-section (3) says and what I say. While sub-section (3) envisages a contract in which specific rights have not been mentioned, therefore, the conclusion is that all rights have been given. My submission is that suppose I have received in writing from writer that he has taken full payment of my story, although it is not a contract technically, it is a document which fully satisfies the author.

DR. R.K. PODDAR: The author cannot give you all rights. You can have the story converted into a drama just by taking money from him. He cannot give you all the rights.

SHRI MADAN BHATIA: This has been the experience in different fields and that is why the legislature is going to provide like this.

SHRI K.D. SHOREY: All rights, Sir.

Then I come to the next submission, that is, proviso to sub-secion (3) regarding provision for one year. The practice in India has been that I purchase a story and pay for that, but sometimes I make use of this story even after five or ten years. That may has no grudge but this proviso says that if the assignee does not exercise the right within a period of one year, then he loses the Copyright. This is totally impractical in our film industry.

SHRI MADAN BHATIA: This has been the grievance of various parties and I think it is quite justified. One year is a very short period.

MR. CHAIRMAN: What is the period you suggest for your industry?

SHRI K.D. SHOREY: It should be about seven years.

DR. R.K. PODDAR: You did not consider my point. You buy a story from the author for your film. Does the author forego his right to convert the story into a drama?

SHRI K.D. SHOREY: No Sir, he cannot.

I submit that it is mentioned even in the existing Act, in Section 13. As we were discussing in the initial stages, the producer becomes the author once the film is initiated.

DR. R.K. PODDAR: I think he is the author of the film only.

SHRI K.D. SHOREY: Here the film is not celluloid film. It is the feature film.

MR. CHAIRMAN: I think it would be better if the officer clarifies.

SHRI M.P.M. KUTTY: I submit that by way of clarification, the proviso which talks of exercise of rights within a period of one year is to the sub-section number 3. It talks of failure of a situation where there is a

lack of details of the rights. Normally if the right and duration and territorial extent is not specified, there is a lot of uncertainty in the assignment. It leaves both the parties in a vague position. In order to make it mandatory on the parties that they must have entered into a written contract this limit is prescribed. If you fail to do this you run the risk of foregoing all the rights. That is the provision which helps both the parties.

SHRI K.D. SHOREY: I submit that the very idea of providing sub-section 3 shows that in the mind of the legislature or in the proposal of amendment, there is some doubt. The very idea of sub-section 3 shows that there may be cases where such a contingency has arisen. My only submission is that the limit of one year is very small as regards film industry is concerned.

My CHAIRMAN: Please see sub-section 4 which reads as follows:

"If the period of assignment is not stated, it shall be deemed to be five years from the date of assignment."

What is your opinion on this?

SHRI K.D. SHOREY: Sir, it is for five years. Please recall the discussion we had in Bombay in this regard. I think sub-section 4 is contradictory to sub-section 3.

MR. CHAIRMAN: Let us hear the official in this regard.

SHRI M.P.M. KUTTY: Sir, the proviso to sub-section 3 is envisaged in an event where rights are not specified whereas sub-section 4 is envisaged where the duration is not specified. It is open to both the parties to specify any duration they like. If they fail to specify any duration, it shall be limited to five years. This is in order to protect the interests of both the parties. The indefiniteness is limited.

SHRI K.D. SHOREY: It is presuming that unspecified rights will be mentioned between parties and in that case we can limit it to five years.

SHRI MADAN BHATIA: What you said is not contradiction. If the period of one year is increased, so far as the first proviso is concerned, if you do not exercise the right of assignment, then the right will lapse. So far as sub-section 4 is concerned, it only mentions the period during which the assignee will continue to enjoy the right of assignment. They can always change the period from 5 to 10 to 20 years by a contract.

Your first point is well taken. As regards the argument for sub-section 4, I do not think it will stand to scrutiny. You can say that instead of five years, this may be increased. That we can understand.

SHRI K.D. SHOREY: Yes Sir.

MR. CHAIRMAN: Shri Shorey, somewhere in your memorandum, you have said about Section 19(A) (1) about "sufficient exercise of the rights assigned" etc. I think it is clear in the section. Can you explain your point?

SHRI K.D. SHOREY: Sir, in our meeting some people said that the use of the words "sufficient exercise...." can be too vague to be interpreted. We feel that there will be lot of complaints if it is left at that.

MR. CHAIRMAN: I think it is a question of mis-interpretation. I think there is no doubt in that regard for the other side of your film industry.

We can go to further submissions made by you on page 8 of your memornadum with regard to Section 38. Can you elaborate it and clarify in detail about what you want to say?

SHRI K.D. SHOREY: I think that this is the most important aspect of the amendment from our point of view. I want to seek your indulgence in explaining my point of view in this regard. The proposed section in sub-section 4 of Section 38 is as follows:

> "Once a performer has consented to the incorporation of his performance in a cinematograph film, the provisions of sub-sections(1), (2) and (3) shall have no further application to such performance".

I submit that the provision of sub-sections (1), (2) and (3) shall have no further application to such performance. Only on technical aspect we wanted to make it clear that the word "such" performance is pertaining to the performance mentioned in sub-section (4) or the performance where it is first used in sub-section (1). That is only technical. But our main submission is that may be in America and other countries things are different, but we can very sincerely submit before you that we do not want to be mean or unfair to our technicians; that is not our object at all. But this matter was discussed in Supreme Court case in 1977. The matter was first discussed by the Copyright Board, then in the Calcutta High Court. Then they went in appeal to the Supreme Court. There the Supreme Court has held that unless it is contractual or something contrary, all the Copyrights should be with the producer. The Supreme Court has not said that it will belong to the producer, but the other thing is also not true in respect of a very big composer. I am not denegrating our composers. But the functioning in the film industry without any mischief or without any unfair means is that the user Director or singer or lyric rather, is paid fully and handsomely. After that—I hope you happen to see Hindi films sometimes—when a song is popular, it is not only because it was composed that way—of course these are very important—but as I committed in my opening submission, film is a very very phenomenon. So, if a hit song is performed outside India and millions of people are collected, it is because the producer was the author and he paid to the people, he got the Copyright and all the individuals have been fully and handsomely paid to their satisfaction. So, if that song or acting which was performed on screen and in London attracts the crowds, then you say it is only the composer or it is only the singer as we find in the Section. All these matters were discussed in the Supreme Court and the Judgement was not only

very analytical, but that is very fair also. If a contract is there specifying something, then it is fine.

Sir, you know there are music directors who run after the producers and there are music directors who are chased by producers. It is an open market. There are about 50 composers who are not getting enough.

MR. CHAIRMAN: For a particular film?

SHRI K.D SHOREY: I would say, a Hindi film and if that creative part of the film is performed somewhere else, I think the producer who has paid every-thing—you kindly ignore me as a producer, but I am submitting that attention may be given to the Supreme Court Ruling which thoroughly analysed the subject and came to the conclusion that this is better left between the producer and the performer. If it is a composer whom I have picked up from the street and boosted him, I would of course say that 'this thing is performed in London'.

SHRI MADAN BHATIA: You want some change in sub-section (4) of Section 38.

SHRI K.D. SHOREY: We are actually on the performing rights.

SHRI MADAN BHATIA: You please let us know how sub-section (4) is inadequate. Sub-section (4) of Section 38 says:

> "Once a performer has consented to the incorporation of his performance in a cinematograph film, the provisions of sub-section (1), (2) and (3) shall have no further application to such performance".

That means the producer has all the rights. Rather this provision has been introduced with an eye on the controversy which has culminated in the Judgment of the Supreme Court.

SHRI K.D. SHOREY: If it is so, I have nothing to say if you are sure that the intention is very clear. If you are satisfied about the wording, it is all right.

MR. CHAIRMAN: Now, let us proceed to your suggestion under Section 53A. You have some reservation about this.

SHRI K.D. SHOREY: This is a new Section as you know. My argument is the same. My contention in this context is only on the word 'musical'. Any painting, literary work and any other work of art, it may be very little. But on our side again the same argument is there.

MR. CHAIRMAN: In your amendment to Section 57 you have said that it should be scrapped.

SHRI K.D. SHOREY: Because everybody is getting more aware of copyright. My suggestion is that the spirit is very good that an author's work should not be mutilated. Our submission is that some authority should decide.

MR. CHAIRMAN: I think there is some provision about the Copyright Board. If there is any dispute that the writer or author or musician is doing something—he thought he should do something and he is doing...

SHRI K.D. SHOREY: I may be wrong, it is not said in any other section. It says:

"In section 57 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) Independently of the author's copyright and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right—

(a) to claim authorship of the work; and

(b) to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work which is done before the expiration of the term of copyright if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation; provided that the author shall not have any right to restrain or claim damages in respect of any adaptation or a computer programme to which clause (aa) of sub-section (1) of section 52 applies'."

MR. CHAIRMAN: A writer may say that his original thinking or his original production is being misused. Who is to decide this?

SHRI M.P.M. KUTTY: In this proposed new Section 57 we have used the word 'infringement'. The mistake arises only if the author of the work claims that his right is infringed. It envisages that all infringements should come to the Copyright Board.

SHRI K.D. SHOREY: It is said in Section 57:

"(1) Independently of the author's copyright and even after the assignment either wholly or partially of the said copyright, the author of a work shall have the right—

(a) to claim authorship of the work; and

(b) to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work which is done before the expiration of the term of copyright if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation:

provided that the author shall not have any right to restrain or claim damages in respect of any adaptation or a computer programme to which clause (aa) of sub-section (1) of section 52 applies."

This amendment straightaway gives a charge to the author. I have illustrated this in Bombay particularly to you because you said that the Act is for people of all walks of life. It may be only for film industry now.

What will happen is that I produce a story for Rs. five lakhs, I make a picture and as it is I am lucky, my picture clicks and when it clicks, although it is five per cent, it clicks like anything. That is not wrong. If that story writer goes to a singer later on says that 'this man has mutilated my version' action should be taken.

I beg to submit that even in the best of films which have been released for the last 15 years some changes take place. We only submit that if that author feels that his version is mutilated, let him go to Copyright Board or any other authority.

MR. CHAIRMAN: Is it not according to the international conventions?

SHRI K.D. SHOREY: In a meeting with producer Mr. Sagar, who really did a lot of work on amendments, he was not able to tell us anything about what happens in the international field.

MR. CHAIRMAN: We have to go at par with other countries.

SHRI MADAN BHATIA: The proposed amendment is less happily worded than the existing section. Should the author under these circumstances go before the Copyright Board or should he be allowed to go before a sub-judge?

The existing section makes it very clear that this modification or destruction must be of such a character that it would be prejudicial to the owner or his reputation. But the proposed amendment blurs this. This requires consideration.

SHRI K.D. SHOREY: We have expressed our gratitude to Parliament for bringing forward this Bill. We are grateful to Parliament even for the 1984 Amendment.

Mr. Bhatia has said, film is not the only field discussed in the Copyright Bill. But there are some unique features in the film industry and the Copyright Act will not help us at all. Cable TV all over the country is the biggest infringer of copyright. These amendments will not mean anything to them.

Two years back, there was a magnum exercise and the inter-Ministerial committee was constituted. There was a suggestion that there should be Cable Authority of India. There was committee and I was convener of that committee. We gave a model legislation to the Government of India that there should be an effective legislation like Cinematographic Act which should be implemented by the States also. But unfortunately, for the last two years, there was not an iota of government action. Cable TV monster is spreading all over the country and urgent legislation is required not only at the Centre but at the State also.

The inter-Ministerial committee went into what is happening in other countries. But in our own country, there is a difference between what is happening in one State and the other. The South is ahead both in quality

and implementation. Most importantly, in all the four Southern States, entertainment duty is only 20-25%. Whereas in the bulk of the country, minimum entertainment duty is 100%. That entertainment duty keeps most of the viewers away from the theatres.

In 1991, if 100 pictures were released, 46 producers lost and 72 distributors lost. In 1992, 53% producers lost and 82% producers lost. The reason is Cable TV. Something should be done to save the film industry.

SHRIMATI GEETA MUKHERJEE: What kind of legislation do you indicate for that?

SHRI K.D. SHOREY: Although there are million of home viewers, the number is manageable. We have said, there should be regulatory and licensing system. Nobody will operate the network unless he is licenced. The condition for issue of licence is, any software being screened should be submitted one week or 10 days before it is actually shown to the licensing authority, who may be SHO, SDM or DC. Even in Bombay, the State Government has not done anything although Maharashtra is the birth place of Indian cinema. They should license and regulate as to what software you are running. There are 13000 theatres any they submit to the DC a week before.

SHRI P.K. BOSE: The South has already promulgated that regulation by amending the Video Act.

MR. CHAIRMAN: We are thankful to you. You came from Bombay to enlighten the Committee. We take note of all your suggestions.

Once again I thank you very much.

(The witnesses then withdrew.)

The Film Writers Association Spokesman

Shri Satish Bhatnagar.

(The witness was called in and he took his seat.)

MR. CHAIRMAN: Before you start. I may point out that in accordance with the provisions contained in Direction 58 of the Directions by the Speaker, your evidence shall be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence given by you should be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

SHRI SATISH BHATNAGAR: I the President of this Association for nearly 12 years. This is a registered trade union organisation to which many eminent people like Satyajit Ray, B.R. Chopra, Ramanand Sagar are members. Quite a few literary giants like Mr. Rajender Singh Bedi, Kamleshwar, Krishan are our members.

MR. CHAIRMAN: I would request you, let us know in brief about your problems, about observations of the Act and your experience regarding the existing Act of 1957. After that, we will take clause-by-clause discussion.

SHRI SATISH BHATNAGAR: I would like to state that nearly for the last 10 years, we have been making representations to various Ministries concerned with this issue and the memoranda were sent to the Ministry. (A and B Ministry). We also in a delegation met the Minister three times. We were assured by the various Ministries, namely the Ministry of Home Affairs, Ministry of Law, Ministry of Information & Broadcasting. Various suggestion made in the past and the suggestions that we have made to be included in the Bill were already submitted to the Members of Parliament.

With regard to the present amendment Bill, we are happy at long last, the Bill has been presented before Parliament. But we still feel, like the principal Act of 1957, it still remains rather complicated and uninvolved. Status of the film writer is not clearly defined. We must understand first of all the peculiar aspect of script writing in films. Invariably, there are more than one person involved. A film script has several sections of writing such as story, screen play, dialogue and then lyric. In some cases, one person provides all these sections of the script, in some cases, there are more than two or three persons.

There are several creative writers who provide a story for film but they are not able to write its screen play because that is a professional job and they cannot provide dialogue in Hindi. The Bill has not clearly defined the status of these persons.

Sometimes it is said that the people who are involved in creating an work of art get a fee. Now with the present technical advancement in the field of communication, the world has become a global village. Our own programmes like Mahabharat, Ramayan, Tipu Sultan etc., are being telecast by the BBC. and other foreign T.V. stations. Mahabharat is being telecast in 29 countries all over the world. The benefits go to the producers. According to our law and according to the Supreme Court verdict, the producer has been defined as the first author of a finished film. In this regard, I would like to emphasize that we have no difference on this particular issue. The producer is a very important person. He gets around him various creative people, but they are not his employees. They are independent creative people who join hands to create an work of art. Even in other countries the writers are entitled to royalty on every sale of the film. Now, the concept of film making as well as film marketing are rather intricate financial matters.

When a producer wants to make a film, he gets hold of a director and a team of writers. He also gets hold of a music director, a lyricist, a dance director and several other people who join together to create an work of art. In the famous Supreme Court judgment even Justice Krishna Iyer who was on the Bench in his foot note said that the law as it stands today

is unfair to the original creators. We had a meeting with him after his retirement and he said that the judgment has been misinterpreted. Mr. Upendra Baxi who is a specialist in this subject has also said that this judgment is a rather misconceived one. While the producer can be the first copyright holder of the finished film, he has no right to disect it. When Mahabharat was purchased by the BBC, I did the script in English. The royalty on it would be 10 per cent which would work out to about Rs. 80,000 /-. The law as it stands today gives the right to the producer and not to the writer. Now, this has nothing to do with the writing of the book. The writers must benefit from their works. While the film is exploited in its totality, now with the revenues being generated are so huge and with the law as it stands today, it gives all the benefits to the producer only, who is the first author of the film. The right to authorise the publication of the work also remains with him. Whenever there is a successful film, it is made in other languages. The producer sells the right of remaking it in other languages and collects money for that. Generally, the films are sold for seven years. All that money again goes to the producer and no royalty is given to the writer.

MR CHAIRMAN: Certain benefits to you also have been proposed to be given.

SHRI SATISH BHATNAGAR: Even today they are not specific. Today the law lends itself to various interpretations and the legislators must realise that the writers and the other creative people involved in the making of the film are the weaker section and they are not in a position to dictate terms barring a few luminaries. The most glaring defect that we find in the law is, in the absence of a clause in the contract, all the rights whether they are mentioned in the contract or not, they go to the producer. We would like that only those rights that are specifically mentioned in the contract should only go to the producer and there should be a separate contract with the producer for transfee of copyright Now, the producer gets all the rights including audio and video rights. That, we feel, is rather unfair to the other people. The producers are perfectly entitled to utilise the total exploitation of the film, but not its separate ingredients.

Now, it is quite common for the actors and singers to go abroad and make shows. They enact some scences or song sequences of successful films. Neither the music director nor the lyricist gets any money for that and only the actors who perform there get the benefits. For instance, film dancers will work for a daily fee if a dance scene is picturised for four days. They are paid the same amount everyday. They don't get any royalty in Britain and in America they have passed a law for it, but in the rest of Europe and France they are, again, not decisive about it.

According to the Tunis model, it has been specially accepted even by the Berne Convention specially for the developing countries. For instance,

an actor is entitled to copyright. In Britain and America, it is felt that an actor only recreates something. He does not create anything. But acting is a dramatic art as such, I have no solution. There was a famous case in India itself in which Mr. Devanand entered into a contract with Fortune Film Ltd. that till his money was paid, the film will not be released. The film was released and the case was filed by Mr. Devanand and the court felt that the actor did not hold any copyright on a film. If these analogies could be removed and made more specific, it will be helpful both to the assignees as well as to assignor in this country.

DR. R.N. PODDAR: How the Act can make a contract better?

SHRI SATISH BHATNAGAR: One suggestion could be that model contract could be made statutory by the legislators that whenever you are assigning a particular provision, you must enter into the contract.

DR. R.N. PODDAR: The Act is not only for the film. It is for all kinds of things.

SHRI SATISH BHATNAGAR: I am only talking for those who own a copyright. In a film, there are several people who own copyright.

DR. R.N. PODDAR: You want a model.

SHRI SATISH BHATNAGAR: The Acts all over the world provide that. The difficulty in dealing with this complicated issue is partly our national scene and secondly, the international scene. Twenty years ago nobody thought that you could press a button and see programme from Hongkong in which the artists belong to various nationalities and are governed by thier own laws. In case of our software which all these serials were telecast by BBC, huge sums of money were realised by PRS London who are also associated with IPRS for audio and performing rights. In case of Mahabharata, it is over Rs. 40 lakhs and still more money is due. Similarly, for Tipu Sultan and other serials, the total money due from foreign countries was collosal and the producers did not know anything about it. They certainly woke up to something that there is a thing called audioright in a film and there are others who are collecting money for their members and distributing it to them. PRs and IRs are the men. They only deal in music and people who write music. While in a film, the lyricist may write seven songs. Those seven songs are like seven scenes in a film but unless a particular song fits into the situation, it has no place in a film. The dialogue and the screen playwriter writes 93 scenes. On an average, there are 100 scenes in a film. While the lyric writer writes seven scenes in a film, the other writers involved write about 93 scenes. Yet, the lyric writer and the music director do get their money through PRF and IPRF. The other writers even if the producer makes audio-cassettes or dialogue version and sells them in lakhs, as it were, will not get any money. Some producer on friendly basis may part with the money but it must be a statutory obligation that if fresh revenues are generated from the work of a person who is creatively involved in making a film and he should be given a royalty.

MR. CHAIRMAN: Somewhere in your memorandum you have said that the film producer and the record owner should be given a status of

publisher of a book and newspaper journals. You had also mentioned that there are certain international conventions in support of your argument but as far as my knowledge is concerned, the status which had already been given is according to the Burne Convention Article 14. You kindly let us know if you have some knowledge of other conventions.

SHRI SATISH BHATNAGAR: There are the two main conventions the Universal convention and the Berne convention. The Universal convention which is, of course, the revised version of the earlier convention, used phraseology which is very much general and understandable while the Berne convention is rather complicated. And even in the Tunis model law it is clearly stated that sometimes to get the benefits to the creators, alternative clauses could be included in the Bill which may not become statutory. I can give you the actual wording of that, if you like:—

"4. The two basic features of the model law are as follows:—

(i) Its provisions are compatible both with the 1971 Paris Act known as the Berne convention (Berne convention) and with the Universal Copyright Convention as revised in 1971 (US convention);

(ii) Its provisions allow for the Anglo-Saxon or the Roman legal approach of the countries for which it is intended.

5. In order to comply with these two principles, it has been necessary in some cases to include alternatives in square brackets. The square brackets signify that the provision in question which moreover usually bears a reference followed by the term "bis" e.g. (sec. 4 bis) is optional."

SHRI M.P.M. KUTTY (DEPT. OF EDN): India is a party to the Berne convention. You can refer to Article 14. The Universal Copyright convention (UCC) has been incorporated and additional provisions have been made in the Berne convention. This is an older convention. Berne is the further latest convention which incorporates all the provisions of the earlier convention.

SHRI SATISH BHATNAGAR: The Berne convention does accept the Tunis model law for the developing countries.

SHRI M.P.M. KUTTY: Model is a different matter. Convention is binding on the parties who sign the convention.

SHRI SATISH BHATNAGAR: The Berne convention has given recognition to the model law for developing countries.

MR. CHAIRMAN: The Berne convention has laid down something else. The Berne convention is supporting your point of view.

SHRI SATISH BHATNAGAR: I am not saying that the Berne Convention states something else. In case where the national law requires certain benefits to be given to the workers, they can have alternative optional laws. That is what I am trying to say.

SHRIMATI GEETA MUKHERJEE: Mr. Chairman, he is speaking about the model contracts. What actually does he mean by that?

SHRI SATISH BHATNAGAR: The point is that if it is made a statutory provision where two separate contracts are entered into with the creative people, one for the transfer of copyright and another for their professional service, that would be better.

MR. CHAIRMAN: Article 14 is of the Berne Convention says that the owner of copyright in cinematorgraphic work shall enjoy the same rights as per the author of a original work, including the rights referred to in the preceding article. What is your comment about it?

SHRI SATISH BHATNAGAR: I will not be able to enlighten you on the controversial aspect of it. What I am trying to bring to the notice of the hon, Members is that the last Supreme Court Judgement gives all the rights to the producers in the absence of a clause to the contrary. That should not be there.

MR. CHAIRMAN: All right.

DR.R.K. PODDAR: Do you want any new clause to be added?

SHRI SATISH BHATNAGAR: On that, we had actually given a whole memorandum which has been circulated to the Members.

MR. CHAIRMAN: You have given your suggestions regarding Section 13 (4). You have suggested therein that two clauses [(clauses (b) and (c)] should be added to Section 13 (4). The fact is that the existing Section 13 (4) already covers your requirement. Is it not so? I think there is no need to further amendment it.

SHRI SATISH BHATNAGAR: In respect of this clause, the ownership or the authorship of the film goes to the producer. He is the one who can authorise the performing right.

MINISTRY: The ownership of copyright and the copyrights which are protected are clearly given in Section 14, That Section gives the rights which are given to the literary, music and other personalities, Their output is being incorporated. Another sub-clause gives the right to the film producer.

SHRI SATISH BHATNAGAR: It is not a question of giving certain rights. All the rights are given to the producers. That is why these two are at clash with each other. The point is the producer owns all the rights in a film. What does that mean? You are giving a right to the producer and making him the first author of the film. He is the author of a finished film. There are the various ingredients used in a finished film such as lyric, dialogue, screen play etc. Whenever a film is being made into another language, according to the present copyright Act the holders are benefitted from it. But actually they do not benefit.

MR. CHAIRMAN: That is a practical aspect. But the law is very clear on this.

SHRI SATISH BHATNAGAR: The judgement of the Supreme Court was being discussed. The people were claiming the copyright. The

producers said that the copyright belonged to them. The judgement of the Supreme Court went in favour of the producers. That judgement is still valid because there has been no case since then.

MR. CHAIRMAN: I think you are not satisfied with the existing Section 13 (4). What specific thing do you want?

SHRI SATISH BHATNAGAR: Yes, I am not satisfied with the present Section 13 (4). My suggestion is that it should be made a statutory thing that whoever be the original creater of a specific ingredient in a film should benefit from it. Producers copyright in a finished film should coexist simultaneously alongwith copyright of other creative persons. Anything which is not included in a contract should not automatically be passed on to him. (Producer)

MR. CHAIRMAN: You have proposed that Section 17 should be deleted. Could you let us know what are the reasons behind it?

SHRI SATISH BHATNAGAR: About Clause 17(b), the suggestion is made in the footnote by the learned bench of the Supreme Court judgment that the copyright in Cinematograph Act shall not affect the separate copyright in respect of which a substantial part of record is made. Authors entering into agreement to write a story shall not have the effect of transferring any of the rights because it come to the same contractual obligation.

MR. CHAIRMAN: Do you want to add the proviso after Section 17(c)?

SHRI SATISH BHATNAGAR: Yes, Sir.

MR. CHAIRMAN: Do you agree that Section 17 (c) of the existing Act relates to author's employment under the contract of the service?

SHRI SATISH BHATNAGAR: I do not think the writer has entered into a contract. Actually, it is not 'for the service', it should be 'of the service'. He is an independent professional. By merely doing a job, he does not lose the copyright.

MR. CHAIRMAN: Do you propose that Clause 8 should be deleted?

SHRI SATISH BHATNAGAR: Yes, Sir

MR. CHAIRMAN: I think, it is provided already there.

SHRI SATISH BHATNAGAR: When this memorandum was sent the copy of the Bill was not sent to us.

MR. CHAIRMAN: Is there anything more you want us to enlighten about? We have covered most of your points. We are thankful to you for coming all the way from Bombay to apprise the Committee about your problems as well as to feed us on some very salient points on the proposed amendments. I thank you very much on behalf of the Committee. I am thankful to the hon. Members of the Committee also.

There are two more witnesses to come before the Committee and then we will come to the conclusion of clause by clause discussion. Further programme will be intimated to you. I once again thank you.

(The Committee then adjourned.)

JOINT COMMITTEE ON COPYRIGHT (SECOND AMENDMENT) BILL, 1992

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON COPYRIGHT (SECOND AMENDMENT) BILL, 1992

(Friday, the 18 June, 1993 from 1500 hours to 1545 hours in Committee Room 'D', Ground Floor, Parliament House Annexe, New Delhi.)

PRESENT

Shri Syed Sibtey Razi—*Chairman*

MEMBERS

Lok Sabha

2. Shri E. Ahamed
3. Dr. F. Azam
4. Shri Sharad Dighe
5. Shri Shyam Lal Kamal
6. Shri M. Krishnaswamy
7. Shri Birsingh Mahato
8. Shri Rupchand Pal
9. Shri Harpal Panwar
10. Shri Naranbhai Jamlabhai Rathava
11. Shri Kodakani Gowdana Shivappa

Rajya Sabha

12. Dr. R. K. Poddar
13. Shri S. Viduthalai Virumbi
14. Shri Madan Bhatia
15. Smt. Veena Verma
16. Shri B.K. Hariprasad
17. Shri Iqbal Singh
18. Shri Subramanian Swamy

SECRETARIAT

1. Shri R.K. Chatterjee—*Deputy Secretary*
2. Shri Ram Autar Ram—*Under Secretary.*

REPRESENTATIVES OF THE MINISTRY OF HUMAN RESOURCE DEVELOPMENT (DEPARTMENT OF EDUCATION)

1. Shri Y.N. Chaturvedi—*Additional Secretary*
2. Shri M.P.M. Kutty—*Director*

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

1. Shri A.C.C. Unni—*Additional Secretary*

WITNESSES EXAMINED

Western India Cinematographers Association, Bombay.

Spokesman:

Shri Ramchandra Das, Chairman

Mr. CHAIRMAN: Before the witness comes, I would like to inform this hon. Committee about the progress made and the pendency of work relating to the Committee:-

The Committee received 42 memoranda in all under Copyright Bill from various interested organisations/associations and individuals. All these memoranda have been circulated in both Hindi and English versions to all the members of the Committee.

The Committee has so far heard oral evidence of 12 organisations/ individuals based in and out of Delhi.

The Committee would hear the last evidence today. Thereafter, the Committee will hold clause by clause consideration of the Bill.

Members of the Committee who are desirous of giving notices of amendments to various clauses of Bill may do so and send their notices to the Lok Sabha Secretariat latest by 5th July, 1993.

I request the Secretariat to issue notices to each individual member of the Committee to both permanent and local addresses.

Now we proceed with the evidence.

SHRIMATI VEENA VERMA: May I put up the amendment again?

Mr. CHAIRMAN: You will be provided with a format and you have to fill up the format on that basis. We have recorded it but for formally moving of the amendment, you have to fill up that format. When your amendment is moved, you can speak on that.

(The witness was called in and he took his seat)

Mr. CHAIRMAN: Before the proceed with the business of the Committee, I would like the representative of the Western India Cinematographers Association, Bombay to introduce himself to the members of the Committee.

(Shri Ram Chandra Das, Hony. General Secretary, Western India Cinematographers Association, Bombay introduced himself to the Committee.)

MR. CHAIRMAN: Before you start, I may point out that in accordance with the provisions contained in Direction 58 of the Directions by the

Speaker, your evidence shall be treated as public and is liable to be published, unless you sepcifically desire that all or any part of the evidence given by you should be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

MR. CHAIRMAN: Shri Ram Chandra Das, would you like to let us know something about your general area of work?

SHRI RAM CHANDRA DAS: Mr. Chairman, my area of work is that of photographing a picture either it is a feature film or a documentary or a movie photograph. There is the still photograph which is taken during marriage functions etc. The move photography includes the electronic media also. Previously, the chemical process was in vogue. Now, there is the electronic media. Whenever any feature film or any cinematographic work is conceived by the production agency, on any subject, then they engage a director, a cinematographer and other specialists as per the need of the subject. For a feature film, a music director is essential, for a documentary, the music director is not essential. But the editor is a must. From the stage of conception of a feature film, the photographer plays an important role. He is indeed called the eye of a director. Anything which is conceived by the director cannot come on the screen without the creativeness of the cinematographer. First, we come to know of the conception, then, we discuss about it. We know of the technical aspect of it which a director is not knowing much. Therefore, we discuss and create that effect. for example, in a picture, you might have seen an actor doing a double-role. How to do it; That is done by us. We are doing that creation.

Secondly, you might have seen the real effects like lightning, earthquake etc. Whatever effects you see in a film, we create. The other aspect which is very important is that it is a make-believe event. The director tries to creat an illusion on the screen with the help of the cinematographer. We take the imaginary things very near to reality. Not only our work finishes with the shooting part but also our work is involved with the release of the print, whatever be the nature of it. This is what I can tell about the performance of any cinematographer.

SHRIMATI VEENA VERMA: How are you being exploited?

SHRI RAM CHANDRA DAS: There are two things which I have already mentioned in my very first letter. Take the dubbing aspect. Suppose, we shoot a Tamil Film. The point is the same negative is used for any other language. The sound-work changes. The same negative is used out of which the positive is made. It is commercially exploited. Further, when we sign and agreement, there is a specific mention of the name of the picture, the format in which it is put and the language. So, we work for that language.

SHRIMATI VEENA VERMA: It is meant only for one language?

Cinema Theatre Workers Act has been passed by the Parliament. According to that, the producer is liable to engage any cine-worker on a written contract. The department has prescribed Form 'A', which is as follows:

> This agreement is made on this... of.....19.....between Messrs..... having office at.....(a sole propriatary concern/a firm registered under the Partnership Act, 1932/a Company incorporated and registered under the Companies Act, 1956) (hereinafter referred to as the "Producer") on the first part and Shri/Smt/ Kum.....son/doughter/wife of Shri.....residing at..... hereinafter referred to as the "Cine Worker") on the second part. The terms 'Producer' and 'Cine Worker' shall include their heirs, successors, administrators and legal representatives.
>
> Whereas the Producer is engaged in the production of a talkie film, his production No.....tentatively titled as...in...language in 35 mm/16mm/70mm gauge/Cinemascope, in colour/black and white:
>
> Whereas the said producer is desirous to engage the Cine Worker in the capacity of a...in the aforesaid film and the Cine Worker accepts the same..." There is another part which says:
>
> "That the Producer shall not without the consent in writing of the Cine-worker, assign or transfer the benefit of this agreement to any other person.
>
> That the Producer shall not utilise the work of the Cine-Worker in any film other than the film under this agreement, without prior permission of the cine-worker."

This is the Form which has been prescribed by the Government of India.

The second part is about the territorial extent. For example, take the care of the serial Tippu Sultan. It was made for Doordarshan. A precise agreement was there. But this serial is broadcast in English after dubbing. Like that, the Mahabharatha has been made only for the Indian television. Without changing anything, now it has been broadcast from Kathmandu.

SHRIMATI VEENA VERMA: There is a difference between a television and a feature film. Is there any model contract?

SHRI RAM CHANDRA DAS: We cover everything. There is the same contract. To cite another example, a serial made in Gujarati has been linked. We are paid for that only. Later on, it goes to commercial exploitation. This is the position.

SHRI E. AHAMED: These facts can be said by anybody. How long will you be able to say that it is affecting your creativity?

SHRI RAM CHANDRA DAS: As regards actors are concerned, they are covered by this Copyright Act and even music composition is also covered by it. The creative work deserves copyright.

MR. CHAIRMAN: I would like to know about the creative work. Suppose a cinematograph film is being dubbed in any other language, how is your creativity affected by dubbing it because your cinematograph film has no language, no sound at all?

SHRI RAM CHANDRA DAS: There is no question of affecting our creativity. Rather it leads to more exploitation.

MR. CHAIRMAN: Could you not enter into contract with the party if you are going for dubbing of some regional language film, for getting some extra money for that?

SHRI RAM CHANDRA DAS: That will come under the Copyright Act. We are fighting for the same thing.

SHRI E. AHAMED: How does the dubbing of the film affect your photographers' creativity?

SHRI RAM CHANDRA DAS: It is not affecting the creativity at all.

SHRI MADAN BHATIA: Are you engaged basically for the purpose of photography or for the purpose of creating something on your own?

SHRI RAM CHANDRA DAS: We are engaged for photography. What we are going to photograph is in the air. In my view, it relates to Copyright Act.

SHRIMATI VEENA VERMA: Nowadays, advertisements are being imposed and half of the picture is covered by that and your creativity is not affected at all. Is it not an imposition on the audiance?

SHRI RAM CHANDRA DAS: I will say that it is an enlarged form of trailer being shown in the theatre which is nowadays inserted in the video. I think, the process is the same. It has been objected in the audiance. But I am least interested in that part.

MR. CHAIRMAN: You have suggested that clause 2(d) should include cinematography also. Could you explain it?

SHRI RAM CHANDRA DAS: It is because Cinematograph Act does not concern sound only. It is both audio and visual. So, I want to include it.

MR. CHAIRMAN: Is it not that we are dealing with the works but not with the process?

SHRI RAM CHANDRA DAS: This is clear from the definition of the Cinematograph Act. I do not think there is any harm because audio and visual go together.

SHRI M.P.M. KUTTY: There are two things—definition of the cinematography and the film. We have clearly included it in the works produced for in a process including video films. Secondly, in the definition of photograph in the existing Act, it says that photography includes video, lithograph and any work produced in the process

analogous to photography but does not include any part of cinematography. There is no separate scope for providing cinematography as separate from it.

SHRI RAM CHANDRA DAS: But there is still photography, marriage photography and vision photography. Cinematography must be included somewhere if it is not included here. That is my suggestion.

SHRI RUPCHAND PAL: The technology is fast-developing in the work at a point of time. The C-DOT has come out with a soft-ware process whereby sub-titling in different Indian languages can be done automatically as was done at the last Film Festival in Delhi. Dubbing can take place simultaneously. For example, the lip-movement will only be taken. Otherwise, the languages will be as required in different territories. You are dealing with the second amendment. Do you believe there will be watertight divisions between the various units?

SHRI RAM CHANDRA DAS: You are now talking of the graphic art and no cinematography. What you say comes under the graphic art. For example, this meeting has to be covered. Who will do the lighting work? Like that, various aspects are involved. The camera has to be placed in such a position so that the whole view can be taken. The contribution will remain the same.

MR. CHAIRMAN: The point is you are not satisfied with the definition. Is it correct?

SHRI RAM CHANDRA DAS: The definition is sufficient if it covers the copyright portion.

MR. CHAIRMAN: Do you not think that protection is given to you under section 17(b)?

SHRI RAM CHANDRA DAS: This covers the general aspect. The point is everybody's work is not a creative work. That is why, we have come to a specific conclusion.

Mr. Chairman, you may kindly recollect our meeting in Bombay. The All India Film Employees' Confederation gave you a letter mentioning its views about section 19(3). This letter has already been given on 4th November, 1992. We are of the view that Sub-Section (3) is superfluous and is likely to do more damage than good. We, therefore, requested that Sub-Section (3) should be deleted.

MR. CHAIRMAN: We have got the minutes with us. We will see that. Thank you very much for giving us the necessary information. Now, you may go.

SHRI RAM CHANDRA DAS: Mr. Chairman, I thank the Committee for giving me this opportunity.

(The witness then withdrew)

MR. CHAIRMAN: Hon. Members, the second witness is not here. I do not know what has happened. In the meantime, we shall have our tea break and then re-assemble.

MR. CHAIRMAN: Hon. Members, the representatives of Indian Federation Against Copyright Theft, Bombay, were scheduled to come here by 4 o'clock. They have not turned up. So, I think, there is no sense of meeting.

Before adjournment, I will again remind that in the next sitting, we will take up clause-by-clause discussion. For that, I have announced in the very beginning and repeat it again that the Members, who are desirous to give notices for amendments, can send these to the Lok Sabha Secretariat by 5th July so that we are able to finalise the work. With these words, I thank you very much for the time given to the Committee.

(The Committee then adjourned.)