

**REPORT OF PROCEEDINGS OF
LEGISLATIVE COUNCIL**

**Douglas, Tuesday, 26th October 1999
at 10.30 a.m.**

Present:

The President (the Hon Sir Charles Kerruish OBE LLD (hc) CP), the Lord Bishop (the Rt Rev Noël Debroy Jones), the Attorney-General (Mr W J H Corlett QC), Hon C M Christian, Messrs E A Crowe, E G Lowey, Dr E J Mann, Messrs J N Radcliffe and G H Waft, with Mrs M Cullen, Acting Clerk of the Council.

The Lord Bishop took the prayers.

Apologies for Absence

The President: Hon. members, this morning we have apologies for absence from the hon. Mr Kniveton who is indisposed and to whom we wish a speedy recovery, and we have apologies from Mr Delaney who is off the Island on government business.

Welcome Back – Birthday Wishes

The President: And we welcome back Dr Mann after his recent hospitalisation and offer our congratulations to the hon. member Mr Radcliffe on this his happy birthday.

Members: Hear, hear.

**Children and Young Persons (Sale of Addictive and Intoxicating Substances) Bill –
Third Reading Approved**

The President: Now, turning to the order paper, we have our first business the third reading of the Children and Young Persons (Sale of Addictive and Intoxicating Substances) Bill and I call upon the hon. Mr Waft.

Mr Waft: Thank you, Mr President. If by this Bill we can prevent some children from becoming addicted to tobacco we can prevent their early deaths from the many related cancerous diseases and heart disease.

Members have been made well aware of the increase in teenage smoking, especially among teenage girls. Replacements have to be found by the tobacco firms for those who have died from those diseases: early tragic deaths which are totally preventable.

I do not think we should delude ourselves into thinking that this Bill will solve the problems of under-age sales of tobacco and solvents over night, but I do feel that in conjunction with other initiatives and with the co-operation of the Department of Health and Social Security, the Department of Education and the Trading Standards Office this government can start to make inroads into the problems of under-age sales of addictive and intoxicating substances.

The World Health Organisation is pressing all governments to introduce legislation to combat the sale of tobacco and solvents to children under the legal age. Peer pressure during these formative years should not be underestimated and we should be setting an example. By

raising the age to 18 we are acknowledging the rise of teenage smoking and we know the long-term effects on the children of this Island.

I would like to thank the members for their support of this Bill. This is just the start of our recognition of the fact that we will no longer stand idly by and watch the deterioration of the health of our children through preventable causes.

Mr President, I so move that this Bill be read a third time and do pass.

Mrs Christian: I beg to second, Mr President. As the hon. mover has indicated, it is not a problem that is going to be easily tackled, in fact efforts in the past have been interesting in that education seems to have worked in some areas but not particularly in this area. However, to tackle it in as many ways as we can is the objective and this is one route by which we may restrict the introduction of tobacco to young people and it is to be welcomed.

Mr Lowey: Mr President, I will be supporting the Bill, but I do so not with a great deal of conviction, I may add. On a day when I heard on the news this morning that one of the companies in the United Kingdom is actually making £4¹/₂ million a day profit by producing these cigarettes, to say that this particular Bill will help to reverse what I would call that offensive, and it seems to me that we are going to restrict the sale of cigarettes to quantities of 10 or more, is part of the armoury. It is like putting a feather in front of the *Titanic* and saying that will help to slow it down. I am sure it will and there is a whole series of these things that will have to be put in place, but again, like the seconder of this particular Bill, I am in favour of trying anything that may prevent young people from becoming addicted and therefore I will be supporting it. I do not think you will be able, in 50 years' time to hold this Bill up as the pivotal time we won the argument. However, perhaps I am being too pessimistic, but I will be supporting the Bill.

The President: Does any hon. member wish to speak? Reply, sir.

Mr Waft: Thank you, Mr President. I thank the hon. minister for Health for her support, and I would agree with the hon. member Mr Lowey that we do need to go much further with the fight against cancer-related illnesses, and this is the first small step towards a long programme of defending the public against vested interests with regard to health. Thank you, Mr President.

The President: Hon. members, the resolution is that the Children and Young Persons (Sale of Addictive and Intoxicating Substances) Bill be now read a third time and do pass. Will those in favour please say aye; against, no. The ayes have it. The ayes have it.

Copyright (Amendment) Bill – Clauses Considered – Third Reading Approved

The President: We turn now, hon. members to item 2 on the order paper and I call upon the hon. Mr Crowe to take the clauses initially of the Copyright (Amendment) Bill 1999. Hon. members will recall we dealt with the second reading at the earlier sitting, so we move on to clauses and it is clause 1, sir.

Mr Crowe: Thank you, Mr President. Clause 1 makes special provision in copyright law for satellite broadcasts to comply with the Council of Europe Convention on Copyright and Satellite Broadcasting. In particular sub-clause (4) changes the law by providing that a satellite broadcast is treated as made not from the place where the signal is uplifted to the satellite, but

from the place where the signal is first transmitted. I beg to move that clause 1 stand part of the Bill.

Mrs Christian: I beg to second and reserve my remarks.

The President: I will put the resolution, hon. members, that clause 1 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 2, sir.

Mr Crowe: Clause 2 confers on the performer of a dramatic musical performance a new right to equitable remuneration if a recording of his performance is broadcast by satellite. This is additional to the rights in his performance conferred by the Performers' Protection Act 1996, that is, the right to prevent unauthorised films or recordings or live broadcasts of the performance and is required by article 5 of the Council of Europe Convention on Copyright and Satellite Broadcasting. I beg to move that clause 2 stand part of the Bill.

Mrs Christian: I beg to second and reserve my remarks.

The President: Hon. members, I will put the resolution that clause 2 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 3, sir.

Mr Crowe: This clause overcomes a problem which has arisen with pay-per-view TV broadcasts of sporting events. As the broadcast being encrypted can only be viewed by agreement with the broadcaster, he can by a contract term prevent a clip of the event being shown in a news programme, even though that showing would not be an infringement of copyright because of the fair dealing exemption for news reports under section 30 of the Copyright Act 1991. I beg to move that clause 3 stand part of the Bill.

Mrs Christian: I beg to second.

The President: I will put the resolution, hon. members, that clause 3 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 4.

Mr Crowe: This clause amends the law relating to copyright licensing by enabling the statutory licence for inclusion of sound recordings in a broadcast to be modified by order and enabling the Isle of Man Copyright Tribunal to award interest on royalties in certain cases. I beg to move that clause 4 stand part of the Bill.

Mrs Christian: I beg to second, Mr President.

Mr Lowey: Will the hon. mover explain which of the department's many arms is going to enforce this particular piece of legislation?

Mr Crowe: This will be the Department of Trade and Industry.

Mr Lowey: Could I just tease a little bit more, the mover? Is it not more the purview of the broadcasting commission? Not the broadcasting commission, the telecommunications commission? That is not the title either. You know the one I mean: up at Home Affairs.

Mr Crowe: You mean the Communications Commission?

Mr Lowey: You have got it. Okay. Isn't it more in the technical terms the purview of that particular body as opposed to the Department of Trade and Industry?

The President: Reply, sir.

Mr Crowe: Thank you, Mr President. Yes, that is an interesting point. The actual regulation of this Bill falls within the orbit of the Isle of Man Copyright Tribunal, which is, I believe, appointed through the auspices of the Isle of Man Government's Department of Trade and Industry, but it is something I could look into and advise on later, yes. I will circulate that separately, Mr President. I beg to move clause 4.

The President: Hon. members, the resolution is that clause 4 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 5, sir.

Mr Crowe: This clause fills a loophole in the provisions of the Copyright Act 1991 outlawing the sale or hire of pirate decoders which the user uses to view encrypted TV transmissions without paying. It is made illegal in the Isle of Man to offer or advertise such devices for sale or hire from an overseas outlet. I beg to move that clause 5 stand part of the Bill.

Mrs Christian: I beg to second.

The President: I will put the resolution, hon. members, that clause 5 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Now turning to part 2, databases, and clause 6, sir.

Mr Crowe: Clause 6 defines 'database right'. It is a property right in a database in which there has been a substantial investment in its compilation. I beg to move that clause 6 stand part of the Bill.

Mrs Christian: I beg to second.

The President: I will put the resolution that clause 6 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 7, sir.

Mr Crowe: Clause 7 specifies who is the maker of a database and therefore the first owner of database right in it under clause 8. It is normally the person who makes the investment in it, that is, the person who takes the commercial initiative and the risk. I beg to move that clause 7 stand part of the Bill.

Mrs Christian: I beg to second.

The President: I will put the resolution, hon. members, that clause 7 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 8, sir.

Mr Crowe: Clause 8 provides that the maker of a database is the first owner of the database right in it. I beg to move that clause 8 stand part of the Bill.

Mrs Christian: I beg to second.

Mr Waft: Could we just clarify that position the hon. member Mr Lowey made reference to earlier? The original maker of the database would have the commercial interest in ownership. Who would actually take the person to court who has breached this situation? Would it be the person with the commercial interest or would he call upon the Department of

Trade and Industry to act on his behalf and take the necessary procedures through legislation?

The President: Reply, sir.

Mr Crowe: Thank you, Mr President. The owner of the database would be the person who would actually have to take the court action if he felt that somebody had used it illegally. There are provisions in the Bill to seek rights through the Copyright Tribunal, but if it was a case of using a database right without authorisation it would go through the courts.

Mr Waft: Through you, Mr President, all this then provides is the legislative framework by which that process can be carried out.

Mr Crowe: That is right. The principal thing is the new concept of a database right forming part of copyright. Before, for a person who made a database there was no right to it, anybody could copy it, so this actually gives the maker of the database a legal right to control the use of that database. So this is really these points about making sure that the owner has rights of licensing or of selling it at a later time.

Dr Mann: It does seem to be a very unusual way of enforcing a right. Normally one registers a right. Is there no means of registering a right of ownership, because some of these databases may be duplicated by two people creating similar databases miles apart? Surely somebody has a right to register their copyright, whereas it seems that you have just got to establish that you have invested more than somebody else?

Mr Crowe: Thank you, Mr President. Yes, that is an interesting point, but there are later clauses which state that if the proprietor of the database puts his name on it and dates it as the time that it was first created, it is taken as evidence that he is the owner of the database.

The President: Hon. members, I will now put the resolution that clause 8 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 9, sir.

Mr Crowe: Clause 9 provides that the unauthorised extraction or use of the information in a database amounts to an infringement of database right and may therefore be controlled by the owner of the right. I beg to move that clause 9 stand part of the Bill.

Mrs Christian: I beg to second.

The President: I will put the resolution, hon. members, that clause 9 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 10, sir.

Mr Crowe: Clause 10 provides that database right lasts for 15 years from the end of the year when the database is completed or first published. I beg to move that clause 10 stand part of the Bill.

Mrs Christian: I beg to second, Mr President.

Mr Lowey: It is just out of interest really - 15 years. Why 15 years? It does seem rather an odd figure. I can see 50 years, I have seen that, but 15 years? Is it arbitrary or is it just a lifetime?

The President: Reply, sir.

Mr Crowe: Thank you, Mr President. Yes, interestingly enough the copyright in a literary work lasts for, I believe it is 50 years, but with database the time limit has been taken as 15 years, probably because databases are rewritten much more frequently in this computer and higher technology age. So it presumably is an arbitrary figure based on the right to a database running out sooner than copyright.

The President: The resolution, hon. members, is that clause 10 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 11, sir.

Mr Crowe: Clause 11 specifies the qualification for protection of database right. Subject to extension to give reciprocal protection for overseas compilers, it is limited to a database whose maker is a British national, an Isle of Man resident or a company or other body formed under Manx law and based in the Isle of Man. I beg to move that clause 11 stand part of the Bill.

Mrs Christian: I beg to second, Mr President.

The President: Hon. members, I will put the resolution that clause 11 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 12, sir.

Mr Crowe: Clause 12 allows small items of information to be extracted from a database which has been published to be extracted and used without breach of database right, and a contract term taking away that right is void. I beg to move that clause 12 stand part of the Bill.

Mrs Christian: I beg to second, Mr President.

The President: I will put the resolution, hon. members, that clause 12 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 13, sir.

Mr Crowe: Clause 13 with schedule 1 provides other exemptions for the use of databases without breach of database right. I beg to move that clause 13 stand part of the Bill.

Mrs Christian: I beg to second.

The President: Seconded.

Mr Lowey: Mr President, it says here, 'Database right in a database which has been made available to the public' and then part (c) 'the source is indicated.' It does seem to me that that is an invitation to anybody as long as you say this was made by Christian or Radcliffe incorporated. If you put that on it you can do whatever you like. The source is indicated, I presume the source of the database, and if you indicate on your clip, in other words have it on the bottom of the screen or something that it has been made by Radcliffe or Christian or Lowey incorporated it permits you to show anything that has been taken from that particular database while it has been agreed. Is that right?

The President: Reply, sir.

Mr Crowe: Thank you, Mr President. Yes, the intention is that certain uses of the database are allowable, for instance if he is a lawful user, that is, he is not using a pirate copy. If it is for teaching or research and not for commercial use, so if a person was doing any sort of

research or university research and making a thesis and needed to use some of this data from the database, it is acceptable to use it as long as the source of the data is acknowledged, that due credit is given to the owner of the database. So it is not going to affect the commercial use of it, it is to give credit where it is due.

Mr Lowey: Yes, but it is only in the context of this particular clause, i.e. the one you have illustrated: for educational use, it is not a general one, it does not apply to other clauses in the Bill, otherwise that would defeat all the other safeguards that have been put in. As long as you put the name of the beneficial owner on it you would be able to do what you like, but obviously not, I think it must apply just to this clause.

Mr Crowe: Yes, I believe that is the case, that it is a limited use of it.

The President: The resolution, hon. members, is that clause 13 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 14, sir.

Mr Crowe: Clause 14 enables data to be extracted from a database to be used if the maker cannot be identified and database can be assumed to have expired. I beg to move that clause 14 stand part of the Bill.

Mrs Christian: I beg to second, Mr President.

The President: I will put the resolution, hon. members, that clause 14 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 15, sir.

Mr Crowe: Clause 15 provides that in legal proceedings to enforce database right certain matters do not need to be proved by the claimant and this goes on to state that if the maker's name appears on the database he is presumed to be the maker. I beg to move that clause 15 stand part of the Bill.

Mrs Christian: I beg to second, Mr President.

The President: I will put the resolution, hon. members, that clause 15 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 16, sir.

Mr Crowe: Clause 16 applies various provisions of the Copyright Act 1991 to database right and they include the transmission of the right by assignment and licensing of extraction and use of data, the assignment of the right in a database, and several other matters. I beg to move that clause 16 stand part of the Bill.

Mrs Christian: I beg to second.

Mr Waft: I think I did mention in an earlier reading of this Bill about the right of someone to pass on his database to someone else for purely commercial interest, for an interested party to be able to use that database, for instance for voters lists or something similar, with regard to circularising that area with a particular product. Regarding the legal situation with regard to the ability to do this, I thought we might have been able to find out what the law was in this area?

The President: Reply, sir.

Mr Crowe: Thank you, Mr President. Yes, I know you certainly raised that issue of voters lists and I was going to sweep it up with the third reading, but it is an opportune time to talk about that and you did request information on whether this Bill included a provision to prohibit the selling of voters lists, but I can advise that this Bill does not cover that, as the registration officer is required, under the Registration of Electors Act of 1984, to supply copies of the register of electors to any person applying, on payment of the prescribed fee. So this obligation under that Registration of Electors Act is unaffected by this Bill.

Dr Mann: This database right is very worrying in a way because it is based on commercial qualification. Is there some protection? You could build up a database which is essentially information that is issued by government departments or you have already referred to voters lists which are a distinct entity, or you could build up from database which is essentially information that is circulating within government departments of this government and then claim a commercial right to it, because you have invested the money and are bringing it together. Am I right that somebody could actually usurp public information and create it into a commercial entity?

The President: Reply, sir.

Mr Crowe: Yes, Mr President. Yes, thank you, Dr Mann. The example I think you are looking at is certainly something like a telephone directory which Manx Telecom produce where they own the database, but they do not prohibit people from actually looking up names and addresses and telephone numbers to use their telephone directory. It is the same with railway timetables, which cost a lot of money to form on a database, but they do not prohibit people or charge people to look it up because of the benefit that they are gaining from it.

Dr Mann: They are not protected here.

Mr Crowe: Yes, they are protected here because they have ownership of the database right, but there are provisions earlier that allow people to have reasonable use of that database which are inconsequential amounts of use of it. They do not take the whole document over, they can just use parts of it and then they are not in breach of the database right.

Dr Mann: It is a very worrying situation.

The President: The resolution, hon. members, is that clause 16 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 17 and schedule 2.

Mr Crowe: Clause 17 introduces schedule 2 which makes provision for the granting of licences to extract and use data in a database. It is based on part VII of the Copyright Act 1991 which regulates arrangements by collective licensing bodies under which licences are granted on behalf of copyright owners to do as protected by copyright, either under general licensing schemes or by direct negotiation with licensees. Disputes over the terms of such schemes and licences can be referred to the Isle of Man Copyright Tribunal. I beg to move that clause 17 and schedule 2 form part of the Bill.

Mrs Christian: I beg to second.

Mr Lowey: Just an explanation really on page 23. There is a word there that I have never come across before and if I am going to approve of the schedule perhaps the mover or somebody could tell me what it is: by effluxion of time. What on earth does that mean?

Mr Crowe: I think it means the passage of time.

Mr Lowey: Why don't they put 'the passage of time'?

Mrs Christian: It is a new word in draftsmanship, I think. It has appeared in one or two other draft measures.

Mr Lowey: Has it? Oh, I have missed it. Oh, I have missed that pleasure.

Mrs Christian: I think we changed it in the one that we were dealing with.

Mr Lowey: Well, I just feel again, to repeat what we have all said from time to time, that we should make legislation that is applicable to the ordinary man in the street and the ordinary men and women in the street that I know would not know what that means and if it is the passage of time, then I would have thought 'the passage of time' would have been much better. It is only something that has jumped out.

The Lord Bishop: That is why Latin is coming back in.

Mr Lowey: Ah, well, perhaps it is just as well I am at the end of my time. *(Laughter)* I just say it as a matter of course and I know we do regularly say 'Keep it simple', but I do think that that is a little bit over the top.

The President: Hon. members, I will put the resolution set out at item 17 on the order paper. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 18, sir.

Mr Crowe: Clause 18 gives the Isle of Man Copyright Tribunal jurisdiction to deal with proceedings under schedule 2 and applies the relevant provisions of the Copyright Act 1991 to such proceedings. I beg to move that clause 18 stand part of the Bill.

Mrs Christian: I beg to second, Mr President.

The President: I will put the resolution, hon. members, that clause 18 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Now, amendment of the Copyright Act and clause 19.

Mr Crowe: Clause 19 amends the Copyright Act 1991 principally to define 'database' and to exclude databases from copyright protection if they do not involve intellectual creation by the author. It also exempts from copyright any act which would otherwise infringe copyright but is exempt from database right under one of the exceptions in this part. I beg to move that clause 19 stand part of the Bill.

Mrs Christian: I beg to second and reserve my remarks.

Dr Mann: I notice that we are spelling 'program' now the American way: are we becoming an American dependency?

Mr Lowey: I was just about to say it.

The President: Hon. members, I will put the resolution that clause 19 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Clause 20.

Mr Crowe: Clause 20, Mr President, defines various terms used in part 2 and excludes the loan of a database from control by the owner of database right. I beg to move that clause 20 stand part of the Bill.

Mr Christian: I beg to second.

The President: I will put the resolution, hon. members, that clause 20 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Now, at this stage we have notice of a proposed new clause from the learned Attorney-General and I call upon the learned Attorney-General to move.

The Attorney-General: Yes, thank you, Mr President. If I may I would move the motion standing in my name:

That the following new clause do stand part of this Bill:

Patents and trade marks

- (1) Subject to subsection (2), the Patents and Trade Marks (World Trade Organisation) Regulations 1999 shall extend to the Island as part of the Law of the Island; and accordingly the Patents Act 1977 and the Trade Mark Act 1994 (Acts of Parliament) shall have effect in the Island as amended by those Regulations.*
- (2) The power to modify the Patents Act 1977 in its application to the Island conferred by section 132(2) of the Act shall apply to the provisions of the said Regulations amending that Act; and the power to modify the Trade Marks Act 1994 in its application to the Island conferred by section 108(2) of that Act shall apply to the provisions of the said Regulations amending that Act.*

Mr Radcliffe: I beg to second.

The President: Hon. members, I will put the new clause in the name of the learned Attorney-General. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Moving on then to clause 21, hon. member.

Mr Crowe: Mr President, is this not the new clause 21 and the old clause 21 becomes 22, sir?

The President: The renumbering will be automatic, sir. Thank you.

Mr Crowe: Yes. Clause 21, which becomes clause 22, forms part 3 of the Bill and contains supplemental provisions. I beg to move that clause 21 stand part of the Bill.

Mrs Christian: And schedule 3.

The President: The printed clause 21 and the schedule.

Mr Crowe: Yes.

Mrs Christian: I beg to second.

Mr Lowey: I know there are technical reasons for this, but could the mover of the Bill tell me why two months is the beginning of part 4: 'Part 1 and this Part. . . shall come into operation on the expiration of the period of 2 months beginning with the date on which this Act is passed.' Why have we given ourselves eight weeks after we have signed the Bill to make this come into being?

Mr Crowe: I think it is, Mr President, to give due notice to people who may be affected, so at least they can be circulated and suitable notice has been given.

The President: Hon. members, I will put the resolution that clause 21 along with schedule 3 do stand part of the Bill. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. Bill read a second time. Now, sir, we have the third reading pattern agreed by the Council, so I invite you now to take the third reading.

Mr Crowe: Thank you, Mr President. As I have indicated previously, the Copyright (Amendment) Bill 1999 is intended to update current copyright and performers' protection legislation in order to keep it broadly in line with changes in legislation in the United Kingdom and with developments internationally. It sets out to do this by achieving compliance with the Council of Europe Convention on Copyright and Satellite Broadcasting which should be extended to the Isle of Man once the relevant provisions of this Bill are made law. It also has the purpose of adopting certain changes in copyright law made in the UK under their Broadcasting Act 1996 and introducing a new kind of intellectual property right called 'database right' to protect a person's investment into compilation of a database, whether electronic or manual in nature.

Many aspects of the Bill are seen as important for economic development, as it provides encouragement for the film and broadcasting industry and also supports the ongoing development of a database industry in the Island by ensuring protection for those involved which is in line with international conventions.

I believe that it is important for the Island that this legislation be introduced at this time, as it ensures that the law in relation to copyright and performers' protection continues to meet current requirements. It takes account of new developments which have arisen and keeps us in line with international standards.

Mr President, I beg to move the third reading of the Copyright (Amendment) Bill 1999.

Mrs Christian: I beg to second, Mr President, and in doing so I think I would just like to make a comment, and perhaps the mover will confirm if my understanding is right, and that is the concern, I think expressed by the hon. member Dr Mann, in relation to someone perhaps taking ownership of what is public knowledge. I do not think the Bill does that at all. It simply says that if someone goes to the trouble of compiling that public information in a particular way in a particular database they should have a recognition of the work that has gone into that. My understanding is that that would not prevent some other person from scratch taking similar information and putting it into another database which may be quite similar in nature but at least has some distinguishing feature. It does not effectively give any one person a right to control that public knowledge, it just enables other people, if they wish to lawfully use that database, perhaps through paying a fee or whatever, to take advantage of the work which someone else has done. I hope the mover would confirm my understanding of that.

Mr Lowey: I have no difficulty in accepting, Mr President, the need for people, artists, to have their rights, and that if they perform they should have protection. I have no difficulty at all with that, and I understand the need, with the new technologies, that we need to have an internationally recognised standard. My only view is that, like Dr Mann, I can foresee somebody using this in a way in which it was not intended and regrettably I think it will, sooner rather than later, be restricted. The old copyright thing has been used in that way in the immediate past by getting a name and preserving it and then for no other reason just for the copyright's sake and no effort at all being applied to that, and very little will be applied now because you can get machines to virtually do anything for you, and I have just got a feeling that the only safeguard for me, while I am going to continue to support the Bill, is that the worst that we can do is hold it up for 15 years before it comes out, so I understand it will not be for ever and with technology advancing as fast as it is, perhaps 15 years is about right; maybe it is a bit too long, but however. With those reservations I am going to support the Bill.

Mr Waft: There is only one other thing I thought worth mentioning. The Bill does not really set out to what extent one database can be different from another database. In other words if they change it only slightly is that sufficient for them to avoid copyright problems? I know with a book, if you copy certain passages, that is deemed to be plagiarism of another book, but to what extent it will involve the database situation, if it is only slightly changed or not and whether this can be catered for, I do not know. Thank you, Mr President.

The President: Reply, sir.

Mr Crowe: Thank you, Mr President, and I thank hon. members for their comments. I thank the hon. Mrs Christian first for seconding the Bill and I would confirm absolutely that her summary of the database right is correct, that this is to protect the work involved in compiling a database, which can be very substantial, and it is to stop people just using another person's work without giving credit or paying a licensing fee.

The hon. Mr Lowey has mentioned concerns that the proof of the pudding will be in the eating, and he is concerned that rights under the Bill might be used in a way it was not intended. I would like to think that the Bill as drafted should cover all those points, but I will take this concern back to the Department of Industry.

The hon. Mr Waft mentions a very good point about plagiarism, where one person compiles a database and another person then copies it largely but then tries to use it as his own database. I think all of this would be taken through the courts and this would prove that a person who had only minimally changed a database would not be able to use it or claim it as his own.

I think that covers all the comments, Mr President, and I beg to move the third reading.

The President: Hon. members, I will now put the resolution that the Copyright (Amendment) Bill 1999 be now read a third time and do pass. Will those in favour please say aye; against, no. The ayes have it. The ayes have it. And that, hon. members, concludes our public business for this morning. The Council will now sit in private.

The Council sat in private.