

millions of people down and tell them they owe me three cents or four cents or something for my copyright.

What, then, of the composers of songs and the people who write the words for songs? They have protection. Why? Because they were faced with the same problem years and years ago. We read today about the problems between great composers, Mozart and others, and their publishers, but the copyright was understood and the copies were made by the publishers.

● (1440)

Of course, hit songs became an important part of our life. Perhaps not many of you are as old as I am, but I remember when the most successful and widespread method of distributing songs—and let us just stick to popular songs—was through music publishers. Honourable senators may remember that, around the old piano, there was always what was called sheet music. The sheet music was put together by a music publisher who had his or her stable of songwriters. For example, a man like Irving Berlin would have had no protection for his compositions without publishers.

So was born what became known as the greatest friend ever to musical composers and songwriters, ASCAP, which stands for the American Society for Composers, Authors and Publishers. If you were a songwriter, you would join ASCAP. The publisher was a member, as you were, and you made agreements as to, for example, how many cents you would get for each copy of your music.

There were also song pluggers, who would sit in places like Macy's and Gimbel's in New York, and in Eaton's and Simpson's in Toronto. These chaps would play their pianos in public places and plug the song or the sheet music.

Then people stopped buying sheet music to put on the old piano in the living room and started buying records. This created a problem for the authors, composers and performers. Incidentally, the Canadian version of ASCAP is CAPAC, which stands for Canadian Association of Publishers, Authors and Composers. Thereafter, the money came in through the sale of records. That did not create a serious problem for the copyright owner because the distribution of records through record stores was controllable, auditable, visible and supervisable, if that is an acceptable word.

It then became popular to listen to these records on the radio rather than to buy them. Of course, having a record played on the radio helped your sales at the record store, but it did not get you anything for the performance. This is a very important stage in the development of copyright as it relates to Bill S-8. I say that because the reaction of the radio station owners to the suggestion that they would have to pay a copyright fee to the copyright owner for the playing of the work on the radio was the same as the reaction we are getting now from the people who find that they may have to pay a copyright fee for copying printed works. The radio stations said, "We can't keep track of that. How can we do that? Every time we play a record, we have to find out who the author is,

[Senator Frith.]

and so on." Eventually it was negotiated between CAPAC and BMI—

Senator Barootes: ASCAP.

Senator Frith: ASCAP is the U.S. organization and CAPAC is the Canadian organization. I am talking now about Canada. It was negotiated that a certain fee would be paid based on gross revenue. I shall not go into the details but the Copyright Appeal Board endorsed the procedure on an overall basis.

That is the setting of the scene when this government did something that was an improvement, in my view as a lawyer, and as one who has been involved with copyright and broadcasting. The government decided to come forward with amendments to the Copyright Act, and I am on record as supporting that initiative. The government brought forward Part I in its efforts to amend the Copyright Act. Under Part I, authors faced with this uncontrollable technical ability to copy written works were given the opportunity to enforce their copyright without having to run around to every individual user in order to enforce their creative rights. Those are the key words in understanding the *dramatis personae* or the players in this field; the users, large and small, of printed copyright and the uncontrolled ability of others to copy.

Here was the problem: How could this be done? I shall not get into the technicalities, but let us assume that all of us here are authors and that we do our work individually and separately. We cannot track down every use that is made of our written work, so we want to get together to try and enforce our rights. The essence of the difficulty is that that would be considered a combination in restraint of trade. We would be getting together in order to establish an association to set up reprography. That association could be considered a combination in restraint of trade, if there were enough of us. Of course, if there were not enough, it would not be effective. Our objective would be to approach the departments of education, just as CAPAC and BMI approached the radio station owners, and say to them, "Look, you can use our copyright, but you have to sit down and negotiate a fee with us in order to do so." However, they could then turn around and say: "But that would be in restraint of trade because what you are doing is throttling competition."

● (1450)

What is the essence of Part I of the Copyright Act? The essence of it is that it is not a combination in restraint of trade to form associations to enforce copyright in written works. I shall limit my remarks to written works at the moment for purposes of illustration. That was the state of affairs when the bill was passed, and that is the state of affairs now.

What is the reason for Bill S-8? Bill S-8 is sponsored by our colleague, Senator Marsden, who, as senators will remember, is a university professor. She has spent most of her life in education and is a very well-known and distinguished member of the educational community in Canada. She herself, along with her colleagues, has experienced the difficulties that arise when there are revolutionary changes in society such as the