

Adjournment Debate

U.S. Congress is not seriously considering any amendment to the copyright law. Therefore, the Sony decision will stand for some time.

In the United States, a solution to the problem was found without changing the copyright laws. I am sure we can do the same in this country.

I shall read some excerpts from the decision in the Sony Corporation of America, et al, versus Universal City Studios Inc.:

The average member of the public uses a VTR principally to record a program he cannot view as it is being televised and then to watch it once at a later time. This practice, known as "time shifting" enlarges the television viewing audience. For that reason, a significant amount of television programming may be used in this manner without objection from the owners of the copyrights on the programs. For the same reason, even the two respondents in this case, who do assert objections to time shifting in this litigation, were unable to prove that the practice has impaired the commercial value of their copyrights or has created any likelihood of future harm. Given these findings, there is no basis in the Copyright Act upon which respondents can hold petitioners liable for distributing VTR's to the general public.

The Copyright Act referred to is the one in the United States:

The Copyright Act provides the owner of a copyright with a potent arsenal of remedies against an infringer to his work . . . The two respondents in this case do not seek relief against the Betamax users who have allegedly infringed their copyrights. Moreover, this is not a class action on behalf of all copyright owners who license their works for television broadcast, and respondents have no right to invoke whatever rights other copyright holders may have to bring infringement actions based on Betamax copying of their works. As was made clear by their own evidence, the copying of the respondent's programs represents a small portion of the total use of VTR's. It is, however, the taping of respondent's own copyright programs that provides them with standing to charge Sony with contributory infringement. To prevail, they have the burden of proving that users of the Betamax have infringed their copyrights and that Sony should be held responsible for that infringement.

• (1810)

Fred Rogers, President of the corporation that produces and owns the copyright on *Mr. Rogers' Neighbourhood*, testified that the program is carried by more public television stations than any other program. Its audience numbers over three million families a day. He testified that he had absolutely no objection to home taping for non-commercial use and expressed the opinion that it was a real service to families to be able to record children's programs and to show them at appropriate times. If there are millions of owners of VTR's who make copies of televised sports events, religious broadcasts and educational programs such as *Mr. Rogers' Neighbourhood*, and if the proprietors of those programs welcome the practice, then the business of supplying the equipment that makes such copying feasible should not be stifled simply because the equipment is used by some individuals to make unauthorized reproductions of respondents' works. The respondents do not represent a class composed of all copyright holders. Yet, a finding of contributory infringement would inevitably frustrate the interests of broadcasters in reaching the portion of their audience which is available only through time-shifting.

The District Court findings lead to two conclusions. First, Sony demonstrated a significant likelihood that substantial numbers of copyright holders who license their works for broadcast on free television would not object to having their broadcasts time-shifted by private viewers. Second, respondents

failed to demonstrate that time-shifting would cause any likelihood of non-minimal harm to the potential market for, or value of, their copyrighted works. The Betamax is, therefore, capable of substantial non-infringing uses. Sony's sale of such equipment to the general public does not constitute contributory infringement of respondents copyrights.

It is all summed up, Mr. Speaker. In the United States they have found a solution to the problem. Universities and schools can obtain these educational films for viewing to assist in educational progress in the schools and universities. Teachers and professors across Canada have been asking for this for over 13 years now. Surely to goodness it is time the Government found a solution to the problem here in Canada.

[Translation]

Mr. Michel Veillette (Parliamentary Secretary to Minister of Consumer and Corporate Affairs): Mr. Speaker, in answer to the Hon. Member's question, since the Minister of Consumer and Corporate Affairs (Mrs. Erola) has left the House for the day, perhaps the Hon. Member will allow me to provide some additional information in response to the question asked by the Hon. Member earlier today.

After a second glance at the Hon. Member's question, it seems clear that the task force to which he referred is the one established in the Department of Consumer and Corporate Affairs three years ago, to examine various issues in connection with revision of the Copyright Act. The Committee reported to the Minister of Communications (Mr. Fox) in 1982. The Committee's recommendations, as well as several study reports prepared for the Department of Consumer and Corporate Affairs and the findings of a number of consultations with the public and private sectors, were used in preparing for the latter department a working paper containing all recommendations regarding revision of the Copyright Act.

One of the studies to which I was referring was about exemptions from the Act and concerned the use of broadcast material by educational institutions.

In fact, the White Paper contains all the Government's decisions in this area.

The attitude is to refrain from making general exception for the use of material in the educational sector. The reason is obvious: many programs and publications are specifically designed for use by schools. Eliminating copyrights for this type of use would have the effect of seriously discouraging authors from producing such material.

• (1815)

The problems the teaching institutions had with the CBC when they wanted to have access to the material were also mentioned. The CBC, like all the other broadcasting companies, does not always own the copyright of the programs it transmits. Broadcasting companies obtain broadcasting permits from the people who own the copyright for the programs,