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Monday, October 2, 2006

Chair

Mr. Gary Schellenberger

Standing Committee on Canadian Heritage

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● (1535)

[*English*]

The Chair (Mr. Gary Schellenberger (Perth—Wellington, CPC)): I call this meeting to order, this being the 14th meeting of the Standing Committee on Canadian Heritage.

Just before we go to our witnesses today, I'm going to go to the last part of the business and ask for some guidance. On Wednesday we do not have any witnesses. It would be my suggestion that we do the notice of motion from Maka Kotto, the notice of motion from Charlie Angus—I think Charlie has two motions—and there is a motion that came in late on Friday from Mauril Bélanger. I would suggest that we hold our Wednesday meeting debating those motions and also setting our schedule of where this committee will go in the next few meetings.

Perhaps someone would make a motion that we do that.

Yes, sir.

Hon. Mauril Bélanger (Ottawa—Vanier, Lib.): May I ask a couple of questions first, Mr. Chairman?

The Chair: Yes, Mr. Bélanger.

Hon. Mauril Bélanger: On the matter of the notice of motion that I gave, Mr. Chairman, which was that this committee recommend to the government to reinstate the court challenges program, which happens to be funded through the heritage department, I filed that on Friday. I recall that we had a discussion at the start when we set up the working rules for our committee that a notice of motion given on a Friday could be considered on a Monday or even on the Tuesday, because at the time we were meeting on Tuesdays.

Now that someone has decided we're going to meet on Mondays, we didn't change the notice of motion requirement. So I would have thought that a notice given on Friday, as if I did that in the House, for instance, would be valid for today, the following Monday. Two sleeps is the rule. I slept very little on the weekend, but I did sleep twice.

So I'm wondering if indeed the notice that I gave is in order or not. That's my first question.

The Chair: It's my understanding, as I've been briefed today, that it was at 2:17 p.m. or something like that on Friday, and then it's two working days—that's what I've been advised—so it is not there today. At the same time, when it is there on Wednesday, I would suggest that we then sit down and debate the situation and make sure that, whatever the rule is, we make it then.

Hon. Mauril Bélanger: With all due respect, Mr. Chairman, I think it's important. I believe—I believed then and I still believe now—that I was within the rules as set by the committee. At the time, I thought it was on Fridays at 2:30 p.m. when the House adjourns, and 6 o'clock during weekdays. So if I'm mistaken in terms of both or either, the time and the delay, then I need to know that to be able to function as a member of the committee.

The Chair: I must say that I received the motion this morning. I think the 48-hour notice of motion is that if you were to present it and it was 48 hours, that it should be in the hands of the members of the committee for at least enough time to go over it. I suggest that we could debate a little bit more—

Hon. Mauril Bélanger: Is it my responsibility, Mr. Chairman, or the clerk's responsibility to make sure they get into the hands of all of the committee members?

The Chair: Especially on Friday, it goes back.... I'm not sure what time it got to my office. I didn't receive it. I went home on Friday afternoon. I was gone before 2:30, so I guess that's my fault.

But all I can say is let's settle this once and for all. We can do that on Wednesday. We'll set that precedent, however it will be, and that's how we will carry on from now on.

Hon. Mauril Bélanger: I'm very sorry. There are a number of issues at stake here, let alone the substance of these motions. There's a great deal of concern out there, Mr. Chairman, about some of the cuts that the government has announced last week. If I'm outside of the rules as set by the committee in order to give notice of motion, then I need to know that, because it is my understanding, my belief—if I'm wrong, I'll admit it and I'll recognize it—that I gave notice in due course, in due time for it to be debated today. I did not know at any time of a member of a committee who has the task of distributing the motion to all the members.

I'm under the impression, from having been on a number of committees, that I have a responsibility to get it to the clerk. I even provided it in both official languages, on top of that. Was I erring? Did I not respect the provisions as they were set out by the committee? I think it's important I know that in order to be able to function properly.

The Chair: Yes, Mr. Abbott.

Mr. Jim Abbott (Kootenay—Columbia, CPC): Maybe I can add a little clarity, or at least my recollection of our discussion.

I think Mr. Bélanger put his finger on it. When we discussed this originally as a committee, we were going to be meeting on a Tuesday. So the question was, if it was put into the system on a Friday, would it clear? If we take a look at the 48-hour rule, if hypothetically we had a meeting on Tuesday morning, and it was put in on Friday afternoon, it wouldn't be 48 hours. I believe that is what our discussion, as a committee, focused on, and we said no, let's waive that.

The fact that the meeting has now been moved from Tuesday to Monday is what has fouled up this previous agreement. I'm sure that we, as committee members, can come to an amicable agreement this coming Wednesday as to what the best rule would be so that the opposition can do their job.

Hon. Mauril Bélanger: [*Inaudible—Editor*]...if I'm not mistaken, and if I am, let me know. We would not count working days; we'd count sleeps. Therefore, notice given on Friday—two sleeps—means it's receivable on Monday.

If I'm wrong, let me know.

The Chair: Mr. Angus.

Mr. Charlie Angus (Timmins—James Bay, NDP): Thank you, Mr. Chair.

My understanding from past practice is that it's been two working days. I don't know if we need to debate this. We can get the chair to look into past practice and just deliver it to us, but my understanding was that it was two working days. So it would be tomorrow.

● (1540)

The Chair: Is there a motion that we carry these motions over to our Wednesday meeting?

It is moved by Mr. Angus...oh, did you have a question?

Mr. Charlie Angus: I have a concern. I believe if we take the motions together, they lay out a number of serious issues that we would have to address. I would like to be assured that if we do hold it over to Wednesday, we'll devote the meeting to it. That would probably influence decisions that we would be making from that meeting in terms of future business, because many of these will be the important things we want to debate.

So I don't have a problem—if we're going to take the meeting to do that, so we can fully do it. I just want to make sure this is the intention of the chair, that we would have a full meeting where we could lay out a plan for moving forward.

The Chair: Mr. Fast.

Mr. Ed Fast (Abbotsford, CPC): Mr. Chair, referring to Mr. Angus' motions, there are two of them, and both of them request that officials from either Heritage Canada or the Canadian Museums Association attend here. Both of them seem to focus on eliciting more information from those officials to determine whether any cuts will be made, and if so, who they will impact. If we're going to debate the other motions, which are perhaps in some ways more substantive and affect the funding that may or may not have been cut for a number of organizations, it seems to me we should first get the information; we should first hear from the witnesses themselves.

You made a suggestion earlier on that perhaps we should wait until we have the minister and her officials here. It seems to me we should also wait until we have members of the Canadian Museums Association here so they can also comment on whether these cuts are going to impact their operations.

The Chair: Right now before the committee we have four motions pending. I've made the suggestion that Wednesday we can debate them. I think your points are valid, and they will be debated on that day. It is my suggestion as chair that we put those motions forward on Wednesday and have a full debate.

Today, I would like to get on with our witnesses and copyright. So if someone would entertain a motion, I will, as chair, say that there will be a full debate on these motions on Wednesday.

Mr. Ed Fast: If I could follow up on that, we'll be debating on motions for which we may have an absence of information. That's my concern.

The Chair: My point is that they're valid motions; they're motions put forward. And this committee will entertain those motions.

Mr. Angus.

Mr. Charlie Angus: To clarify for Mr. Fast, it's a request from our committee to ask people to come so that we can hear from them. What more information would we need on that motion? Either we support having them come and hearing from them, or we don't support having them come.

Mr. Ed Fast: Actually, I'm not referring to your two motions, Mr. Angus.

Mr. Charlie Angus: To bring the Canadian Museums Association.

Mr. Ed Fast: No. Those, I think, are fairly straightforward. It's the other two motions that actually look to restore the funding that supposedly has been cut. And on those two motions, it seems to me there would be a problem.

The Chair: Without much more debate, I'm looking for a consensus around this table. I don't have to have a motion. But I would like to have an agreement around this table that we table these motions until Wednesday and have a full discussion then. Or we could be here discussing them all day, and our witnesses are going to sit there and not have to answer a question. I'm sure there have to be some other questions around this table.

Do I have agreement that we put these motions until Wednesday?

It's not in total agreement. Then I will take a vote on who supports debating these motions today.

● (1545)

Mr. Charlie Angus: I'm sorry, you should be asking to debate them on Wednesday, not against debating them today. It puts us in a difficult situation. We'd be slitting our own throats, Mr. Chair.

The Chair: Okay, I'm sorry about that.

Then on debating these motions on Wednesday, those in favour? Those against? Okay. They will be debated on Wednesday. That consensus carries, almost fully.

Pursuant to Standing Order 108(2), a briefing on copyright, we have witnesses here today from the Department of Canadian Heritage, Danielle Bouvet; and the Department of Industry, Albert Cloutier.

Welcome. You've been here before, so you don't have another brief to bring us. We already have the brief before us, so I guess we're here to continue questioning.

We have Mr. Bélanger first. No questions.

Ms. Keeper, questions? No.

Mr. Kotto. No.

Mr. Malo. No.

Mr. Angus.

Mr. Charlie Angus: Do you want me to start my five minutes of questioning? Sure. I thought I was going to hear a report first.

The Chair: The presentation was done last time, wasn't it?

Mr. Charlie Angus: Okay. I'll go off the top of my head.

The Chair: Do we have a presentation today?

Ms. Danielle Bouvet (Director, Copyright Policy Branch, Department of Canadian Heritage): We have one. If you want to hear from us, we have one.

The Chair: I wouldn't mind hearing your presentation.

[*Translation*]

Ms. Danielle Bouvet: Mr. Chairman, ladies and gentlemen of the committee, my colleague, Albert Cloutier, and I are delighted to be here again to further our discussion on copyright.

Last week, we spoke about the Copyright Act and its primary guiding principles. We also spoke about the major international conventions governing copyright that form a backdrop to the Act.

It is our intention this afternoon to provide you with a brief overview of the various revisions of the Copyright Act.

If you turn to page 2 of the presentation that has been circulated, you will see that the first major review of the Copyright Act took place in 1988. This heralded the granting of new rights, a move towards collective rights management, and the establishment of the Copyright Board.

On the subject of new rights, although authors already held moral rights prior to the 1988 review, the update clarified the scope of these rights and strengthened the avenues of recourse open to rights holders in case of infringement.

It is important to understand that, prior to 1988, computer programs were not officially covered by the Copyright Act. However, it became clear that computer programs were comparable to literary works and, therefore, merited protection under the Copyright Act. Protection of computer programs was consequently enshrined in the 1988 review.

The review also encouraged collective rights management. Several measures to allow not-for-profit associations to represent several authors or producers were introduced with a view to promoting collective rights management over individual rights management.

The review also led to the establishment of the Copyright Board. Since 1988, the Board has been responsible for setting the royalties to be paid by users seeking to use works protected by the Copyright Act.

Page 3 provides an overview of another major review of the Copyright Act. It focused on three main areas.

Firstly, it introduced new rights for performers and producers of sound recordings, while simultaneously providing some exceptions for educational establishments, museums, archives and libraries.

Allow me to provide you with an example of the new rights that were granted to producers and performers. Prior to 1997, a performer whose work was played in a public place or on radio was not compensated for this use of their material, as it was deemed to be a question of statutory law not covered by the Copyright Act.

Since 1997, performers and producers of sound recordings have had the right to be remunerated each time their song is played in public, be it on an airplane, in a shopping centre or any other public place, such as, for example, here in this room. Performers and producers must now be paid for any use of their sound recordings or performances.

As regards exceptions, I explained last week that the Copyright Act provides authors and artists with either sole rights or rights to remuneration. Sole rights are considered the Cadillac of rights in copyright circles, while the right to remuneration provides for the rights holder to be paid, but does not allow him to deny consent for his work to be used.

● (1550)

In 1997, exceptions were introduced to allow certain users such as schools, researchers, museums and archives to make use of protected works. While it is not mandatory, if they do opt to use these works, they are bound to respect certain conditions. They do not, however, have to seek the author or artist's permission and, in some instances, are exempt from paying royalties.

A second principal focus of the 1997 review was the private copying regime. The private copying regime creates an exception allowing any individual to reproduce, for personal use, a musical work, a sound recording, or an artist's performance of a musical work. In tandem with this exception, the 1997 review also provided for a compensation regime to provide authors, producers of sound recordings, and performers whose performances are fixed in sound recordings to receive royalties for private copying.

Section 92 is another important section in the Copyright Act. It required the government to report to both the House of Commons and the Senate on how the act was operating. Under the provisions of section 92, the government had to report to both Houses in 2002. We will come back to this a little later.

Lastly, 1997 was also the year in which Canada signed the two WIPO Internet treaties, another matter that we will return to later. One of the treaties deals with protection for authors, and the other with protection for producers of sound recordings and artists whose performances are fixed in sound recordings. In signing these treaties, Canada officially recognized the underlying principles of these two international agreements. It is important to draw a distinction between signing and ratifying. Ratification is the stage following the implementation of a treaty.

● (1555)

[*English*]

Mr. Albert Cloutier (Director, Intellectual Property Policy Directorate, Department of Industry): Turning to page 4, Danielle referred to section 92 of the Copyright Act, which required that the government table a report on the operations and provisions of the act. That section also required that once tabled in Parliament, it be referred to an appropriate committee for its study and that the committee would then be required to provide its own report.

In fact, the report—I have a copy here, and some of you may recall it from your time on the committee back in 2002—was referred to the heritage committee, this committee. The committee began to examine it in the spring of 2003, and actually in great earnest, I would say, in the fall of 2003, and this led to certain reports.

I want to put the document into context a little bit. I think one of the reasons for the inclusion of section 92 in the act was to recognize the significance of the changes brought about by Bill C-32 in 1997. It was felt that at the end of five years it would be opportune to re-examine the impact of those changes.

But at the same time, the government, in tabling the report, had a number of objectives in mind. The first thing they did was, in recognition of the complicated process of amending the act, which often seemed to result in some level of controversy and acrimony, try to streamline the process by which future amendments to the act might occur.

So what the report proposed was that rather than undertaking a large omnibus type amendment in the future, the government would propose perhaps smaller step-by-step amendments, and they would try to group amendments in some way thematically. So the first thing the report did was to affirm a kind of step-by-step approach in the interests of perhaps improving the efficiency with which the act could be amended.

The second thing it sought to do was to demonstrate that there were still a lot of issues that stakeholders were calling on the government to try to resolve. So it provides a catalogue of...it depends on how you count them, but some would say up to about 70 different issues that the government was asked to have addressed.

Then the report tackles those issues by trying to group them based on a certain maturity, I guess, or a priority as far as the government is concerned. It tries to group them into short-term priorities, medium-term priorities, and long-term priorities. In a sense, the short-term priorities are described generally in terms of what ultimately came out in Bill C-60; namely, it looked at certain Internet-driven issues, the need to re-examine the level of protection in the Internet environment to look at the way intermediaries like Internet service providers are dealt with, and how educational institutions and other not-for-profit public institutions should be able to utilize the Internet to manage or further their objective.

That's what the report did, in a nutshell.

I have just one further word. It goes without saying, of course, that this is the document of the past government, and to date, there's been no endorsement by the present government.

[*Translation*]

Ms. Danielle Bouvet: Mr. Chairman, page 5 refers to another document that has played a very important role in copyright reform. I am of course referring to a government interim report tabled in March 2004 in response to requests from the Standing Committee on Canadian Heritage for an update on the status of copyright reform.

This document sets out and discusses all of the issues relating to new technologies and Internet that have been debated over the past few years. You will note that we opted not to address certain issues as we considered them to have been dealt with in the report that was tabled with your committee.

This report, which Albert spoke about earlier, focuses on a four-pronged reform.

The first area addressed is the implementation of the WIPO treaties. The second is the issue of photographers, a question that is analyzed in detail and which is still subject to much debate. Thirdly, it focuses on clarifying the role and liabilities of service providers in the context of new technologies and Internet. The fourth area addressed is access to exceptions regarding rights holders' rights.

The report tabled in March 2004 addresses all of the above issues and sets out Canada's obligations.

Page 6 of our presentation refers to the report that this committee tabled in May 2004. The report was approved by the then members of the committee for a second time in November 2004. It revisits some issues raised in the interim report, but not all of them, as some were deemed to have been resolved. The committee chose not to reopen the debate or hear witnesses on issues deemed to have been resolved. Page VII contains the list of issues on which the committee made recommendations to the government following its discussions.

I am going to ask my colleague to walk you through page 7, which deals with the government's response to the standing committee's interim report. He will provide you with the list of proposals set out at the time.

● (1600)

[*English*]

Mr. Albert Cloutier: In response to the heritage committee's request, the government tabled a statement in March 2005 that tried to outline conceptually, but with some degree of detail as well, what it proposed to do in the actual amendments that it was in the process of developing.

Rather than go through a detailed list, at this point I would refer you to the next slide, which describes Bill C-60—tabled three months later, at the end of June—and what it sought to do, again very much in keeping with the section 92 report and the status report that had been provided previously.

In terms of new rights and protections in the Internet environment, the bill would implement the new rights and protections found in the two 1996 WIPO treaties to the extent they were necessary. The key rights in that case are the making available right, the legal protection of technological protection measures, and the legal protection of rights management information. I'll talk about those briefly before moving on to a description of some of the other provisions.

The making available right, required by the treaties, would give rights holders, whether authors or the neighbours—that is, the sound recording makers or performers—the exclusive right to control the very appearance of their material online. In our own assessment of the state of Canadian law, and based on Supreme Court of Canada decisions, we came to the conclusion that the communication right that authors currently benefit from already integrates a making available right for authors. So no significant amendments were needed in that regard.

As far as the music producers and performers were concerned, while the activity of making available may be covered under the communication right that they enjoyed, which is only a remuneration right, amendments were needed to elevate the right to an exclusive right in the online environment. So there were some significant amendments required there.

As far as the legal protection of technological measures is concerned, this provision deals with the ability of rights holders to apply a digital lock on their material to ensure that people can make only non-infringing use of that material. The provision would bolster the use of these technologies by giving rights holders the ability to sue those people who would circumvent the digital lock, who would, without authorization, break through the lock. There were no such provisions in the act at that time—or now—so again, amendments were needed. The approach we took was to say that whenever somebody breaks that digital lock for an infringing purpose, then the rights holder would have a remedy.

Similarly, if somebody purports to provide a service to someone else where that service entails the breaking of the lock on behalf of someone else, and they knew or should have known that the service would be used to further an infringement of copyright, then they too would be subject to some kind of sanction.

The provision on rights management information deals with information that a rights holder may embed in the work—in the form of, say, an electronic watermark—so that their work remains identifiable and associated with them and the uses they allow.

Increasingly, these rights management information elements are included in systems that are known as digital rights management systems, that control the licensing of material and the uses that can be made in, again, a digital environment. But because that information is key to the operation of these digital rights management systems, rights holders would have legal recourse against those who would try to alter that information in a way that would permit infringement. And because the act didn't contain provisions in that regard, and still does not, the bill would have added these three elements. And those are, I would say, the three key elements of the WIPO treaties that required amendment.

● (1605)

Other amendments were also required, in our view. There is a need to adjust the term of protection for photographers to meet the requirements of the treaty, and for performers there was a need to recognize moral rights on their behalf. There was a need to introduce a new distribution right, which gives a rights holder the ability to control the distribution of their material in a tangible form. So we're not talking about online, we're talking about the actual CD or book, or what have you. A number of sort of ancillary amendments would nonetheless be required pursuant to the treaty. Those are the main treaty protections that the bill would address.

As well, the bill dealt with the copyright liability of Internet service providers by basically exempting them from liability when their main activity was simply to be an intermediary, to facilitate the communication of content between the actual provider of the content and the recipient or subscriber. As long as they didn't kind of alter the content or play a role in selecting out the content, they would be exempt.

They could also engage in certain activities that involved reproductions of copyright material, where this was done only to improve the efficiency of the Internet. They weren't necessarily interested in the material as such, but they were interested in allowing the Internet to operate more efficiently. To do this they make caches on certain websites that allow more rapid access without clogging up the arteries of the Internet, if you will.

By the same token, Internet service providers were expected to play a role in trying to curtail the infringement that was going on online, by participating in what we have called a “notice and notice regime”. Under that regime, if a rights holder sees that certain subscribers of a particular ISP are involved in some kind of unauthorized activity, then they could send a notice to that ISP, and then the ISP would be required to forward that notice to the subscriber. That way, the subscriber was put on notice that his activities had been detected.

The other obligation that would kick in at that point is that the ISP would be required to maintain information to identify the subscriber in question for a certain period of time, so that in the event of litigation between the rights holder and the subscriber, there was a way for the rights holder to ascertain who exactly was involved in this activity.

In effect, that speaks to one of the reasons why the intermediaries are involved at all: it's often very difficult to know who is behind some of these activities. A lot of people in the online environment go by certain handles and it's not possible to truly know who they are except with the help of the ISP. So that was the second major element of the bill.

The third major element of the bill relates to certain uses that were going to be permitted for educational and research purposes, and the bill had two major amendments. One was to allow for a form of distance learning, so that schools would be entitled to use the Internet as a means of transmitting lessons to students. By way of example, it may be the case that a teacher is standing in a classroom and the presentation that the teacher makes to the students is also webcast to remote students.

Oftentimes there are copyright materials that are incidental to the lesson that are being used to enrich the lesson. The act already allows for teachers to make certain uses of copyright material in their lessons. This would simply ensure that the teachers could also communicate via Internet to remote students and include those copyrighted elements.

● (1610)

A second aspect relating to education was the ability to transmit certain course material to remote students, provided the course material was already covered under a reprographic licence with an appropriate collective society. If the school had the ability to photocopy materials for their students and provide it to them in the form of course packs, then they could also transmit the course back to the student with the proviso that there be certain safeguards in place that didn't allow the student to do anything other than print off a copy. In essence, the Internet would just be another means of conveying the course pack to the student.

Finally, on the research side, the act currently allows for inter-library loans to take place in the following way. If I request a copy of a journal, an article of some kind from a library, and they don't have it, they can go to another library and ask them to provide the article to me. However, if they send it electronically, they can only do so to the requesting library—my library. Once it gets to my library, my library has to print it off and hand me a paper copy. Under the provisions that were proposed in Bill C-60, you wouldn't have this additional administrative step involved, that is, the providing library could send directly to me, the patron, a copy of the article. There again, the requirement was that the only thing I could do with it was print off a copy myself. It avoided the additional administrative step of having my library print off a copy and send it to me.

There were a number of other provisions related to photography. Right now under the act the first owner of copyright in a photograph is the person who actually owns the negative or the plate used to make the photograph; it is not the photographer. In fact, the person who owns the plate is deemed to be the author of the photograph. This was seen as being out of keeping with the treatment of other rights holders and so the bill would have changed these rules to make the photographer the author and first owner of copyright in photographic works.

There was a special case involving commissioned photographs, where, if I commission a photograph for money, then I'm deemed to be the first owner of the copyright in that photograph. Thebill would have changed this, but allowed me, as the commissioning person, to make certain personal uses of the photograph unless I had agreed to the contrary.

Those are the broad contours of what the billtried to achieve.

● (1615)

The Chair: Thank you very much.

You might notice that my name is on that bill that came from Heritage, or on that report from Heritage. Mr. Abbott and I are probably the only ones who were part of that process at that particular time. And it was not an easy process.

I agreed that Mr. Angus would have the first question.

Mr. Angus.

Mr. Charlie Angus: Thank you.

My first question is short. When is the bill coming?

Ms. Danielle Bouvet: That's an easy answer. There has been no decision. Minister Oda said she wanted to table the bill as soon as possible, and we're working under that assumption.

Mr. Charlie Angus: I'll be asking my questions on where we're going as opposed to where we've been. I know where we've been and I'm not all that interested in it, but I'm very interested in where we're going.

I'd like to focus on the issues in terms of WIPO, because we signed that treaty when the fax machine was cutting edge and the web was called the bulletin board. I'm wondering whether we're looking towards building copyright for the 21st century, or are we really running, trying to catch up to the 20th century?

In terms of the non-infringing use rights that we seem to be looking towards implementing, how much has the heritage department looked at the legal cases coming out of the United States in terms of abuse of technological protection measures and DRMs against fair consumer use? Has that been a priority at all in terms of Canadian Heritage?

Ms. Danielle Bouvet: I can confirm that it has. We do comparative law and we have looked at any court decisions around the world. This file is very much international. So we do check, consult, and discuss with other experts around the world about all these ramifications.

Mr. Charlie Angus: So right now, if we implement WIPO the way it's written, the big rights holders will have the right to sue if I circumvent a lock on my CD. But as a consumer, I have no rights to protect me from the fact that they could put spyware on a CD, such as Sony did, or that they could be selling me a copy of a CD that I cannot put onto my iPod because they say it's only going to go on a Sony or universal player.

Would new law be looking at providing protection to consumers to prevent them from the egregious abuse of technological protection measures?

Ms. Danielle Bouvet: One thing I can say is that it will not be because we move ahead with amendments to the Copyright Act that other legislations are not going to apply. Consumer legislation, competition legislation, privacy legislation, the charter, and the Constitution will all continue to apply.

Mr. Charlie Angus: But will they be in any new bill on copyright? We're explicitly giving rights to Sony and to Universal, but does the consumer have the right to be protected from abuses that could happen from the use of technological protection measures? Will that be in the bill?

● (1620)

Ms. Danielle Bouvet: There has been no decision about that.

Mr. Charlie Angus: Okay.

I'm looking at the signatories, the countries that are in the same WIPO position as we are: France, Finland, Germany, Portugal, South Africa, Spain, Switzerland, the United Kingdom, Venezuela. Then I'm looking at those who have completely signed on: Albania, Azerbaijan, Botswana, Croatia, the Dominican Republic. It sounds like the “coalition of the digital willing” for WIPO.

I'm wondering, why is it that the other countries haven't fully implemented WIPO? Are we moving forward to join Botswana as opposed to the big potential competitors in Switzerland?

Ms. Danielle Bouvet: I think it's fair to say that in light of all the work done so far, Canada is trying to have its own made-in-Canada legislation on copyright.

Mr. Charlie Angus: Like Kyoto? Oh my God.

Ms. Danielle Bouvet: No, we have been consulting on these issues for many years. We have our own legislation with its own rights and protection and exceptions. As I said, we have been looking at all legislation and any court cases that have been rendered around the world. It's in light of all this research and all these proposals that this government will be able to take a final call on this.

Mr. Charlie Angus: But if we take further steps on WIPO, have we checked to make sure we're not putting ourselves at a competitive disadvantage against our major competitors like the U.K. or anybody in the EU?

Ms. Danielle Bouvet: It has certainly been taken into account.

Mr. Charlie Angus: I'd like to ask you about the blank copying levy for a minute. As someone who survived on copyright royalties for many years, I've always thought this was a very progressive step that Canada had taken. I understand that some of the large record industry representatives are now down on the blank copying levy, even though it's a guaranteed form of providing remuneration to artists.

Again, looking at the United States, where we've seen copyright laws being used to sue 12-year-old kids in the schoolyard who trade Alanis Morissette CDs, I'm wondering, is there a push within your department to remove the blank copying levy? That would mitigate any damages that would be used against a large label if they were suing kids.

So my question is, are we going to stand firm and insist that the blank copying levy remains intact, will it be added to, or will it be cut ?

Ms. Danielle Bouvet: At this point, there has been no decision to repeal the home copying regime.

Mr. Charlie Angus: But have you looked at it? Has it been addressed?

Ms. Danielle Bouvet: In the previous documents put forward—this report, the status report, and the interim report—there were some discussions about the home copying regime. So it has been discussed and looked at by the previous government. We have had many meetings with stakeholders on this, but this government has not made a call to repeal the home copying regime.

Mr. Charlie Angus: Have there been any moves within the department to clarify fair use? Will there be a specific clause on fair use? Have you looked at the issues facing education authorities, above and beyond what was talked about in Bill C-60? There were still major issues and problems raised by the education community. So how are you going to define fair use in this new bill?

Ms. Danielle Bouvet: There has been no decision on this. That's the only thing I can say at this point.

Mr. Charlie Angus: Are you looking?

The Chair: Mr. Angus, I've been very lenient here.

Mr. Charlie Angus: Thank you.

The Chair: Mr. Kotto, please.

[*Translation*]

Mr. Maka Kotto (Saint-Lambert, BQ): Thank you, Mr. Chairman.

Welcome back to our committee.

I am going to start off with a philosophical question. I do not know whether there is room for philosophy in the world of law, but I will go ahead nonetheless, it might prove enlightening.

Do you believe thought to be of value? Are works of the mind of material worth?

● (1625)

Ms. Danielle Bouvet: Allow me, in turn, to answer philosophically. I believe thought to be of great value, but copyright law does not protect thought in itself. It is the expression of thoughts and ideas that is protected by copyright, so unless an author or artist records his thoughts and ideas, they are not protected by the Copyright Act.

Mr. Maka Kotto: That is what is referred to as “works of the mind”?

Ms. Danielle Bouvet: Exactly.

Mr. Maka Kotto: Were the status quo to be maintained, what would you say to the thousands of writers — bearing in mind that, in Quebec, only 9 per cent of authors are able to live off their royalties — who see their work being endlessly photocopied or reproduced on the Internet? This is one of the matters that we had to address last year when we began studying Bill C-60.

What would you say to these people?

Ms. Danielle Bouvet: Firstly, Mr. Kotto, it should be pointed out that digital reproduction is already covered by the Copyright Act. Writers already enjoy reproduction and communication rights, which allow them to maintain control over their works.

Nonetheless, we are all in agreement that there is room for improvement and that the Act requires updating. With regard to the issues that we are studying, specifically, the implementation of the two WIPO treaties, my colleague referred to technical tools, such as digital locks, which offer authors better control over how their work is used in a digital environment. That is an example of the type of extra protection that we are currently studying.

There is also the whole question of the rights management regime that applies when an author chooses to identify themself as the rights holder and set down the terms and conditions applicable to the use of their work. New methods of protection are being developed on this front and will be included in the next update of the Act. Their aim is to ensure better rights management in digital environments by preventing people from tampering with notices warning against copyright infringement.

Mr. Maka Kotto: We have been talking about challenges, which brings me to something that I wish to see happen, although I am perhaps getting a little ahead of myself. I was thinking about the number of member States that would have to sign the Cultural Diversity Convention for it to be implemented, as is hoped, in early October 2007. If it were to go ahead, would it be problematic that Canada is lagging behind in the field of copyright, in spite of having signed two treaties in 1996.

Ms. Danielle Bouvet: If you are asking me for a legal opinion, I am unable to answer your question. Obviously, article 20 is the key article of the Cultural Diversity Convention. It deals with the relationship to other international treaties. Obviously, were the requisite support level for implementation to be achieved, this Convention would have to be considered in the context of the two international WIPO treaties.

Mr. Maka Kotto: Let us turn back to Mr. Angus's earlier question. He asked whether there was a bill in the works and, if so, when it would be ready and what form it would take.

Were the convention to be implemented in the near future, would the introduction of a copyright bill become a matter of urgency?

● (1630)

Ms. Danielle Bouvet: I believe that Ms. Oda, our minister, has already said that this bill is a priority for her. She has already announced that she wants to act as quickly as possible to ensure that our Act complies with our international obligations.

Mr. Maka Kotto: Have you received an action plan to this effect?

Ms. Danielle Bouvet: As somebody who works on this day in and day out, I can assure you that we are working hard to get the bill tabled as soon as possible.

[*English*]

The Chair: Excuse me, Mr. Kotto, your time is up.

Mr. Bélanger.

[*Translation*]

Hon. Mauril Bélanger: Thank you, Mr. Chairman.

In understand that you are under certain constraints, as some decisions are still to be made. We can only hope that they will be made soon so that we can focus on the bill.

I would like to know which groups and representatives have met with Industry Canada and Canadian Heritage to discuss the introduction of the bill. Are you able to provide that information?

Ms. Danielle Bouvet: I will have to ask you to repeat your question.

Hon. Mauril Bélanger: As, I am sure, do my colleagues, I regularly receive requests from groups wanting the opportunity to outline their view on a bill that is in the pipeline. Everybody has heard about the bill, but nobody is privy to the details. Some people have concerns they would like raised. I imagine that such groups also contact your department.

Ms. Danielle Bouvet: Mr. Bélanger, I can certainly confirm that copyright reform is of interest to a high number of groups and individual stakeholders. We have met with many of them since the beginning of 2000. In 2001, we held Canada-wide consultations on several issues relating to the reform. We continue to meet with all interested parties. We also receive a huge volume of correspondence.

Hon. Mauril Bélanger: What I want to know is whom your respective departments have met with since the change of government in January. It would allow us to sing from the same song sheet. If you have met with persons a, b and c, it would perhaps be a good idea, in terms of this bill, for us to meet with the same people.

Can you provide this information?

Ms. Danielle Bouvet: Mr. Bélanger, I would say that virtually all of the groups that appeared before this committee in 2004 have probably contacted and met with both departments to discuss these issues. These are issues that are of great interest to the entire music industry: writers, performers, producers...

Hon. Mauril Bélanger: Yes, but would it be possible to have a list of the individuals and groups with whom you have met?

Ms. Danielle Bouvet: I have to say that I would be unable to provide you with an exact list today; however, if you give us a little time, I am sure that we would be able to provide you with a list of most of the groups that have written to us, asked to meet with us, or with whom we have discussed these issues.

Hon. Mauril Bélanger: I would like to know if it is possible because I suppose it could have an impact on the bill which will eventually be presented. I am referring to groups, representatives or individuals you have met with regarding the future copyright bill since January 2006, not in the last seven years. I do not want to make work for you.

Ms. Danielle Bouvet: I understood what you meant.

● (1635)

[*English*]

Mr. Albert Cloutier: I would like to clarify that we have not met with any groups to discuss future legislation. At this point we have met with groups, or groups have asked to speak to us on the things that led up to Bill C-60, and we've certainly had a number of groups reacting to us about Bill C-60. But we have not circulated proposals—

Hon. Mauril Bélanger: In the lead-up to presumably a submission to the cabinet committee, presumably signed jointly by the Minister of Canadian Heritage and Status of Women and the Minister of Industry, which consultations have been made?

[*Translation*]

Ms. Danielle Bouvet: In fact, Mr. Bélanger, I would go back as far as 2000-2001 because we have been studying these issues for a long time, and this is reflected in all the reports which have been tabled with regard to the amendments. So in that context, we have met with stakeholders who, directly or indirectly, were interested in this issue. I do not see why we should not draw up a list of people or associations who have consulted with us from 2006 on. It will be a long list, since almost everyone is interested in copyright. If you want the list to include anyone who has written to us to share their concerns, well, expect to get a complete chapter of names.

Hon. Mauril Bélanger: That might be useful because we could then also familiarize ourselves with their grievances.

My last question is for Mr. Abbott.

The minister of Canadian Heritage told us that she intended to introduce a heritage bill as soon as possible. She has undertaken a series of consultations in that regard.

Would it be possible to know which groups the Minister has met or consulted with concerning this future bill?

[*English*]

Mr. Jim Abbott: I'll have to take that under advisement. I simply don't know.

I must admit I'm a little baffled by what purpose this exhaustive list is going to serve. It strikes me that the committee has not wanted to get into micromanagement, and that appears to be where this is going. I'm not saying it is; I just don't know what the purpose of this long list would be. It's going to take quite a bit of work on the part of the ministry, and I would like them to be doing more productive things.

The Chair: Excuse me. I maybe should have disallowed the question across to Mr. Abbott. We have our witnesses here. At the same time, I'm going to add my two cents' worth.

Over the past years, as we've worked on copyright, I've met with pretty well every interest group from either side of this issue. I met again with a bunch of them after Bill C-60 came out, so I know some of the likes and dislikes. Usually you hear more about the dislikes than the likes.

I'll go to Mr. Fast for his questioning.

Mr. Ed Fast: Thank you, Mr. Chair.

First of all, for me, it's a little bit disappointing to see how long this laborious process has taken and we still don't have any modernization of the Copyright Act.

It seems to me the message that we've sent to children across Canada, actually to all Canadians, is that the issue of ownership of intellectual property is not a high priority for this government. Canadians, in turn, act in a manner consistent with that approach. I find it disconcerting to find young people ripping CDs, downloading music on the Internet, plagiarizing in universities and in high schools. My fear is that we're developing a culture of disrespect for property rights, disrespect for a culture of law in Canada, and the longer this drags on the greater that problem will get.

Let's get to where we are right now. It seems to me this is probably the third kick at the can that we're going to take at trying to modernize the Copyright Act. We've gone through some of the most recent proposed revisions. If you were going to come up with another bill that made another attempt at finalizing a new copyright act, what additional changes, on top of what you've already introduced for us today, would you, as staff, suggest to the minister?

● (1640)

Ms. Danielle Bouvet: Mr. Fast, thank you for your comments. They are duly noted.

With respect to your last question, again, there has been no decision with respect to the package and I cannot answer that question.

Mr. Ed Fast: You have no ideas on what some of the new technological advances may have thrown into the way here?

Ms. Danielle Bouvet: I can say that on a day-to-day basis I'm working on various issues dealing with the reform, but there has been no decision with respect to the final package, so I cannot speak about the future of this reform.

Mr. Ed Fast: All right. Is it safe to say, at least, that your department continues to work on copyright issues?

Ms. Danielle Bouvet: Yes. In fact, we work very hard on this, and again, my minister said publicly on several occasions that she wanted to meet international standards with respect to copyright as soon as possible, and we're working on that basis.

Mr. Ed Fast: Then let's talk about copyright standards internationally. As I understand it, one of the purposes of amendments to the Copyright Act would be to bring us into compliance with Whitehall. Having listened to Mr. Angus earlier when he suggested comparatives, the one jurisdiction that he appeared to omit was the United States, our largest trading partner, probably our largest cultural challenge in some respects. Are you aware of any concerns that our friends to the south have raised with respect to how slowly we're moving forward with copyright reform in Canada?

Am I correct in assuming that they are further ahead in terms of compliance with Whitehall?

Ms. Danielle Bouvet: They certainly are. They implemented the two WIPO treaties in 1998. So as a fact, I can tell you they've taken a step that we haven't taken so far.

Mr. Ed Fast: But have they raised any specific concerns?

Ms. Danielle Bouvet: It's something I don't feel comfortable to answer, because I think it's part of our international relationship with an important trading partner. I would prefer to refrain from answering that question.

Mr. Ed Fast: Well, the reason I asked that is that I sense that the United States would be quite concerned about the fact that we may be developing a culture of entitlement in Canada to resources that are being produced by creators acting in good faith, on both sides of the border, and that we should be moving forward with haste to get this done.

I have one final question, Mr. Chair. In terms of enforcing, regulating, administering a new copyright act, do you sense that there will be a larger role for government to play, or do you sense that there should be more industry involvement in those rules?

Ms. Danielle Bouvet: Copyright is about private rights, to begin with, and it has always been our view that collaboration is key in order to try to reduce infringement in Canada and elsewhere. In the first place, rights holders have a big word to say, but the government has always been supportive of any action that could support and help the work they're doing.

● (1645)

The Chair: Thank you.

Mr. Bélanger.

Hon. Mauril Bélanger: I have a lot of sympathy for our witnesses, Mr. Chairman, because it's difficult for them to speculate at all. They can't. Their advice is to the government, and some of the questions should be better addressed to the government representatives, not the administration—perhaps the minister or even the parliamentary secretary. I have a great deal of sympathy with the position they're in, and I don't think we should be pushing them in a direction they can't go in.

But to answer the concern with respect to my last question of why we'd want information on who has been met, it's quite simple, quite straightforward. Whenever the legislation is tabled in the House and referred to a committee... First of all, I'm not even sure which committee is going to get it, whether it's heritage or industry or a joint committee. That is something that has yet to be determined, unless it has been determined. But what the government's wishes are there, I don't know.

Actually, that might be a question, but it would be a question directed—

Mr. Ed Fast: Highly inappropriate.

Hon. Mauril Bélanger: It probably is, so I'm not going to ask it. The fact that I've left it hanging there is enough.

Whoever gets it, and I hope we will be involved somehow, I think it behooves us to be prepared. Throughout the spring and the summer and this fall, I have received, and I'm sure my colleagues around the table have as well, numerous requests for meetings. I want to accommodate as many of those as I can and I want to prepare as well as I can for whenever the legislation comes, so it would be useful to know which groups have been consulted by either department. That's a factual information requirement. There's no speculation needed there. I'm just asking for this year, and also if it's possible to obtain that information—and I don't know that it is not—which groups either minister has met. I know they've met some because I've met some of the same people, but if there are others I have not had a chance to meet, it would be useful to know that so that we too can get to know. We wish to have, inasmuch as is possible, a level playing field as we embark on this.

I remember Bill C-32, back in 1997. I was involved there. It was very complex legislation. We met at least 50 witnesses—groups and so forth—and I expect we'll be facing the same thing. So any preliminary work that can be done to help us individually and collectively, as we're doing here, understand what's coming would be useful. It's in that sense that the question was asked. It was nothing nefarious.

I'll repeat the question. If it's possible to get that information, I think it would be quite useful, because I don't know all the groups and I'm sure I don't know all of

[*Translation*]

the issues. There is a whole series of them, and I imagine that some will not be included in the bill, whereas others, which have not yet come to mind, will. It is better to be safe than sorry.

Ms. Danielle Bouvet: Mr. Bélanger, it would be our pleasure to provide you with a list of associations we have met with. But, I cannot promise to give you a list of people the Minister's office or the Minister has met with. However, we can give you a list of people who have met with officials from both departments.

I must admit that over the last few months, we did not ask for feedback from any group. We have not held any official consultations. Those people who wish to talk to us, to meet with us or to share their concerns know which door to knock on. In that context, we have met with many people and received many briefs. It would be our pleasure to send you that list.

At this moment, however, I cannot tell you how much work that will entail. I have to admit that that is beyond my control. So I cannot promise you the list within a certain timeline, but I can commit to putting in the request. I could also let you know how much time it will take to get that list to you.

● (1650)

[*English*]

Mr. Albert Cloutier: May I add something from the point of view of Industry Canada?

I will have to check to see whether I can provide that information. As Danielle said, I certainly can't commit on behalf of the minister's office.

I would be a little mindful of wanting to respect whatever feelings the people who've contacted us may have about their contact with us and whether there would be any dereliction on my part if I disclosed that. I would have to check into these matters.

Hon. Mauril Bélanger: Presumably we can also get some from the registrar of lobbyists.

The Chair: Mr. Kotto.

[*Translation*]

Mr. Maka Kotto: Thank you, Mr. Chairman. I have two or three straightforward questions.

How far along is the bill?

Ms. Danielle Bouvet: That is another indirect question about where we are heading.

I will simply repeat that the issues we discussed in the course of the day are those on which an awful lot of work has been done over the last few years. We are still working on these issues, because the current government has not taken any decision yet.

No issue, no subject has been taken off the drawing board, if I can use that expression. As soon as our respective Ministers or the government tell us what they have decided, we will be able to provide you with the appropriate documents.

Mr. Maka Kotto: Experience shows that when laws are developed, they very often benefit those that influence their creation in the early stages.

Do you receive any political orientation, either from Industry Canada or Canadian Heritage, in connection with the work that you are doing right now on this?

Ms. Danielle Bouvet: As I was saying, it is clear that the work that we are doing goes back some way. We even had the benefit of legislation being introduced in June 2005 which itself provoked a huge reaction from a lot of stakeholders. All those reactions and comments are carefully taken into consideration.

Mr. Maka Kotto: I will simplify my question. Where does the greatest pressure come from when you are working in this area?

Ms. Danielle Bouvet: It depends on the issue, but as I was saying earlier, we are dealing with matters relating to the implementation of the WIPO treaties covering all authors of musical works, dramatic works, that is, film...

Mr. Maka Kotto: Just authors?

Ms. Danielle Bouvet: There are two treaties. One is aimed at improving protection for authors. It includes authors of musical works, dramatic works, that is, films, as well as all those involved with computerized applications, computer programs, video games. All those people are also stakeholders in the process.

Finally, there are artistic works and photography. All of these people, as authors, have an interest in this process.

There is also the user side, which includes schools, museums, archives, libraries and all Canadians. With the Internet, everyone has access to copyright. All those stakeholders have a keen interest in the issue.

The liability of service providers is of interests to authors, makers of sound recordings, film producers and consumers in general. Then there is photography.

As I mentioned, photographers are obviously very interested in this issue, since Bill C-60 contained provisions that had a major impact on them. In fact, anyone who has a contract with a photographer to have pictures taken, so consumers in general, could be interested in this question.

● (1655)

Mr. Maka Kotto: Are you concerned about the proper balance between the creator and the consumer? If not, is it more the creator that you have in mind when you are doing your work?

Ms. Danielle Bouvet: When we made our first presentation before your committee on September 25th, we said that there were two basic principles that guided our work. The first was to consider new types of protection, new rights, in order to ensure that creators have the tools they need to be able to control how their works are used.

We also wanted to look at issues related to access. So the user side is taken into account. Those are the two cornerstones, the basic principles of the Copyright Act.

Mr. Maka Kotto: Thank you.

[*English*]

The Chair: Thank you.

Mr. Abbott.

Mr. Jim Abbott: How much time do we have, Mr. Chair?

The Chair: We have half an hour.

Mr. Jim Abbott: Good, thank you.

You will recall, I'm sure, from 1997 my interest in what you were calling the “home copy regime”. Mr. Angus and I have possibly different perspectives on this, particularly in light of WIPO and the other revisions we're looking at. Help me on this if I'm wrong—I'm looking forward to your giving me some advice here—but my understanding is that a certain pool of money is created from this “levy”, if that's what we'd call it. Am I correct that this pool of money currently is being distributed at 100¢ on the dollar in Canada?

Am I further correct that if we were to do the changes envisioned under WIPO ratification, we would suddenly see a gigantic, gaping hole in that revenue, and the giant sucking sound would be the money leaving Canada, going to the various collectives or artists or whoever they are in the States and in other countries? Is my assumption correct?

Ms. Danielle Bouvet: No.

Mr. Jim Abbott: Good. Excellent. I'm pleased to hear that.

Ms. Danielle Bouvet: On the first question, with respect to the beneficiaries of the home copying regime, there are three: authors of musical works, performers and performances in sound recording, and sound recording makers.

The first one, for authors, is payment around the world. Under the regime, authors around the world are paid for the copying of their music.

Mr. Jim Abbott: I understand, but I'm trying to be precise to make sure that we're both talking about the same thing. We're talking about the pool of money that is created from the gathering of funds on blank tapes for—

Ms. Danielle Bouvet: Authors of the world, yes.

Mr. Jim Abbott: Okay, fine.

Ms. Danielle Bouvet: With respect to performers and sound recording makers, only Canadians are eligible.

Mr. Jim Abbott: Just stop there; would people of that group outside of Canada have access to the funds under the WIPO provisions?

Ms. Danielle Bouvet: The home copying regime has nothing to do with the WIPO obligations. The home copying regime is a Canadian creation, and there is no international obligation mandating the government to have a home copying regime in Canada. It's up to member states to decide if they want to have a compensatory regime, but there's no international obligation to have such a regime.

● (1700)

Mr. Jim Abbott: But what about so-called national treatment?

Ms. Danielle Bouvet: As I said, because we are under no obligation to have a home copying regime, in light of the obligation we've had so far, Canada has decided to offer the benefit of the regime to authors, producers, and performers, the way we did it in 1987.

One question is that by going ahead with the implementation of the two WIPO treaties, when it comes time to ratify the two WIPO treaties, are we going to be able to sustain or keep, in whole or in part, our home copying regime? That question has been raised in many reports in the past, and it's something we will be looking at further down the road.

Mr. Jim Abbott: So are there any best guesses as to whether it will be able to be maintained?

Ms. Danielle Bouvet: You're asking me to provide you with a legal opinion, and I cannot respond to that question.

Mr. Jim Abbott: Okay, I appreciate that.

Mr. Angus, obviously by his testimony, is in favour of this home copy regime. So in fact there is a question then as to whether it can be maintained in the ratification of WIPO. Is that correct?

Ms. Danielle Bouvet: That issue has been raised on several occasions: in the 2002 report, in the status report, by this committee in its interim report, so yes, it is a question.

Mr. Jim Abbott: I realize it's my government. Is it reasonable to presume that question would have been satisfactorily answered prior to the ratification legislation?

Some hon. members: Oh, oh!

Hon. Mauril Bélanger: Unfair. Next you're going to tell them you guys are going to be rational? Unfair.

Ms. Danielle Bouvet: My colleague will answer that question.

Mr. Albert Cloutier: There are two steps. One is the implementation of the rights and protections found in the WIPO treaties. The question of ratification is a distinct step the government will take and will have to assess, whether as a result of the amendments it's brought forward, if it is in a position to ratify. But that's a separate consideration, which will follow.

Mr. Jim Abbott: Then there's the third part of the question.

The Chair: There's a third part?

Mr. Jim Abbott: Yes, the third part of Madame Bouvet's answer that there is a third element, was there not?

Ms. Danielle Bouvet: Are you talking about outflow? You raised the issue on national treatment.

The Chair: Mr. Abbott, maybe you can ask more questions in the next round.

I'm going to Mr. Bélanger first, and then we can come back to this side, and then we can go to Mr. Angus, because I think Mr. Angus has a couple more questions.

Hon. Mauril Bélanger: A sure sign that one is aging is when one doesn't keep up with the technology, Mr. Chairman. I figure if that's a sure sign, then I'm really aging. I've just had a good discussion with my colleague Madam Keeper. She referred to how, even two or three years ago, technology that is commonly talked about today and commonly used wasn't even talked about then—podcasting, for instance.

Would it be useful for us as a committee, Mr. Chairman...? I appreciate the two briefings we've had now on the history of and the more recent changes to copyright legislation in this country. I know it would be very useful for me, and if it's not going to be offered by the committee then I'll venture to.... Due to the simple fact that I mention it today, I'm sure I'm going to get two or three calls tomorrow, offering me this briefing.

Would it be of use to have a more technical briefing in terms of the current technology the industries are using, whether it's television or recording and broadcasting or radio or copying or whatever, and perhaps with a tag in terms of the copyright considerations of each technology and the copyright battlegrounds, if you will, so we have some sort of flow chart of the difficulties we'll be facing as a committee, or that the government's currently trying to come to grips with, as they flow from technology and fit in our international obligations? We can't just legislate in a vacuum; we have to be aware and mindful of the impact we would have on our international obligations, so we need some sort of flow chart that gives us the entire stream of this, from technology, to international obligations, to the battlegrounds as we see them.

I don't know if that even exists, or if it's asking too much, but I suspect it might greatly facilitate the work of our committee when we get legislation.

● (1705)

The Chair: I can go back to Mr. Abbott.

Do you have more questions, Mr. Abbott?

Mr. Jim Abbott: Not really, thank you.

The Chair: Mr. Fast.

Mr. Ed Fast: Actually, I very much support the comment from Mr. Bélanger. I'd like to see that as well, so that we understand them. What are the issues relating to each of these technologies as they relate to copyright? For example, I've never used podcasting. I have a rough idea of what it is, but I have no idea what the copyright issues related to it are. That would be very helpful.

I have just one quick question. Have you any idea of the annual losses that industry suffers as a result of not having an up-to-date copyright law in Canada? Surely some of those studies will have been done either by industry or by government.

Mr. Albert Cloutier: The issue is one of correlation and how you relate all the factors that may contribute to the well-being of a particular industry in a particular economic environment. We try as best we can to get data on the impact of our policy choices, but again, establishing a correlation is a very tricky thing, a very dangerous game.

Mr. Ed Fast: For the moment, just drop the correlation. In terms of total industry losses, do we have a ballpark figure of what that might be?

Mr. Albert Cloutier: I think what I'm trying to suggest is that it is very hard to look at the profits or losses of any particular industry and try to attribute those to a particular policy choice, because there are so many factors. To give you an example, if one industry may not do so well, is it because of copyright policy or is it because of the availability of other substitutes in the marketplace that may be taking its place? Is it due to a general downturn in the economy? Is it due to other factors?

Again, how you attribute it to the particular copyright policy is a very difficult undertaking, I would say.

Mr. Ed Fast: But surely there would have been some studies done either by industry or by government, say, in the recording industry. What losses do they suffer annually from individuals illegally copying, ripping, downloading, etc.?

[*Translation*]

Ms. Danielle Bouvet: I hope that my answer will be helpful. It is clear that over the past few years, various industries have all produced reports that illustrate the scope of the phenomena of copyright infringement and piracy.

At the international level, the OECD, the economic organization, is attempting to assess the scope of these phenomena. I also know that the greatest problem facing this organization is exactly what my colleague, Albert Cloutier, referred to, that is figuring out what methodology should be used in order to obtain the best data to give us a measure of the scope of the phenomena.

Several reports have been published. I do not remember the exact numbers in these studies, however several studies or reports published over the past few years have referred to the scope of this problem. Of course, those who differ over this data will say that the figures are inflated, that the methodology was not appropriate and is unsuitable for the problem we are facing.

We take these studies into account. Furthermore, Canada is involved in international research into these phenomena. A few years ago, the World Intellectual Property Organization even conducted a study with a view to assisting the various member States in measuring the scope of these phenomena.

Over the past few years, we at Canadian Heritage have conducted studies in an attempt to measure the economic impact of copyright in general on copyright. Those studies are available on our website and I would be happy to provide you with the specific references in the next few days, if you so wish.

I know that work has been done on this issue. However, the problem often lies in the methodology. Copyright being what it is, that is, an area where consensus is rare, we often end up with studies that are challenged. In our capacity as officials in these departments, we must take the best of these in order to provide some direction on what would be useful in crafting policies.

● (1710)

[*English*]

The Chair: Thank you.

Mr. Angus.

Mr. Charlie Angus: Thank you.

I think Mr. Fast is getting at the heart of the problem, which is our trying to develop laws that look forward when all we can do is look back, and what impact that will have on innovation. We suggest that even within the last three years, since I came on the copyright file, things have changed dramatically. For example, in the music industry, I know of many Canadian bands that are now suddenly international superstars. They attribute that to the quick ability of fans to get music legally, technically, or illegally, and the creation of new markets that three years ago didn't even exist.

How are we, when we're looking at this, responding to the needs of forward-looking legislation? For example, have there been any moves to outlaw peer-to-peer technology? That has been identified as a big source of illegal trade in both music and movies. It's also an emerging technology that we haven't really even come to terms with in respect of its possibility for creating new markets. What's the balance that's happening right now with Industry Canada in terms of examining, say, peer-to-peer as a threat, or as a potential new market?

Mr. Albert Cloutier: I think you're right. The issue of peer-to-peer as a technology I'm not sure we have looked at as the focal point of copyright policy, in the sense of saying that the technology is the problem. In a sense, peer-to-peer technology, as we understand it, is a file-sharing mechanism and can't speak to whether the content is infringing or non-infringing. I think what we've tried to do in our policies is to acknowledge the reality of peer-to-peer file sharing in the sense that it's enabling an infringing activity. How can you get to the infringing activity while still allowing the beneficial uses that peer-to-peer technology may provide, not only in other contexts but in the copyright context as well, in terms of developing a marketplace?

Mr. Charlie Angus: Has there been any representation or push to put strict limitations on the developing of peer-to-peer technology?

Mr. Albert Cloutier: I have to say I'm not aware of pushes that target that technology as such.

If we want to look historically at Bill C-60, if you look at the Internet service provider provisions, for example, we crafted a notice and notice regime in part because we thought that was a better way for ISPs to participate, to address peer-to-peer technology. In the U. S. they had developed a notice and takedown regime, but takedown doesn't really apply to a peer-to-peer scenario. So we try to acknowledge that maybe a notice and notice regime was something that could address that kind of technology.

● (1715)

Mr. Charlie Angus: I didn't really get a clear answer on where we're going with fair use. I have to say I'm feeling a bit like I'm on the old *Front Page Challenge* show, because I'm not sure what we're asking of you, whether we're talking about an old bill or whether we're talking about a new bill, or whether we're talking about what we might do or what other people have done. We're not very clear here, so I want to go back to fair use.

Let's put it in context. If I wrote an article 20 years ago—and I did, and it was in a textbook—I would get paid for its use in a school, for which I have been paid. So students would get *x* number of textbooks and they would photocopy *x* number of copies. It's very easy to see.

Now students go on the Internet, and they aren't stealing materials, they're going to free websites that post amazing educational materials for free and fair use. So in some ways that's made the book almost irrelevant. There's been a real question about how we are going to remunerate, first of all, the people who still rely on the book, or how we are going to ensure that the electronic communication of students is not infringing on copyright.

My colleague had talked about young people having a culture of entitlement. They definitely do. They expect that they can go on the Internet and learn anything they want in the world, and I think they should have that right. I want to make sure, though, that there is a system in place in terms of remuneration but also to make sure that the fair and open use of the Internet is not being charged.

How have your departments dealt with this? It will be one of the key areas of new legislation in terms of educational use of the Internet and fair use of the Internet. What models have you looked at?

[*Translation*]

Ms. Danielle Bouvet: I feel old. In fact, I always get the impression that I am referring to the past because it is difficult to talk about what will happen in the future. Within the framework of the work we have been involved with over the past few years, we considered certain amendments whose purpose was to make the work of teachers and students easier.

Earlier my colleague referred to three main areas, the first of which involved measures that would help teachers and students benefit from distance education. We looked at the possibility of a teacher giving a course to a class and using various works protected under the Copyright Act, interacting with the students even if they are not physically in the same classroom, and obtaining works over the Internet, without breaching the Copyright Act.

We also considered measures that would allow schools to acquire material protected under the Copyright Act and under a licence granted either by Access Copyright or COPIBEC. That material would allow schools to reproduce certain works under specific conditions. We looked at the possibility of those schools digitizing and sending that material to their students over the Internet.

The last area we looked at involved library loans. Once again, providing digital access to material makes the work of library clients easier.

Those are the measures that were considered and that are still on the table. These are measures that could make the work of schools, researchers, libraries, archives and museums easier.

● (1720)

[*English*]

The Chair: Very short, Mr. Angus.

Mr. Charlie Angus: Yes, I just need to clarify.

For copywritten materials, there would be a levy fee similar to what's in place now with access copyright. But what about the educational use of the general Internet? Will there be levy fees? Have they been talked about in order to catch anything else that's going in the stream?

[*Translation*]

Ms. Danielle Bouvet: The issue is being studied because teachers believe that it is essential that any reform of the Copyright Act should include provisions that allow students and teachers to have Internet access. We are looking into this issue. There will be a decision about amendments that could settle the matter through the coming reform.

[*English*]

The Chair: Thank you.

As chair, I have a couple of little questions, and I'm going to be short. This was one of my previous questions, probably two years ago.

We talk about streamlining the process. In this process, there was signing of the WIPO treaty 10 years ago. We've been five years in progress, getting the short-term things done, the short-, medium-, and long-term issues. Did Bill C-60 only look after the short term? If that's the case, and if it's taken 10 years, how long is it going to be before the long-term issues are addressed?

[*Translation*]

Ms. Danielle Bouvet: This is a difficult question, Mr. Chairman. The issues are very complex, as you can see. The new government needs time to adapt to them and properly estimate the scope of the amendments. It must become familiar with the various issues. All we want is to act as promptly as possible. But the issue is very complicated.

[*English*]

The Chair: I know it's extremely complex. I have met with a lot of the groups, and I know I will be meeting with a lot of them again.

Again, I must say thank you very much for your great answers today. I thought some were a little inhibitive, but your answers were great.

Thank you to all the people who asked questions. I hope we all learned a few things here today.

I now adjourn this meeting.

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