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Chair

Mr. Gordon Brown

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● (1530)

[*English*]

The Chair (Mr. Gordon Brown (Leeds—Grenville, CPC)): Good afternoon, everyone.

We're going to call this sixth meeting of the Legislative Committee on Bill C-32 to order.

Today we have, from Access Copyright, Roanie Levy, general counsel and director of policy and external affairs; from the Canadian Anti-Counterfeiting Network, Brian Isaac, the chair; and from the Canadian Private Copying Collective, Annie Morin, chair of the board, and Sophie Milman.

Could we hear from Ms. Levy from Access Copyright for five minutes?

Ms. Roanie Levy (General Counsel and Director, Policy and External Affairs, Access Copyright): Thank you, Mr. Chair, *mesdames et messieurs*, members of the committee.

I'll begin by explaining what Access Copyright does. In order to do so, I invite you to reflect for a second on just one image.

Here I have a copy of a page from a story by children's author, Alan Cumyn. All it is is words on paper: words and paper. In what does the value reside? Of course, the value resides in the organization of the thoughts and ideas on the page; that is, in the words. So when we photocopy, when we reproduce, when we display, or when we post it for others to use, we are reproducing the words, not the page or medium that merely conveys the words.

Access Copyright captures the value of these reproductions and redistributes it to creators and publishers who have invested their creativity, sweat, and capital to produce words on paper.

[*Translation*]

Reforms to the Copyright Act in 1988 and 1997 brought in collective societies like ours to manage parts of Canada's copyright regime. We have counterparts in every developed and many developing countries around the world.

Every year, Canada's education sector alone reproduces more than half a billion pages of text for use in classrooms. That's equivalent to three million books, books unsold, but whose words are valued enough to be copied. This is not about the child who copies a poem to memorize. This is about mass, industrial-scale copying of texts as educational resources. Mass copying that occurs one page at a time, one chapter at a time.

Across Canada, the education sector, and others, negotiate licences with Access Copyright for these very purposes. This ensures that rights owners are compensated when their works are copied instead of being purchased.

For centuries, this has been the purpose copyright has served: protect the value invested in the words and images that convey the ideas that drive our culture and civilization forward.

● (1535)

[*English*]

Perhaps it was unintended, but Bill C-32 turns this principle on its head. It does so with the introduction of a raft of new exceptions, exceptions that say users will continue to pay for the paper, the iPod, the iPad, but the words shall be theirs for free.

Today I'm going to walk you through provisions that demonstrate the true consequences of Bill C-32, that is, the stripping of revenues from Canada's creative industries and redistribution of them as subsidies to the education sector. That is done in the name of fairness. The word “fair”, like a fig leaf, appears to hide an embarrassing reality.

I have wrestled to understand the public policy rationale behind these changes.

I have wrestled to understand the public policy rationale in Bill C-32 for cutting off existing compensation from the education sector to creators and publishers for the use of copyright protected works in tests and exams, uses that are covered today under collective licences.

I have wrestled to understand the public policy rationale for cutting off existing compensation for the display in the classroom of copyright protected works, once again, uses that are covered today under collective licences. These are licences that generate a return on investment that keeps Canada's creators and publishers thriving as partners in the development of Canadian resources for Canadian students.

And I have wrestled to understand the public policy rationale for adding education to the so-called fair dealing exemption. Make no mistake, this is a misnomer: when dealing or use is considered fair dealing, it is not paid for. Fair dealing is free dealing.

Am I wrong or is this an unintended consequence of Bill C-32? Are the education exemptions a subsidy? Half a billion pages are paid for today. How many millions will be free tomorrow?

The government's background paper says this provision will “reduce administrative and financial costs”. As written, the exception is a hole through which many trucks will pass: everything will become education.

The Canadian Federation of Students understands that. They are cheering. The Council of Ministers of Education understands that. They, with the notable exception of the Quebec ministry of education, hope to bring us to the Supreme Court, because they believe that “most, if not all, photocopying in schools is fair dealing”.

“Fair” does not ensure that creators and publishers will be treated fairly. To me it looks like a fig leaf for expropriation without compensation.

You may have seen this. Four hundred of Canada's world-celebrated writers have signed this letter of protest, which was published a couple of days ago in *The Globe and Mail*.

If these consequences are unintended, please make it clear in the legislation. Fix it now and spare us decades in the courts.

[*Translation*]

I will be pleased to take your questions.

[*English*]

Thank you.

The Chair: Thank you very much.

We'll move to Mr. Isaac for five minutes.

Mr. Brian Isaac (Chair, Canadian Anti-Counterfeiting Network): Thank you.

Good afternoon. I'm Brian Isaac. I'm the chair of the Canadian Anti-Counterfeiting Network, which we refer to as the CACN. I'm also a partner with Smart and Biggar, Canada's largest firm practising exclusively in intellectual property.

Thank you for the opportunity to present today. Due in part to the short time between our receipt of the invitation to participate and our participation, we have not yet submitted our written submissions, but plan to do so in the coming weeks.

The Canadian Anti-Counterfeiting Network is a national coalition of individuals, companies, firms, and associations, that have united in the fight against product counterfeiting and copyright piracy in Canada. We're going against IP crime. The members of CACN include Canadian organizations, companies, and practitioners who have hands-on experience enforcing against IP crime, including copyright piracy in Canada.

The issue of IP crime legislation has been studied for years in Canada. In 2007, the Standing Committee on Industry recognized that Canada's IP crime laws needed to be amended, and recommendations included ratifying the World Intellectual Property Organization Internet treaties that Canada signed in 1997.

While Bill C-32 does not address all the issues that need to be addressed relating to the problem of counterfeiting and piracy in Canada, and that includes addressing some other acts, such as the Trade-marks Act and customs legislation, it does address the Internet treaties and is an important step in addressing commercial-scale piracy in Canada.

Our submission is that passing Bill C-32 into law is a matter of urgency. Canada needs to take legislative action that is already way too long overdue, and while we're recommending some specific changes to address loopholes and practical enforcement issues, we do fully support passing of the bill as soon as possible.

Turning to substantive comments, first regarding the ISP safe harbours provisions, we remain concerned that the notice and notice system proposed in the bill will not be sufficient to effectively address the Internet trade in pirated products. In any event, a notice and notice system requires strong provisions directed against enablers of Internet piracy. The bill's proposed enabling infringement provision only applies if a service is “designed primarily” to enable infringement. With experience, I can say it's often going to be very difficult to prove a service was designed primarily for infringement, even when it would be possible to prove that a service provider is knowingly enabling and encouraging infringement as a primary use of the service.

Accordingly, our submission is that the enabling provision should be amended to catch services “designed or operated primarily” to enable acts of infringement. In addition, the provision should make it clear that the full range of legal remedies, including statutory damages, are available against enablers.

Second, we submit that the provisions providing protection for technological protective measures are crucial to fill a gaping hole in Canada's copyright laws. The prohibition on trafficking circumvention tools or services will permit rights holders and law enforcement to go after entities that are enabling widespread piracy. The nature of circumvention activities is such, however, that the act of enabling circumvention and the act of copyright infringement are normally distinct acts that are performed by different people. Accordingly, limiting the prohibition to circumvention for the purpose of infringement, in our submission, is not feasible as it's going to create a loophole for traffickers that will be exploited.

Further, the wording of the exceptions has to be closely scrutinized to try to ensure there are no unintended loopholes that may be used by persons trafficking in circumvention products and services. For instance, if you have purveyors of circumvention tools or services adapted for allowing the loading and using pirated content onto devices that are technologically protected, the fact that it may allow for the loading of legitimate content should not create a loophole when the economic viability of the tool or the service is solely based on enabling piracy.

Generally, we strongly urge against any watering down of the TPM provisions, as they may easily be rendered practicably unusable.

Third, and last, we're very concerned that the two-tier system for statutory damages will be abused and may create perverse incentives for rights holders and infringers. The new non-commercial tier provides a range between $100 and $5,000 that applies to all infringements ever done by the infringer, and that's going to give an incentive for them to copy as much as they can, because they'll only get one capped damage.

Also, the first rights holder to file an action can benefit from the ability to claim statutory damages. This could provide incentives for the rights holders to sue quickly so they're the first to the gate.

● (1540)

Moreover, many individuals and organizations that facilitate widespread piracy, such as “warez” or release groups, do so to build a reputation on the Internet. They don't do it for dollars. One of our concerns is that the two-tier system will benefit those people who are purposely going out to gain their reputations, and it would limit the liability of those individuals.

We recommend you eliminate the multi-tiered system and instead focus on the factors that courts must consider when determining the amounts of the awards, to ensure that individuals copying pirated content for private use are protected from inappropriate damage awards.

We urgently need to equip rights holders, law enforcement officials, and prosecutors with robust legal tools to shut down those who enable or facilitate piracy. We applaud the significant step the bill represents. We urge the committee to implement the amendments necessary to fully realize the principles of the bill and to rapidly pass and implement it.

I will gladly answer any questions.

Thank you.

● (1545)

The Chair: Thank you very much.

We will now move to the Canadian Private Copying Collective for five minutes.

[*Translation*]

Mrs. Annie Morin (Chair of the Board, Canadian Private Copying Collective): Good afternoon, my name is Annie Morin and I am chair of the board of the Canadian Private Copying Collective. The private copying levy has been an important part of the Canadian copyright regime for more than a decade. The levy, which is included in the purchase price of blank audio recording media, is distributed to copyright holders in the music sector.

Currently, only one blank medium is subject to this levy, which provides not very substantial revenue for artists. And that is blank CDs, to which a 29¢ levy applies.

However, the amounts generated by the levy on blank CDs are declining at an increasingly alarming rate because they are an increasingly obsolete medium for copying music. I would like to share a few quite edifying figures with you.

In 2008, the total amount of the levy for distribution to rights holders was $27.6 million. This year, the forecast amount is in the order of $10.6 million. That's a 60% decline in three years.

The dilemma is obvious and urgent. We all know that iPod-style MP3 players have become the predominant music copying medium. Some 70% of the 1.3 billion songs copied annually in Canada are copied on digital audio recorders.

That means that Canadian artists receive nothing in exchange for the vast majority of those copies. What we urgently need is a simple amendment to the Copyright Act that would allow the levy to be applied to MP3 players such as the iPod.

Such an amendment would not change the spirit of the act, which is to recognize and protect the right of Canadian artists to fair compensation for the use of their work. Instead it would constitute a simple update of the act.

In 2004, the Copyright Board set the amount of the levy at between $2 and $25, depending on the type of memory in question. Based on our research and our experience, we believe that those amounts—between $2 and $25—are still valid today. When they were applied in 2004, there was no negative impact on the market.

This kind of levy would apply solely to devices developed, manufactured and marketed to copy music. There has been extensive discussion about the fact that the full range of electronic devices such as home computers and BlackBerries would be subject to the levy. That is absolutely not the case.

It is now time to adapt this levy to the twenty-first century. It needs to reflect how music is actually copied today, not how it was copied a decade ago.

That said, the best way to show you how important the levy is for our artists is no doubt to ask Sophie Milman, a Canadian artist, to share her experience with you.

[*English*]

Ms. Sophie Milman (Artist, Canadian Private Copying Collective): Thank you, Annie.

My name is Sophie Milman. I'm a jazz singer, and I'd like to share with you what the levy means to Canada's artists. It helps us fund our recordings, music videos, and tours and to pay our musicians, tour managers, recording engineers, webmasters, make-up artists, and photographers. The levy helps us support countless Canadian suppliers.

The days of big spending record labels are over, but a good quality album still costs more than $100,000, before marketing and promotion. So we've had to become entrepreneurs, making very tough investment decisions every single day.

The levy also helps us pay for basics, such as gas, groceries, and rent, and it helps us support our families. Did you know that most musicians in Canada live on less than $30,000 a year? Without the levy, many of us would have to choose between having careers and surviving.

We need you to realize that copies made of our works have intrinsic value. How much time do you think people spend listening to empty iPods? The levy is value paid for value received, a perfect market solution that ensures that artists are paid for creating value. But it's dwindling to nothing as blank CDs become obsolete.

It is frustrating for us to hear references to the so-called iPod tax. The levy is not a tax. Taxes go to government. The levy goes to the people who make the music. And we're not proposing an extravagant sum. Even a decent set of ear buds costs more than the likely levy. Music is being consumed and enjoyed now more than ever, but artists are being compensated less and less. It's just unfair.

Culture is this country's greatest and most recognizable export. When I immigrated here at the age of 16, all I cared about was that this was the birthplace of Leonard Cohen and Oscar Peterson.

Canada's music community must be supported if we want our country to maintain a worldwide reputation of excellence in the arts.

We're not asking for charity. We don't want access to our music to be restricted. We only want to be compensated for copies of our music made to devices specifically designed for that purpose. Everybody else who makes and sells an iPod or other MP3 player gets paid. Only artists are being told that they have to work for free. You would not ask any other group in this country to forego a legitimate source of income.

We ask that you please save the levy.

● (1550)

The Chair: Thank you very much to our witnesses.

We'll now move to our first round of questioning.

From the Liberal Party, for seven minutes, we'll have Mr. Rodriguez.

[*Translation*]

Mr. Pablo Rodriguez (Honoré-Mercier, Lib.): Thank you, Mr. Chairman.

Good afternoon and welcome, everyone.

[*English*]

Thank you for being here.

[*Translation*]

I'm going to start with you, Ms. Levy.

It is interesting to note that, when you talk about the education exemption, you consider it a subsidy to the education sector. I understand from your presentation that there is a potential net loss of vested rights in terms of revenues.

Do you have an idea of the amounts that are involved, or any actual examples of things that the education system would have had to pay in the past and would no longer have to pay today?

Ms. Roanie Levy: Based on our study, we believe that about $60 million is at risk as a result of the scope of fair dealing in the education sector, as well as other education-related exemptions provided for in Bill C-32. This is revenue that COPIBEC and Access Copyright collects today for the copying of a chapter here, a page there, for the distribution of works in class, for the use of works in exams. It also includes the royalties that certain film distributors collect from the education sector.

So we're talking about a minimum of $60 million at risk, but you also have to consider that, when a use or reproduction becomes free of charge, an increase in that type of reproduction follows. There will also be a revenue shortfall that will be more difficult to quantify as a result of a decline in sales of texts intended for schools.

Mr. Pablo Rodriguez: Does that $60 million represent all revenue collected by COPIBEC and Access Copyright?

Ms. Roanie Levy: That includes part of the revenue collected by COPIBEC and Access Copyright and of the revenue collected by other organizations such as Criterion Pictures, Audio Ciné Films, etc.

Mr. Pablo Rodriguez: What would be the approximate amount for COPIBEC and Access Copyright?

Ms. Roanie Levy: For COPIBEC and Access Copyright, it's about $40 million, and that's just the start.

Mr. Pablo Rodriguez: So the total amount would be more...

What should we do?

You'll tell me that the exemption should be repealed, which could be a solution. However, if we don't repeal the exemption, do you think it would be possible to more clearly define what fair dealing in education is? Could we, for example, proceed by using the six points as defined in the Supreme Court judgment or the three-step test of the Berne Convention? In the latter case, would we put them in the specific fair dealing section or could we put them, for example, at the start of the bill?

Ms. Roanie Levy: You're asking me a lot of things. I'm going to start by saying that defining the education sector would be helpful. However, that's definitely not the solution. Even defined in a more limited way than it is today, the education sector as such is still an important sector for creators and book publishers. So simply defining the education sector is not enough. It's also important to define certain limits to the concept of fairness.

I'm going to suggest something else that you might consider. The amendments in 1997 made it possible to introduce a very innovative mechanism in Canada. It's a mechanism that grants access to a work and payment for that work at the same time. Access is guaranteed, and payment as well.

Unfortunately, Bill C-32 disregards that mechanism, which is provided for under the current Copyright Act. Even worse, it is eliminated in a number of instances. If we once again followed the principle that, when the market is able to meet the rights holders' needs as well as those of the user, we no longer need to apply the rules of exemption, we would succeed in achieving the twofold objective of access and compensation.

● (1555)

Mr. Pablo Rodriguez: I'm going to have to interrupt you because I would also like to ask the CPCC representatives some questions. I'd nevertheless like us to talk about this again in more detail later.

Mrs. Morin, you say there is a way to limit the collection of royalties on MP3 players, which are designed and developed strictly for the purpose of playing music, and sold and advertised as such. How would that be feasible in the current context?

Mrs. Annie Morin: In fact, we would like it to be limited to items intended to reproduce pieces of music and that are designed, manufactured and marketed. It is possible to determine what a device is intended for.

Mr. Pablo Rodriguez: Can Parliament define it and describe it in the current act?

Mrs. Annie Morin: Definitely. It would indeed be possible to limit the matter. It would even be possible under section 87 of the act, as it currently stands, to limit by regulation the media to which the levy could apply. Thus, if the government deemed that such and such a medium should not be subject to royalties, it could exclude it by regulation.

Mr. Pablo Rodriguez: All right.

In your opinion, since there is a net loss of revenue, is there something in the bill that makes it possible to compensate for that loss?

Mrs. Annie Morin: Absolutely nothing is provided to compensate the net loss of income arising from private copying. There is only section 29.22, which permits copying for personal purposes.

Mr. Pablo Rodriguez: I'm going to interrupt you because I don't have much time left.

Would the bill, as it stands, result in lost revenue?

Mrs. Annie Morin: Absolutely, net losses.

Mr. Pablo Rodriguez: Unless I'm mistaken, Mrs. Milman, in your case, if you no longer receive the amount that you were receiving from private copying, there would be less money in your pocket tomorrow morning.

[*English*]

Ms. Sophie Milman: Absolutely. As I mentioned before, we have become entrepreneurs. We create value in the economy, and value needs to be compensated. Consumers enjoy what we create, they make copies that have value, and that value needs to be paid for.

We have a high overhead, we make a huge investment in our careers, and we deserve a return on investment on everything we put into our work.

Mr. Pablo Rodriguez: A quick question to the three of you—just yes or no.

[*Translation*]

If the bill remained as it stands, without amendments, should it be adopted—without amendments?

[*English*]

Mrs. Annie Morin: No.

Mr. Pablo Rodriguez: No?

Ms. Roanie Levy: No.

Mr. Brian Isaac: Yes.

Mr. Pablo Rodriguez: Okay.

Merci.

[*Translation*]

The Chair: Mrs. Lavallée, you have seven minutes.

Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ): Thank you, Mr. Chairman.

Welcome, everyone. I'm pleased to see representatives of the collective societies. UNESCO has recognized the importance of copyright licensing. Ms. Levy, who has a pre-ordained name, Mrs. Milman and Mrs. Morin, good afternoon.

Mrs. Morin, I want to speak to you more particularly because the Bloc Québécois passed a motion in the House of Commons by a majority of members last March that was designed to update the Copyright Act. We introduced a motion of principle to modernize the Copyright Act by applying the levy for artists to digital audio devices.

Since that time, we've heard a lot of criticism. The Bloc Québécois defends the interests of artists, but I'm going to tell you about five specific criticisms made by the Minister of Canadian Heritage and his parliamentary secretary in the House of Commons. I would like you to respond to each of them.

I'm going to cite them all. If you want to note them down, you can respond to them all at once. I know that Mrs. Milman has answered me, but I would like you to answer me for the people who are around the table.

Mr. Del Mastro, you should listen, she may respond to you in English as well.

First, they always tell us that this is a tax.

Second, they say that it will cost $25 to $75. They say that when they're in a good mood. When they aren't in a good mood, they say it will cost more than $75. I could find the quotations. In addition, they say it would apply to all digital media, including telephones, computers and automobiles. They've even mentioned that.

Then they say that consumers are opposed to it and that they don't want a tax. They also tell us that consumers aren't pirates and that, consequently, should not be taxed because it's as though we consider them in advance as nasty bandits because we think they're downloading files illegally.

So those are the five arguments I hear every day in the meetings of this committee. I would like you to respond to them.

● (1600)

Mrs. Annie Morin: I would be very pleased to do so.

First of all, it isn't a tax. You who are here and who work in government, you are in a good position to know that a tax is money that goes to the government, that is used to pay for public services. In this instance—

Mrs. Carole Lavallée: So we should never say that.

Mrs. Annie Morin: In this instance, you should never use that word. That is misinformation, it misleads people, and it causes confusion. A royalty is a revenue that is collected by the Canadian Private Copying Collective and that is paid directly to music creators.

It is in no way a tax, just as it is not a tax when Apple pays for all the licences on its little thing called an iPod. Those aren't taxes, but rather royalties.

Mrs. Carole Lavallée: What do you think of the argument that this will cost $25 to $75?

Mrs. Annie Morin: No, that's not at all the case. As I have said and repeated, it would be between $2 and $25. That amount could be determined by the Copyright Board. It wouldn't be $75 at all, and, once again, the government could even impose a ceiling on the amount that could be collected under the regulatory authority provided for under section 87 of the act.

Mrs. Carole Lavallée: It will apply to all digital audio media, including wireless devices.

Mrs. Annie Morin: Absolutely not; that's not what's provided for. We're not talking about every medium designed, manufactured and marketed or commercialized. Are there any advertisements that suggest buying a car in order to copy music? That doesn't exist; I've never heard of any such thing. The scope of this royalty is being exaggerated. We really want there to be a royalty that applies for copying music.

Mrs. Carole Lavallée: All consumers are opposed to it, Mrs. Morin.

Mrs. Annie Morin: No. We retained the services of the firm that normally conducts surveys for the Conservative Party, Praxicus, and according to the surveys they conducted, 67% of consumers are in favour of a royalty, and 71% believe that a royalty of $10 is a fair and reasonable levy. When that amount is increased to $15, 65% of consumers believe it is reasonable, and when it is increased to $20, 63% of consumers, the majority, find it fair and reasonable.

Mrs. Carole Lavallée: Could I ask you to send a copy of those survey findings to the clerk or committee chair, in the interests of everyone?

Mrs. Annie Morin: Yes, I'd be pleased to do so.

Mrs. Carole Lavallée: That's good, thank you.

Lastly, what do you say to all those, like the minister, who say they want a levy on digital audio devices because they assume in advance that users will be downloading illegally?

Mrs. Annie Morin: No. Look, these are two separate things.

There's access to music and there are reproductions of music. So, at the time, in 1997, when people bought a CD, part of the royalties went to the artists, just as when people now download a song from iTunes.

Even in a legal business, the fact remains that value is attached to copies of the music that are subsequently made. Consequently, there's no connection. Pirating music and copying music on recorders or any other medium are two separate issues.

So I find it hard to understand that argument. I believe that confuses matters. I can't see any connection between the two.

Mrs. Carole Lavallée: All right.

I've also previously heard another argument, that all artists, even those who have not produced anything for 10 years, will be able to live off society through those royalties.

Mrs. Annie Morin: No.

The levy in fact guarantees artists an income that is proportionate to their success. These amounts are distributed based on the number of sales made by the artists and also based on the broadcasting of that music.

Of course, an artist who manages to create a very popular product will earn more money from the royalty than someone who creates a product that isn't popular.

This works the same way for inventions. If an invention is very popular, it earns more money. If it is an invention that isn't very popular, then there will be less money.

● (1605)

Mrs. Carole Lavallée: It's often said that the Canadian Private Copying Collective currently redistributes the royalties it collects under a system that is complex but not fair enough for artists.

Could you explain that system to us and how you redistribute that money? Exactly what is it based on?

Mrs. Annie Morin: It's based on sale surveys, on the one hand. Fifty per cent of the data that are used are sales data. So if someone sells albums, it can be assumed they will eventually be copied.

The other 50% are broadcasting data. So if someone is regularly broadcast on the radio or elsewhere—it can be a quite limited number of times—that person's name will appear in the broadcasting surveys and money will be sent to that person.

So it is assumed that the artists who sell music and artists who are broadcast on the radio are more likely to be copied than others.

[*English*]

The Chair: Thank you.

We're going to have to wrap up. We'll move to Mr. Angus for seven minutes.

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

Thank you for coming today.

I think this is very germane to the whole issue, the issue of who has a right to copy and who has a right to be paid.

I'd like to follow up on some of my colleagues' questions about the issue of the levy, because, my God, the Conservatives have got themselves worked up about this. They've got mailings going out to their ridings every few weeks that the separatists and the socialists are going to force every kid to pay $75 on their cellphone. I look at the Conservative claims, from the minister and his parliamentary secretary, and they're either misrepresenting or they don't understand the role of the Copyright Board. So I'd like to just go through this again.

They claim this is a new tax when in fact the Copyright Board assessed a tariff in 2003-04 based on the evidence that was brought before them. They assessed it again in 2008. Now, the Copyright Board doesn't just roll over when CPCC comes in and wants a tariff. You have to prove it. You have to prove it on evidence. You have to be cross-examined.

What is the role of the Copyright Board in terms of defining whether a use is legitimate or not?

[*Translation*]

Mrs. Annie Morin: In fact, the Copyright Board of Canada is an economic regulation agency, and it operates exactly like a court.

On the one hand, the Canadian Private Copying Collective will come in with its armada of experts and lawyers to prove the value of copies made and how much the levy should be.

But believe me that, on the other hand, there are all the manufacturers, importers and retailers of these blank audio media that also come in with their armadas of experts to try to contradict what the CPCC is trying to obtain.

Based on the evidence brought before it, the Copyright Board of Canada, like a tribunal, rules and renders a decision determining what is fair and equitable to pay for a medium based on the use that is made of it.

[*English*]

Mr. Charlie Angus: And of course their favourite $75 tax that is being imposed.... Based on the evidence that we saw from the Copyright Board, the Copyright Board chose between $2 and $15. And in terms of identifying a use, the Copyright Board would say a cellphone is a cellphone even if it plays music, but an iPod is a musical player.

Does the Copyright Board make those distinctions?

[*Translation*]

Mrs. Annie Morin: In fact, here's what the Copyright Board would do. First, it would start by looking at whether the object presented to it is indeed an object ordinarily used to copy music. That, first and foremost, is one of the analyses that it would conduct.

If it came to the conclusion that that device is not ordinarily used to copy music, then it would not even rule on a levy on that device.

For example, it ruled on DVDs at the time. It said that they were not ordinarily used to copy music, even though a lot of people do make copies of music on DVDs.

[*English*]

Mr. Charlie Angus: The other thing that strikes me is that the minister doesn't seem to be aware of his own powers. Even if the Copyright Board assessed a tariff on a musical player and the Conservatives were all getting their shorts in knots that this was going to apply to automobiles and SUVs, and, who knows, Humvee tanks in Afghanistan, the minister has the right, does he not, to prescribe not only the use...? He could say BlackBerrys are exempted, cellphones are exempted.

Mrs. Annie Morin: Yes.

Mr. Charlie Angus: For example, so we don't have any market distortion, he could list it to a percentage so that the impact on an iPod would not....

Is the CPCC fully accepting of those rights of the minister?

● (1610)

Mrs. Annie Morin: Yes. What can we do? It's written within the law. It's a government power to limit the devices or the support for the media on which the levy could be asked, and to limit also the amount that could be asked. It's something that is written within the law.

Mr. Charlie Angus: I had a financial estimate done on our private member's bill, and under the existing sales there would be $25 million in royalties coming to artists. If we remove the levy and remove the right of artists, we have a $25 million hole. Add to that $21 million in mechanical royalties. Madame Milman, that's quite the kick in the teeth that Canadian artists are expected to take to get this bill through.

Ms. Sophie Milman: Absolutely. Since the government, with this bill, did not completely scrap the levy on blank CDs, they do recognize that copies have value. I don't understand why they're only keeping it on devices that are phased out. They're becoming completely obsolete.

I would like you to try to go to any other group and say, "We believe you can live on two-thirds of your income, so we're going to take that other third." Why does the government feel it has the right to do it to artists, especially people who live on, literally, between $12,000 and $30,000 a year? We're not talking about rich people here. We're talking about people who take every dollar and stretch it beyond any reasonable amount.

Mr. Charlie Angus: Madame Levy, one of the concerns I have about this legislation is that copyright, when we update it, is usually about access and it's usually about remuneration. This seems to be about a bill of deciding how many people don't have to pay.

When you've set up copyright, you have neighbouring rights. You have reciprocal agreements with other countries that you trade with, that if you're collecting royalties and they're collecting their royalties, there's remuneration internationally.

Have you looked into the question of how many of these exemptions, from the mechanical rights exemption to the exemptions on collective licensing, would be in compliance with our international obligations, in terms of suddenly deciding to create a bill that says where there were rights, those rights now cease to exist? And if we're not in compliance, are there issues in terms of trade retaliation?

Ms. Roanie Levy: Absolutely. I think you're correct to point out that, especially when you're dealing with a situation where remuneration is currently received by creators and by other rights holders, removing the remuneration would conflict with the normal exploitation of a work or would unreasonably prejudice legitimate interests of the rights holders. If you're familiar with our international obligation, you would recognize that these are two of the three-part steps that every exception needs to be met.

In Bill C-32 there is a surprising number of changes that outright eliminate remuneration that is currently being received. There are some in the education sector, there are some in the mechanical reproduction sector, and there are some in others as well.

It also goes to the ability of creators to be able to perceive future revenues. As the use is moved to a digital environment, the elimination of the licensing regimes and the undermining of collective society is going to have a serious impact on the ability of creators and rights holders to be able to actually benefit from the promise of the digital economy, which would otherwise allow them to receive compensation where the consumer is at, where the consumer is actually making uses.

When you think of the digital economy, you think of this seamless web of licences, licences that would be through collective society as well as directly with the rights holders, that would allow the uses to take place in a seamless way to the consumer, but where the creators and the rights holders would receive compensation. The elimination of these revenues today and the dismantling of collective societies generally, which Bill C-32 creates, would seriously undermine the innovation of these types of business models in the digital economy.

The Chair: Thank you.

We'll move to Mr. Del Mastro.

Mr. Dean Del Mastro (Peterborough, CPC): Thank you, Mr. Chairman, and my thanks to the witnesses for appearing today.

This is an interesting discussion. It seems to me that the role of copyright is to establish a market. It's to establish a system by which people who create things can be paid for their creations. It recognizes that when a work is created, it should be bought and not stolen.

I want to go back to some of the comments of my colleagues across the way, because it seems they're missing the purpose of the bill. I don't want people to copy your music for nothing; I don't. I want them to pay for it. When I was a kid...it's not that long ago; I guess I'm a few years younger than anybody on the opposition side. I had to buy 45s, I had to buy cassette tapes, and I had to buy CDs. In fact, I bought hundreds of CDs.

It seems we have a defeatist attitude on the other side now and some in the lobby, who say, "You'll never shut down isoHunt, and you'll never shut down these organizations." It doesn't matter. Mr. Isaac says, close up the loopholes. I want to close the loopholes up. I want to shut them down, and I want you to get paid for every song you sell.

What I don't want to do is put in a system.... I need to understand this better. You said you'd only tax music devices. This phone is a music device. It's a phone, it's a computer, and, by the way, as technology improves, it's going to be even more seamless. The same device you use to open your garage door will be the device you use to change channels on your television—and it might well be your television. All these things are converging. Technology is converging. There will be no such thing—there is virtually no such thing today, as we sit here...if you go to the store shelves, unless you're buying very, very cheap devices, there is no such thing as strictly a music device for sale. The good devices are all converging. They do multiple things.

I have no idea how you would ever create a tax for this, and it is a tax. I also want to deal with this question of whether it's a tax or a levy. A government is only a conduit. In fact, right now government is a really good conduit, because it's paying out more money than it's taking in, some of which we're giving to artists, and I'm proud of that. But there is no difference to the consumer where the money winds up. None of the money ultimately goes to something called "government"; it all goes back to Canadians in different ways. So it is very much a tax.

I would like to understand how you would place it only on a device that only copies music. First of all, there is no such device. Secondly, I don't know how you could set it at $2, $10, or $15 and make up for the fact that what Bill C-32 seeks to do is shut down the BitTorrent sites. You must support this. Is that not the most important thing for artists, that people can't just steal their music?

● (1615)

Mrs. Annie Morin: It's one of the important things. I will answer your first question about the converging technologies, and I will answer in French because it's easier for me to do so.

[*Translation*]

Even a blank CD can be used for something else than music. For example, photographs and text can be stored on them. Nevertheless, a levy was applied to blank CDs. However, when it established what the amount should be per blank CD, the Copyright Board of Canada took the other uses into consideration and accordingly reduced the amount of the levy per blank CD. You can store photos and even other things on an iPod Nano. The levy can be adjusted to take into account these other potential uses.

As for convergence, as new technologies develop... In 1997, when the act was passed, it was supposed to be technologically neutral. That's what we were told. You can even consult the English version of the act. You will see that it applies to audio media—

[*English*]

Mr. Dean Del Mastro: I understand that, Ms. Morin. But the point is that there is no such thing as a music device. That's the point.

[*Translation*]

Mrs. Annie Morin: Whether I buy an iPod Shuffle or an iPod Nano, these are really what you call music devices. If you look at iPod advertisements, what do you see? People dancing. They're not reading course notes or looking at pictures: they're listening to music. These devices are designed to listen to music.

[*English*]

Mr. Dean Del Mastro: Ms. Milman, I firmly believe the right way to go is to re-establish a market so you can sell what you create. It seems there is an attitude that it can't be done. Some songwriters who came forward with a presentation said that what they need is an ISP levy that would be placed on the consumer, so that when they copy, it will go to a collective and then songwriters and musicians will be paid from that. Does that hold true? Is that along the same line as the device levy? Do you think that if we put this levy on at the ISP level we wouldn't need to worry about shutting down the BitTorrent sites, or it would become less important to shut them down?

● (1620)

Ms. Sophie Milman: Ms. Morin, please, and then I'll answer the rest of the question.

[*Translation*]

Mrs. Annie Morin: The option of making downloading illegal is a central issue. However, whether or not there is illegal downloading, that will never prevent copies of musical works from being made, in particular using all the CDs that are bought. Music copying is a recurring phenomenon.

However, if buying music on line was the only option in the world, part of the problem would already be solved, but that would not prevent copies from eventually being made. So compensation must be paid for those copies because they have value.

[*English*]

Ms. Sophie Milman: We're not talking about piracy here. I'm all in support of any bill that fights and gets these guys out of business. Experience over the last 10 years, since 1999, has shown that you kill one and another bunch spring up in China, where you absolutely have no judiciary authority to go after anybody.

At the same time as you're fighting the bad guys, we want actual market mechanisms that allow us to monetize the copies that are made, copies maybe from legitimate sources, right? Somebody legitimately buys a record and feels the need to put it on his iPod so he can jog to it. That is a copy made that under the new proposed bill I would get no reimbursement from, even though the person who is listening to his iPod derives a lot of enjoyment from it.

It's not that we're being defeatist. We're being, on one hand, realistic. On the other hand, while you're fighting crime, we want market mechanisms. You say that the levy is a tax. Taxes are at the discretion of government. So on one hand, you're a conduit, but where the money goes depends on government. The levy goes to artists only. There's no government. There's no other party with any sort of mandate standing between the levy and artists. So we want those mechanisms to stay in place to make sure that we can afford to continue making records.

Mr. Dean Del Mastro: There's an important feature in Bill C-32, which is a technological protection measure, as Mr. Isaac mentioned. If you don't want people to make additional copies of your work, we actually say that we'll let the market work. And that's an important distinction....

Ms. Sophie Milman: Are you talking about digital locks?

Can I address that question?

The Chair: No, you'll have to do it in future opportunities.

We'll have to move to the Liberal Party.

We'll go to Mr. Garneau for five minutes.

Mr. Marc Garneau (Westmount—Ville-Marie, Lib.): Thank you, Mr. Chair.

The Conservatives have a very fluid definition of tax. It's usually something they apply when they don't like it.

[*Translation*]

Mrs. Morin, you mentioned that funds from the collective management regime had fallen 60% over the past three years. I assume that, around 2007, approximately $27 million or $28 million was collected on blank CDs and cassettes. Is that correct?

Mrs. Annie Morin: In 2008, it was $27.6 million. When the amounts available for distribution were at their highest point, it was about $32 million.

Mr. Marc Garneau: Could you provide us with that chart so that we can see how the amounts—

Mrs. Annie Morin: Of course. That way you can see what amounts were available for distribution for each year in which the system was in effect.

Mr. Marc Garneau: Today we're talking about approximately $10.5 million.

Mrs. Annie Morin: In 2010, the amount available for distribution will be $10.6 million.

Mr. Marc Garneau: What are your estimates for the use of blank CDs?

Mrs. Annie Morin: It will continue to decline. We would like a certain level of stability to be achieved and maintained, but the figures we're being given indicate to us that it will continue to decline.

Mr. Marc Garneau: I would like to have an idea of the scope of the challenge, of the problem. You're talking about a system that would establish levies on MP3 players ranging from $2 to $25. Are those figures based on your intention to restore the amounts available to approximately $30 million? Is that how you address this problem?

Mrs. Annie Morin: No. In fact, we relied on the royalties that were established in 2004. Considering the reasons that were given for establishing those amounts, we believe those amounts are still plausible.

● (1625)

Mr. Marc Garneau: How much did the system generate in 2004?

Mrs. Annie Morin: Levies were collected on digital audio recorders for 10 months in 2004.

[*English*]

We've collected $4 million in the first 10 months of the collection of royalties on the DARs.

We collected $4 million in the first 10 months from the royalties on the DARs.

[*Translation*]

Mr. Marc Garneau: Of course, some people say that, by attacking peer-to-peer file sharing sites, this bill will be useful in that it will reduce pirating.

Now you're saying that 90% of music that is listened to is music that people haven't paid for.

How far do you think this figure of 90% could fall if Bill C-32... Do you think people will find ways to circumvent the problem?

Mrs. Annie Morin: I can tell you that, based on the last figures we've obtained, legal downloading has increased somewhat in a year. Before that, 90% of the content on an MP3 player consisted of unauthorized copies. For 2008-2009, we see that unauthorized reproductions represented 85%. So there has been a slight improvement.

That said, I don't see how Bill C-32 could improve the figures on music copies. Even if there are no further opportunities for illegal downloading, people will nevertheless copy music and pay nothing if the copying is done on a digital audio recorder.

Mr. Marc Garneau: Very good.

[*English*]

I have a question for Madam Levy.

There are those who argue that education as an exemption is not a sort of free ticket to go out and do whatever you want; there is still a requirement to prove that you are fair dealing.

What is your feeling about somebody who feels that their works are being copied unfairly and decides they will go to court? What kind of onus, from your point of view...? Do you think that's a fair way of doing things?

Ms. Roanie Levy: Let me give you an answer by example. In 2004, we started a process with the Copyright Board in order to set a tariff for the photocopying of mostly textbooks that was happening in the elementary and secondary schools. The Copyright Board issued its decision and made a certain allocation for fair dealing.

The ministers of education were not satisfied with that allocation for fair dealing. They claimed it should have been far greater, so they appealed the decision. The Federal Court of Appeal felt that the Copyright Board's decision was a reasonable one. The ministers of education are not happy with the Federal Court of Appeal decision, so they're seeking leave to appeal to the Supreme Court.

This is a process that started in 2004. The evidence necessary to be able to prove not just what gets copied, but the intent behind the copying—the purpose of the copying and everything you must prove in order to demonstrate whether a use is fair or not fair—has cost millions of dollars.

The Chair: Thank you.

We have to move on.

Ms. Roanie Levy: This is money that creators and publishers can ill afford.

[*Translation*]

The Chair: Mr. Cardin, you have five minutes.

Mr. Serge Cardin (Sherbrooke, BQ): Thank you, Mr. Chairman.

Ms. Levy, earlier you said something about half a billion copies of all kinds. I don't know whether you saw the article by Kenyon Wallace, who interviewed Greg Nordal in the National Post. He cited a number closer to 10 billion pages copied at the primary and secondary level, which is quite a lot more than your estimate.

Ms. Roanie Levy: To clarify the subject, 10 billion photocopies are made in the elementary and secondary schools in Canada. These are copies of absolutely everything, whether it be letters sent to parents or other things.

Of those 10 billion pages, more than three billion are copied from published works, works that are protected by copyright. Some 250 million are covered by the Access Copyright licence, and a levy is applied to them. These are 250 million pages of works that are copied in the primary and secondary schools. Add to that the copies that are made in the postsecondary institutions.

● (1630)

Mr. Serge Cardin: In that same article, it was estimated that the cost of that was $75 million annually.

Ms. Roanie Levy: That's roughly our estimate as well; that's approximately what the exceptions may cost creators and publishers. A portion of those losses is definitely hard to quantify because the result will be a decline in book sales that is still hard to calculate. However, the royalties currently collected by COPIBEC and Access Copyright, as well as by other collectives, such as ERCC, will definitely disappear or are at very high risk of disappearing.

Mr. Serge Cardin: Mrs. Morin, earlier you said that the levy between $2 and $25 could mainly be applied to music copying equipment?

Mrs. Annie Morin: Yes.

Mr. Serge Cardin: It seems to me that other instruments can be used. Currently, BlackBerries, by adding some kind of chip... I'm not up on the new technology—

Mrs. Annie Morin: Yes, definitely. You're talking about a music card.

Mr. Serge Cardin: You can copy music—potentially, I mean—on the music card that's included in a BlackBerry. A BlackBerry may not be subject to a levy, but the card—

Mrs. Annie Morin: The movable music card? Look, that's perhaps something that should be submitted to the Copyright Board to see whether it might be a blank audio medium that could eventually be subject to the levy. However, with regard to the BlackBerry as such, I have never seen any advertisements suggesting that it can be used to copy music. They don't talk about that; it's not marketed for the purpose of—

Mr. Serge Cardin: That's it, it's not the instrument that makes the copy, but it's the fact of adding a card to it.

Mrs. Annie Morin: A movable electronic memory card could perhaps be subject to a levy; I don't know. That will be for the Copyright Board to rule on.

Mr. Serge Cardin: I'd like to go back to the levy-setting methodology. Is it based on anticipated revenue or compensation for all works copied? Earlier you referred to a figure of 90% of the content of MP3 players that had not been subject to the payment of any royalty, and you said that it had fallen to 85%. Is it with the aid of this information that you...?

Mrs. Annie Morin: First, the board starts by determining whether it is a medium ordinarily used to copy music. Once that is established and it believes that a levy may be imposed, it will assess the extent to which, the frequency at which it is used to make copies of music.

I'm just going to request a detail from the woman who is with me.

[*English*]

The Chair: Okay. We will have to get that quickly.

[*Translation*]

Mrs. Annie Morin: That's it; the board will verify the frequency at which it is used to copy music. Based on that, it will establish the value of the copies made. For example, a copy made on a blank CD has a certain value. It will assess various criteria to determine what value the copy made on an MP3 medium will have. Once that is established, it will then do repertory studies to determine what percentage of works are used, where those works come from and, at that point, will allocate the amounts between the Songwriters Association of Canada, the performers and the producers, but it's a very complex process.

[*English*]

The Chair: That will have to be it.

We're going to move to Mr. Braid for a quick five minutes.

Mr. Peter Braid (Kitchener—Waterloo, CPC): Thank you very much, Mr. Chair, and thank you to all of our witnesses for being here.

I'm going to attempt to be magnanimous and pose a question to each of you. I'll start with Madam Morin.

Does the CPCC currently have definitions of devices that are ordinarily used to copy music, and what devices does that definition cover?

● (1635)

Mrs. Annie Morin: It absolutely covers DARs, what we call digital audio recorders. When we asked for a levy on them, even the Federal Court of Appeal said it was really clear that they were devices ordinarily used to copy music. Unfortunately, the terms of the law don't allow us to apply a levy because they're not media; they're devices. So it's definitive that DARs are ordinarily used to copy music. I can assure you of that.

When I was asked about the chips that you put into BlackBerrys... it is difficult for me to say. I would tend to say yes, but then it's not for me to say yes or no. But in the case of the DARs, this is clearly a yes, and the Federal Court of Appeal has mentioned this.

Mr. Peter Braid: Thank you.

Ms. Milman, I want to come back to an earlier example you gave, one of the reasons why those who are opposed to an iPod tax or levy, whatever we want to call it, struggle with this concept. You gave an example where somebody legitimately buys a CD, and they want to copy that music onto an iPod or some listening device. You're proposing they pay twice—once when they buy the CD and then again when they copy it onto the listening device. Is that correct?

Ms. Sophie Milman: Let me qualify what you're saying.

Mr. Peter Braid: Okay. And how do you think consumers would welcome or embrace that?

Ms. Sophie Milman: First of all, we expect them not to pay as much for the second copy, a very small percentage of what they originally paid for what they purchased. So we do expect them to pay a bit, not as much, but to pay nonetheless, because every single copy generates value. People wouldn't be doing things if they didn't receive value from the things they do. That's what our economy is based on. It's value paid for value received.

So when people make a copy...they listen to the CD at home, they make a copy onto their iPod that they can listen to at the cottage, in the car, while jogging. They're enjoying music under different circumstances on a different device. As our research has shown, the Canadian public is quite open to artists being compensated for copies made of their work. So this whole issue that people somehow will rebel is false.

Mr. Peter Braid: To ensure that artists are properly compensated, shouldn't the focus be on ensuring that artists receive dollars and not pennies? And would you not agree it's important to ensure that the legal market for music, and the legitimate purchase of music, is bolstered and protected? In some European countries that have implemented legislation similar to Bill C-32, the legal market for music has been further supported and bolstered and protected. Are you familiar with those examples, and would you agree that's where the focus should be?

Ms. Sophie Milman: It is important to bolster the legal market. It is important to go after those file-sharing companies, but I don't think you will ever be able to eliminate them completely. Even if you do, it doesn't account for the music that's already out there on the Internet, free floating. You might help artists who are coming up tomorrow, but for artists like me who have been active for six years and have three albums, all of my material is now online and can be shared freely on these websites that pop up all over the world. To your comment "dollars, not pennies", we want to receive dollars and pennies. We deserve dollars and pennies.

Mr. Peter Braid: Thank you.

How much time do I have left, Mr. Chair?

The Chair: You have 15 or 20 seconds.

Mr. Peter Braid: I apologize, Madam Levy.

Mr. Isaac, could you quickly explain why we need to combat Internet piracy? What is it, and why do we need to fight it and eliminate it?

Mr. Brian Isaac: It's a huge problem that drains a huge amount of money from legitimate economies. In the case of commercial piracy, it's being drained from the legitimate economy into a black market. So that alone is enough reason to say why it has to be done. We need improved tools. It's very difficult to do it now with the tools we have.

Thank you.

● (1640)

The Chair: Thank you very much.

Thank you to our witnesses.

We'll suspend for a few minutes, and our second panel will come in.

● _____ (Pause) _____ ●

The Chair: We'll move to open the second part of today's 6th meeting of the Legislative Committee on Bill C-32.

We have two witnesses for this period. We have Ysolde Gendreau, from l'Association Littéraire et Artistique Internationale (Canada), and Glen Bloom, from the Intellectual Property Institute of Canada.

Madame Gendreau, *pour cinq minutes.*

Ms. Ysolde Gendreau (President, Association Littéraire et Artistique Internationale (ALAI Canada)): Thank you very much, Mr. Chairman.

My name is Ysolde Gendreau. I am a professor at the Faculty of Law, University of Montreal. However, I'm here today as president of ALAI Canada, which is the Canadian branch of the International Literary and Artistic Association, a body that was founded in 1878 for the promotion of authors' rights.

I will continue my presentation in French.

● (1645)

[*Translation*]

Because the ALAI is at the origin of the Berne Convention, I have come here today to talk to you about Bill C-32's compliance with international law and especially with the requirements of international law with respect to exemptions. Before talking about the exemptions, perhaps we should talk about the basic principle. I would first like to submit that a copyright act, whether it concerns copyright or *droit d'auteur*, represents a partnership between authors and distributors. From the time the first copyright legislation came into existence 300 years ago, Parliament has intervened to inform the distributors of works—at the time, they were printers and book stores—that they had to take authors into account in the compensation they obtained from the sale of their books. The role of Parliament is to provide a framework for this partnership and its evolution as new distributors arise.

In a relatively recent example, in 1954, the Federal Court—at the time, it was called the Exchequer Court of Canada—held that the retransmission of works by cable did not give rise to the payment of copyright royalties. In 1988, 34 years later, Parliament intervened and required cable companies to pay royalties to authors. I would like to point out that that intervention occurred at the time of a trade agreement with the United States.

It is by developing this partnership between authors and disseminators as technology evolves that we foster the technological neutrality of copyright. Exemptions to copyright mark the limits of this partnership because, otherwise, there might be no end. This partnership entails exemptions—as you know, since you have previously heard about this—at the international level. These exemptions are sublimated in what is called the three-step test under the Berne Convention and TRIPS, two instruments to which Canada is bound, and also in the WIPO treaties. There are certain special cases: no conflict with normal exploitation, no unreasonable prejudice to the legitimate interests of the authors/copyright owners.

I would like to submit a few examples of this found in Bill C-32, which, in ALAI's view, undermines the three-step principle, because these exceptions are too broad, because they are based on unrealistic conditions that, once again, make them too broad. Here we're talking about fair dealing for the purpose of education, the new section 29. We're talking about non-commercial user-generated content, private copying under section 29.22. We can add, of course, fixing for later listening or viewing. We can add back-up copies that are not limited to software and applied to all works under section 29.24.

The three-step test is what indicates that copyright and copyright holders have limits. This three-step test is not just a statement of prohibition. It provides for a solution to settle the cases of exceptions that might not meet the three-step test.

Why does it contain in itself this seed of a solution? Because the three-step test was designed in the 1960s, at a time when photocopying was on the rise. Copyright thinkers at the time viewed the increase in photocopying as a rise in mass use and foresaw that technology would continue along that path. What do we see today? We are indeed facing mass use of all kinds of media. They also understood that the answer to these mass uses was collective management. We can come back to this later in response to certain questions that you may wish to ask. What the origin of collective management was, to explain that answer and the context of the exceptions, assists in adjusting collective management, mandatory licences and the determination of value.

● (1650)

International copyright law protects this partnership between authors and distributors. It imposes limits on it that must be respected.

I will be pleased to answer your questions.

Thank you.

[*English*]

The Chair: All right. Thank you very much.

We'll move to Mr. Bloom.

Mr. Glen Bloom (Chair, Copyright Legislation Committee (Technical), Intellectual Property Institute of Canada): Good afternoon. *Bonjour.* My name is Glen Bloom, and I'm a partner in the law firm of Osler, Hoskin & Harcourt. I appear today on behalf of the Intellectual Property Institute of Canada, IPIC.

[*Translation*]

It's a pleasure for me to be here today on behalf of IPIC. Thank you for inviting us.

[*English*]

IPIC is the association of intellectual property law professionals. Our membership totals over 1,700 individuals, consisting of practitioners in law firms and agencies of all sizes, corporations, government, and educational institutions. I am the chair of IPIC's copyright legislation technical committee and appear today in that capacity.

To explain the purpose of my presentation, I first need to give you some background about our committee.

The technical committee is composed of experts in copyright. We practise law in private practice, with the exception of Ms. Gendreau, a committee member who is an academic. We represent clients across the spectrum on all sides of the policy debates. The committee takes no position, however, on the policy decisions behind Bill C-32.

Members of our committee have extensive experience in the practice of copyright law and by virtue of that experience have a good understanding of how the Copyright Act works and how amendments could affect both rights holders and users. We therefore bring a different perspective to the specific language utilized in Bill C-32 from the government officials, who address policy choices, and the legislative drafters, who, although experts in drafting legislation, may not have expertise in copyright law and its application in practice.

Our committee has examined the technical issues arising from the amendment to the Copyright Act. By technical issues, I mean the actual wording of Bill C-32. Our goal is to assist the government to ensure that the wording of the bill achieves the government's policy intent and avoids unanticipated consequences. We make suggestions to clarify the proposed amendments to ensure the English and French language texts are aligned to achieve internal consistency in the Copyright Act and to point out possible consequences of proposed amendments, which may not have been intended.

We have prepared a detailed submission addressing technical issues in Bill C-32. A copy of the table of contents showing the breadth of our comments has been handed to you. IPIC will be forwarding the submission to government officials shortly. IPIC would be pleased to provide a copy of the submission to this parliamentary committee, if you wish.

I will provide you with two examples of our many technical comments.

First, subsection 13(2) of the Copyright Act currently provides special rules for the ownership of commissioned engravings, photographs, and portraits. Clause 7 of Bill C-32 repeals subsection 13(2). As a replacement for subsection 13(2), Bill C-32 will enact a new paragraph, proposed paragraph 32.2(1)(f). This new section will provide Canadians certain rights to the non-commercial use of commissioned photographs or portraits. There's no reference to engravings. Our committee questions whether this was an unintended omission and suggests that consideration be given to amending proposed paragraph 32.2(1)(f) to refer to "photographs, engravings, or portraits".

The second example of our technical comments relates to treaty obligations. Our committee understands that the matter of the extent to which Bill C-32 implements the obligations established by the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty is considered to be a policy matter. However, this is not the case with respect to technological protection measures, or TPMs, which we understand are considered to be a technical matter. Consequently, the committee does not comment on treaty implementation, save in the context of TPMs. With respect to TPMs, we are of the view that Bill C-32 is compliant with the obligations in the WIPO treaties. We express no view as to whether a lower threshold of protection for TPMs or fewer legal remedies for the circumvention of TPMs would or would not also be compliant with the treaties.

You may ask why our committee wants to reduce the ambiguities of the legislation and therefore potential areas for litigation. IPIC and our committee strongly believe that in the area of copyright, as with other areas of intellectual property, everyone is better served by certainty. The less doubt there is regarding the scope and application of copyright, the better it is for creativity and for the dissemination and use of copyright works in Canada.

● (1655)

[*Translation*]

Thank you for listening to me.

I will now be pleased to answer your questions.

[*English*]

The Chair: Thank you very much.

We will move to the first round of questioning.

For seven minutes, Mr. McTeague.

Hon. Dan McTeague (Pickering—Scarborough East, Lib.): Chair, thank you very much.

Witnesses, thank you for being here.

I'll take up from where we left off with the previous panel, because in terms of ambiguity, the one that obviously comes to mind is the definition, the subject of fair dealing. We have had a number who have come forward with the idea that the additional word "education", as far as the broader definition of fair dealing, will probably not permit extensive copying of textbooks, etc. In fact, they believe it's fair dealing, not free dealing.

How do you respond to that view and square that with your concern, Mr. Bloom, about ensuring that we get the nomenclature correct?

Mr. Glen Bloom: It's difficult for me to talk about policy issues. I must stay away from them. But on the issue of clarity, there is one provision in the act, the fair dealing provision, that has to give flexibility to the courts, because it is not possible for legislators to define all circumstances in which fair dealing would apply. The choice that has been selected in our legislation in the past is to leave that issue to the courts, providing the general broad heading of fair dealing for the specific purposes. The courts then have determined whether the use is being made for one of the five fair dealing purposes, and if so, is it fair. The Supreme Court of Canada has identified the six factors to be considered in determining what's fair.

Hon. Dan McTeague: That's fair, but perhaps more confusing for a committee that has to come up with an answer on definitions that may be broadly defined. I guess the concern we have, as members, is subjecting all of these words to the possibility of legal challenge and almost forcing this to be a precedent-setting matter for down the road. I think we would certainly want more certainty and understanding as to whether these things left alone as they currently stand, as opposed to adding a new addition of education as defined under fair dealing, may lead to unintended consequences.

Madam Gendreau, you suggested earlier, and I think it's here written, that fair dealing for the purpose of education is an exception that goes against the three-step test. You sit on the IPIC. How do you reconcile that with your lawyer colleagues?

Ms. Ysolde Gendreau: Well, I am a member of the committee, so I let the committee look at aspects of technical matters. I concentrate on other matters where I can have technical input.

I'm not here as a member of the IPIC committee; I'm here as a representative of ALAI, and ALAI is a body that has always been for the promotion of authors' rights. An exception of fair dealing for the purpose of education without any other safeguard has in it the potential to be extremely broad. So if we look at various other examples that we have in the act, we see that there are other provisions that deal with education too. Since the legislator is not supposed to speak for nothing, some meaning has to be given to fair dealing for education, which is different from all these other exceptions for education. And I think this is the start of a possible opening of an exception that is in a very unknown territory, very broad and undefined.

Hon. Dan McTeague: I simply want to hear from you the need for the purpose of the educational exception in fair dealing, as you understand it.

Ms. Ysolde Gendreau: As I understand it, I'm not sure there is such a need for a fair dealing purpose with respect to education. There are already other exceptions dealing with education, rather than fair dealing for the purpose of education itself.

Hon. Dan McTeague: Thank you.

Chair, with your indulgence, we only have one round. Mr. Garneau, I believe, has a question.

The Chair: You still have another three minutes plus, sir.

Mr. Marc Garneau: Thank you very much.

Mr. Bloom, you talked about six criteria that the Supreme Court has raised. I can read them out here, but you know them better than I do.

[*Translation*]

Ms. Gendreau, you talked about

[*English*]

the three-step Berne convention. Which is the best tool for us to use, if the courts are going to eventually have to make decisions about whether something related to education is fair or not fair dealing?

● (1700)

Mr. Glen Bloom: Perhaps I can help you. The three-step test is something to consider as to whether an exception is appropriate and is permissible under the international treaties. The international treaties have permitted a fair dealing exception. The six factors that the Supreme Court of Canada set out are factors to consider the application of the fair dealing exception, and particularly to determine whether something is fair.

Mr. Marc Garneau: I appreciate that clarification. Thank you very much.

My second question is for you, Mr. Bloom. If this bill had provisions whereby it was legal to copy and reproduce something that a person had bought and paid for and that had a digital lock, but the person wanted to use it for his or her own personal use and reproduced it and copied it to other devices, would that, in your opinion, still allow us to be in compliance with WIPO?

Mr. Glen Bloom: It's our understanding, as we've been advised by government officials, that WIPO treaty compliance is a policy issue and therefore I'm not able to speak to that issue. But what I can say is that under the draft of the legislation currently, the prohibition against circumvention cannot itself be circumvented, if I may use that term, by fair dealing. That's a policy issue for the—

Mr. Marc Garneau: That I understand as well.

Okay. Thank you very much.

The Chair: Great. Thank you very much.

We'll move to Madame Lavallée, *pour sept minutes*.

[*Translation*]

Mrs. Carole Lavallée: Thank you very much.

Ms. Gendreau, I very much appreciated your presentation, particularly when you said: "Copyright is a partnership between authors and disseminators," and the word "disseminators" is used here in its broadest sense. Too often I hear the minister say that there should be a balance between artists and consumers instead. I've often heard that as well from the Conservatives. They say the same thing.

However, if we look at history and the Statute of Anne—Anne, Queen of England—we realize that this has always been a search for a balance between authors and disseminators in the broadest sense of that term. It is good to see the facts re-established.

Moreover, unless I'm mistaken, when you refer to the exemptions under Bill C-32 that do not meet the three-step test, you're saying that the bill is inconsistent with international treaties?

Ms. Ysolde Gendreau: I believe that's the conclusion I would like to come to with regard to those exemptions. It seems to me that exemptions of that kind will not meet the three-step test under the international treaties. Consequently, it is possible that Canada may find itself in an embarrassing situation and eventually be brought before a WTO panel for an additional analysis of this question under international law.

Mrs. Carole Lavallée: Bill C-32 does not comply with those international treaties, contrary to what the minister says, whereas you know that that is one of its main objects. It states that one of the main objects of Bill C-32 is to comply with international treaties. It also states that one of its main advantages is that it is renewable every five years. It's as though someone wanted to sell me a car and told me that that was good because I would be able to change it in four years. It's as attractive as that.

To go back to the international treaties, the minister says that the main reason for this bill is to comply with international treaties. You say that it doesn't comply with those treaties and that Canada could be brought before international bodies to explain itself.

Ms. Ysolde Gendreau: I would very much fear that Canada would be brought before international authorities on the basis of the exemptions as they are currently drafted.

Mrs. Carole Lavallée: I'm going to come back to the exemptions later, if I have the time.

With regard to the three-step test, the third particularly states: "no unreasonable prejudice to the legitimate interests of the authors" or copyright owners. Does that mean that the three elements that are not contained in Bill C-32 and that force artists to lose enormous annual revenues constitute undue hardship?

The first of the three steps is the non-modernization of private copying. This is an advantage, which artists currently have, that will cause them to lose $13.8 million a year. Then there is the education exemption, which will cause them to lose $40 million a year. There is another one, which we have not discussed today, and that is the exemption granted to broadcasters from paying fees for transitory copying: that's $21 million a year. In all, artists will lose $74 million a year as a result of this bill. Does that mean that this constitutes undue prejudice to authors' legitimate interests?

● (1705)

Ms. Ysolde Gendreau: I wouldn't put the notion of levy for private copying in the same bag because this is not about an analysis based on a copyright exemption. In my view, compliance with international agreements should not be established on the basis of the three-step test. As for fair dealing for education purposes, yes, that's an exemption that I believe should be analyzed based on the three-step test. Transitory recording in another possibility. As a result of these issues, the exemptions to copyright that should be examined should not prejudice authors' legitimate interests. It must always be borne in mind that the object of a copyright act is to establish compensation for authors and for copyright holders who indirectly benefit from these rights.

I'll give you an example. No one would be surprised to see that the object of a consumer protection act is to favour consumers in their relations with merchants. Of course, when you consider drafting consumer protection legislation, you say to yourself that the conditions must be reasonable for the manufacturers, sellers and merchants. You cannot impose excessive obligations on them. Nevertheless, the basic policy is still the protection of consumers' interests.

Somewhat the same thing is true of the Copyright Act. The basic policy, the one that the international treaties represent and with which we have been living for 300 years, is that these laws protect the interests of persons whose creations are of that kind.

Mrs. Carole Lavallée: Pardon me for interrupting you, but my time is limited.

Earlier you said that the role of a copyright act was also to agree on compensation for those people.

Ms. Ysolde Gendreau: Yes.

Mrs. Carole Lavallée: The minister told the CBC that Bill C-32 was not designed to compensate artists, but rather to protect their works so that they are not stolen. You're saying that the objective is to compensate artists.

Ms. Ysolde Gendreau: Yes. However, if those works are "stolen", the authors are definitely not being compensated—

Mrs. Carole Lavallée: The idea is also to protect them.

Ms. Ysolde Gendreau: Necessarily.

Mrs. Carole Lavallée: All right.

So you disagree with the minister when he says that the object is not to compensate them.

Ms. Ysolde Gendreau: I believe I'm obliged to do so.

Mrs. Carole Lavallée: Clearly, Bill C-32 strips artists of three major sources of compensation to which they long had access.

Ms. Ysolde Gendreau: The exemptions and certain regimes provided for under the act mean that the power relationship between authors and disseminators, potentially public ones, is largely reversed.

Mrs. Carole Lavallée: Do you think this is a highly unbalanced bill?

Ms. Ysolde Gendreau: From that standpoint, yes, but allow me to tell you that the use of the word "balance" is a problem. Balance is a virtue; it is the image of justice. The problem is that that image leads to a zero sum game. In this situation, if either of the two parties wins, the other loses. That logic leads to a dead end. In my view, it would be important not to put the emphasis on that term and not to bandy it about. I'm afraid it will lock us in a world that we'll be unable to escape and that it will prevent us from negotiating acceptable conditions.

[*English*]

The Chair: Thank you very much.

Mr. Angus, go ahead, please, for seven minutes.

Mr. Charlie Angus: Thank you, Mr. Chair.

Thank you both for coming.

Mr. Bloom, I'd like to start with you with regard to clarification of language. I was noticing in proposed section 29.22 the words “private purposes” and “use” are interchangeable, and I find that confusing. If I have a private use and I want to make a copy, that would be my right under this bill. It's for private use. For a private purpose, I might want to make 10 copies as Christmas presents for my family. That would still be a purpose. Are those words interchangeable or should they be clarified?

● (1710)

Mr. Glen Bloom: In the submission we will be furnishing to the officials, we have expressed our concern about precisely that point. It comes up in a number of sections. There is “private”. There is “non-commercial”. There is “non-profit”. These terms are used throughout the legislation, and the courts would give them separate meaning because separate words are being used. We've questioned whether the appropriate words have been used and whether there needs to be some sort of definition, and we've set that out in our submission about a number of the sections in the legislation.

Mr. Charlie Angus: I'd like to ask you about proposed section 29.21, on the user-generated content, because one of the problems we're facing with this bill, or with the need for legislation, is that everybody in some way is making user-generated content today. We hear from certain stakeholders, “We don't want to go after kids” and “We don't want to go after people who are putting up baby videos”, but that's exactly who has been targeted.

We have the example of Prince going after the mother who showed her kid dancing, and they used notice and takedown to take down a video. Is there a possibility, for user-generated content, to clarify the difference between personal creative use and works that would contradict the rights that exist under the Berne three-step test? Could we say you can post a mash-up video as long as it does not contravene the Berne three-step test? Would that be enough to ensure that Mack trucks are not being driven through this legislation?

Mr. Glen Bloom: I don't think you could use that language; it wouldn't be effective. But you could certainly craft language that would much more focus the UGC section. If that's to be done, let's get the right language. But it could be done, yes.

Mr. Charlie Angus: Has your committee...? I'm only reading your table of contents here—

Mr. Glen Bloom: We're not proposing issues that would be policy issues; we're pointing out where the existing language, which is based on a policy intent, has perhaps fallen somewhat short of the policy intent, or where there are issues of clarity, and you've hit on one of them, which is this non-commercial use.

Mr. Charlie Angus: Madame Gendreau, I'm interested in the issue of fair dealing. You say it's not needed. One of the issues in terms of the legislation is that it's been defined under the CCH decision at the Supreme Court level, so like it or not, it's in the room and it's not going away.

Now, the Copyright Board did an analysis of the tariffs on JK to 12, based on the CCH decision. Out of the billion copies or whatever that are made, they identified 280 million that educational institutions are obligated to pay for.

Would that be in keeping with our international obligations?

Ms. Ysolde Gendreau: I think the Copyright Board decision was based on the concept of fair dealing for the purpose of research. In that perspective, I don't think we can assume that a similar approach, a similar outcome, would derive from an analysis based on fair dealing for the purpose of education. I think this is one important consideration we have as a distinction with this new fair dealing provision.

On the other hand, I must say I'm not against all fair dealing. I think the fair dealing purposes we have now are perfectly acceptable. Indeed, I find fair dealing for the purpose of parody or satire, which is being added by the bill, to be a perfectly commendable purpose for fair dealing.

What I'm saying is that it is difficult to say 100% that with a new, added purpose in the act, the Copyright Board will necessarily come up with the same conclusion it did with respect to fair dealing for the purpose of research.

Mr. Charlie Angus: Again, I'm not trying to put myself in the mind of a Conservative—God knows what goes on in their heads on any given issue—but the fact that the Copyright Board established the tariff based on the CCH decision, which identified education, clearly.... Now the ministers of education are challenging that, taking it all the way to the Supreme Court, and we're in this open battleground. The Copyright Board was ready to accept education, and the ministers are fighting this, so would it not be prudent to put clarifying language into legislation so we're not having to go back to the courts again and again to define this?

It was defined by the Copyright Board. Can we not put that in legislation and then move on?

● (1715)

Ms. Ysolde Gendreau: I think that anything to clarify the bill would always be welcome.

But the issue you are raising is precisely one that shows the need for clarification. Within education, you also have the context of research. You do research when you do education; therefore, it makes sense that there should be a tariff that looks at the context of research within the area of education.

Research in itself is not the only point of education. I think this is why adding the purpose of education to fair dealing can open up something different from what has already been decided by the Copyright Board when it looked at its use of the materials in light of fair dealing for the purpose of research.

I think that's one of the problems.

Mr. Charlie Angus: Mr. Bloom, in the quick time I have left, the question on clarity on education is a concern for some rights holders. In a sense, everything could be education, or should education be defined as educational institutions, i.e. K to 12, post-secondary, where we identify that people are in courses and classes, as opposed to Shoppers Drug Mart employees getting the data for training and all kinds of copies are being made.

Do we need to clarify the language on what would be an educational use?

Mr. Glen Bloom: I can say our submission does refer to a specific, very recent Federal Court decision that looked at the words "educational textbook" and did conclude that "educational textbook" is not confined to something that is used in a structured educational environment.

So if the policy intent here is that there be a structured educational context for education, you may wish to look at the decision in the Federal Court and supplement the language in the bill.

The Chair: Thank you very much.

We'll move to the government side. *Madame Boucher, pour sept minutes.*

[*Translation*]

Mrs. Sylvie Boucher (Beauport—Limoilou, CPC): Good afternoon. I'm going to share my time with Mr. Del Mastro.

I have a simple question for both of you. Do you think it's important for there to be a reform of the Copyright Act? Yes or no, and why?

[*English*]

Mr. Glen Bloom: I do believe there is need for new copyright legislation. The legislation does need to be modernized. The legislation does not address many of the issues in the digital environment that are critical for both creativity and for the dissemination and use of works, and therefore it is necessary to modernize our act.

[*Translation*]

Ms. Ysolde Gendreau: I would agree. It's possible to adapt the act thanks to the case law. However, it needs to be modernized and updated. It's missing provisions.

The treaties that are being implemented, such as the WIPO treaties, make it possible, in a way, to accommodate the new reality. Technology is evolving so quickly that we have to adjust to ensure that those who disseminate know they have to consider the rights of authors and creators.

Mrs. Sylvie Boucher: So there could be negative consequences for creators and consumers if Bill C-32, An Act to amend the Copyright Act, were not passed? That's what you're saying?

Ms. Ysolde Gendreau: Yes, it seems to me. Lastly, it seems to me that the issues we're discussing about this bill aren't resolved. That's why we're all here. Because they haven't been resolved, they're creating a lot of uncertainty. They're also creating what is sometimes called a climate of discomfort for users who are used to ways of doing things. Then it becomes more difficult for the government to impose regulations, since people are used to there being no regulations.

Mrs. Sylvie Boucher: Thank you.

Mr. Del Mastro.

[*English*]

Mr. Dean Del Mastro: Thank you very much to both witnesses. I enjoyed hearing your testimony.

Ms. Gendreau, it appears that Madam Lavallée would like to have you say that under no circumstances should we ever pass the bill. It's at a legislative committee where it can be amended, frankly, but she seems to be suggesting that under no circumstances should we pass a bill if it has a mistake in it.

Have you ever seen a bill before a legislative committee that shouldn't be worked on? The bill has value, correct?

● (1720)

Ms. Ysolde Gendreau: Well, I can actually give you examples of things I like in the bill.

Mr. Dean Del Mastro: Wonderful. Why don't you give us a few things that you like about the bill?

Ms. Ysolde Gendreau: There are things that are positive in this bill.

For instance, the fact that photographers are finally being treated like other authors—

Mr. Dean Del Mastro: And they're excited about it.

Ms. Ysolde Gendreau: I think that's an extremely important fact. I did my doctoral thesis on them, so this is an issue I know about. I think the enabling provisions in proposed subsections 27(2.2) and (2.3) are very important.

Anything that affords greater moral rights to performers, as mandated by the WIPO treaties or within the working of exceptions, where we say that, yes, it's important for people to be recognized when their works are being used, I think is extremely positive.

I think as I mentioned earlier, the fair dealing for the purpose of parody or satire is a very welcome exception, and I'm also happy about the fact that for the moment we're not talking about extending the term of protection from life to 50 to life plus 70. So I think there are indeed positive elements in the bill.

Mr. Dean Del Mastro: Thank you very much.

Mr. Bloom, you spoke a little bit about TPMs—technical protection measures, or digital locks, as they're sometimes referred to. I know there are some around the table, Mr. Angus in particular.... In fact, we had Dr. Michael Geist in last week, who has devoted a lot of his time to the study of copyright. They are of the opinion that to be WIPO compliant you can allow TPMs to be taken down for personal purposes and still be WIPO-compliant. Is that your position?

Mr. Glen Bloom: No. Our committee simply looked at the bill as it's drafted to determine whether it's WIPO compliant. We did not look at and have not considered whether, if there were lower standards of protection, it would also be WIPO compliant. We'd need to see what the lower protection was if that were the government's policy direction.

Mr. Dean Del Mastro: But as constructed right now, you consider it a measure that is providing for WIPO compliance.

Mr. Glen Bloom: It's our opinion that the TPM provision certainly meets the requirements under the WIPO treaties.

Mr. Dean Del Mastro: There are organizations, such as the Canadian recording industry, such as the entertainment software industry, film companies, and many others—it's a long list—that have specifically said, “You know what? Allow the market to work. If you put these measures in place, it doesn't mean that we have to use them. It means that we can use protection measures if we choose, to dictate how copying can take place.”

In fact, it would work for music just fine. If we set in place a market whereby people actually pay for music rather than get it for free, as they do now, largely, we could then allow them to say that you can make a copy for a digital device or two copies for digital devices, and we'll lock it down after that.

Doesn't that seem like a reasonable and rational way to go about ensuring that copyright owners, the people who own the copyright, actually are extending a licence that allows them to make money and establish a market?

Mr. Glen Bloom: I spoke earlier about the need for modernization. One of the critical needs for modernization is to provide a regime of protection to enable a marketplace to operate in the digital environment. That's what this bill is seeking to do, and that's what Canada needs to do to meet its international obligations. So to the extent that we are addressing these issues in the WIPO treaties, that is certainly a positive step in modernizing our legislation.

Mr. Dean Del Mastro: We keep on trying to imply, across the way, how important it is that we move forward. It's been a long time that we have been trying to modernize the Copyright Act, and we really want to get moving on this.

Has your group done any work or heard testimony that you aware of on the amount of money that could be being funnelled into black markets and could be lost to industry, to artists, and others, that would otherwise be invested in the Canadian economy?

Mr. Glen Bloom: Well, certainly there are studies. We've not considered those studies. They've been largely done by other groups, other rights-holder groups. We're somewhat more neutral than that, but certainly those studies do exist.

Mr. Dean Del Mastro: Thank you.

The Chair: Thank you very much.

We clearly do not have time for another round, but we do have a couple of minutes. If our witnesses have anything more they'd like to say, I'll give you a minute each.

● (1725)

Mr. Glen Bloom: I have nothing to add.

Ms. Ysolde Gendreau: Perhaps I could add something. There are two things I would add.

There are other provisions in the act that may go against the grain of international conventions, not just the ones dealing with exceptions. Proposed section 30.04, on works made available on the Internet, or publicly available material, as they're also known, is reliant, in part, on the existence of a notice that would be put by the copyright owner to prevent copying. This raises serious issues concerning the Berne requirement that copyright does not depend on the existence of formalities.

There's also something that is very puzzling in that we have expanded here the exceptions for persons with perceptual deficiencies, something that is, of course, a very laudable purpose. There is already an exception for this purpose. However, right now, you may know that there is an international treaty being discussed. It's a bit ironic that we should be doing something about this issue before there's actually a treaty in place. So that would be quite different.

Overall, I think I would simply say that the 21st century is supposed to be a century that is based on the knowledge economy. Copyright, as an intellectual property right, protects a form of knowledge. Therefore, it is important to recognize the protection of what is being created by creators and promoted by copyright owners if we are to be an important player in this knowledge economy, with the manufacturing sector in decline in our countries.

Thank you.

The Chair: Thank you very much.

You have a point of order, Mr. Del Mastro.

Mr. Dean Del Mastro: Just prior to Mr. Bloom's response, he indicated in his brief that he was going to be forwarding a submission to government officials shortly and would provide it to the committee if so desired. We would appreciate that, I believe, for all members of this committee.

Mr. Glen Bloom: We will provide it.

The Chair: Thank you very much to our witnesses. We will meet again on Wednesday at 3:30 p.m.

Mr. McTeague, on a point of order.

Hon. Dan McTeague: I wanted to clarify that we have in fact a tentative witness list—

The Chair: We do.

Hon. Dan McTeague: —which has not been shared with members at this point.

The Chair: We would be happy to share that with you.

Hon. Dan McTeague: How many do we have, so I know?

The Chair: Madam Clerk.

Ms. Angela Crandall (Procedural Clerk): For Wednesday, we have four confirmed.

Hon. Dan McTeague: Would you care to divulge those?

Ms. Angela Crandall: The panel from 3:30 to 4:30 p.m. will be the Entertainment Software Association of Canada and the Canadian Alliance of Student Associations.

From 4:30 to 5:30 p.m., we will have the Association of Canadian Publishers, the Canadian Council of Chief Executives, with the Hon. John Manley, and the Barreau du Québec, with Marc Savoie.

Hon. Dan McTeague: Thank you very much

The Chair: This meeting stands adjourned to the call of the chair.

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