House of Commons
CANADA

Legislative Committee on Bill C-32

CC32 • NUMBER 007 • 3rd SESSION • 40th PARLIAMENT

EVIDENCE

Wednesday, December 8, 2010

Chair

Mr. Gordon Brown

Legislative Committee on Bill C-32

Wednesday, December 8, 2010

● (1535)

[*English*]

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

I call to order this seventh meeting of the special legislative committee on Bill C-32.

Today we have two hours of witnesses. In the first hour we will have witnesses from the Canadian Alliance of Student Associations, Zachary Dayler and Spencer Keys; and from the Entertainment Software Association of Canada, Danielle Parr and Jason Kee.

For five minutes, from the Canadian Alliance of Student Associations, you have the floor.

Mr. Zachary Dayler (National Director, Canadian Alliance of Student Associations): Thank you, Mr. Chair.

On behalf of our 26 post-secondary institutions across Canada, representing over 300,000 students, we'd like to thank you and the members of the committee for inviting CASA here today.

We come before you to bring your attention to the importance of creating education as a new category of fair dealing. The inclusion of education as fair dealing is viewed by our membership as one of the most important changes the Government of Canada can make through Bill C-32.

The importance of an education fair dealing right cannot be understated. Our neighbour universities and colleges in the Unites States are able to capitalize on their fair use education right to drive innovation, but the growing reality for Canadian post-secondary institutions is that they are being financially and legislatively left behind.

If this category is not created, students will be getting double-charged, sometimes triple-charged, for access to materials they've paid for through a variety of fees collected, whether they be through collective licensing, library, or tuition fees.

Licensing collectives, such as Access Copyright, are looking to expand their scope beyond photocopying, to include fees for digital copies of already purchased articles, quotations in PowerPoints, and even to colleagues sharing texts over mail.

Beyond that, the economic argument for a more liberal fair dealing regime is clear. Modern tech-heavy creative industries in the United States rely on fair use to find innovative ways to generate more wealth and income for their country. Studies point to the fact that this fair use economy amounts to 17% of the U.S. GPD, and education forms a significant proportion of that in direct contributions and training for future contributors.

If Canada seriously wants to be a 21st century leader in innovative sectors, the U.S. example shows liberalizing fair dealing must be a cornerstone. Simply, we must allow access for the sake of education or sit by and watch our competitors pass us by.

However, as it is currently drafted, the educational fair dealing right is not enshrined as a true right but as a secondary right that can be overwritten by a digital lock. Creating a balance in the bill is important, and digital locks have their role, but allowing them to override fair dealing undermines the very concept of fair dealing. If a work has a digital lock, a copyright holder can limit any use of it. And fair dealing means there can be no inherent limit of the purpose, if the purpose is just.

This is more restrictive than the copyright regime in the United States and goes beyond Canada's obligation under international treaties. If we are to take fair dealing seriously, it needs to be a true right and it needs to not be trumped by a digital lock.

There are also two further amendments to the bill that CASA is proposing. The first is an amendment requiring libraries to self-destruct articles they lend through interlibrary loans. Students have two options when taking on such an article: either print one copy of it on paper, or let them destruct five days after receipt.

This clause undermines the way modern study operates. The benefits to digital articles are immense. They can be carried everywhere, organized in new ways, volumes can be searched in seconds, and citations can be automated. By requiring students to physically print out these articles, the law would actively bring education research back into the 20th century, at a loss to all Canadians.

The second amendment requires professors and students to destroy their course materials 30 days after the end of the course. This is absurd. In the 21st century, students are taught to be information gatherers and synthesizers who can find the information that exists in the world and bring it together in a way that generates new and original knowledge.

Tests that were once closed-book in the 20th century are now open-book in the 21st. Requiring students to destroy the information they've built their skills on after the course is over is to force them to take an open-book test without the book, to build a house without their hammers, when they enter the workforce. It's needless and it doesn't impact the bottom line of rights holders.

Because students gained access to these lessons in an economically fair manner in the first place, if the cost of an education doesn't carry with it the ability to use that education in the workforce, I ask: what are students paying for?

Thank you, Mr. Chair.

● (1540)

The Chair: Thank you very much.

We'll now move to the Entertainment Software Association of Canada for five minutes.

Ms. Danielle Parr (Executive Director, Entertainment Software Association of Canada): Great. Thank you.

[*Translation*]

Good afternoon, and thank you for inviting me.

[*English*]

My name is Danielle Parr, and I'm the executive director of the Entertainment Software Association of Canada. With me today is Jason Kee, ESAC's director of policy and legal affairs.

Our association is the voice of the Canadian video and computer game industry, which employs 14,000 people in creative and cutting-edge jobs that are leading Canada's digital economy.

Video games make up the fastest-growing entertainment medium in the world, with some blockbuster titles rivalling Hollywood movies in sales and excitement. In 2009 Canada's video game industry accounted for more than $2 billion in retail sales of entertainment software and hardware, and contributed over $1.7 billion in direct economic activity to Canada's economy.

In our view, Bill C-32 proposes measures that will bring the Copyright Act in line with advances in technology and current international standards of intellectual property protection. Subject to certain technical changes we are very supportive of the bill, and we strongly urge the committee to pass it as soon as possible.

Piracy is a massive problem for the video game industry. It represents huge losses of revenues to game developers and publishers that depend on large, upfront sales to recoup the significant costs of game creation. Piracy ultimately leads to studio closures, lost jobs, or worse.

The bill will provide rights holders with the tools they urgently need to go after those who facilitate piracy, either by trafficking and circumvention devices or services, or by operating pirate websites. Further, by establishing clear rules it will provide much-needed certainty in a digital marketplace, permitting market forces to operate properly, and enabling creators and companies to choose for themselves the best way to make their own content available.

This will contribute to job creation; promote innovation; spur investment in the development of new digital products, services, distribution methods, and platforms; and support a diverse range of new and innovative business models that will, in turn, foster legitimate competition, more consumer choices, and lower prices.

Today we'd like to tell you about how copyright is central to the video game industry, and recommend specific technical changes intended to address loopholes and avoid unintended consequences. We've outlined these issues in more detail in our submission to the committee, so I'll just give you a brief overview.

When it comes to TPMs, the video game industry makes extensive use of technological protection measures in all aspects of its business in order to protect its works. We strongly support the provisions in the bill that will protect TPMs. However, we have concerns with some of the exceptions, and recommend narrowing and clarifying them.

TPMs not only help prevent piracy by allowing creators themselves to determine how their work can be used, and to be properly compensated for their work; TPMs also enable a wide variety of business models by enabling value-added features and facilitating new products, services, and distribution methods in a digital environment.

Let me break that down a little. The choice of whether or not a creator, artist, or company can use a TPM to protect a digital work is and should be the purview of creators. Consumers clearly have the right to avoid purchasing products or services that make use of TPMs if they wish, and it's incumbent on creators and companies to respond to consumer demand, or they'll suffer in the market.

Some companies, such as iTunes, have responded to demand for format shifting by offering TPM-free versions, while others have responded by providing a downloadable copy of the work with the packaged version, like many Blu-ray movies. However, there's no equivalent expectation that a video game purchased for a Nintendo Wii should be playable on a Xbox, and there's no consumer demand for format shifting.

The point is that each market is different, with its own specific rules and idiosyncrasies, and it's good public policy to support the widest possible range of markets and business models and let the consumer decide, rather than pick winners and impose a regime that may be beneficial for one sector over all others. Strong legal protection for TPMs accomplishes this by ensuring that the creator's choice to use a TPM is respected.

It's also important to understand that TPMs play an increasingly critical role in new and emerging platforms and distribution channels for content online. From new streaming radio and music services such as Spotify, to film and television services such as Hulu or Netflix, to gaming platforms such as PlayStation Network or Xbox LIVE, all of these services are supported by TPMs. They control access to the services, thus preventing piracy. They provide viable market-based revenue streams for creators, and enable value-added features, such as rental versus purchase. The video game industry also makes extensive use of TPMs to provide additional downloadable content for games to prevent cheating and to implement subscription services.

We're in the midst of a fundamental change in the way we consume content, and creators will increasingly use online platforms and other new innovative distribution models to deliver their content.

● (1545)

Strong anti-circumvention measures such as those contained in this bill are essential, not only to prevent piracy and allow creators to determine how their works will be exploited, but also to ensure the new platforms are secure and to maintain the integrity of the nascent digital marketplace.

However, we are concerned that certain exceptions to circumvention will be exploited by those who enable piracy by trafficking in circumvention devices and services in order to escape liability. Overly broad and vague exceptions will render the provisions virtually unusable. We recommend that those exceptions be narrowed to close this loophole.

Briefly I'd like to mention three other areas that are of concern for our industry.

With regard to enabling infringement, we applaud the new enabling infringement provision but we are concerned that as drafted it might not be effective. We recommend clarifying it to ensure services that are both designed or operated to enable infringement are captured and that rights holders can obtain the full range of legal remedies against enablers including statutory damages.

The second is the exception for user-generated content. Generally the video game industry takes a very permissive approach to UGC. However, the wording of the bill would essentially permit widespread appropriation of existing works. It essentially allows anyone to copy the designs, art assets, even programming code from a game, and release a copycat game, for free, on the Internet. This exception must be narrowed and additional factors added, such as the need for the new work to be transformative, to avoid these clearly unintended consequences.

Another issue of major concern is with regard to the statutory damage provisions. The new multi-tiered approach is clearly intended to limit damages payable by private individuals who infringe copyright for personal purposes, but it could create perverse incentives and have the unintended consequence of giving a free pass to large-scale pirates. We recommend that this unworkable distinction be eliminated and that instead the factors the courts must consider when determining the award be emphasized.

Thank you, and we look forward to your questions. *Merci.*

The Chair: Great. Thank you very much.

We'll go to a round of questioning.

From the Liberal Party, for seven minutes, Mr. Garneau.

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

I'd like to start with Mr. Dayler, or Mr. Keys if possible. You talked about a financial penalty that you feel students are paying at the moment with respect to copying materials for your educational purposes.

Can you quantify that for me? Can you tell me what you're paying under the current arrangement to be allowed to copy?

Mr. Spencer Keys (Government Relations Officer, Canadian Alliance of Student Associations): Currently the access copyright tariff with post-secondary institutions has them paying both a per student and a per copy fee. The per student fee is somewhere in the order of about $3.50, which the institution pays for every student. It's a few cents a page—I can't remember the exact number off the top of my head—for every page that is copied that goes into, say, a course pack. These are the photocopied packages of materials that are sold at the bookstore.

We don't necessarily have a total number for all of Canada in terms of how much they collect on that, but it's certainly a couple of tens of millions of dollars.

Mr. Marc Garneau: And the few cents per page, is that for the paper and the photocopying process, or is that identified for the fact that you are reproducing somebody's copyrighted material?

Mr. Spencer Keys: Reproduction.

Mr. Marc Garneau: Do you have an idea of how much a student has to pay out of his or her pocket in a year?

Mr. Spencer Keys: It depends, but you could easily be talking about a couple of hundred dollars. It really depends on the kinds of courses they're taking. A humanities or social sciences course is probably a bit more focused on journal articles and less focused on textbooks, so they would be paying quite a bit more.

It's also worth nothing that Access Copyright is proposing for their new tariff that the amount be multiplied tenfold for colleges, to $35 per student as a blanket rate, and $45 per student for universities. That is part of the reason we think it's really important that this education provision be included.

● (1550)

Mr. Marc Garneau: If the education exemption is built into fair dealing, what do you think your costs would go to?

Mr. Spencer Keys: I think it's primarily a question of prevention of this massive overreach that's being contemplated by the collective licensing groups right now. That's where we think this exemption is going to work for students. It's going to prevent that tenfold or more increase for something that is essentially a fair use, and keep that money in the pockets of students.

Mr. Marc Garneau: So if I understand what you're saying, what you're really concerned about is going from $3.50 per year to $35 per year.

Mr. Spencer Keys: Yes. I mean, that could easily be $16 million just on a strict institutional basis, which could be hundreds of professors in this country. We think that's a meaningful amount.

Mr. Marc Garneau: I'm interested in a per person basis. What are your feelings about those who obviously don't agree with the education exemption and say, “Under the education exemption, somebody is getting access to my work free of charge”? How do you respond to that?

Mr. Spencer Keys: I think it's quite clear that, as CCH v. Law Society has shown and to paraphrase Dr. Geist, fair dealing is not free dealing. There's a balance that has to be struck. You have to make contextual decisions. It's important to recognize that CCH was a decision about the use of a library. It was about learning materials. It used the context of learning to decide whether or not a library was overreaching in how it distributed content.

These contextual decisions are important, and we think there is protection through the court system to make sure that creators are not having their rights taken away. In fact, one of the provisions in the six-part test within CCH is “What's the effect on the marketplace?” We think that's a crucial question and we fully agree with that.

Mr. Marc Garneau: So what's your feeling about the courts? Yes, there are criteria to establish whether something is fair or unfair. What do you think about the person who challenges the fair use of something and has to go to court, a process that we all know can be expensive and can be dragged out for a long time? Do you think that's a fair balance?

Mr. Spencer Keys: Yes, actually. Yes, it is a fair balance, particularly because in this country you're not generally talking about individuals. You're talking about licensing collectives who absolutely have the capability to challenge the courts on behalf of individuals.

Mr. Marc Garneau: What is your definition of “education”, if it becomes an exemption?

Mr. Spencer Keys: We are not qualified to come up with a definition for the purposes of the bill. We think the courts would have the greatest latitude and the greatest capability to answer that question.

Mr. Marc Garneau: I wasn't expecting you to be legal experts. I just wanted to get your feeling for what you think qualifies under fair dealing.

Mr. Spencer Keys: Generally speaking, we'd be saying that formal education, not a book club but something that is happening in a more formal setting, would generally be the area we're discussing when we think of education.

Mr. Marc Garneau: Thank you very much.

Ms. Parr, you mentioned that you had some concerns for user-generated materials such as mashups. Do you have some specific wording you could suggest to us, that we might consider as we go forward with this bill?

Mr. Jason Kee (Director, Policy and Legal Affairs, Entertainment Software Association of Canada): Absolutely. Our principal concern is not with the provision per se. As an industry, we're very permissive with respect to UGC. It's that it's constructed so broadly that you could drive a Mack truck through it, and it would enable all sorts of misappropriation that clearly was not the intent.

I think you could narrow its application by adding a number of factors. The most notable would be one that Professor D'Agostino raised—i.e., that the essence of UGC is that the use is somehow transformative, that it's actually creating a new work. This doesn't just mean creating something new—it means creating something new and contributing. So adding a factor that requires a transformative element would be one way of doing it. Another way would be to limit the application not just on a non-commercial basis, but on the basis of standards that are currently in the act, provided that the limitations don't prejudice the rights owner. You could also do it by looking at the factors now applied in the fair dealing context—which are good, solid factors—and considering how to incorporate the those factors into the UGC, permitting the uses that encourage creativity while taking steps to avoid abuses.

● (1555)

Mr. Marc Garneau: I happen to agree that it needs to be tightened up.

I think my time is up.

The Chair: Thank you.

[*Translation*]

Mrs. Lavallée, you have seven minutes.

Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ): Thank you very much. I would like to begin with a comment addressed to our witnesses from the Canadian Alliance of Student Associations. After that, I will have questions for our witnesses from the Entertainment Software Association of Canada.

As I see it, the exemption you are requesting for education is not a good thing. Allow me to explain. First of all, it's a very bad principle to be teaching our young people and our children. They should be taught to respect copyright and intellectual property, and the fact that intellectual property and copyright should be remunerated. Students, first and foremost, should be learning this principle and applying it. Allowing you to be relieved of the obligation to pay copyright would not serve you well at all. If you feel that your fees are too high, the school should be asking for lower prices from other suppliers—for example, for pencils, blackboards and chairs. We should not be reducing copyright remuneration pay to creators, because they are the people who earn the least. On average, they earn less than $25,000 a year in Canada.

It's a little like asking to be exempted from homework or other school work for a week. It would be pleasant at the time, but afterwards, when you had to take the ministry exams, you would see that you didn't have all the tools or all the knowledge you need to pass your exams. In fact, you are punishing yourselves. Tomorrow, you will be these same creators and scientists publishing your work. Unfortunately, you will not be entitled to copyright.

Now I have some questions for our witnesses from the Entertainment Software Association of Canada. I read your brief very carefully. From what I understood, you are basically asking for five amendments.

The first amendment has to do with circumvention, and everyone supports you on that. This is an unintended mistake on the part of the people who drafted this bill. Everyone wants to curb piracy and ensure that it is wiped out. In that respect, this isn't a serious problem.

Your second amendment deals with enabling infringement. This is another huge problem. Under the current act, this applies to any service which is “designed primarily to enable” on-line piracy. Your amendment suggests removing the word “primarily” and replacing it with the term “operated”, in order to clarify things.

Your third amendment deals with the exception for user-generated content, known as the YouTube exemption. This does create a problem because it basically gives anyone the right to use works without authorization and without remuneration for non-commercial purposes. As you stated in your brief, in the software gaming industry, as is the case with other artistic genres, people are more interested in the glory than in the money. You are recommending that this clause be amended so as to restrict it substantially. Why don't you simply ask to have it removed, since it is an exception that is found nowhere else in the world and that Canada seems to have just pulled out of a Cracker Jack box.

Ms. Danielle Parr: I will respond in English; it will be clearer.

Mrs. Carole Lavallée: No problem. I have access to simultaneous translation.

[*English*]

Ms. Danielle Parr: *Parfait.*

Basically, I think we understand that this bill is a compromise of a wide variety of stakeholders and a wide variety of industries, and as my colleague said, generally our industry takes a fairly permissive view to user-generated content. There are just certain instances where we think it can cause real harm to our industry, and that's why we're just proposing a minor amendment to the legislation. In principle we don't have a problem with UGC, but we just wanted to narrow the scope of what's allowed.

● (1600)

[*Translation*]

Mrs. Carole Lavallée: Why not just remove it?

[*English*]

Mr. Jason Kee: Obviously, eliminating the provision entirely would resolve the issue; we were attempting to operate within the policy framework outlined with this bill and understand the clear desire or intention to facilitate at least some kind of limited personal use creation working within that framework. But it would resolve the issue.

[*Translation*]

Mrs. Carole Lavallée: Ms. Parr, I would like to come back to what you said earlier about this bill being a compromise. I have to say that, unfortunately, it is not a compromise. This bill is heavily weighted in favour of an industry such as yours, entertainment software. I'm happy for you, because your industry is important. However, this bill is seriously imbalanced.

You are proposing five amendments. If these amendments do not pass, would you still be prepared to support Bill C-32? I guess you would be in favour of Bill C-32, even though the artistic and creative community is sharply critical, has denounced it and would never want it to pass.

One proof of that imbalance is the damages regime. You refer to that in the fifth amendment you are suggesting. The damages you refer to relate more to musical works.

This is about circumventing a tool which is extremely valuable for you, namely digital locks. Clause 48 talks about criminal sanctions amounting to $1 million.

A musical work is worth $20,000 in terms of damages, whereas circumvention of a digital lock, which is extremely valuable for the gaming software industry, costs $1 million and exposes someone guilty of such an offence to a five-year prison term. There are pre-set amounts for damages. That is a good thing, but they are capped at $20,000, which results in an imbalance.

So, that brings me to damages. I would like you to tell me whether I have this right. Does the $20,000 fine also apply to software that is copied?

[*English*]

Mr. Jason Kee: Within the context of this bill, we're not proposing an increase to the level of statutory damages, mainly because, in our view, the commercial and non-commercial distinction that is being proposed in the bill creates a number of unintended consequences, largely on the basis of there being plenty of significant economic harm being created by parties who are doing so for non-commercial purposes.

Essentially, it's resolving the issue in a way that would not permit wrongdoers to get away with things, as opposed to suggesting an increase of the $20,000 limit.

The Chair: Thank you very much.

Mr. Angus, you have seven minutes.

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

Thank you, both groups, for very interesting presentations.

I'd like to start off, Mr. Kee and Madam Parr, on the issue of user-generated content. I find interesting the suggestion from the Bloc that we'll just erase the provision and then all of the user-generated content will magically go away. But we know it doesn't. User-generated content is all over the Internet.

I must confess myself guilty; I do lots of user-generated content with my little iMovie. I think some of it's not bad.

I'll leave that to my colleagues to go and check out, though.

An hon. member: [*Inaudible—Editor*]...debate.

Voices: Oh, oh!

Mr. Charlie Angus: What I'd like have clarified, though, is how do we continue to deal with the fact that people are actively involved in creating and remixing, and how do we separate those?

I had asked one of the previous witnesses whether or not the language should be clarified in proposed section 29.21 by putting in the Berne three-step provision. I say this because, clearly, user-generated content should not unreasonably prejudice a work. It should not interfere with the normal exploitation of the work. I wonder whether or not that language is clear enough or whether your suggestion, based on the idea of a previous witness, Ms. D'Agostino, about "transformative uses", would be.

Do you think the word "transformative" covers that, or should we be more specific?

● (1605)

Mr. Jason Kee: I think "transformative" would be one element of several elements you would need to incorporate in there.

I certainly think the suggestion to incorporate elements like Berne is exactly the direction we're proposing. The specific concern I would have about the Berne language is that Berne is about determining when an exception is appropriate or not, and it would be conflating two very different regimes to incorporate that specific language.

Mr. Charlie Angus: Right.

Mr. Jason Kee: But I am essentially proposing those elements, because, first, I'm proposing that it doesn't affect the work prejudicially and I'm proposing that you incorporate fair-dealing style limitations, which is our interpretation of what Berne is. And I'm proposing this transformative element, because it's actually an element that's been included in other jurisdictions but that we haven't included, but which is very sensible to incorporate into a UGC provision—because, again, I think the real value of it is that you're creating something new that you're distributing to the world. That work is more than just fair dealing; it's actually doing something beyond that, and the word "transformative" gets at that.

Mr. Charlie Angus: All right.

I want to follow up on the issue of technological protection measures, because clearly that's an issue of some debate. At the outset I will say that I recognize the incredible importance of the gaming industry in Canada, the gaming software. We are a world leader, and we want to make sure we protect that. We don't want to take the bottom out, and technological protection measures certainly play a role.

On the other hand, we have issues. For example, I was talking to documentary filmmakers. If there's a technological protection measure on the DVD, they might have the right of access for parody or satire, even for commentary, but if they break it, they're going to be in a bit of a dicey situation.

I was speaking with television journalists who were saying they didn't know if they were now going to be able to make use of commentary showing footage, because if there are technological protection measures in place, that would impede their ability to do journalism.

Can we find language that is going to ensure that the rights being guaranteed on excerpting for parody or satire, for example, are not arbitrarily erased? But meanwhile we maintain strong provisions so someone is not going to copy a bunch of games for private purposes and give them out to all their relatives at Christmas.

Ms. Danielle Parr: We appreciate your understanding that our industry, I think, is different from a lot of other industries in the sense of the expectations about format shifting.

One thing I would point out in terms of fair use is that you can still make an analog copy of something and exercise your fair dealing rights. You can videotape portions of a video game and use that. You can take screen shots. You can do all those things. It doesn't necessarily have to guarantee the right to make a perfect digital copy and use that in the work.

I just give you that to contemplate.

Mr. Jason Kee: The trick is that balance, and it's very challenging to achieve. From our point of view we have a principal, overriding concern, which is to ensure that those who are trafficking in circumvention devices, offering circumvention services, particularly charging money for it and in doing so making money on the backs of creators, are not able to do that.

The bill currently gets at that and does so in a very robust way and then offers a laundry list of exceptions and additional regulatory-making power and so forth to try to balance the interests there.

The main concern we would have is that the more you open it up, the more likely you're going to find these bad actors essentially exploiting those loopholes to justify their own activities. This is best illustrated by giving you a quick example. We have a guy who decides he wants to get UBISOFT's Assassin's Creed Brotherhood, which was just released by UBISOFT Montreal—buy it now—and downloads it and puts it into his Xbox. It recognizes it's a pirated version and won't play it. So he takes that Xbox to someone to have it modified so it will play the pirated game. Now he has an Xbox that will play all pirated games. The guy makes $80 to $100 on the modding services.

If we're dealing with a formulation that has broad exceptions in it, what's going to happen is that the act of infringement, which is the piracy of the game, the downloading of it, and the act of circumvention are distinct from one another. If we try to approach this guy who did the circumvention for money, saying he did something illegal, he's going to say he had no knowledge of any piracy: he's innocent. It makes the threshold and what we have to cross in order to establish his guilt nearly impossible to attain.

So our principal concern is to ensure that any sections that are introduced don't undermine our ability to pursue these actors and also don't have a negative effect on the overall digital content.

● (1610)

Mr. Charlie Angus: That's interesting.

To our student representatives—again, we're trying to find out how we maintain this balance—are you seeing unintended consequences, and is there a way we can deal with this?

Mr. Spencer Keys: Yes, absolutely. I think the key for us is linking circumvention to infringement and making sure that is very clear. We have no problem with digital locks for preventing infringement. That scene is totally reasonable to us. It's when it's a non-infringing purpose that it becomes a concern.

You're bringing up the idea of documentary filmmakers, and certainly it's something we are concerned about because news reporters have the fair dealing right to use copyrighted work for news, but if a digital lock trumps that fair dealing right and works behind a lock, it would become unreportable, unstudiable, uncriticizable, and that would be a step backwards.

So if you are linking it to infringement...and make sure that it's still carved out that if it's for a fair dealing purpose, you can circumvent in that particular instance. I'm glad to hear there's so much support for CCH and the six-part test, and that might be a way to adjudicate those peripheral disputes. But we think a balance can be struck there.

The Chair: Thank you very much.

We'll have to move to Mr. Lake, for seven minutes.

Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC): Thank you, Mr. Chair.

Rather than break the pattern here, I'm sure Mr. Kee might have some comment to make on Mr. Keys' recent comments or just on previous comments regarding technological protection measures.

Maybe I'll let you comment on what Mr. Keys has suggested.

Mr. Jason Kee: This is actually good; it highlights the tension, because this is the exact concern that we have. The proposal to link circumvention and infringement means that the example that I provided means we would never be able to pursue that. What we're going to find is those who are offering circumvention devices and services, at least the smart ones, are going to quickly distance themselves from any act of infringement. What happens is you're never going to be able to establish that the person engaged in the offering of services, the actual act of circumvention, actually had actual knowledge that it was being done for infringing purposes. From an efficacy standpoint, it basically renders the provisions literally useless for the purpose of enforcement.

Mr. Spencer Keys: Would that be the case for your industry? Sorry about the back and forth, but would that necessarily be the case? How many situations are we talking about where there's a fair dealing right to...? I don't know how much of a fair dealing right there is to playing Halo.

Mr. Jason Kee: The issue, again, is I think you need to look at the entire range of exceptions that are available under the act. So the issue is not just a fair dealing; is there any kind of non-infringing use that they can claim to fall under? That's what they would be pushing for.

Mr. Spencer Keys: Yes, and I guess that's our point. That's where CCH has shown there's a balance that can then be struck by the courts. It's not simply an assertion of a fair dealing right that exists. It's something a lot more complicated than that.

Mr. Mike Lake: I"d almost like to let this go for the next 20 minutes and just let the two of you debate.

I do have a couple of things. I would like a clarification on where Mr. Garneau was going earlier regarding Access Copyright. It's my understanding that Canadian schools pay in excess of $20 million per year to Access Copyright, and Bill C-32 does not change that—I don't believe.

Mr. Zachary Dayler: Access Copyright currently has a levy in front of the government right now to increase that fee.

Pardon?

Mr. Dean Del Mastro (Peterborough, CPC): Dramatically.

Mr. Zachary Dayler: Yes. The changes are being proposed.

Mr. Mike Lake: The fact of the matter is that Bill C-32 doesn't change the $20 million plus that is already being accessed by Access Copyright, I guess, in a sense.

Secondly, is there any indication on fair use and the use of fair use in the U.S.? How might that have impacted the American publishing industry?

Mr. Spencer Keys: We have a report here that we can certainly circulate to the committee.

You're talking about something in the order of $4.4 trillion in revenue—accounting for a one-sixth total of U.S. gross domestic product, employing 17 million workers—attributable to fair use industries in the United States. This is a 2010 study.

That's grown substantially since it was last done in 2006, and certainly we can circulate that to the committee afterwards.

Mr. Zachary Dayler: To follow up on that, it talks about fair use economies and it outlines that those types of industries would be manufacturers of consumer devices, educational institutions, software developers, Internet search, and web-posting providers. They have all seen an increase in terms of employment, in terms of revenue, and in terms of what they're able to do as a business and grow.

● (1615)

Mr. Mike Lake: Speaking of employment and revenue, I'm going to transition to Ms. Parr and Mr. Kee.

How big a player is the Canadian gaming industry worldwide?

Ms. Danielle Parr: Canada has the third-largest video game industry in the world. If you think about that on a per capita basis, it's especially impressive. These are the kinds of jobs I think that Canada wants in terms of our future, our digital economy. These are jobs of high value, high pay, and high skill. The average salary of a video game developer in Canada is $68,000.

So these are really valuable jobs. We may be large corporations, but there are also small independent developers and a variety of different businesses across the country. I think you're huge players on the world stage.

Mr. Mike Lake: One of the challenges that we've had before the committee is a discussion about how badly we really actually want to pass this legislation. I know that, from a government standpoint, it's critical that we move the legislation forward. I think we as a committee really hold the future of the legislation in our hands. We will pass it or not pass it based on decisions this committee makes in terms of how much effort we're going to put towards it.

How critical is it to all of those jobs that you're talking about, to that economic impact, that we pass this legislation?

Ms. Danielle Parr: In our view, this bill is critically important to our industry and to the continued growth of the intellectual property businesses in Canada, in general. I think it speaks to the government's commitment to intellectual property and the digital economy. We feel that this legislation is essential, and we really strongly urge the committee to pass it quickly.

We're very concerned. I think everyone has heard rumours about a possible spring election, and we're deeply concerned that this bill might die on the order paper for a third time.

Mr. Mike Lake: Mr. Keys, you are nodding. Do you want to comment?

Mr. Spencer Keys: Certainly we think that the education provisions are incredibly important. And this is certainly a positive new step in the long history around copyright. We would not want that to die on the order paper either.

Mr. Mike Lake: Right.

I have one last question for you, Ms. Parr and Mr. Keys. You were talking about the importance of legislation. I want to hear a little bit more specifically about the TPM measures. Obviously, you have fairly strong feelings about the technical protective measures. Why are they so important? Maybe you could use some specific examples to help Canadians understand, when they're looking at this, why it's so important that they remain a part of this bill.

Ms. Danielle Parr: From our industry's perspective, our revenue is from the sale of our intellectual property. The one thing I'll emphasize for the committee is that, again, the new technologies and the new business models emerging now—the streaming services, the online subscription services—all depend on TPM. So it's not just about CDs and format shifting. If you think about the video game industry, Electronic Arts has said that 50% of their business next year is going to be digital downloads.

We have to think beyond the current context and be forward-thinking in terms of how the technology will evolve in the coming years. TMPs are critically important to these new business models. They create more choice for consumers, lower prices, and more flexibility. New business models let people develop a range of different types of products to suit different types of consumers.

I can't underline enough how important TPMs are in creating the ability for businesses to make the decisions themselves. That's why you need strong protection in the law so that people can choose and the market can decide whether a business model is viable.

The Chair: Thank you very much.

Mr. McTeague, you have five minutes.

Hon. Dan McTeague (Pickering—Scarborough East, Lib.): Thank you, Chair. I realize the time constraint we're under.

I thank the witnesses for being here.

I might actually pick up, Mr. Keys and Mr. Dayler, from where you left off, given the shortness of time. There was a suggestion you made earlier that collective organizations can get access to the courts to find appropriate remedies. You're not suggesting, then, that we make a cottage industry for more lawyers, are you?

Mr. Spencer Keys: I'm suggesting that the industry already exists.

Hon. Dan McTeague: Beyond that, though, in all seriousness, the question of defining what is fair, I think for many people, from this perspective, would be seen as an exception. It doesn't mean a fair dealing right.

I think the approach you're taking leaves one with the impression that the sky is the limit and that you might actually be suggesting that we could be copying, each and every one of us, every page of *War and Peace*, for example. Is this in fact the position you're taking?

● (1620)

Mr. Zachary Dayler: If I may, education is changing. The realities are changing. Distance education is becoming more important. How students use media—through presentations, through incorporating snippets from it, and so on—is where education is going and what in-classroom is teaching.

Obviously, students already pay for access to materials through their fees. Our concern is the double-charging of students now for articles in media that currently exist and that they can access. A faculty member printing out full copies of *War and Peace* would find it rather expensive. But should that faculty member have the ability to take portions of that novel and provide that to their students in study? Absolutely.

Hon. Dan McTeague: We were kind of hoping it would be copies of *Hansard*, but I digress.

Voices: Oh, oh!

Hon. Dan McTeague: Access Copyright, as you probably know, does not actually set the tariff rate. It's set by the Copyright Board. I think you've left the impression here that it's the other way around.

We know that it takes all the evidence and all the concerns from various parties into consideration, and of course it balances those interests. I'm wondering, from your perspective, whether CASA, in its deliberations over the past several months, has been able to present its concerns and make more formal complaints directly to the Copyright Board on the educational tariff rate. If so, when? What did you say? And can we have a copy of it?

Mr. Spencer Keys: That is ongoing right now. Certainly, if you want to get a lot of details about that, please go to Howard Knop's Excess Copyright blog. We are, in fact, intervenors in that proceeding right now. There's a decision being made about whether or not the existing tariff should be temporarily extended as we go into the exploration of this new tariff.

Yes, we can definitely send a copy of our statement of objection and any further—

Hon. Dan McTeague: You made a presentation to the Copyright Board?

Mr. Spencer Keys: We haven't made a presentation, we've made a submission. We are intervenors

Hon. Dan McTeague: Right.

I'm running out of time here.

You mentioned earlier, Mr. Keys—I believe it was Mr. Keys, it might have been Mr. Dayler as well—the destruction after 30 days. This has been brought or introduced, from what I understand of my reading of the legislation, for the first time in Bill C-32. I think you suggested that it was somehow the position as a result of pressure or involvement by the publishers. I don't think that's the case.

Do you in fact want to clarify that comment?

Mr. Spencer Keys: I don't believe we suggested that. I think we just suggested that we thought it was something that impeded learning and that your course materials were a component of your course, and you should be able to build upon that into the future.

Hon. Dan McTeague: I have time for one more question. I'm begin signalled by the chair.

Maybe I could go back to the ESA. There is a section here; in fact, it's on your very last page of recommendations, where it says:

> Apply the damage award on a per infringement basis and not apply to all infringements in order to avoid the perverse incentives created by the system.

Do you want to expand on that, Mr. Kee?

Mr. Jason Kee: Certainly.

Essentially, the challenge with this new kind of two-tiered system of statutory damages is that for the non-commercial tier it sets a new range between $100 and $5,000, but unlike the current regime, it actually is not on a per infringement basis. It will apply to all infringements that people have ever engaged in from the entire history of their life from the day the legal proceedings are filed. Over and above that, it also says, “all other rights holders, after the first one, will be barred from collecting statutory damages and will not be able to obtain that”.

The perverse incentives this creates means that you have a maximum capital of $5,000 for infringement, which creates a perverse incentive to maximize the value of that cap and actually download as much as you can once you start—

Hon. Dan McTeague: Mr. Kee, do you have examples of where that $5,000 would be a disincentive, that I can infringe ad infinitum and make several millions of dollars? How wouldn't that $5,000 actually be an enticement?

Mr. Jason Kee: Absolutely. In fact, there was one gentleman at the copyright consultation who we called Mr. "Six-Terabyte" because he was basically professing that he had a six-terabyte server offering up Canadian content and making Canadian content known the world over even if no one was getting paid for it. He literally wrote in a blog post that he was thanking the government for this because he could do all he wanted for $5,000, while he was clearly creating many, many, many, times more than that in terms of economic harm.

The Chair: Thank you.

[*Translation*]

Mr. Cardin, you have five minutes.

● (1625)

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

Ladies and gentlemen, welcome to the committee.

I would like to come back to education and the royalties that are paid through collectives. If this bill passes, the potential loss for copyright holders is estimated to be approximately $40 million; that is $40 million in relation to a total budget of $72 billion for education in Canada.

As far as I am concerned, the contribution made to copyright by the educational and university communities is not out of line. I don't intend to talk about ancient history, at the time I was in university, but we paid for every book that we used. We paid the full cost. Sometimes I even wondered whether the amount we were paying for books, which obviously included copyright fees, was not actually higher than our tuition.

If we're talking about the copyright legislation, I think it's important to think about protection for copyright, rather than proposing changes to the legislation that will impoverish authors or perhaps even take away their desire and motivation to write for the education community.

I would like to find out what your underlying motivation is. The fees are not that high, considering all the other things that you have to pay. Sometimes parking a car at university costs a lot more than copyright. What is the relative importance of the potential savings you will realize, to the detriment of copyright royalties?

[*English*]

Mr. Spencer Keys: I think we should be really clear that our concern is less about the past costs of academic materials than about protecting us from exorbitant future costs. Mr. McTeague's point about access and copyright—you can go before the Copyright Board—is certainly taken, but that isn't the only point we have where we can project into the future what creators will be asking for.

They want to be paid for printing a digital copy of something you already have in your possession. They want to be paid for sending a digital copy to a colleague via e-mail for any reason whatsoever—it doesn't matter if it's an infringing use. They want to be paid for storing a digital copy on a hard drive, which actually happens any time you ever open anything on a computer.

They want to be paid for posting a digital copy of a copyrighted work to a secure network, which is often personal use in this age of cloud computing. They want to be paid for projecting an image on a wall during a presentation. They want to be paid for showing another person a digital copy on your own computer; and they want to be paid for posting links to digital copies, regardless of whether they're freely available on the Internet.

Those are the concerns we have. What is the future of this? We think these education exemptions protect us from this highly unreasonable future.

[*Translation*]

Mr. Serge Cardin: To what extent can that be considered unreasonable? At some point, it seems appropriate to assume that copyright or intellectual property… A product is created by someone and everyone has the right to be paid for what he or she does. If that remuneration does not come in the form of royalties, how will it be paid? And, is it unreasonable? This is something that could be negotiated. Copyright royalties have to be paid.

With respect to entertainment software, I understand your position. You work in the software industry. Everything is going digital and, technically, everything goes through you. Your role is to innovate. We know that there is ongoing innovation in that industry. You are well positioned to control the intellectual property associated with your own products and to protect it. You are also well positioned to apply it to other products, and it could be done. Would it be possible to simply impose a tax, as the Conservatives call it? We call it royalties. Taxes scare everyone. Taxes are collected by the government to meet the needs of the population; in this case, we're talking about royalties.

In terms of innovation and technical advancement, it is possible to control just about everything. Would it be possible to control the use of all digital audio players? If not, should a direct royalty be applied?

● (1630)

[*English*]

Ms. Danielle Parr: On that issue, our industry would prefer a market-based solution where we can monetize our own products. In our view, a levy on devices is actually harmful and creates a perverse incentive for piracy. It's certainly not something we as an industry would support.

The Chair: Thank you.

Mr. Braid, you have the floor.

Mr. Peter Braid (Kitchener—Waterloo, CPC): Thank you very much, Mr. Chair.

Thank you to our presenters for being here this afternoon.

I'd like to start with a couple of questions for the Canadian Alliance of Student Associations.

Setting aside a discussion about BillC-32 specifically, in the context of a general discussion about copyright, how would you summarize or encapsulate the interests of students in a general discussion about copyright?

Mr. Zachary Dayler: I think the major thing is making sure that students have access to everything they need to create innovative solutions, programs, and works of art. It comes down to making sure students have the ability in a safe space, being a university, to try new ideas and put them out there for public consideration. We get new ideas and businesses and keep people here in this country through encouraging them to be innovative, and access to academic materials does that.

Mr. Peter Braid: So you're drawing a link to innovation and entrepreneurship here.

Mr. Zachary Dayler: Absolutely.

Mr. Peter Braid: Okay, interesting.

Bringing this now to Bill C-32, what elements of Bill C-32 help to advance this agenda?

Mr. Zachary Dayler: Obviously the major point that we are trumpeting or bringing to you today is the inclusion of fair dealing as an educational provision: making sure that students aren't penalized for using, testing, and trying out new materials in the classroom.

Mr. Peter Braid: The model in the U.S. and their copyright legislation, is that something for us to consider and look at with respect to fair dealing?

Mr. Spencer Keys: Certainly we've seen in recent court decisions in the United States that they've decided that circumvention for fair use, as they call it, circumvention of, say, a digital lock, is appropriate and that generally these fair use provisions—fair dealing here—are incredibly important to protecting users and creators because essentially creators in a lot of situations.... I mean, there are very few of us who come up with 100% original work. I would like to meet that person, it would be wonderful. But we think it's an important component to the innovation system.

That question of transformative change is definitely an interesting one to consider. But it's all wrapped up in innovation, certainly.

Mr. Peter Braid: Very good.

Do you believe that Bill C-32 strikes the right balance between the interests of students and the interests of creators?

Mr. Zachary Dayler: I think if education as a fair dealing is kept in there as a provision, it's a fine step towards that balance. Obviously you want to make sure with copyright that it is living, that it will make sure it addresses the future needs of the industry and of students. I think striking that balance is an ongoing project.

Mr. Peter Braid: Great. Thank you.

Moving now to the Entertainment Software Association, thank you very much for being here.

Ms. Parr, you had a recommendation earlier with respect to user-generated content. I certainly understood the rationale behind the concern, the recommendation. We've also had discussions about technological protection measures, TPMs.

Would not TPMs protect you against the concern that you described with respect to user-generated content? And if not, why not?

Mr. Jason Kee: Essentially, not necessarily—for a number of reasons, most of which are technical. One is that the UGC exemption in the bill, unlike some of the other exemptions, actually does continue to apply even if a TPM is circumvented in order to create the UGC. So that doesn't disallow it.

Secondly, it's possible to access some of the art and the design and so forth of a game without actually circumventing the TPMs and then replicate that in another game, either by literally reaching into the game and drawing it out and similarly doing the same for the code. That's our concern. Essentially it's because you can actually do UGC without circumventing, which I think is good because it actually promotes UGC. But on the other hand, it means it can be misappropriated.

● (1635)

Mr. Peter Braid: Thank you for clarifying that.

I have a higher-level question now. Could you describe or elaborate on how effective and modernized copyright legislation will bolster the growth of your important sector?

Ms. Danielle Parr: As I said earlier, I think it speaks to public policy commitment to supporting intellectual property, saying this is of fundamental importance to our economy and creating an environment that's going to foster the growth of IP businesses in Canada. This is certainly a piece of that whole strategy.

Certainly we need to be able to protect our intellectual property. The level of investment that's made in developing a video game today, a major triple-A title, you're talking $20 million, $30 million, $40 million in terms of just development costs and years and person-hours of development. It's a massive investment, and only a very small number of games are actually profitable. So the ability to protect those creations from theft is essential to the profitability of the business.

The Chair: Thank you very much. That will be the last word.

Thank you to our witnesses.

We will suspend briefly to bring in our next panel.

● (Pause) ●

The Chair: If our witnesses will take their seats, we will call to order this seventh meeting of the special legislative committee on Bill C-32.

We have three groups that are going to present this time: from the Association of Canadian Publishers, we have Carolyn Wood and Grace Westcott; from the Barreau du Québec, Marc Sauvé, Georges Azzaria, and Pierre-Emmanuel Moyse; and from the Canadian Council of Chief Executives, the Honourable John Manley.

We will start with the Association of Canadian Publishers.

● (1640)

Ms. Carolyn Wood (Executive Director, Association of Canadian Publishers): Thank you for this opportunity to speak today on behalf of the ACP. It represents 127 independent publishers from across the country. We have members in all provinces. They publish books in all genres: literary books, cookbooks, children's books, general interest books, scholarly works, and textbooks. They represent, by and large, small- to medium-sized companies, and I would have to say their emphasis is more on the small-sized than the medium-sized companies.

Though a few are affiliated with universities and other not-for-profit organizations, most are owner-operated businesses—independent, English language, and Canadian owned. The multinational publishers located in the greater Toronto area represent to our members the chief competition in the marketplace. We have no foreign-owned companies in our association, but we share some common ground with them on copyright, and particularly on Bill C-32.

For all publishers, copyright is the ground that we stand on or the roof over our head—you can pick your metaphor. It's the sole source of our revenue. Authors give us the right to make copies. We produce copies and sell them, and we sell the rights to other publishers to produce and make copies in other languages, other territories, and other formats. That's it. That's our business. We have no concert revenue. We have no spinoff merchandise. We carry no advertising in our pages.

The revenue that derives from copyright is the sole revenue for our members, so it's not unreasonable that we are pretty interested in this bill. We are really glad to see it come down the pike. We've waited a long time for it and we're glad to see a bill get to this point. We've watched others fall off the tracks over the years.

We do have a few concerns, and there are four in particular I want to talk to you about today.

The first step for us is the education exemption. It is, as written, so broad and so undefined as to create enormous uncertainty for our industry with respect to its markets and future prospects. I was interested to hear the students say that any uncertainties can be resolved in the courts. I don't think anybody thinks that this would generally be the best outcome.

For our members—small businesses—legal solutions to this kind of problem are the last thing we want to see and can afford. We can't afford expensive litigation, and we can't afford to lose the market share that is at risk while all this plays out. We are interested in seeing clear definitions of “education”, and of the context in which this exception would be applied.

We are also concerned about the reduced role for collective licensing we see in this bill. The model represented by Access Copyright and Copibec has worked effectively for a long time to produce, as a result of much trial and error and many arbitrated decisions, broad access to a huge range of copyright-protected materials in a convenient and affordable form. If you want to negotiate the price, that's a market decision. If public representatives choose to do away with a lawful business model, that's a political decision. And if that model has a long history of working well for many institutions and individuals, that's a counterproductive political decision.

Our third point was addressed in the previous session on the limits to statutory damages for non-commercial use. We too are struck by the difference between copying by individuals for private purposes and the much broader and much less well-defined term of “non-commercial use”.

● (1645)

Finally, the extension of provisions on interlibrary loans to digital works—those provisions that applied previously only to print—causes serious market problems particularly for university presses in Canada, which publish the majority of Canadian scholarly journals. A change like this will severely undermine that market and perhaps eradicate it.

The total of all this—one of many—is a disincentive toward the production of intellectual property. While I was interested to hear the students talk about how access to intellectual property is one of the cornerstones of an innovative economy, if there is no incentive to produce those materials, then an innovative economy is the last thing we're going to have.

The Chair: Thank you very much.

We'll move to the Barreau du Québec.

[*Translation*]

Mr. Marc Sauvé (Director, Research Services and Legislation, Barreau du Québec): Mr. Chairman, ladies and gentlemen members of the committee, my name is Marc Sauvé and I am the director of Research Services and Legislation with the Barreau du Québec. For the Barreau's appearance before this noble assembly, I am accompanied by Mr. Georges Azzaria, a professor at Laval University, and Mr. Pierre-Emmanuel Moyse, who teaches at McGill University. They are experts in the field and you will be able to ask them any questions you may have.

The Barreau's position on Bill C-32 was expressed in a letter from the president of the Barreau du Quebec addressed to Ministers Tony Clement and James Moore on October

The Barreau is of the view that the debate should focus on the principles that should apply to all legislation. However, the Barreau cannot claim that there is a consensus in the legal community regarding its position on Bill C-32, for two reasons. The first of these is the wide diversity of interests at stake, as well as the lack of a common, shared vision of what a copyright act should be.

If I may, I would like to focus on two points: the excessive complexity of the legislation, which encourages referral to the courts, and the bill's inconsistency with international law.

To address the first point, I would like to turn it over to Professor Moyse.

Mr. Pierre-Emmanuel Moyse (Professor, McGill University, Barreau du Québec): Mr. Chairman, ladies and gentlemen members of the committee, thank you for inviting us to appear today.

My name is Pierre-Emmanuel Moyse and I am a professor at McGill University and member of the Intellectual Property Policy Centre at that same institution. My comments will be limited to a fairly theoretical point which is at the heart of international trade concerns—namely, exhaustion and, primarily, international exhaustion.

Very briefly, copyright has to do with reproduction and communication, but not only that. In some provisions, copyright also makes it possible to control the circulation of the copies themselves as tangible objects.

That copyright control over tangible objects runs the risk of creating a form of interference with the circulation of goods, and it is in this context that the concept of exhaustion was first developed. Exhaustion can be either national or international.

At the national level, the principle is exceedingly simple. Once the author has produced a work and, with the author's authorization, that work is on the market, the buyer or owner of the good is free to dispose of it as he sees fit. In other words, there is no longer any copyright control over the destination or the ultimate use that is made of the copy, which explains the fact that books can be sold on the used book market or that someone can buy a poster and change the format, as demonstrated in the famous case of Théberge v. Galerie d'Art du Petit Champlain inc.

This point is not particularly problematic. What is of more concern is international exhaustion of rights. That has been the Achilles' heel and focus of all the policy discussions on harmonizing rights in Europe. It has also been the focus of discussions on amendments and reforms to copyright in Australia, a country which imports value-added products.

Copyright does come into play and can make it possible to control the circulation of works, particularly through import rights. In that regard, there are two relatively dangerous or worrisome trends. The first relates to the use of that import appeal process in areas that may give us pause. The best example is the Euro-Excellence Inc. v. Kraft Canada Inc., et al. case where copyright was recently used to prohibit the importation of chocolate bars, or at least to hinder such imports.

The second point relates to an anomaly in the bill. On the one hand, it provides for international exhaustion. Under the new paragraph 3(1)(j) which would be added to the current legislation, as soon as the object of the copyright is put into circulation abroad, the right is exhausted. Furthermore, it includes import provisions which restore control over the circulation of these tangible objects to the author. In other words, international exhaustion, as provided under paragraph 3(1)(j), and the import provisions could be contradictory and cause trade policy issues.

Thank you.

● (1650)

[*English*]

The Chair: Can you please go quickly? We're going over time now.

[*Translation*]

Mr. Georges Azzaria (Professor, Laval University, Barreau du Québec): Mr. Chairman, my comments will deal mainly with the complexity of the legislation, and I'm available to answer your questions in that regard.

Our hope was that Bill C-32 would clarify the underlying principle of the act, and yet we are left with a far more complex piece of legislation that includes an increasing number of exceptions, as well as exceptions to exceptions, to the point where it becomes very difficult to make sense of anything under the circumstances. Everyone knows that a law that becomes obscure and increasingly convoluted may not be obeyed, in some cases, because people will not know exactly what the principle involved is.

Let me quickly give you a couple of examples. You can make a private copy of a work, but not if there is a lock. In some cases, you have to destroy the copy and, in other cases, the author will be compensated, but not always. This is something that the average person will have difficulty understanding. So, I think there is significant concern associated with that.

Let me quickly give you two further examples. What is the distinction in the legislation between educational purposes, and so on? We don't know. Also, what is meant by "non-commercial purposes" or "private purposes", considering that there is already a reference to private study and private use?

So, it is all of that, and the courts will probably end up wondering what it all means, which implies that there will be litigation in order to clarify matters. The Supreme Court will be able to explain all of this 10 years from now. But I'm not sure that is a good thing for litigants.

[*English*]

The Chair: Thank you very much.

We'll move to Mr. Manley from the Canadian Council of Chief Executives.

Hon. John Manley (President and Chief Executive Officer, Canadian Council of Chief Executives): Thank you very much, Mr. Chairman. It's nice to be back.

I will read a brief statement and then I will go into the questions.

The Canadian Council of Chief Executives, which I lead, has a long history of support for measures to strengthen Canada's economy and to promote innovation. A strong regime of intellectual property protection and copyright is fundamental to that overall mission. Laws that protect and reward the fruits of intellectual capital and artistic creativity are critical to maintaining a dynamic, innovative, and open economy.

By the same token, the society has an interest in ensuring that consumers and other users enjoy fair and reasonable access to copyrighted material. This can only be achieved through a balanced approach to copyright protection. For that reason, we are supportive of Bill C-32.

[*Translation*]

This legislation is, as you know, the product of extensive national consultations, round tables, town halls and submissions from thousands of individuals and organizations across Canada.

Throughout this process, care has been taken to respect the concerns, needs and legitimate rights of everyone who creates, markets, distributes or in any way makes use of copyrighted material.

I'm aware that some Canadians are of the view that this bill goes too far in protecting the rights of creators and copyright holders.

Similarly, there are people who feel this bill gives too much freedom to consumers and other users.

This divergence of views is inevitable. The challenge in copyright law has always been to strike a balance between the interests of creators and those of the general public.

● (1655)

[*English*]

To my mind, there are four key elements of Bill C-32. First, it brings Canada's copyright rules into the 21st century by legitimizing some activities that consumers in fact do every day. This includes recording television programs for later viewing, transferring digital content from one format to another, and making backup copies, provided the original material was acquired legally and the copying is for consumers' personal use.

Second, the bill gives creators and copyright owners stronger legal tools to control how their works are made available and to guard against copyright violation. As other witnesses have pointed out, these provisions are needed to ensure that Canada does not become a haven for international music, movie, and software piracy.

[*Translation*]

Third, the bill will improve the learning experience for Canadian students by providing educational institutions, as well as libraries and museums, with enhanced access to copyrighted material. It does this in part by expanding the concept of “fair dealing” in a way that recognizes the significant societal benefits of education.

This is consistent with the recommendations of the Competition Policy Review Panel, which in its 2008 report identified the use of the Internet for research and education as a cornerstone of Canada's ability to innovate and compete in a knowledge economy.

Fourth, Bill C-32 encourages the growth of Internet services in Canada by providing legal clarity for network service providers, web-hosting services and search engines.

Under the new rules, ISPs will be exempt from liability when they act strictly as intermediaries in the communication of copyrighted material.

At the same time, the bill includes new provisions targeting those who knowingly enable copyright violations.

On behalf of the Canadian Council of Chief Executives, I strongly endorse the overall thrust of this legislation.

[*English*]

Having said that, I think the committee may wish to consider certain technical changes to the bill so as to avoid unintended consequences. For example, important concerns have been raised with respect to the impact on Canada's software industry of the provisions dealing with encryption research, network security, reverse engineering, and copying for interoperability purposes.

In addition, some of the language dealing with user-generated content and copying for private purposes may be too broad, but I'll leave it to others to propose amendments that would address specific concerns while staying true to the spirit of the legislation.

Those issues aside, the bill generally strikes an appropriate balance among various stakeholder interests.

I note that Bill C-32 includes a mandated review of the Copyright Act by Parliament every five years. While it may not be possible to satisfy every demand of every group, this provision ensures that parliamentarians will have the tools to address unforeseen problems on the basis of experience. In that light, I urge you to move this bill forward as expeditiously as possible.

As others have noted, the Copyright Act was last revised when the Internet was in its infancy, and it badly needs updating to reflect the impact of new technologies on business practices and daily life.

Bill C-60, tabled in June 2005, and Bill C-61, tabled in June 2008, both died on the order paper after the dissolution of Parliament. If these hearings continue at the current pace, there just might be a danger that this bill, too, will die. That would not be in the interests of Canadian creators and it would not be in the interests of consumers.

[*Translation*]

Nor I suspect, would parliamentarians welcome the prospect of going back to the drawing board, with yet another round of consultations and hearings. Finally, I want to commend the committee for the work you are doing. I bear the scars of the last time Canada's copyright law was amended, and I am the first to admit that mediating among so many competing interests requires a great deal of care and effort.

● (1700)

[*English*]

I still bear some of the scars from that process.

Thank you very much, Mr. Chairman.

I'd be pleased to respond to questions.

The Chair: Thank you very much.

We'll now move to questions for seven minutes from the Liberal Party.

Mr. Rodriguez.

[*Translation*]

Mr. Pablo Rodriguez (Honoré-Mercier, Lib.): Good afternoon, Mr. Manley. It's a pleasure to have you with us today.

Mr. Sauvé, Mr. Azzaria, Mr. Moyse, and Ms. Wood, welcome. I have questions for each of you.

I would like to begin with you, Mr. Manley, since you just completed your presentation.

I have two brief comments to make with respect to your presentation. You say that "this legislation is […] the product of extensive national consultations across Canada". But you know as well as I do you can arrange for consultations to say whatever you like. I have gone all across Canada and held roundtables in the ten provinces. Yet I may not necessarily have heard the same thing that the government heard when it held those consultations.

I also want to reassure you. You say that you are "aware that some Canadians are of the view that this bill goes too far in protecting the rights of creators and copyright holders"; but let me reassure you: I don't think there are many people who believe that. I think the bill lacks balance. Some aspects of it are positive, but there is an imbalance which, unfortunately, works against rights holders and creators. There are obvious losses of income and royalties. Those have been noted. The government is also aware of that—for example, as regards the levy, private copying, ephemeral rights and the loss of potential income in education.

Is this not a concern for you? Shouldn't the government be looking at this to find ways of providing compensation, since it is clear there will be income losses for these people?

Hon. John Manley: Mr. Rodriguez, I don't think anyone can say with certainty that there will be losses in terms of compensation. That is why there is a five-year review process.

As I mentioned, I was around when the Copyright Act was amended in 1998. During the debate, both parties made a lot of claims that were unfounded.

I think there is balance. Some people may think that no such balance exists. Once we have a little experience with this, following extensive change, knowing that it could still be amended by Parliament five years from now, we can see whether these demands are justified or not.

Mr. Pablo Rodriguez: In some cases, possibly; in others, no. In terms of the levy, for example, if we eliminate it, we will be killing a way of operating and I don't think we can go back up afterwards.

I have a question now for Ms. Wood.

With respect to the education exemption, you say that it is too vague and not well defined, and we agree with you. This will lead to endless lawsuits, as the Barreau du Québec was saying, which means that people will be spending an enormous amount of time in court. On the other hand, the students who appeared before you were telling us that it's not important because the collectives will be going to court to represent authors and publishers, meaning that cost will not be an issue. Is that true?

[*English*]

Ms. Carolyn Wood: Not at all; I think—I'll answer in English, if you'll bear with me—that if—

Mr. Pablo Rodriguez: English is fine. No problem.

Ms. Carolyn Wood: Okay.

I think a law that leads automatically to litigation to resolve uncertainty is an outcome that no one wants to see. Our members don't want to have this resolved in court....

Did I misunderstand?

Mr. Pablo Rodriguez: No, no, that's fine. You answered. But it would be you—the publishers, the writers—who would go to court. They would pay for that, not necessarily the collective, right?

● (1705)

Ms. Carolyn Wood: Not necessarily...?

Mr. Pablo Rodriguez: The collective—those who collect the money.

Ms. Carolyn Wood: Well, it depends on the specifics—

Mr. Pablo Rodriguez: Sometimes yes and sometimes no?

Ms. Carolyn Wood: —but certainly it would be authors and publishers who conceivably would be the plaintiffs. If the collective is involved in that particular infringement, then of course they would be party to this as well. I don't think it's realistic to think that any infringement that occurs would be addressed by Access Copyright or a collective exclusively.

[*Translation*]

Mr. Pablo Rodriguez: Thank you. There is clearly a potential for income losses in your industry. At the very least, an amendment is needed. There are some possibilities. We could scrap the education exemption, but are there other options as well? Is there some way of defining education, for instance? Is there a way of incorporating the three-tiered test under the Berne Convention, or some other one, in order to define this concept and limit excesses under the education exemption? Do you have any suggestions in that area?

There is clearly a potential for revenue losses in your industry. At the very least, an amendment is needed.

There are certain possibilities. We could scrap the education exemption, but are there other things we could do? Is there some way of defining education, for example? Would it be possible to incorporate the three-tiered test under the Berne Convention, or some other one, in order to define this and prevent things from getting out of control in terms of the education exemption? Do you have any suggestions in that regard?

[*English*]

Ms. Carolyn Wood: Certainly we would welcome a narrowing of the definition.

As to the specifics of the applicability of the three-step test in this context, I'm going to ask Grace Westcott to answer for us.

Ms. Grace Westcott (Legal Counsel, Association of Canadian Publishers): Yes, a three-step test would be a helpful way to narrow the scope of an educational fair dealing. In addition, defining what education is in the context.... I know the government has made pains since day one to say that education only pertains to education in a structured environment, but we really do need a definition to that. And perhaps we could start with "educational institutions", for which we have a definition. It's somewhere to begin to pin that down.

I also think one of the issues in fair dealing for educational purposes is how would that very broad exception relate to the more specific exceptions the government has spent a lot of time honing in the bill and that we already have in existence in the act? Would a broad fair dealing for educational purposes trump or elbow aside some of these more specific exceptions?

It seems wrong and it seems counterintuitive. These are specific situations about which the legislature has spent a great deal of time —

Mr. Pablo Rodriguez: I'm sorry, I have to interrupt you. I only have a few seconds left, and that wasn't my only question.

Thank you very much. I'm sure we're going to receive more detailed stuff from you on this, right?

[*Translation*]

I have a question for our witnesses from the Barreau du Québec. I will make it very quick, because I have only 15 seconds left.

You wrote a letter to the minister on October 14. Did you receive an answer?

Mr. Marc Sauvé: To my knowledge, we did not receive any answer. Speaking for myself, I heard nothing about our having received an acknowledgement or anything else.

Mr. Pablo Rodriguez: You didn't even receive an acknowledgement. Fine, thank you.

Briefly, as you see it, the content of Bill C-32 is not sufficient for us to be in a position to ratify international treaties. Did I get that right?

Mr. Georges Azzaria: Well, there may be challenges. Last Monday, Ysolde Gendreau testified before the committee, and I believe that she explained at some length that the bill, as currently worded, would have trouble meeting the standard if it were subject to the three-tiered test, in particular. That means there would be challenges to trade organizations, either the WTO or another organization.

It is pretty clear to me that there is a cloud over Bill C-32.

The Chair: Thank you.

Mrs. Lavallée, you have seven minutes.

Mrs. Carole Lavallée: Thank you very much.

Welcome, everyone. Greetings as well to our witnesses from the Barreau du Québec. I read your brief and we will talk about it in a moment.

I would like to begin with Mr. Manley.

Thank you for being here, and welcome back. I think it's been quite a while since you were in Ottawa. You are not living on the same planet as us and I am going to try to—

Hon. John Manley: I certainly hope that is not the case.

Voices: Ah, ah!

Mrs. Carole Lavallée: The fact is you are in another world—another bubble. Here everyone has noted that this bill is seriously imbalanced. The fact that the Canadian Council of Chief Executives is saying that it is balanced suggests to me that it really is seriously imbalanced.

I'd like to give you some information. What I would like, basically, is for you to go back to your chief executives and tell them that somebody has not given you the complete truth with respect to this bill.

I would like to present a different viewpoint.

In order to drive home the point that his bill was well accepted within the heritage community, the parliamentary secretary to the Minister of Canadian Heritage stated in the House that 38 multinationals, 400 businesses and 150 CEOs agreed with it. That is what he said.

When he was asked whether any artists agreed with it, he was only able to name one. He was so thrilled to have this support that he mentioned it twice in the House. Only one artist agreed with it, but as Dean Del Mastro stated in the House, there are 400 companies and 150 CEOs that do agree with it.

You also talked about laws that protect and reward the fruits of intellectual capital. I will give you some specific examples a little later. But this is anything but a balanced approach.

I also winced when you talked about extensive national consultations. I want you to know, Mr. Manley, that the consultations in Montreal, which is a large cultural capital, not a small one, were held on July 31, when half of the city had shut down and people were out of town. Furthermore, organizations as important as the Union des artistes du Québec had trouble getting invited and were forced to make their presentation in Quebec City. Talk about phony consultations.

Your friend, Mr. Pablo Rodriguez, objected to your saying that you are "aware that some Canadians are of the view that this bill goes too far in protecting the rights of creators". But no one has ever said that, Mr. Manley; no one. I have never heard anyone say that this bill goes too far in protecting the rights of artists. I wanted you to know that.

According to you, the purpose of the copyright bill "has always been to strike a balance between the interests of creators and those of the general public". Once again, allow me to correct you.

Historically, since Queen Anne of England back in 1710, copyright legislation has served to balance the rights of creators and disseminators. In the 18th century, this term included printers and publishers. Now it has a much broader meaning.

This bill has major flaws and will take money away from artists. First of all, the non-modernization of the private copying regime will remove an average of $13.8 million all across Canada. The education exemption, that young students were claiming earlier, will remove some $40 million annually. Write this down so that you can repeat it afterwards. This is money that is being taken out of their pockets. These are royalties that they receive as a result of their author's rights, and which they will no longer have. The abolition of ephemeral recordings will remove some $21 million in income. And artists are not the only ones saying this; broadcasters are of the same view. They said it would only cost them $21 million. There is also the YouTube exception, that the Entertainment Software Association talked about earlier, where preset damages are capped at $20,000. A musical work will never be worth more than $20,000. And I could give you other similar examples.

As you said yourself, the lack of accountability for Internet service providers makes no sense. They must be held to account. There are no royalties for artists and a notice system that is probably ineffective since there are no fines. This bill is focussed on digital locks, which works perfectly for the software and gaming software industry, but is very poorly adapted to the music industry. And, again, there are no residual rights for visual artists.

In a letter dated October 14, your colleagues, representatives of the Barreau who are sitting right next to you, said this about the bill: "These are piecemeal amendments lacking in vision and overall consistency, and rehashing parts of foreign models that are already known to be out of date." The three intellectuals seated to the left of you wrote that. That is so true that the Quebec National Assembly unanimously passed a motion against Bill C-32, asking for substantial amendments.

With that, I will give our witnesses from the Barreau du Québec a chance to speak. Of course, you will have an opportunity to respond to my comments.

A voice: You have 15 seconds left.

● (1710)

Mrs. Carole Lavallée: But it made me feel better.

[*English*]

The Chair: Are there questions there?

[*Translation*]

Hon. John Manley: There is no need to respond to that kind of speech. It wasn't a question; it was a statement.

I am from another world. I am from a world where the economy is important, where people who are trying to create jobs have points of view that reflect a concern for innovation and dissemination of information.

That was a great speech to make in front of a group in your riding during an election campaign. However, this is the third time that the House of Commons has tried to amend the Copyright Act. We will be missing another opportunity.

Are we going to continue with legislation that was very good in its day, but which goes back to 1998? I don't think so.

● (1715)

[*English*]

The Chair: All right.

We'll move to Mr. Angus, for seven minutes.

Mr. Charlie Angus: Thank you, Chair.

Thank you, everyone, for coming today. This has been a very interesting discussion.

Mr. Manley, I wanted to start off with you for a moment, because I was interested in your comments on the issue of a balanced approach.

I think one of the issues we see with copyright—or I certainly have, since my election—is that some industries come to me only when they are very concerned. Sometimes they're concerned because they're under threat, and sometimes they're concerned because there is new competition. So the balance is how do we allow new entrants and how do we make sure that it's not unfair? Yesterday's pirates are today's demand for copyright.

Hollywood existed not because the weather was nice out there but because they were trying to escape the copyright of the Thomas Edison corporation. Sony was the king pirate of the 1970s. I think Jack Valenti called it the Boston Strangler of the movie industry. Now Sony, of course, is one of the biggest defenders of TPMs. So what we have to do is find the balance.

I was struck, though, that you pointed out that you thought we should tighten up the TPM provisions on reverse engineering and interoperability, because I've heard from many people that it's key for start-up businesses, for research, for innovation to actually bring new entrants into the market. So why is it that we should apply the TPM provisions on reverse engineering and interoperability?

Hon. John Manley: Mr. Angus, you have some good examples of how times have changed. I think in the area of software engineering, for many Canadian companies you have the necessity to not only establish their innovation and get it to market but also to secure a market share that's adequate before they face competition from others who may have reverse-engineered.

I think the real issue we need to get at here is the capacity to reverse engineer. It's not the very simply stated "we may need a backup copy" for whatever reason but to inhibit the reach to reverse engineering. I think this can be done with fairly modest, fairly technical amendments, but that's the essence of the concern that some of my members have brought forward.

Mr. Charlie Angus: I have certainly heard about the need to maintain it so we don't get into a situation where a company, once it's established, would certainly want to squash competition. That's the nature of business. Our job, as legislators, is to make sure that provisions aren't used unfairly.

I'm interested in terms of our obligations internationally with technological protection measures. On June 10, 2010, the WIPO Standing Committee on Copyright and Related Rights released a study, a questionnaire, of 31 member states, 19 of which stated that they do have technological protection measures, with exemptions recognized. Some of the exemptions are more modest, some of them are a bit broader, but those exemptions are guaranteed in terms of what was existing in law.

Canada would be very much in place, within its WIPO obligations, according to article 10, if we allowed the technological protection measures but recognized that there were limitations in terms of protecting exemptions.

Would you support that?

Hon. John Manley: Yes, I think WIPO is the minimum standard that we need to have.

Mr. Charlie Angus: Okay.

Professor Azzaria, I'd like to ask you about that, because much of our pressure has come from the U.S. trade interests. This past July, U.S. courts ruled that in fact there were problems with their own DMCA legislation in how it dealt with the fair use provisions, because the technological protection measures aren't rights in themselves. They're enforcement measures, so they're more like adjunct rights. So even the U.S. courts have decided that those adjunct rights don't trump the rights that exist for U.S. citizens, and fair use is much broader in the U.S. than it would be under fair dealing.

Do you believe we could have provisions in terms of our technological protection measures that would be internationally compliant but would also protect, where it is reasonable to protect, the rights that citizens have?

● (1720)

[*Translation*]

Mr. Georges Azzaria: I think that you have put your finger on another problem with this bill, which is sort of what we were discussing earlier. The technical protection measures are an obligation for Canada, in any case, because the WIPO treaties state that, one way or another, we have to have these technical protection measures.

So, the question doesn't really arise. Yes, we need technical protection measures. But which ones do we need and to what extent do we need them? That is the question that follows.

Under Bill C-32, we ultimately are dealing with two systems. On the one hand, there will be the authors working with it, and at the same time, there will be other people who won't be working with it. I'm not sure that is really the aim of technical protection measures. Initially, they were an additional barrier. One might even ask whether this is copyright. People will say it is, because the WIPO treaties say so, but it's as though there were two types of authors: the ones that work with technical protection measures and have a somewhat special regime, and the others, who have decided they don't and who work on the basis of another system.

I don't think the Copyright Act should support these two types of measures.

[*English*]

Mr. Charlie Angus: I'd like to follow up on that, because it had been mentioned in one of the earlier presentations that these rights could still exist in an analog world. So there would be a set of rights that exist for paper and for analog, but once they were in a digital realm, those rights would be subservient to the enforcement measures under technological protection measures.

Is it possible, or is it right, in terms of legislation, to establish basically a two-tiered set of rights in terms of what a citizen can access?

[*Translation*]

Mr. Georges Azzaria: That is a question you should put to the lawmakers. I'm not sure it's a good thing. You're right that the people who make use of TPMs may cause problems for other people who have a legitimate desire to take advantage of certain exceptions in the legislation.

That is why I think we have to look at what is being done in Europe. There are systems where limitations are placed on these technical protection measures—in other words, you can't use them to prevent people from accessing fair dealing which is already permitted in the non-digital universe.

I don't know whether that answers your question.

[*English*]

The Chair: Mr. Del Mastro, for seven minutes. You will be our last questioner.

Mr. Dean Del Mastro: Thank you, Mr. Chairman.

Thank you to the witnesses.

Mr. Manley, I know what you were doing on December 18, 1997: you were putting out a release, which I am holding here. It's a release from you and the Honourable Sheila Copps where you announced that you were committed to signing two new international treaties dealing with copyright, specifically the World Intellectual Property Organization, or WIPO.

I just want to quote you here:

> The treaties support the federal government's goal of making Canada a leading-edge supplier of content for the information highway and multimedia, and reflects the federal government's role in creating the right conditions for electronic commerce.

The release also says that that commitment followed a recommendation made by the information highway advisory council that Canada should respond quickly to the World Intellectual Property Organization's 1996 copyright and performance treaties.

I think that's important: I think you were right then and I think you're right today.

There are two aspects that I'd like to get your opinion on. One, you correctly pointed out here that if we want to take advantage of all the economic opportunities that exist in the digital age and all of the opportunities that exist going forward, we have to establish the rules.

But in this release, you also point out the fact that Canada is part of a global economy. In your position, you must hear a lot from our global partners with respect to copyright laws in Canada. What are you hearing from them with respect to this bill, and with respect to Canada needing to catch up on its copyright legislation?

So there are two aspects: first, how important is this to the economy, and second, what are our trading partners saying to you?

Hon. John Manley: By the way, I might add as a footnote to your quotation that the information highway advisory council was chaired by the president of the University of Waterloo, one David Johnston, who gave us that report.

● (1725)

Mr. Dean Del Mastro: Very good.

Hon. John Manley: What I would say is that intellectual property becomes fundamental to a knowledge economy. We can do a lot of other things well, which don't touch on it; certainly our natural resource sector is.... I mean, there's a certain amount of intellectual property protection, obviously not copyright; we do well in other sectors also. But in terms of much of the components of a knowledge economy, this becomes a fundamental cornerstone.

Some of our best-known technology companies would tell you that they exist because of intellectual property protection, and they exist in a global context because Canada is just too small a market for them to succeed otherwise. Some of those have this issue that Mr. Angus pointed to, which I had referred to, around protecting against the ability to reverse-engineer. I'd suggest that's a pretty significant group, that maybe some people didn't hear, saying that perhaps the bill went a bit too far.

So I think there is a context in which you have to find that balance that gives the level of protection that's necessary in order to preserve the value for the creator, at the same time as not suffocating the ability to distribute or disperse knowledge. You know, it doesn't really matter who it is: it's not one idea that makes all the difference but rather the innovation that's built on idea after idea. If you wrap it up too tightly in a straitjacket, what you do is suppress innovation.

You have to have the incentive to create. You also have to have the incentive to build.

Mr. Dean Del Mastro: On international partners, are you hearing anything from any of our trading partners on Canada's...?

Hon. John Manley: Yes, absolutely. Canada is now seen as a bit of an outlier by some, and they are anxious to see us demonstrate our commitment to international obligations and to international standards.

Mr. Dean Del Mastro: We had some earlier witnesses who talked about the educational exemption on fair dealing. I note in your comments that you address that. You talked about the appropriate balance, and about how that can drive innovation and so forth.

Could you talk a little bit more about that? It's widely misunderstood as to what “fair dealing” means. As my colleague pointed out earlier, there is $20 million currently being collected from the collective. That is not under threat, nor are the sales of textbooks threatened by this.

Can you just talk a little bit about that?

Hon. John Manley: I have to say that among my members I don't represent educational institutions, I don't represent students. I have members who are both holders of copyright and members who are ISPs. I have members who are broadcasters, who are distributors. So I have a range, but not in the educational sector. Where we come down is very much in line with the Wilson panel, which says it is just so important that we ensure, within the educational context, that the best possible access be available.

This is where I really think it should be looked at in five years' time, to see if some of these extreme expectations that some have said they have come true, but in the meantime come down, in balance, on the side of education.

Mr. Dean Del Mastro: Thank you.

Sometimes in this place politics gets in the way of good policy. I know you know that, and I appreciate the fact that you've put a push on and encouraged members to meet more often to try to get this bill through. I appreciate that a great deal.

The bill doesn't deal with the digital levy. In fact, my opinion is that any kind of amendment on it is beyond the scope of the legislative committee. But I would like to get your opinion on it, because I think we're actually talking about reconstructing a market where all the dollars are, and it seems others are focusing on a very small, very minute amount of money versus rebuilding an industry.

Do you have any comments on that?

Hon. John Manley: We tried a digital levy on recordable CDs in the 1998 legislation. I think that experience demonstrated that you just don't know where things are going. Technology is evolving so rapidly, and I suspect that anything you do is probably going to be overtaken fairly quickly by technology. For example, I suspect we will be using pens as recording devices. The attempt to impose a levy is probably going to be frustrated in that way.

Second, my belief is that it's an attempt to solve one problem by imposing a solution unrelated to the problem itself. The use of digital media is so diverse that it's unfair to impose on all uses of that media the cost of compensating the producers in a certain sector. We resisted doing that in 1998, when it was suggested that a levy be applied to hard drives, for the simple reason that they were being used for business and all kinds of applications, and not simply for copying music, as the concern was at the time. I still know people who use their recordable CDs, even though they could use recordable DVDs free of it, to keep their Kodak pictures on. Yet they're paying a fee that goes to an unrelated point.

You know, accountability and responsibility say that if you have a problem, figure out a way to fix that problem without imposing the responsibility on others unfairly.

● (1730)

Mr. Dean Del Mastro: Thank you very much.

The Chair: Thank you very much. That is the last word.

Thank you to our witnesses for being here today. It was very enlightening.

The meeting is adjourned.

Published under the authority of the Speaker of the House of Commons

SPEAKER'S PERMISSION

Additional copies may be obtained from: Publishing and Depository Services
Public Works and Government Services Canada
Ottawa, Ontario K1A 0S5
Telephone: 613-941-5995 or 1-800-635-7943
Fax: 613-954-5779 or 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
http://publications.gc.ca

Also available on the Parliament of Canada Web Site at the following address: http://www.parl.gc.ca

Publié en conformité de l'autorité du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

On peut obtenir des copies supplémentaires en écrivant à : Les Éditions et Services de dépôt
Travaux publics et Services gouvernementaux Canada
Ottawa (Ontario) K1A 0S5
Téléphone : 613-941-5995 ou 1-800-635-7943
Télécopieur : 613-954-5779 ou 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
http://publications.gc.ca

Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante : http://www.parl.gc.ca