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Chair

Mr. Gordon Brown

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● (1105)

[*English*]

The Chair (Mr. Gordon Brown (Leeds—Grenville, CPC)): Good morning, everyone. We're going to call this 10th meeting of the special Legislative Committee on Bill C-32 to order.

For the first hour we have witnesses from the Business Coalition for Balanced Copyright, Jay Kerr-Wilson; and also from the Canadian Chamber of Commerce, Perrin Beatty and Lee Webster.

We will start with Mr. Kerr-Wilson for five minutes. You have the floor.

Mr. Jay Kerr-Wilson (Representative, Business Coalition for Balanced Copyright): Thank you very much, Mr. Chairman and members of the committee.

My name is Jay Kerr-Wilson, and I am here today on behalf of the members of the Business Coalition for Balanced Copyright.

Thank you very much for giving us the opportunity to present our views on Bill C-32.

The members of the coalition include individual companies and trade associations representing a broad spectrum of the communications, technology, broadcasting, retail, and Internet industries. The one thing our members have in common is that they provide the essential links between creators and consumers.

The issues addressed in today's presentation are those on which there is agreement among the coalition members. Some individual members may wish to address additional questions or concerns when they appear before the committee on their own behalf.

We believe that Canada's copyright laws should focus on two fundamental and interrelated objectives: first, to deter infringing activity; and second, to promote open and efficient markets for legitimate distribution of copyrighted works.

We disagree with the notion that copyright legislation is either good for consumers or good for creators. We believe that by promoting the development of a vibrant digital economy, a balanced approach to copyright legislation can serve the interests of creators, distributors, and consumers.

We also believe that Bill C-32 goes a long way towards striking this balance, and we support its passage in a timely manner.

This doesn't mean the coalition thinks the legislation is perfect or couldn't benefit from some minor changes to provide greater clarity and certainty. In fact, we have submitted a number of proposed changes that we would like the committee to consider as part of its review.

First, Bill C-32 provides limited liability for content hosting services. The ministers have repeatedly stated that these provisions are intended to remove barriers to the introduction of innovative remote storage services, including cloud computing and network PVRs. We are concerned, however, that while the existing language limits liability for the reproduction of a work that is stored using such a service, it still leaves potential liability for any transmissions of the hosted content even back to the person who posted it in the first place.

Second, Bill C-32 would create liability for those people who enable others to engage in copyright infringement. We support this provision as an important tool for rights holders to protect themselves against the widespread, unauthorized distribution of their works. We are concerned, however, that the provision as drafted does not adequately distinguish between those individuals who provide services intending that those services be used to infringe copyright and innocent actors who merely provide links to Internet sites but who do not actively promote or encourage infringement.

We are also sensitive to the concern of rights holders that only prohibiting those services that are primarily designed to enable acts of infringement may be too narrow. We therefore support amending the provision to prohibit those services that are designed or operated primarily to enable acts of infringement.

Third, we support providing legal protection for technological protection measures, or digital locks. However, we do not believe that the use of digital copy control locks should prevent consumers from relying on the personal use exceptions such as format shifting or time shifting.

Fourth, we support the provision that would permit broadcasters to transfer musical works onto a different format for a limited time without incurring additional copyright obligations. We believe that a similar amendment should be made to the provision that lets local television stations or community channels tape live events such as parades and concerts for later broadcast.

Fifth, we support the provisions that would impose on ISPs the obligation to implement a notice and notice system. Many Canadian ISPs have engaged in voluntary notice and notice systems for several years, and other countries are now beginning to adopt similar obligations. However, we are concerned that the bill would not provide any time for ISPs to implement the additional obligations that would be imposed by the legislation. We recommend that the notice obligations only come into force once the minister has enacted regulations prescribing the forms of the notice and the fees that can be recovered, and after a sufficient period, for ISPs to implement the necessary systems to comply with all of the obligations.

Sixth, we support the inclusion of an exception for user-generated content. However, we have heard the concerns expressed by rights holders about the potential for abuse of the exception as drafted. Therefore, we agree that the provision could be amended to require that any use of the works in user-generated content be fair, in addition to the conditions that have already been proposed.

Finally, we strongly oppose the introduction of new levies or the extension of existing levies to cover private copying on digital devices. We recognize that the bill does not deal with the private copying levy, but we are aware that the issue has been raised on several occasions before the committee. From our perspective, there are insurmountable problems with such a levy.

Thank you for giving us the time to present these recommendations. I look forward to answering any questions you may have.

The Chair: Thank you very much.

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

Hon. Perrin Beatty (President and Chief Executive Officer, Canadian Chamber of Commerce): Thank you very much, Mr. Chairman.

I'm delighted to be here, and I'm very pleased to have with me Mr. Lee Webster, who's a partner with Osler's, and who's also the chair of the Canadian chamber's intellectual property committee and a member of the Canadian Intellectual Property Council.

Mr. Chairman, our members see the bill as a piece of the larger puzzle of innovation in Canada. Many companies, big and small, rely on the protection of intellectual property rights to maintain their businesses. Updated copyright legislation will bring Canada in line with other major industrialized countries and establish rules of the road for downloading and file sharing on the Internet. It will also position Canada to finally ratify the WIPO Internet treaties that Canada signed in 1997.

[*Translation*]

Some say that Bill C-32 will prevent Canadians from listening to music and watching movies on their portable devices. That's false!

[*English*]

Businesses in Canada don't want to stop people from enjoying their media, but rules do have to be established so that illegal commercial operations are stopped. What we need is to establish a marketplace framework that will support development of new digital products, services, platforms, and business models and make it clear what kinds of behaviour are legitimate and what kinds are prohibited. We have to strike a balance between the interests of consumers and those of rights holders.

Generally, we believe the government has done a good job in striking the right balance, and we support the principles of the legislation. I can certainly tell you, Mr. Chairman, that striking the appropriate balance to establish good public policy is not an easy task. I can commiserate because I had the responsibility for the copyright file when I was Minister of Communications in the early 1990s. Both the Conservatives and the Liberals put legislation on the table in recent years only to have the bills die on the order paper, and we're anxious to see this new bill passed to clarify rights and responsibilities for both businesses and consumers. So perhaps the third time is a charm.

Now, strong copyright protection will benefit communities across Canada, and here are some examples. In Toronto, there are over 3,300 high-tech companies, generating revenues over $32.5 billion annually and employing 148,000 people. In Kitchener-Waterloo, there are over 700 high-tech companies, generating $18 billion annually and employing 30,000 people, with over 200 burgeoning start-ups. The Canadian video game industry generates billions annually and employs over 14,000 people across the country. Many major studios are in the Montreal area, such as Ubisoft and Electronic Arts and Behaviour, while St. Catharines is home to a prominent video game company, Silicon Knights, which employs over 100 people in high-value jobs.

● (1110)

[*Translation*]

In 2009-2010, the Quebec film and television industry generated an estimated $1.2 billion annually and created more than 36,000 jobs in the province.

[*English*]

IP is the economic currency of the future. Properly applied, IP rights drive job creation, economic growth, and innovation. As I mentioned, copyright is only part of the puzzle; patent and brand protection and promotion is also a key element in attracting and retaining businesses in Canada.

Leading economies around the world have made IP protection a priority. Japan has created an IP strategy council led by the Japanese Prime Minister. In France, President Nicolas Sarkozy heads an anti-piracy commission to curtail Internet piracy. Clearly, other nations are effecting major changes in IP protection. If Canada does not soon follow suit, Canadian businesses risk being left at the periphery of the global economy.

By defining and better protecting IP rights, we'll develop a marketplace that rewards investments in innovation and creation. It will foster new business models that will lead to stronger economic growth, job creation, and prosperity. In modern developed nations like Canada, where services and innovation have become key economic drivers, and given our emphasis on the knowledge economy, doing so has never been more important.

Let's fix the unintended consequences in the drafting of the legislation and get this copyright bill passed. It's desperately needed to provide certainty to Canadian businesses. Mr. Chair, I simply plead with the committee this way. Let's not let the perfect be the enemy of the good. This represents our best chance to modernize.

I was looking at some of the comments that were made in Parliament and elsewhere. I think it may have been Mr. Angus who had made reference to the WIPO treaties reaching back into the past century. I was reminded of George Michael's CD, *Songs from the Last Century*. What we're talking about here are principles to update from the last century and to bring us into the 21st century. It's something that's critically important.

Since our time is limited for opening remarks, Lee will get into specific areas where we need amendments during the question period. Just to put it very simply, we need to see some clarifications or improvements in the areas of enabling infringement, encryption research, computer and network security, interoperability, reverse-engineering of software, user-generated content, online service provider liability or safe harbours, private copying and backups, and statutory damages.

Thank you, Mr. Chairman. We'd be very pleased to respond to questions.

The Chair: Thank you very much.

We're now going to move to the first round of questioning. It's going to be seven minutes.

We will hear from the Liberal Party, Mr. Garneau.

Mr. Marc Garneau (Westmount—Ville-Marie, Lib.): Thank you very much for being here this morning and for giving your testimony.

I'd like to start off by focusing on TPMs or digital locks and the issue of the bill as it currently exists, which of course says very clearly that if you circumvent an existing digital lock you are breaking the law. The Liberal Party is very clear on its position that it agrees that if you are circumventing a product with a digital lock for commercial purposes—pirating or what have you—that is breaking the law, and we are against breaking the law. However, we do have a different position with respect to people buying a product and format shifting, copying, transferring it to another personal device for their personal purposes. We've been clear on this since Bill C-60, one of the predecessors of Bill C-32.

I'd like to start with Mr. Kerr-Wilson on this issue because he referred to it briefly in his opening comments. Would you please—and then, Mr. Beatty—explain your position with respect to the use of a product with a digital lock but in the case where it is strictly for personal purposes?

● (1115)

Mr. Jay Kerr-Wilson: Thank you very much, Mr. Garneau.

The coalition's position is the same as the one you just articulated. We support protection for digital locks and we support prohibiting breaking the digital locks for an infringing purpose. But we also believe that digital locks should not prevent consumers from making legitimate uses of content they have legitimately acquired. Our preference would be that the personal use exceptions not be subject to the digital locks.

In an effort to try to find balance, we've modified our position somewhat because the act actually defines two distinct types of digital locks: copy control locks and access control locks. In the general provisions, only circumventing access control locks is prohibited. There is no general prohibition against circumventing a copy control lock. So what we've said is that for the personal use exceptions, which by and large involve copying, it should not be prohibited or it should be permissible to circumvent a copy control lock in order to make your backup copy or to do time shifting, but that perhaps keeping the access lock protection in place would be a middle ground that would give rights holders some more certainty. But in principle, we agree with the position you articulated.

Mr. Marc Garneau: Thank you.

Mr. Beatty.

Hon. Perrin Beatty: Thank you, Mr. Chairman.

Mr. Garneau, thank you for the question.

We have concerns about opening up the capacity to break digital locks. It could limit the options open for various business models and the range of opportunities that consumers may have. There are a number of businesses that rely on the ability to have digital locks in place as they relate to individual consumers. One thinks, for example, of digital rentals of movies. If it's possible to circumvent that, it creates a problem. You'll find content providers simply pulling the content back and not making it available, and then we run the risk in Canada of limiting consumer choice as a perverse effect of something that was intended for good purposes.

But let me turn to Mr. Webster, who is our expert on this.

Mr. Lee Webster (Chair, Intellectual Property Committee, Canadian Chamber of Commerce): Thank you for the opportunity to speak today. The chamber's position is that we support digital locks both for access and for copy controls. I always think that some of these supposedly complex Internet-based issues can be pushed back on the way things are dealt with in the bricks-and-mortar world.

It's illegal for somebody to come into my house and walk out with my sofa. But that's not a reason for banning the locks on my door. I think a digital lock is appropriate at the consumer marketplace. If the consumers don't like digital locks on the product, they have the option not to buy it. If they want to change the commercial model, they can complain to the rights provider.

Allowing persons to break these locks would have unintended consequences. So I think the marketplace should dictate it. I think it's basically a property right to keep the digital lock on the software. If the consumers don't want it, they can complain to the rights holder.

Mr. Marc Garneau: Thank you, Mr. Webster.

On the issue of mashups and user-generated content, am I to understand, Mr. Kerr-Wilson, that you're saying that mashups should be transferred into that other group in Bill C-32 at the moment—satire, parody, education—as an exemption under fair dealing? Is that what you're proposing?

Mr. Jay Kerr-Wilson: Technically you can either move the user-generated content exception into the section 29 general fair dealing provision or you could simply make reference to fair use in the provision as it's drafted now. I think you want to keep the conditions in there now that talk about the effect of the mashup on the market for individual work. You want to keep those market protections, but I think it's also appropriate to stipulate that any use be fair and then incorporate the fairness factors the Supreme Court has identified.

● (1120)

Mr. Marc Garneau: Thank you.

Mr. Beatty, what is your position on mashups?

Hon. Perrin Beatty: It's a question of balance. We understand that mashups should be allowed to an extent, but we don't want to have something so broad that it allows somebody to do essentially anything that the original creator could have done with the product. It's a matter of striking a balance.

Mr. Webster.

Mr. Lee Webster: Let me drill down a little bit on that. Our position is that this should not be allowed with respect to technological subjects like computer programs and engineering drawings. The user-generated content exception we think is unique. I don't think there's a similar provision in other countries. Having said that, we think it's a good idea with some amendments.

For example, mashups should not be created if there is an adverse financial effect on the rights holder. They should not be permissible if there's an agreement with the rights holder that this type of activity should not be done, and intermediaries should not be allowed to obtain a financial benefit from these mashups.

Mr. Marc Garneau: So you're saying it should be further defined.

Mr. Lee Webster: Correct. In principle we would agree with it, but I think it needs a bit of fine-tuning to make sure that unauthorized third parties don't take unfair commercial advantage of it.

Mr. Marc Garneau: I understand.

What do you think of the statutory damages, the amounts, and the way it's written?

Mr. Kerr-Wilson.

Mr. Jay Kerr-Wilson: The coalition has not taken a position on the statutory damages, so I will turn it over to our friends.

Hon. Perrin Beatty: We see them as valuable tools to enable people to enforce their rights.

Let me turn to Lee to elaborate on that.

Mr. Marc Garneau: It's not so much whether they are a good tool. The question is whether they are appropriate. There's some controversy about whether they are appropriate in the amounts that are being discussed, whether they are commensurate with the seriousness of potential offences.

Mr. Lee Webster: Part of the problem here is that we all see what has gone on in the United States, with some of the rights holders getting massive damage awards from individuals. I don't think that's a fair way of dealing with things.

That being said, you look at the numbers for personal infringement and the statutory damages provisions—$100,000, $5,000. We think that's good, but there's one problem. We're concerned that it's really a licence for somebody to infringe. I know $5,000 is a lot of money to most people in this country, but what if somebody downloads a gigabyte of music—tens of thousands of songs? Is $5,000 a deterrent to that? I think not.

There's also some uncertainty. It's not just commercial uses of downloaded music. Some individuals like to disseminate music just for the heck of it, frankly.

The Chair: Okay. We have to move to the Bloc Québecois.

[*Translation*]

Ms. Lavallée, the floor is yours for seven minutes.

Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ): Thank you very much, Mr. Chairman. Good morning, gentlemen, and welcome.

You all represent business people, large businesses. Mr. Beatty, you are president of the Canadian Chamber of Commerce. So you know how to talk about business, how to talk about money.

Hon. Perrin Beatty: Small and medium-size businesses know that as well.

Mrs. Carole Lavallée: Yes, I know. Small, medium-size and large businesses agree on one point: to do better business, you have to find win-win situations. Everybody has to win; our supplier, our business, our consumer and our client have to win. Do you agree with me, Mr. Beatty? I know why you're very happy about Bill C-32. Despite your association's name, Mr. Wilson, we can see that Bill C-32 isn't very balanced.

I'll take a few minutes to explain to you why that is. More particularly, the creators of artistic content are the big losers. First, since the private copying system hasn't been modernized, they lose at least $13.8 million a year. As a result of the exception for education, they lose $40 million a year. I'm taking shortcuts because you seem to have a clear understanding of the bill. With the abolition of ephemeral recording, they lose at least $21 million a year. That's a minimum. I noticed that other amounts were also paid, but I didn't include them in my initial calculation. That totals $74 million a year.

There's the exception for YouTube, whose content is generated by users. In France, since there's no such exception, France's Société des auteurs-compositeurs français, SACEM, has managed to negotiate with Google for royalties to be paid. And even there, some money is being lost. It's at least $74 million annually that the creators, artists and crafts people are losing under Bill C-32. Do they consider that balanced? No. You know how to talk about money; you know very well they can't find that balanced. These aren't subsidies, but rather money that is being taken out of their pockets, money they normally used to receive.

In addition, yesterday, the Standing Committee on Canadian Heritage heard from the people responsible for the copyright bill at the Department of Industry and the Department of Canadian Heritage. I put the question to certain individuals around the table. I asked them what artists would gain with Bill C-32 and for them to name one bankable gain that they could make money with? There are indeed a few more rights, such as performers' rights, but that's not bankable. A power relationship is being established; the artists are happy, thank you very much, but that's not bankable.

So this is a bill that takes at least $74 million a year away from artists who earn an average of $23,000 a year and that gives them nothing more, no way to make more money. Creators can be viewed as suppliers. They're the ones who fill all the Internet sites of this world. The programming of 80% of radio stations is filled with music. When our suppliers no longer produce because we've slit their throats, what do we do? Will your radio stations want to go to the United States to get American music? When the clientele, Canadian and Quebec consumers, see that, how will they react? As for getting American music, let's go after American broadcasters. They'll change stations.

I want to outline this problem of lack of balance to you. I know you're very intelligent people. You know business, the value of money, and you know what it means to make a situation more profitable for everybody. So I'll let you speak.

● (1125)

[*English*]

Mr. Jay Kerr-Wilson: Thank you very much, Madam Lavallée. I'll answer in English, if that's okay, just so I can make myself better understood.

I would respond in a couple of ways. First of all, the act, as it exists now and as it would be amended by the bill, creates the same rules for everybody. So whether you're a large corporate rights holder or a small individual creator, the same rules apply to everybody. And the same holds true for Canadian creators and non-Canadian creators. We have an obligation to provide the same level of protection to everybody.

So when you talk about the lost revenue—and I'm not familiar with the figures you cited—certainly, I'm not aware of any money lost through a time-shifting exception, because right now people can use a VCR or a set-top box or a computer to record television shows, and there's no revenue associated with that. So I'm not sure the bill is going to cost anybody any money.

But I think a more fundamental point is that using the Copyright Act to try to sustain some minimum level of income for creators—which I think is a laudable goal and a good public policy objective—has some problems, because the bill applies to everybody. So if you create a measure hoping to provide some moderate level of income to Canadian artists, the way the provision will be applied, most of the revenue generated won't go to Canadians. It will go to large corporate American rights holders who have the bulk of the market in the U.S.

From our perspective, we should set ground rules in the Copyright Act that allow creators to market their creations and to benefit economically, and then on top of that, if we think Canadian artists—because we live in a smaller market and they have a much more difficult economic challenge—require additional support, then as a matter of public policy we should do that directly. We can't target support for Canadian artists through the Copyright Act, because most of the money will simply go to creators from other artists and to those who already get the most airplay, the most CD sales, and the most ticket sales.

[*Translation*]

Mrs. Carole Lavallée: Pardon me, but I simply want to make a minor correction. The legislation contains measures that strip artists of income they are currently receiving. Perhaps the easiest example for you to understand is the exclusion for ephemeral recordings. Radio stations pay at least $21 million a year for ephemeral recordings. The bill—if you wish, I'll cite the clause when you leave your chairs later—repeals the clause that allows them to recover $21 million. That's a lot of money for artists, as I said, but I also want to let the others respond. Mr. Beatty?

● (1130)

Hon. Perrin Beatty: Thank you, Ms. Lavallée.

[*English*]

Let me simply set a context for you. First of all, I can hear the passion in your voice when you talk about artists. It's a passion I share as the former Minister of Communications for Canada responsible for Canadian culture

[*Translation*]

and as former president of the CBC.

[*English*]

For me, it's absolutely fundamental, and as Minister of National Revenue, I was responsible for bringing in the status of the artist bill, which was designed to help provide protections and income for artists.

Copyright protection is one of the tools—it's not the only tool—the government has at its disposal to provide for better incomes and better support for creators. This is why we support the legislation. Artists themselves will benefit from having better copyright protection. Businesses will, and others will as well.

There are other tools in addition to that, as you're looking at the income of artists—support that may be available for the artistic community, which government also has at its disposal—and you should look across the board at all those measures.

Of concern to us, though, as we look specifically at copyright, and where we believe that both artists themselves and the businesses that are involved with them will benefit, is that we not lose this best chance that we've had to modernize our legislation and move ahead.

I've read the committee's transcripts, and the one area in which there's agreement is that the status quo is unacceptable. We have to make improvements. We need to strike a balance, to find some sort of fair middle ground. We think a conscientious attempt was made to do that. We're making proposals for ways to improve it beyond that. But we think that can be done.

Mr. Webster might want to comment specifically—

[*Translation*]

Mrs. Carole Lavallée: I'd like to use the last 10 seconds of time allotted to me, Mr. Beatty.

Only 10 seconds, right?

[*English*]

The Chair: We're going to have to move on.

Mr. Angus, you have seven minutes.

Mr. Charlie Angus (Timmins—James Bay, NDP): Thank you, long-suffering Chair. Have I told you lately what a good job you do?

Thank you, gentlemen. This is fascinating. I'm glad to have you here.

What we always hear is that this is about balance. Everyone who comes to us says, "Listen to me because I've got the balance. The other guys are unbalanced."

There's something I've noticed. I've found two interesting perspectives on copyright. Mr. Webster, you tell us it's about stopping people from stealing your sofa, that it's a property right. Copyright isn't a property right. Copyright is a construct of Parliament going all the way back to Queen Anne's Law, which was designed as a public good. And the good was to remunerate the artists and to decide the limits on that remuneration. It's not like you own a house and you pass that house on to your kids.

Mr. Wilson, you're describing copyright as a laudable goal for Canadian artists. But it's not the Canada Council. I don't care if Bono is going to make a lot more money on Canadian radio than is Sarah Harmer. Copyright is fundamentally about ensuring that artists get paid. Otherwise, there is no business model.

You say we shouldn't worry about updating the levy. But we have some $41 million directly in musicians' royalties that would be lost, from the mechanical royalties that are going to be tossed out if we don't update the levy in some form of digital format. That's a serious amount of money, and that's not counting the other areas where artists are going to lose.

Don't you think there is some obligation, if we're going to talk about copyright, to recognize that it's actually about people getting paid for their work?

Mr. Jay Kerr-Wilson: Yes, Mr. Angus, I agree. And I'm glad you asked the question because I think it also will address Madam Lavallée's question. When she was talking about time shifting, I misunderstood and thought it was about the recording of television programs. I think she was talking about the ephemeral as well.

I have a couple of points to make in response to your question. I'll try to make them quickly.

First, on the question of the ephemeral exception and the ability of radio stations to make copies, as the provisions now stand, the lifespan of those copies is 30 days. If radio stations want to make persistent copies of music to use as part of their operations, they can't now rely on the exception to do it. And if amended, they can't rely on that exception to do it. They need to have some other mechanism to have long-term copies. This is simply short-term copying.

But I absolutely agree with you. The fundamental purpose of the Copyright Act is to provide rights holders with the protections they need so that they can derive revenue from their creations and see a return on their investment.

Going back to Queen Anne, that revenue was through agreements, through contracts, going out to the market and making deals with publishers. And when we finally got to the recording industry, it was about making deals with the recording industry. And then consumers would place the value they wanted on the works.

When we talk about the levy, the problem is that there's a large disconnect between what the levy would be used for and what the levy would be collected on. The days of the single-use digital music player are gone. Everything is a multi-use device. People want their phones, their Internet access, their music players, and their cameras all in a single device. So how do you charge a levy for music on a device that may never see a song embedded in it, such as mine, which can take music but doesn't.

The other problem I have with it is that the coalition wants to see artists succeed in a new digital economy.

● (1135)

Mr. Charlie Angus: Which coalition? Are you talking about their coalition or our coalition?

Mr. Jay Kerr-Wilson: Sorry, our coalition.

Mr. Charlie Angus: I thought you were going to go after the socialist and separatist Bloc coalition. Whenever we talk about levies, my guys get all excited. I'm seeing them just gyrating.

Mr. Jay Kerr-Wilson: We may need to rebrand.

But we have submitted to the committee a copy of the licence that online music services such as iTunes are required to pay to authors and publishers in order to make copies. And we've highlighted on the first page of the levy the part that says, "(1) This tariff", which is a payment to rights holders from online music services, "entitles an online music service and its...distributors (c) to authorize consumers in Canada to further reproduce the musical work for their own private use".

When consumers buy songs for iTunes, they're already paying for the right to move them onto their iPod. So the levy would actually require those consumers to pay twice, once when they buy the device and then again when they pay to use it.

Mr. Charlie Angus: We're not going to get too much into this, but if you look at the Copyright Board decision, contrary to what my colleagues over there say, it doesn't get applied to cars. It doesn't get applied to cellphones. It has to be very specific in terms of the playing device, and the revenue we're looking at is $35 million. That's a shortfall. I have to go back to artists in my region, or across Canada, and say, we're giving you a copyright bill and we're telling you to lump it. Live off iTunes.

I have songs on iTunes, and I can tell you that doesn't cover one-fiftieth of what's being copied out there. So we have to find a copy mechanism.

I have to move on, because I want to speak with you, Mr. Beatty. I'm glad you read what I said in the House on WIPO. I might have said that it was written when the fax machine was cutting-edge technology. I think that was my full quote. I'm worried that when we talk about WIPO we are applying elements to WIPO that are not necessarily there, for example, the technological protection measures in the original WIPO treaty. And if you look at WIPO-consistent countries, in recent analysis we looked at many of our WIPO competitors and they have exceptions on technological protection measures, because under article 10 in the WIPO Copyright Treaty it says that it is "possible to carry forward and appropriately extend into the digital environment limitations and exceptions in their national laws which have been considered acceptable".

For example, if we give someone the right of parody and satire in a non-digital world and that exists in a digital world, do you not believe it's possible—I know it's difficult and it might be problematic for some—that we can establish a made-in-Canada law, in terms of technological protection measures, that allows us in Parliament to set the exemptions so that we are still WIPO-compliant, so we are still very much with that treaty of 1996?

Hon. Perrin Beatty: Thanks, Mr. Angus.

I'm not a lawyer, and I'll spare you my legal opinion. As a result, I'll turn to Mr. Webster.

The only thing I will say, based on your previous question and notwithstanding the fact that I was here a long time ago, is that Queen Anne had actually passed along before my day. It was a bit before my day, so I didn't have a chance to discuss it with her, but Lee is no doubt up to speed on all of that. I'll turn to him.

Mr. Lee Webster: Thank you.

You touched on a number of topics, but I think the bill is WIPO-compliant as it is. Certainly we can craft exemptions to it if we wish to do it. The question is whether we wish to do it and whether it's appropriate in the circumstances.

I don't want to get into an argument with you over whether my sofa is akin to a copyright, but copyright is an intellectual property right, and the reasons we have an intellectual property right are twofold. One, it is to reward creative efforts, and two, it is to stimulate creation. We're sitting here. The chamber represents not just big business but also little business, but copyright goes back to the authors and the creators. The reason we have copyright is to reward creativity.

We talked about striking a balance. That's fine. The balance we have to work at is how much reward to give to the creators and authors, and that's why we're all here today and that's why the legislation needs to be updated.

One thing we should not have is any misconception that copyright is just something to enrich the pockets of big business. It goes back to authors and creators. That's the fundamental foundation to the right.

How far does the right go? We now have an opportunity to make changes, to look at this to see what's appropriate in the digital age.

● (1140)

Mr. Charlie Angus: The question is...because I think we all agree. We want to make sure that if you invest a serious amount of money into a product it's not going to be bootlegged and stripped apart. The question is if there are specific exemptions that are guaranteed under Canadian law.

You say let the market decide. I don't see how you can decide legislation and say you have rights, but some corporate piece of software is going to deny specific rights that you should be able to access. For example, carrying satire—

The Chair: I'm sorry, Mr. Angus, that's going to have to be it.

Mr. Lee Webster: Part of the problem with this is unintended consequences. I was practising law back in 1997 when we went through the last round of amendments, and there was a lot of talk focused on dual cassette decks, basically. My dual cassette deck went out in the garbage about a month ago. We didn't think in those days of Napster or iPod or anything at all like that, so to try to craft exceptions for—

The Chair: Okay, we're going to have to wrap it up and move on to Mr. Del Mastro. I'm sorry, we're well over this round.

Mr. Del Mastro, for seven minutes.

Mr. Dean Del Mastro (Peterborough, CPC): Thank you very much, Mr. Chairman.

And thank you to the witnesses for appearing today.

Frankly, it's a contrasting testimony to what we had the other day. It's somewhat refreshing.

With respect to the numbers, Mr. Kerr-Wilson, I'm not surprised you're not familiar with some of the numbers that are being thrown around today. For future committee hearings, I'm going to have the chair bring in the big wheel off the *Wheel of Fortune*. We'll just spin it, and whenever it stops, we'll suggest that that could possibly be a number that might be impacted by the bill, because I have no idea where these numbers are coming from. Even when we asked folks to quantify it, it was very difficult for them to actually quantify where the numbers came from. So I'm assuming it's a big wheel that you spin.

Anyhow, Mr. Beatty, you made a fantastic comment when you said “Let's not let the perfect be the enemy of the good.” I can't agree more. Based on the consultations that we've had across the country, we've met with members, frankly, of the Chamber of Commerce, big and small. There was a comment made the other day that this bill seeks to protect big copyright holders but does nothing for small copyright holders, does nothing for small business. In fact, we get bogged down a lot talking about artists on this committee, but what we're really talking about is creators—creators of all different forms of intellectual property. Some of it is music, some of it is art, some of it is photographs, in fact, which are now protected in this bill. Some of it is software that's created—gaming software, software for computers and business. These are all the types of things that are protected in this bill—creators big and small. It's a good bill.

I've seen your amendments, by the way. They are largely technical amendments that involve making sure that the intent of the bill and the actual function of the bill, in law, is in line. I think I would describe them largely as technical amendments that you're suggesting.

So if we're not going to let the perfect be the enemy of the good, you and your association, I'm assuming, must be here representing big and small and creators of all forms. Is that accurate?

Hon. Perrin Beatty: Yes, we are. In our network we have 192,000 businesses. The vast majority of them are small and medium-sized businesses, and both larger businesses and smaller ones will benefit from this legislation.

Just going back to your question, the only pitch that I would make is, yes, we are recommending changes. I hope the government will be flexible on those. There's a lot of heat that's generated by the debate, and you can see it in the parliamentary committee; you can see it in public comments that get made. But I was struck when I was reviewing the evidence by the degree of consensus there is in terms of what the goals are that people on all sides are trying to achieve. I think if there's sufficient goodwill, we can have a situation that is infinitely better than where we find ourselves today, where I cannot find anyone who says that what we have today is acceptable.

Mr. Dean Del Mastro: Yes, I agree. I think, frankly, the government's willingness to work this bill through the process is evidenced by the fact that we're here at a legislative committee specifically set up for this copyright bill and to work this thing through. We're frustrated, on our side, because we feel that the bill is simply being punted down the field and we don't have the focus we would like to see to have this bill accelerated and dealt with.

How important is it to the Chamber of Commerce, sir?

In fact, Mr. Kerr-Wilson, how important is it to the group formerly known as the Balanced Coalition for Balanced Copyright? How important is it that we get this, that we deal with it, that we deal with it promptly, and that this bill becomes law as soon as we can possibly do that? How important is timeliness?

● (1145)

Mr. Jay Kerr-Wilson: Certainly, on behalf of the BCBC members, we think it's absolutely fundamental that the rules have to be established that create the framework for all Canadians to move forward into the digital economy, whether it's creators, distributors, or consumers. We encourage Parliament to work together, the parties to work together, to get the bill passed this time.

We would agree with Mr. Beatty's comments that we can't let the perfect be the enemy of the good, especially when we have regular review mechanisms built in. We can fine-tune and we can correct, but we need to take that first step and give the marketplace the tools it needs to develop.

Mr. Dean Del Mastro: Is timeliness an issue for your members, Mr. Beatty?

Hon. Perrin Beatty: It sure is. And we've been waiting a long time. It goes back to my day when we were talking about this. The technology has changed dramatically since the time when I was Minister of Communications. Various ministers have attempted to modernize our intellectual property regime. It needs to be done now desperately, and we can't just push it off or else everybody loses—everybody loses. The Canadian economy loses jobs, prosperity. Artists, other creators lose. This is the best opportunity we've had for a long time to modernize the regime, and we need to do it.

Mr. Dean Del Mastro: Thank you very much.

Obviously, having been a chamber member for a long time, I'm just interested if the chamber has actually put any numbers to what they think—since we like throwing numbers out—is actually being lost on an annual basis due to lack of protection in this country, due to piracy of copyrighted materials.

Has the chamber quantified that in any way?

Hon. Perrin Beatty: I'll turn to Lee on this again, but it's very difficult to put that sort of a figure on lost revenues. You simply don't know exactly what has taken place and what people's behaviour would have been otherwise. All we know is that it's substantial, and to a degree it's correctable, but let me turn to Lee on that.

Mr. Dean Del Mastro: Maybe I can just refine the question a little bit. If you can't quantify the loss, is anybody coming to you and saying they would invest more in Canada or invest more into their business if they felt better protected?

Hon. Perrin Beatty: Absolutely. What we certainly hear from our members is that copyright protection is critical for them in looking at investments they make in Canada. Do we have a regime that's attractive here or not?

If I can talk personally just for a minute, my family was a manufacturing company. I'm not talking about copyright but about IP here. We employed 800 people in the small town of Fergus. My grandfather at one point reportedly had more patents registered after his name than anybody else in Canada. That was an incentive to innovation and to job creation and to prosperity for Canadians. It is no different as you move away from patent protection to copyright protection. Having that sort of a framework in place rewards creativity, innovation, and risk. People, whether they're artists themselves or whether they're business people, are going to go where risk will be rewarded.

Mr. Dean Del Mastro: Thank you very much.

The Chair: Okay. Thank you very much.

We'll move to the second round of questioning, and it's a five-minute round, starting with Mr. Rodriguez.

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

I think we all agree on the importance of modernizing this copyright bill, so you must have been very disappointed when you realized that it took five years for the government to start discussing this after proroguing two, three times. I hear Mr. Del Mastro comment, but if there had been no prorogations, maybe we could have dealt with this before. I don't think the opposition is responsible for this.

[*Translation*]

We agree that the act has to be modernized and that we have to have a sound copyright system consistent with our international undertakings. We also agree that consumers must have better access to content.

Where we don't agree with you is on this idea that content should be free. From what we've heard from you from the start of the discussion, rights existed and generated income. They will no longer exist, and that's fine; that's not a problem with regard to private copying. In your view, does private copying have a monetary value? Is it worth something?

● (1150)

[*English*]

Hon. Perrin Beatty: Worth something to the individual? But that's one of the reasons, when we're talking about technological protection measures, digital locks, that we think it's important that there be protection there that ensures there's a range of options and business plans that people have that they can offer to consumers, and consumers can make a decision then as to what they would like to have.

[*Translation*]

Mr. Pablo Rodriguez: Artists and creators in the music industry, for example, are also business people. In a way, every artist manages an SME, a small business. They take risks, they have to work and invest, they have to record disks. That costs a lot of money. It's not certain to work. We're telling those artists that now, when someone copies their songs, that's no longer worth anything. Isn't that a problem for you?

[*English*]

Hon. Perrin Beatty: I'm certainly not saying that it's no longer worth anything. Far from it, and the reason why we support copyright legislation is that we believe that intellectual property does have worth. The question is, how do you construct a regime to protect intellectual property that's modern, sufficiently flexible, and responsive to all of the needs that are there?

The most important thing, in my view, that we can do for artists is to ensure that there are protections that don't exist today in terms of protecting their intellectual property. There are other tools as well, in addition to copyright, that the government has at its disposal to provide assistance to artists, and copyright should be looked at as one of those elements that can advance the position of artists, in addition to the others.

[*Translation*]

Mr. Pablo Rodriguez: You must agree on not extending the levy to new technology or having a program in place, such as the one being suggested. There is a net loss of income for creators in the music sector.

I want to go back to the issue of ephemeral rights. You entirely agree on the idea of maintaining this aspect as proposed by the government. Is my understanding correct?

[*English*]

Mr. Lee Webster: Yes, we do.

[*Translation*]

Mr. Pablo Rodriguez: You also know and are aware that there is a loss that is estimated—this isn't a randomly selected figure, but an established and proven figure—at approximately $21 million. In your mind, it isn't a problem that this $21 million is lost by creators, by people in the cultural sector?

[*English*]

Mr. Lee Webster: I'm not quite sure where that $21 million number comes from. Perhaps you could explain it a bit more.

[*Translation*]

Mr. Pablo Rodriguez: These are the figures advanced by the music industry. It's the very amount of which you say a part is paid to foreign artists.

[*English*]

Mr. Jay Kerr-Wilson: If I may, I would just say that the only loss that will result—if we're talking about the radio station ephemeral—would be if no radio station keeps any copies longer than 30 days. The existing provision only covers copies for 30 days. On the 31st day, they can't rely on the exception; they need to do something else.

[*Translation*]

Mr. Pablo Rodriguez: I understand, but there are broadcast loops. The song can very well be deleted after 30 days and be recorded again, and it continues on that way. In net terms, there will be an income loss of $21 million if the bill remains as it stands.

[*English*]

Mr. Jay Kerr-Wilson: But I also don't think we should—

[*Translation*]

Mr. Pablo Rodriguez: I agree with you on certain points. Some points are valid, but what concerns me is that there is a loss of income for our creators, which doesn't seem to trouble you.

[*English*]

The Chair: Mr. Rodriguez, we're going to have to move on.

[*Translation*]

Mr. Cardin, you have five minutes.

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

Good morning and welcome, gentlemen.

I'm going to go back to Ms. Lavallée's remarks, which also served as a basis for questions by Mr. Rodriguez following a few points mentioned by you, gentlemen, the witnesses. I believe it was you, Mr. Beatty, who said that "the better is the enemy of the good," and Mr. Del Mastro supported that statement. It's also said that "perfection is not of this world," but we have to try to improve every day, as though we could achieve it.

As Mr. Wilson said, this bill creates the same rules for everybody, but we're talking about different classes of creators, whom you represent as well. Some creators are really smaller. Earlier Ms. Lavallée advanced a figure saying that nearly $74 million in copyright royalties could be lost as a result of this bill.

We're talking about balance, particularly in a context of constant and increasingly rapid technological change. Some creators can easily defend their copyright and ownership rights. However, the smaller creators who don't necessarily have that kind of control must also be given the same ability.

The result, based on the analyses and figures that have been advanced by a number of specialists, is nearly $74 million in losses. Mr. Webster told us earlier that the purpose of copyright was to reward authors and creators. Personally, I don't consider it a reward, but rather a form of salary. Someone has created something and his creation evolves through time and has a monetary value solely as a result of those who use it or consume it.

At that point, we can't say there is a reward. If we consider that this is a reward, what are they doing wrong for them to be deprived of $74 million, as provided for in this bill?

● (1155)

[*English*]

Hon. Perrin Beatty: I'll start and then turn it over to colleagues after that.

Let me come back to what you were saying about whether we're allowing the perfect to be the enemy of the good. I fully agree with you. Whatever bill comes out of this Parliament, or whatever legislation there is, will not be perfect. It'll represent Parliament's best attempt to put a modern regime in place, and it'll start to feel the creaks and the strains as technologies change very rapidly.

But the only thing that I'm sure of, Mr. Cardin, is that it will be infinitely better than what we have today. And the plea I would make to Parliament is, do not lock us into the 20th century when we've moved into the 21st century. We need to modernize what we do.

Again I come back to the question, what can we do for our artists? One of the key things we have to do is to ensure protection is in place in terms of copyright to protect their creations. That's essential. Is that all we can do for them? No, it's not.

I am a former Minister of Communications responsible for culture. in addition government has many tools to address issues artists have, which it should use. *Société Radio-Canada*, of which I was president, is the largest cultural institution in Canada and a great source of support for artists as well.

There are many tools, but one of the tools that artists definitely need is to have modern copyright legislation. Without that, we'd lock ourselves in the past, and everybody loses. If we make the change, does everybody win as much as they would like to win? Inevitably there will be debate on that. The only thing I know is that if we don't act, everybody loses. That's why we must act.

[*Translation*]

Mr. Serge Cardin: The people you represent also include some major specialists. As I told you earlier, some people are able to protect themselves and to protect their creativity, their creations and their inventions. They should also make a contribution to assisting the smaller ones. If we consider the major disseminators of cultural products, if there was no culture, what would they do? So it's also up to them to assist in this protection.

[*English*]

Hon. Perrin Beatty: And they do. You are preaching to the converted, certainly, when you're talking to me about where we would be without culture. I've devoted much of my life to defending Canadian culture and Canadian sovereignty, and it's critical for me.

Our members are taking important steps. Our members create the opportunity for artists to have their works distributed and sold, and pay them for doing that. Our members create the technological protections that are in place to help protect the intellectual property artists have created, and we feel very strongly. It's a partnership. Our businesses could not function without the creators. It's essential.

The Chair: Thank you, Mr. Beatty.

Hon. Perrin Beatty: And I would cast the net very broadly. It's not—

[*Translation*]

Mr. Serge Cardin: Would you allow me just one minute?

[*English*]

The Chair: Thank you, Mr. Beatty and Mr. Cardin.

● (1200)

[*Translation*]

Mr. Serge Cardin: He could answer a question that everyone is wondering about.

[*English*]

The Chair: We are well over time. We are going to Mr. Braid for five minutes.

[*Translation*]

Hon. Perrin Beatty: Thank you for your question.

[*English*]

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

And thank you very much to the representatives for being here this morning and this afternoon. It's been a very informative briefing and presentation.

Mr. Beatty, I certainly appreciated your reference to my riding of Kitchener—Waterloo as being an important engine of the national economy, particularly with respect to the high-tech sector, the innovation sector.

I want to start by asking if you could please underscore and summarize why updating and modernizing our copyright legislation in Canada is so critical for fostering innovation in this country. Could you make that link?

Hon. Perrin Beatty: Mr. Braid, I know your community very well. I'm a resident of Fergus, where I was born and raised and which I represented in Parliament and which is literally around the corner from you.

I am stunned when I see the creativity in Kitchener—Waterloo and the number of businesses there that have been created and the number of individuals who just exemplify the best of the knowledge economy. This is where Canada's hope lies in the future, in that sort of creation of new jobs.

Intellectual property protection is absolutely critical, whether it's in terms of patent reform or in terms of copyright reform, to reward those people who take risks and those people who invest their creativity.

Both people and capital are mobile to an extent unprecedented in the history of humankind. If we do not protect our intellectual property in Canada, not only will we not be able to attract people here from abroad to make those investments of their brilliance and of their financial resources, but we will lose them voting with their feet to go to other countries. That's why it's so utterly critical.

I have a son in university. I don't want him, when he graduates, competing with a young person from western China on the basis of who will accept the lowest pay. I want him competing on a value-added job based on the knowledge-based sector where we have a sustainable, competitive advantage in Canada. And to do that we need to have a legislative framework in place that rewards creativity and that keeps our best and our brightest in Canada.

Mr. Peter Braid: Thank you very much, Mr. Beatty.

Mr. Webster, when Mr. Beatty concluded his presentation, he mentioned that the chamber had some suggested amendments with respect to a couple of areas. One dealt with the issue of reverse engineering.

I just wanted to ask if you could share that with the committee, elaborate on that, and perhaps provide an example.

Mr. Lee Webster: Sure.

One of the things we're talking about with respect to reverse engineering is that some have expressed the thought that digital locks or TPMs should not be permitted to lock down subject matter such as software, on the basis that in doing so it would prevent individuals from reverse-engineering software. Well, I think digital locks are essential to preserve business and commercial information. There's nothing strange, nothing new, about that. That's the way things work in the world with trade secrets. So digitally locking down a software code makes a lot of sense.

And on the ability to reverse-engineer it, why should somebody be allowed to break a digital lock to reverse-engineer? It's frankly the trade secret or confidential information of the rights holder. Reverse engineering is a means of copying, essentially, and we don't think digital locks should be broken to allow for that.

Mr. Peter Braid: Okay. Thank you very much.

Mr. Kerr-Wilson, I wanted to ask if you could please speak to the role of ISPs in ensuring legitimate use, and under Bill C-32, the important rights and responsibilities that ISPs have.

Mr. Jay Kerr-Wilson: Thank you very much for the question, Mr. Braid.

Certainly, ISPs under the act would be obligated to receive notices from rights holders that there's infringement activity and to pass those notices on to the subscriber in question without identifying the subscriber or violating the privacy rights. Then they would also have to retain the records about that, so if the rights holder wants to pursue litigation, there's an evidentiary record.

The fact is that large Canadian ISPs have been doing this for a decade, with no legal obligation, and in cases where, in the United States and Europe, ISPs have been doing nothing to respond to peer-to-peer file sharing. So in fact we've been a decade ahead of the curve. France and the U.K. have now developed models that have led them to notice and notice, which is the model that, as I said, ISPs have already been undertaking without the legal obligation, without a lot of formal structures.

So it's the appropriate response to peer-to-peer file sharing where the ISP doesn't know what content is on the end user's computer; quite frankly, we don't want ISPs to know what content is on the end user's computer, but it sends a message, and has an education component, so the consumer knows what they're doing is wrong.

● (1205)

The Chair: Thank you very much. That's going to have to be it.

Thank you to our witnesses.

We're going to take a short break and bring in our second panel.

Thank you very much.

● (1205)

(Pause)

● (1210)

The Chair: We are calling the tenth meeting of the special Legislative Committee on Bill C-32 to order.

We have two groups who are going to be witnesses. We have Terrance Oakey and Howard Knopf from the Retail Council of Canada, and Anthony Hémond from the Union des consommateurs.

We will start with Terrance Oakey from the Retail Council of Canada for five minutes.

Mr. Terrance Oakey (Vice-President, Federal Government Relations, Retail Council of Canada): Thank you, Mr. Chairman.

The Retail Council of Canada is pleased to provide our comments on Bill C-32. As you stated, my name is Terrance Oakey, and I'm a vice-president with the Retail Council of Canada.

Our members speak for an industry that touches the daily lives of Canadians in every corner of the country and one that directly contributes close to $75 billion in GDP, invests $5.9 billion in infrastructure and machinery, $1 billion in logistics, and is also quickly becoming the number one job-creating sector in our economy.

Our industry is innovative and highly reliant on emerging technologies, with one goal in mind: to deliver the highest-quality product and service to the customer in the most cost-effective manner.

Our members sell the very cultural products that this bill intends to protect, so it is in our members' interest to advocate for the best balance between the public and consumer interest on the one hand and the interest of creators, producers, and distributors on the other. RCC has always taken this approach, whether before committees such as this or before major court cases relating to some of the issues that I will deal with today.

I want to focus briefly on five issues in my opening remarks. I believe members of the committee have our submission, so more detail is provided there.

The first issue I want to deal with today is the levies, or some have referred to it as the iPod tax. Even though it is not addressed specifically in the bill, the issue has loomed large in the public debate around copyright. Our members feel that there are good reasons to ensure that the blank media levy is not extended to iPods, and actually should be repealed altogether.

We believe the tax is obsolete. There is nothing like it in the U.K. Australia, or, most importantly, the United States. Most of our retailers compete head to head with U.S.-based retailers. If it is expanded to iPods, we believe it will creep to cellphones, BlackBerrys, and even computers, and it will drive sales away from Canadian retailers.

Although there is persistent denial by iPod tax proponents, the fact is that in SOCAN's most recent attempt at the Copyright Board to impose a levy on digital audio recorders, they asked for an amount of $75 on each recorder with more than 30 gigabytes of memory. In other words, that would cover basically your classic iPod. We know now there are many devices that have three times this amount of memory in their capacity.

This tax would put Canadian retailers at a significant competitive disadvantage and I would argue would simply further incent Canadians to buy their devices outside our borders to escape this fee.

Our next issue is parallel imports. RCC is concerned that clause 4 of the bill may inadvertently affect the ability of retailers to bring in parallel imports of legitimate and competitively priced goods from abroad. This practice of parallel importation is expressly permitted by the 1996 WIPO treaties and other World Trade Organization agreements, and it is seen by consumers and retailers as being an indispensable tool in the maintenance of free trade, competition, and the prevention of international price discrimination.

We do not believe the government intended to change the status quo, so we suggest that this provision either be omitted or that the bill be amended with improved wording that would maintain the status quo. In our more detailed submission, we provide such wording.

Our next issue is fair dealing and exemptions. Our members believe that the performance of music for the sole purpose of demonstrating any consumer electronics device or selling CDs or DVDs should also explicitly be included as an exemption in the legislation. This would be perfectly consistent with long-standing American legislation that deals with this precise issue.

It would also be consistent with the fact that iTunes now can show or sample a song for up to 30 seconds without paying this fee. This is yet another example where bricks-and-mortar retailers are at yet another competitive disadvantage compared to their major trading partners.

Our next issue is photofinishing. As many of you are aware, today's inexpensive, high-tech cameras allow almost anyone to take pictures that look somewhat professional. Some of our members are becoming concerned and are refusing to make prints because they fear being sued under statutory damages, which can be as high as $20,000 for each photo.

This bill should include an explicit exemption that immunizes any commercial photofinisher who acts in good faith and relies on a written representation that the customer has the right to request the reproduction.

Our next issue is technical protection measures. We join the chorus of many manufacturers of consumer electronics, and many artists themselves, who believe that overly rigid measures to protect digital locks are bad for artistic creativity, bad for innovation, and bad for the retail business.

● (1215)

Consumers should be free to do whatever they want with their legitimately purchased hardware and software, as long as that use is for private purposes that are otherwise non-infringing. That is all that is required by the WIPO treaties, and we believe that is as far as Canada should go.

That concludes my opening remarks.

Howard or I will be happy to take your questions.

Thank you.

The Chair: We'll move on to Monsieur Hémond.

[*Translation*]

Mr. Anthony Hémond (Lawyer, Analyst, policy and regulations in telecommunications, broadcasting, information highway and privacy, Union des consommateurs): I would like to thank the committee for inviting us to take part in the committee's proceedings on the copyright bill.

My name is Anthony Hémond. I am a lawyer and analyst with the Union des consommateurs.

In our presentation on Bill C-32, we will address a number of topics such as the technical protection measures, which raise a number of problems, the new rights conferred on users through exceptions and the accountability of Internet service providers.

By preventing the circumvention of technical protection measures that control access to works, the bill goes beyond the mere protection of authors' rights by enabling authors and rights holders to limit the rights that the legislation confers on users through technical measures. It must be understood that the aim of the IPO treaties, the WCT and the WPPT, is not to provide technical protection measures that protect access to works, limited to those implemented by the authors in the exercise of their rights. Some European countries that have ratified the WCT and WPPT treaties and the information society directive have chosen not to include among the technical protection measures that may not be circumvented those that protect access to works. It is therefore entirely possible to ratify WIPO's WCT and WPPT treaties without including any technical protection measures that are a barrier to user rights.

We also believe that Canada should draw extensively on the approach adopted in Sweden's copyright legislation, since that approach, which protects both the existing rights of rights holders and the public, manages to maintain a balance between creators' rights and those of the public, which Canada's copyright legislation should absolutely aim to do.

In the view of some, the technical protection measures that control, for example, user access to downloading platforms which in their view are necessary because they support business models must be protected under the Copyright Act. The purpose of the Copyright Act is obviously not to protect business models, but rather to confer certain rights and obligations on authors, while ensuring that there is a balance between those rights and the rights of the public. In our view, the technical measures that control access do not come within the purview of the Copyright Act. The business models referred to concern the provision of a service, not copyright. We also suggest that the bill be amended to change the definition of technical protection measures and to enable them to be circumvented where they unduly limit user rights.

These new exceptions, reproduction for private purposes, reproduction for later listening or viewing and backup copies, are welcome. This initiative is all the more appreciated since these new exceptions legalize practices that are widespread among consumers, practices supported by the market, and that have long provided them with some of the tools that permit or facilitate those practices. However, in our view, the provisions for these exceptions must be amended. Certain conditions associated with the exercise or context of the exceptions could very well prove inapplicable, or appear not to achieve their target. In addition, certain limits placed on the exercise of those rights seem unwarranted in our view. Furthermore, the wording of those clauses does not always appear conducive to enabling users to know and have a clear understanding of the nature, scope and limits of the rights conferred on them.

From a perspective of simplification for the purpose of providing everyone with a clearer understanding of what is permitted and of the limits of these authorizations, we also think that a more broadly conceived copying right would make it possible to include in a single clause the exceptions made for the fixation of a signal or a recording of a program for later listening or viewing, the private copying right and the backup copies right introduced by Bill C-32. In our view, it would be possible and preferable to institute a single system for the reproduction of works including adequate royalties. Such a system, which ideally would be technologically neutral, would afford the twofold benefit of enabling all creators whose works are copied—

● (1220)

[*English*]

Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC): Excuse me, Mr. Hémond. The interpreter just said that you're reading too quickly for her to understand.

[*Translation*]

Mr. Anthony Hémond: Such a system, which ideally would be technologically neutral, would afford the twofold benefit of enabling all creators whose works are copied to be compensated and of relieving users of any legal insecurity over whether copying a particular work on one of their devices is or is not authorized by rights holders or by the act.

With regard to the accountability of Internet service providers, certain rights holders suggest that the act should require Internet service providers to pay compensation for works circulating on the Internet in violation of their rights. In fact, they would like Internet service providers to pay for all acts that they consider illegal and that are committed on networks by users. If Internet service providers were required to pay such fees, it could of course be anticipated that they would, on the other hand, increase Internet subscription rates. In other words, all users, whether or not they violate rights holders' rights, would have to pay for that kind of compensation. All users would therefore be encouraged to commit the acts that rights holders consider illegal.

If a system of royalties were to be considered, it would be a good idea to develop something more logical and equitable. It is indeed curious to consider a system that proposes, on the one hand, to maintain and even increase the number of violations of the Copyright Act by users who would pay even if they did not violate that legislation, since they would be encouraged to do so, and that, on the other hand, contemplates payment by non-offenders of royalties that, as far as possible, should be imposed solely on those who intend to act in a manner that might involve the works subject to copyright. That is why we advocate the introduction of a licence to make available—

[*English*]

The Chair: You'll have to wrap it up.

We have to move to questioning.

[*Translation*]

Mr. Anthony Hémond: All right. That is why we advocate the introduction of a licence to make works available on networks that are paid for by users. We believe this approach would be more effective, more viable and more equitable.

[*English*]

The Chair: We'll move to the first round of questioning.

Mr. McTeague, for seven minutes.

Hon. Dan McTeague (Pickering—Scarborough East, Lib.): Yes, I promise not to be very fast in my questions.

[*Translation*]

Thanks to all the witnesses appearing before the committee today.

[*English*]

Mr. Oakey and I have done work in the past on credit cards and other issues. I have always known him to be a very solid individual in an organization that has a great reputation. I certainly wouldn't want the organization to give a perspective to an ideal about iPod taxes or levies that are those of the Liberal Party.

As you know, Mr. Oakey, we do not support that. Despite the Conservative attack ads, which tend to be nothing less than a provocation of the truth, the reality is that we don't. I think you understand that. Is that correct?

Mr. Terrance Oakey: Yes, I do. I met with Mr. Garneau and Mr. Rodriguez as well, and I've been assured of that.

Hon. Dan McTeague: Mr. Oakey, I'm very interested in the RCC's take on copyright in general. I know that you were very helpful in 2006 when the industry committee came to a number of conclusions, which led, I think, to part of the legislation that we have before us today. I'm somewhat pleased to hear the endorsement, the support, that you have for TPMs and the position we've taken.

Within your own membership, do you have concerns about the illegal use or the sale of products? This is something that I recall hearing at one of the speeches given some years ago, that there was a sort of attempt—within the organization itself, within the RCC—to at least curb the incidence of copyright infringement, particularly of the more egregious natures.

Mr. Terrance Oakey: Absolutely, our industry depends on those consumers who buy legitimate products. We are the first ones to want to crack down on piracy and other uses of the product that are illegitimate. That being said, a lot of our members have expressed concerns about digital locks that might go too far in terms of a customer expectation. We want to ensure that there's a scenario where customers are incented to buy legitimate products.

So when they buy a DVD at one of our member stores, that's completely legitimate. Then they maybe go on vacation to Europe and can't use it because of a TPM that's on it. A lot of our members feel that's an incentive for the customer, when they go to Europe, to simply find a site where they can download the movie, and that becomes a practice.

● (1225)

Hon. Dan McTeague: In the interests of time, I wanted to flush out more of your comments on parallel importation. Could you give us a real example of how this is impacting your membership?

Mr. Terrance Oakey: I'll ask Howard to talk some more about that.

Mr. Howard Knopf (Counsel, Retail Council of Canada): Thank you, Mr. McTeague.

The best example I can give is the one that was in the Supreme Court of Canada three years ago in which the Retail Council of Canada intervened. Kraft, big multinational Kraft, tried to use copyright in a highly technical way to block the importation of perfectly legitimate Toblerone chocolate bars from Europe that were coming in at a lower price; they said there was copyright on this little logo, a tiny little logo on the chocolate bar. Justice Binnie, in his usual brilliant and witty way, asked the lawyer for Kraft if this was really about artistic creativity, which the lawyer for Kraft said it was. Justice Binnie said, “Do you seriously think that anybody's going to buy this chocolate bar, frame the package, and throw away the chocolate?” The answer was...of course, it was a rhetorical question.

That's what parallel import law is all about, to use copyright in a very technical way that has nothing to do with the product in most cases and is designed to achieve price discrimination and eliminate competition. So we've come up with what I think is a very simple amendment that we've given you that would combine both. There were several opinions in that Supreme Court case, and we combined the two prevailing opinions: the one rather technical one having to do with hypothetical maker, which you don't want to hear about, I'm sure, and the other having to do with what Justice Bastarache called “an incidental use”. So if the incidental use of this little logo on the label is incidental to the chocolate bar, which is the real object of the transaction—

Hon. Dan McTeague: It sounds to me, Mr. Knopf, that it's a very interesting point. It's a point that a good number of our friends in the bar might understand. I'm wondering how this directly impacts your members. I think that's really the concern we have. If your members are expressing this, there is a cause and effect, it's well known, and it's certainly something we'd want to look at.

In the interest of time, because I know I'm going to get gavelled here in a second,

[*Translation*]

Mr. Hémond, I would like to ask you a question about damages and penalties.

Do you think the penalties included in this bill will have a deterrent effect or prevent people from violating it?

Mr. Anthony Hémond: The proposed clauses provide for effective mechanisms that in fact have already been adopted by Internet service providers. So the bill merely legalizes current practices.

Hon. Dan McTeague: You mentioned royalties and said that that troubled you somewhat. Can you give me some more details on that subject?

Mr. Anthony Hémond: With regard to royalties, we propose the adoption, not of a number of systems, as is proposed in the bill, but of only one. The ephemeral recording provisions include very specific conditions that are in effect inapplicable. It is impossible to control what is done in people's homes, in private life. This complicates the system. In these conditions, users are no longer reassured because they don't know whether they're entitled to do what they do. With regard to private copying, a single system combined with a royalty would reassure all users. That would enable them to make copies without having to be concerned.

Hon. Dan McTeague: How would we proceed?

Mr. Anthony Hémond: There are systems. I heard that the United States and Great Britain didn't have royalty systems for private copying. On the other hand, the majority of European countries do. Their mechanisms operate more or less well, but the fact remains that the courts have found this gives people the right to engage in private copying.

[*English*]

Hon. Dan McTeague: Mr. Knopf, perhaps I'll ask a final question of you in the few seconds I have. Your take on the statutory damages and whether or not they in fact encourage more egregious behaviour by simply placing a monetary penalty of $5,000...are you going to be able to...? You have members obviously who are in the retail industry who may be affected by this, so how are they going to stop the isoHunts and the BitTorrents of this world who are stealing information with very little legal impact, let alone a remedy as far as penalties are concerned?

● (1230)

Mr. Howard Knopf: Mr. McTeague, as Mr. Oakey said, the RCC in no way favours piracy in any way, shape, or form. I think that $5,000 is a lot of money for most Canadian households; it's about a year's tuition at university, as I understand it these days. It's enough to make people notice. Some people think it should be eliminated. Only Canada and the United States, among major countries, even have statutory damage regimes, so we do have it. We're not in any sense proposing its abolition, but $5,000 is a lot of money for most families.

Hon. Dan McTeague: They may be making tens of thousands a day doing what they're doing. It's legal in Canada, illegal in other....

Mr. Howard Knopf: Mr. McTeague, that's a completely different issue. It has nothing to do with this issue. They do not get that exemption.

The Chair: Madame Lavallée, you have the floor for seven minutes.

[*Translation*]

Mrs. Carole Lavallée: Thank you, Mr. Chairman.

To start with, I'd like to set the record straight with regard to a statement contained in the brief by the representatives of the Retail Council of Canada.

You wrote that the levies on the iPhone could represent $75. You say, and I quote: "This fact cannot be denied." Pardon me, but I'm going to deny it. I followed the link you sent us and I saw that that amount didn't correspond to the levy proposed by the Copyright Board of Canada, but that there was a proposed levy of $75. I'll leave it up to you to go and search the Copyright Board of Canada site on the Internet. A decision made and the levy obviously didn't exceed $25. So that could be denied, just as the idea of calling it "a tax" could be denied. A tax, as you know—you're intelligent, like everyone—is money that goes to the government. However, a royalty is money paid to a copyright collective to be redistributed to artists.

Between you and me, it's quite surprising that this Conservative government doesn't want to pay artists royalties on the sales of digital audio players but instead wants to tax books in Quebec as part of the tax harmonization. Really!

My question is for Mr. Hémond.

Good morning, Mr. Hémond. I'm glad you're here. I have two questions for you, and then we'll set aside a little time because I would like to talk to you about music streaming. For the moment, I'm going to talk to you about Part VIII of the Copyright Act concerning private copying.

You say that other countries have this system—I suppose there are countries where it works very well—and that it works extremely well here in Canada and Quebec. From the point of view of consumers, whom you represent, if you had to rewrite this part of the act, to what devices would you apply this levy and to what works? Would you focus on music? Would you set a ceiling? For example, the Copyright Board cited a figure of $25. Would there be a ceiling? How would consumer interests be served in this private copying system?

Don't forget to allow 30 seconds for us at the end.

Mr. Anthony Hémond: Consumers are generally in favour of these levies. One survey was tabled here, which you may have read as well, which states that consumers are prepared to pay these levies. The devices concerned would be those that generally make it possible to make copies.

I have rarely met any users who have downloaded all their tech music from iTunes and have made copies. They must be reassured and told that what they're doing is legal and that, if a levy is applied, they are entitled to copy their CDs onto their iPods, or their daughter's songs and so on, in a private context. We should reassure everyone at that point. This is a win-win system for creators and users—consumers—because they know that what they're doing isn't illegal and they encourage creation. So we're in favour of this model.

What kinds of works are there? I would say you can go very far. In fact, virtually all types of works could be subject to this. As regards the limit, there's a commission—

Mrs. Carole Lavallée: That is to say, literature, visual works.

Mr. Anthony Hémond: Yes, why not? A man buys a book at a store. He can lend it to his wife. However, an e-book purchased from an online seller is stuck on an iPad and can't be lent to anyone unless that person lends his iPad. There are a number of e-book technologies that have digital locks and prevent copying. For the moment, users don't have the same option at all. So the system has to be reviewed considering these possibilities. That's the most technologically neutral.

● (1235)

Mrs. Carole Lavallée: So you would apply these levies to a range of digital devices, including e-readers, iPads, wireless telephones, USB memory sticks?

Mr. Anthony Hémond: No. As regards USB sticks, some things should be avoided. I'm perfectly aware of what goes on in certain countries with regard to private copying. In France, for example, they want to tax GPS systems. That's crazy. That kind of thing should be avoided because, on the other hand, if it becomes excessive, it will be completely rejected by users. They'll then feel pushed and led towards something that might perhaps be the contrary or illegal with regard to copying because they'll be fed up with feeling that more and more is being taken away from them. On the other hand, they should be reassured that this concerns only certain works, certain copies, and that certain devices won't be taxed. As for the price that will be paid, the Copyright Board has done a remarkable job and it should be emphasized that the proposed levy would definitely have to be reviewed because people have greater storage capacity. However, analyses could be done and the issue would be debated before the Copyright Board.

Mrs. Carole Lavallée: How would this private copying system be consistent with consumers' interests?

Mr. Anthony Hémond: It would enable them to make copies and to be reassured. That's what's important. It's increasingly possible to make copies. Trying to control this practice through technical measures seems completely crazy and unrealistic. So let's find a win-win system for creators and users.

Mrs. Carole Lavallée: Since it's possible to access music that's streamed by service providers, I would like you to tell us how artists could receive royalties through that type of broadcasting.

Mr. Anthony Hémond: One arrangement available on the market is to subscribe to systems such as Spotify or Deezer in France. Usage is free. So it's funded through advertising. This unfortunately doesn't exist in Canada. Some models are currently being market-tested, with varying degrees of success. However, we have virtually nothing at all like that here.

Mrs. Carole Lavallée: Can a comparison be drawn between radio, which enables us to listen to music free of charge without paying royalties, even when we buy a radio, and music streaming on a computer?

Mr. Anthony Hémond: There are a lot of similarities between radio and music streaming. The difference is that, in the latter case, users have some control because they can choose certain pieces they want to listen to. Users seek out this interactivity.

To a certain degree, a comparison can be drawn with radio. Levies were imposed on the sale of blank cassettes in the past because those cassettes were used to record what people heard on the radio or vinyl disks. While preparing the brief that we wrote on the bill, I had occasion to read the documents prepared by subcommittees in the 1980s. That was 30 years ago, and what was already being proposed at the time in the case of private audio-visual recording was royalty systems. That was the solution that seemed most appropriate. However, 30 years later, we want to question everything. And yet that was really a win-win system for users and creators.

[*English*]

The Chair: *Merci.*

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

Mr. Charlie Angus: Thank you very much.

Once again, it is a fascinating discussion.

Mr. Oakey, you were correct on one element on the levy: the United States doesn't use a levy. You're absolutely correct. They sue people. A hundred thousand people last year alone were sued in the United States. They don't actually get to court. They just get a thing in the mail that says, “Give us five thousand bucks, or we'll sue you for a million bucks.” That's not exactly consumer friendly.

You didn't mention that many European countries use a levy, because a levy has been found to be a balancing act. It goes back to the days of the cassettes, when they started to notice that music revenue was starting to drop off because people were making numerous copies.

As a musician, I never had a problem with making copies. Nobody makes more copies than musicians, because we love music. It's not about dinging people and shutting them down. It's finding some balance.

You threw out the $75 fee that my colleagues over there just love to run with. Yet I look at the Copyright Board's decision, and it seems completely at odds with the position you're taking. When it was applied to cassettes, it wasn't market distorting. When it was applied to CDs, it wasn't market distorting. Sure, we heard people complain. I used to hear people say, “I've never made a copy. I'd never make a copy. Why should I pay the levy?” I never met so many digital virgins in my life. The fact is that people are making massive numbers of copies.

When it came before the Copyright Board, sure, the rights holders were going to start up as high as they wanted, but the Copyright Board adjudicates. It makes them go through it. It tests them. You could start with seventy-five bucks, and they could bring it down to five bucks, because one of their decisions is going to be that it has to be based on the intent. For example, James Moore asked if the iPod levy would be applied to cars now. Well, it wouldn't be applied to cars, because you don't buy a car to record a song. If you do, you have lots of extra dough that you probably shouldn't have anyway. It applies to music players. Now, there are many other forms out there right now—people have phones and everything else—but the Copyright Board was very specific: it had to be marketed as a music player. That's it. It was very limited in what it was.

The Copyright Board also made it clear that it is not going to be market distorting.

The other element is if say, for example, iPods drop from $300 to $59, and we have a $10 iPod fee on them, it's within the minister's power to change it to a percentage or to change it to whatever dollar figure he wants so that we ensure that it's not market distorting.

You come here and say that this is going to be $75, and it's going to drive people to the United States. Did you ever see people driving down to the United States to buy cassettes?

● (1240)

Mr. Terrance Oakey: No, I didn't say it was $75. I said that SOCAN asked for it to be $75.

Mr. Charlie Angus: But you seemed to leave the impression here that you thought that was bad and that it would be market-distorting —

Mr. Terrance Oakey: Absolutely.

Mr. Charlie Angus: —whereas, when the Copyright Board adjudicates, they're not going to take SOCAN's word. They're going to ask what a fair market price is. That's how the Copyright Board works.

Mr. Terrance Oakey: We think that a levy on iPods or similar devices would be market-distorting, because it isn't in the United States. Canadians can easily go to an online retailer based in the U.S. and buy their iPod there. I would argue that artists would likely receive less money because in the end more people are going to buy their products in the U.S.

Mr. Charlie Angus: But the levy wasn't market-distorting on cassettes; it wasn't market-distorting on CDs.

Mr. Terrance Oakey: Well, on a blank CD, what was it? Was it 25¢, or 29¢? And in the U.S., a blank CD retails for about 15¢.

Mr. Charlie Angus: So do you think people went to Buffalo to buy CDs?

Mr. Terrance Oakey: I'm saying that's obviously market distortion.

Mr. Charlie Angus: I think you're incorrect there, and I think the issue of finding a way to do some form of digital remuneration has to be addressed—

Mr. Terrance Oakey: We agree.

Mr. Charlie Angus: —or we have to go to the issue of suing people, because there's no in between. Or we go to digital locks. The Conservative position is that we're going to take out the remuneration, but we're going to put locks on so that you can lock down your content. I think that's going to lead people to piracy.

When I drive down the highway and I get a cup of coffee and that cup of coffee stinks, I don't take it up with the rights holder, the coffee maker, like our previous witness. I leave and go to another coffee shop. I talk to young people, and when they find a product.... For example, my daughter tells me that the last CD she ever bought had a digital lock, and she couldn't back it up. She said, “Twenty-five bucks, Dad?” That's the last CD she ever bought. She went out and downloaded the entire album and felt it was her due. I've talked to many young people, and if it's not easily accessible, they will get it.

The issue is, we move to digital locks because it's the only solution, if we don't have remuneration. How do we find the balance for access and remuneration? People have to be paid. Otherwise you're going to put a lock on it to keep people from stealing it.

Mr. Howard Knopf: Or maybe we wait for the industry to develop a new business model, after all these years.

Mr. Charlie Angus: But Mr. Knopf, we've been waiting for it for 15 years. Unless you have a monetizing stream, there is no business model.

Mr. Howard Knopf: In Canada the industry has come to rely on this revenue stream. By their own figures from the CPCC, it generated about $160 million over ten years, distributed to 97,000 copyright owners, many of them large publishers.

What that means is that the average musician who received a cheque—and that leaves out most of the emerging artists—got something considerably less than $160 per year, which isn't very much money. I used to be a musician too. We both know that musicians like to drink beer, and $160 doesn't go very far these days.

Mr. Charlie Angus: I know, but copyright.... It sucks being a musician; nobody's arguing that. Nobody's arguing that they only get $160, but it's their right. I hate to be the socialist here saying that I don't have a problem with Bono getting millions, but copyright is based on the idea that if you sell a lot of songs, you make a lot of money. And if you're a working musician and you only get $160 every quarter—sometimes it's that and sometimes it's $5,000—you still have a right to get it.

I don't see how the new business model is going to appear, if we say go out and find a new business model, if there's no way to be remunerated. Either we do a levy on the product or we're going to do a levy somehow online, in the way that they monetized radio in the 1930s, but you're going to have to come up with a revenue stream. Otherwise, selling T-shirts ain't gonna cut it.

● (1245)

Mr. Howard Knopf: Mr. Angus, in the U.K., Australia, and the United States there's no levy. Yes, there are lots of lawsuits. Those mass lawsuits are being thrown out by the courts right, left, and centre. There will be a way—

Mr. Charlie Angus: They just went after Jammie Thomas again for $1.5 million. She's been in court three or four times. The vast majority don't get to court because they're afraid to. They're going to pay the $5,000 fee to RIAA, rather than—

Mr. Howard Knopf: Nobody's encouraging that, but if we put in the levy that the music industry wants, the inevitable consequence is that you legalize all kinds of downloading, which many in the industry consider to be piracy. That's why the industry itself is so badly split on it. The recording industry hates the idea.

Mr. Charlie Angus: The four big labels that represent the U.S. labels are against it. Pretty much every other independent music company and organization in the country supports it, because they recognize that it's a revenue stream. So we're not legalizing piracy; we're saying copies are being made, and nobody's getting paid. We can shut down isoHunt, but people still aren't getting paid.

That's the question. We have to find a model, somewhere along the line, to say that for all the monetizing out there, all the access, someone's going to be paid at the end of the day. I don't see that coming from the suggestion that consumers are going to go to Buffalo to buy an iPod more cheaply. It's not a reality.

The Chair: Thank you, Mr. Angus.

We will move on to Mr. Lake for seven minutes.

Mr. Mike Lake: Thank you, Mr. Chair.

I'm finding this discussion incredibly interesting today. There's a lot of ducking and weaving on the part of the Liberal Party because of some things they have said or done in the past regarding the iPod tax.

I find it quite interesting to hear particularly the strong language from Mr. Garneau last meeting and Mr. McTeague this meeting regarding their position. The facts are the facts, and you only have to look at the facts to see that first of all the Copyright Board did propose the iPod tax, which would be in the range, as you mentioned, of $75 for anything more than 30 gigabytes—and of course, that covers most recording devices that are commonly used now, so it's very significant. You can probably get a 30-gigabyte device for $150, so a $75 tax on top of that is pretty significant.

Regarding the specific issue and the language that Mr. McTeague and Mr. Garneau used today, let's just again take a look at the facts. In March 2010, the Standing Committee on Canadian Heritage reported a motion to the House. It's important to hear the wording used in this motion. It read:

> That the Committee recommends that the government amend Part VIII of the Copyright Act so that the definition of "audio recording medium" extends to devices with internal memory, so that the levy on copying music will apply to digital music recorders as well.

That's pretty clear. It's a pretty clear motion, reported to the House.

On April 13, the House voted on this motion. This is the official record of the House of Commons. This is the final vote on this issue in the House of Commons, in April 2010. I have a list here of the yeas, and I see Mr. Angus—that's not a surprise—Mr. Cardin, not a surprise, and Mr. Garneau—he voted yes to that motion. Ms. Lavallée, of course, is not a surprise.

Mr. McTeague, in the official record of the House, you voted yes to that. You voted yes in the House to recommend that the government amend part VIII of the Copyright Act so that the definition of "audio recording medium" extends to devices with internal memory, so that the levy on copying music will apply to digital music recorders as well.

Mr. Schellenberger, if I go down the list here, voted no. Every Conservative member voted no.

Taking a look at the facts—that's the official record of the House—we actually had a vote on the issue. It's pretty hard, in fact....

I have a quotation from that day in the House in which Mr. Rodriguez is saying:

> ...we are in complete disagreement with the Conservatives when it comes to taxes. We consider it a levy.

He's not opposing the issue itself. He's maybe opposing the wording around it, but is clearly in favour of the iPod tax.

The record is there. You can't argue otherwise. You voted on it not that long ago. We're talking about $75 on a $150 device.

I want to get back to the actual issue at hand, if I could, with Mr. Oakey.

I'm from Alberta, where we don't have a sales tax. I personally avoid buying things here because I don't want to pay 8% more. Seventy-five dollars on a device that might cost $150 is a 50% tax on top of the device. Is it reasonable, for example, that when a Canadian knows they're going to go to the U.S. at some point in the near future, they might not buy something that's going to cost them $225, knowing they can get it for $150 in the United States when they're there?

● (1250)

Mr. Terrance Oakey: This is a concern that our members have obviously expressed. That's why I'm here expressing it to you. But it also has to be looked at in the holistic environment right now, where the dollar is at parity. There are already other requirements that Canadian retailers have to adhere to that their U.S. counterparts don't. So it's a competitiveness issue.

I think, and my members have seen it, that just the dollar going from $0.95 to parity is leading customers to buy online. That's not even an 8% difference.

Obviously, if there's a tax on iPods anywhere near what the Copyright Board or SOCAN or Re:Sound is asking for, it will lead to Canadians buying their products outside of our borders to avoid the unnecessary fee.

Mr. Mike Lake: Do you think it's reasonable that comparing two prices, one at $225 and one at $150 for the same product, even if someone's not planning or able to go down to the U.S.... Is it reasonable that more people would buy a product at $150 than would buy it at $225?

Mr. Terrance Oakey: It's reasonable to assume that, but there's another point. You don't have to go to the U.S. You don't have to travel across the border, buy your iPod, and bring it back. You can ship iPods into Canada duty free and just pay the GST. If there was that difference in price, it may make sense to even buy one if you were going on your winter vacation, but you can also buy one online.

Mr. Mike Lake: Mr. Hémond, do you want to jump in on this conversation? Do you have any thoughts on that?

[*Translation*]

Mr. Anthony Hémond: Yes. The European Union, for example, imposes levies. The purchase of devices outside Canada represents quite a small market share. Why? It shouldn't be forgotten that, if you buy a device in the United States and it breaks down, the company may well tell you that, since you bought the device in the United States, it doesn't provide service in Canada. So Canadians consumers have an interest in buying their products in Canada.

[*English*]

Mr. Mike Lake: Mr. Oakey, what are your thoughts on that? That's the other side of the argument.

Mr. Terrance Oakey: In terms of the warranty, there are issues, but it depends on where the price point is. A $75 additional fee and $150 is quite substantial. I would argue that if someone feels confident with the product, which most people do about digital music recorders, they likely would take the risk of their warranty.

Mr. Mike Lake: If I could move on with the final bit of my questioning, we hear a lot of discussion about what people don't like. I've said this meeting after meeting when I'm talking to folks. As we're discussing what potentially to change as we go through this, what areas of the bill are the most important to maintain?

Mr. Terrance Oakey: The number one issue for our members is that the blank media levy on iPods not be extended. Our members have told me to focus on that. I know it's not directly addressed in the bill, but there are rumours that there may be amendments coming.

Mr. Mike Lake: Okay.

Mr. Hémond, in terms of the things you like in the bill, what are the most important parts of this legislation that you want to make sure we protect as we go through the discussion?

[*Translation*]

Mr. Anthony Hémond: The new exceptions have some interesting aspects, including user rights. However, there is one point in particular that I would like to see amended, and that is technical protection measures. As currently defined, they are extremely problematic for users. That doesn't suggest—

[*English*]

Mr. Mike Lake: If I could break in for a second, we're going to hear that repeatedly. We've heard it already. What I'm interested in hearing from you today is the things you want to make sure we protect in the bill, the things you like the most about the bill.

The Chair: Mr. Lake, that's going to have to be it for your round. With the consent of the committee, we could go for a two-minute round for each of the parties.

Some hon. members: Agreed.

The Chair: We have consent.

Mr. Garneau, for two minutes.

● (1255)

Mr. Marc Garneau: Thank you very much.

I'm glad, Mr. Oakey, that you said in response to Mr. McTeague that you recognize the Liberal Party had no intention of putting any kind of levy on iPods and that you'll be ignoring the five-minute rant from my Conservative colleague on that, which is completely disconnected from any sense of reality.

You talked about the fact that when people have bought something for private use they should be able to use it, do some format shifting, perhaps copy it, back it up, and that kind of thing. Do you have a specific, practical way we could do this, in terms of the proposed legislation? This certainly is something that many groups have said is the right thing to do, and I agree with it.

Mr. Terrance Oakey: I think there is.

We do believe they may be on the side of owners for consumers.

Howard I think is going to comment more specifically, because we do propose it in our submission.

Mr. Howard Knopf: We have not specifically addressed that in detail, but we'd be happy to provide something later. What we have specifically addressed is some very simple language to, pardon the expression, liberalize the TPM regime that would probably allow exactly what you're suggesting to happen. This would allow the consumers to break a digital lock or whatever to make a copy for the car, the bathroom, the cottage, or whatever, which doesn't cause economic harm because the consumer has already paid for it at least once already.

Mr. Marc Garneau: Thank you very much. I'd appreciate getting that. I don't think we have your submission here in front of us yet, but thank you.

The Chair: *Monsieur Cardin, vous avez deux minutes.*

[*Translation*]

Mr. Serge Cardin: Thank you, Mr. Chairman. I'd like to ask Mr. Hémond—

Hon. Dan McTeague: Pardon me, Mr. Cardin. Would it be possible to do this first?

[*English*]

On a point of order—sorry—would it be possible that before the session begins, if there are any submissions to give, that we actually have them on our table here? I didn't know we did not have it. I don't want to make a big deal of it, but it's important. We have witnesses here, and we didn't have some of these submissions.

Thank you, Chair.

[*Translation*]

Mr. Serge Cardin: Thank you, Mr. Chairman.

I'd like to ask Mr. Hémond a question about music streaming. Who do you think should pay royalties if that technology is used?

Mr. Anthony Hémond: For music streaming, I previously mentioned that there were agreements between those who want to stream music, the societies and creators. In fact, you can't record streamed music with some of these services. The consumer, or user, only listens to the music. The proposed models operate on the basis of either subscriptions or advertising. Users retain no copies on their devices under some of these models. The royalties are paid to creators by the person offering the service.

Mr. Serge Cardin: All right.

In our remaining time, would you have anything to tell the committee in closing?

Mr. Anthony Hémond: I'd like to discuss certain minor points. I often hear it said that the United States doesn't have a royalty system. It previously had one that applied to DAT digital cassettes. They tried to apply it to the ancestor of the iPod, the Rio. You should also pay attention to the message concerning the Americans. They tried to introduce royalties, but were unsuccessful.

There is a system that no longer applies to iPods today. There was one. Royalties are a win-win system for users and creators. You also have to pay attention to technical protection measures. As we said, considerable emphasis is being placed on the definition of technical measures in the bill. It goes well beyond what the WIPO treaties propose. We suggest amending that definition because you can see it's more than a lock; it amounts to locking up the entire culture.

[*English*]

The Chair: *Merci*.

Mr. Lake, you have two minutes.

Mr. Mike Lake: Thank you, Mr. Chair.

Again, sorry, but I have to come back to Mr. Garneau using the words “completely disconnected with any sense of reality” to refer to my reading from *Hansard*, the official record of the House of Commons. I find that just astonishing.

We have the official record of the House of Commons, where again we voted on this statement:

> That the Committee recommends that the government amend part VIII of the Copyright Act so that the definition of “audio recording medium” extends to devices with internal memory, so that the levy on copying music will apply to digital music recorders as well.

That was a statement on which we voted on April 13, 2010, and when we had that vote, members of Parliament voted, and every single New Democratic member, every single Bloc member, and every single Liberal member, including Mr. McTeague and Mr. Garneau, were recorded on the official record of the House of Commons, *Hansard*, as voting yes to that motion. Every single Conservative member voted no to that motion. It's very clear. It's the official record of the House of Commons.

You know, if we're going to talk about being completely disconnected from reality.... I'm just trying to make a connection to the official record, and the official record says that all three opposition parties are in favour of the iPod tax; it's very clear.

So as we work our way through this legislation, the way to change that reality is to pass a copyright bill quickly, a copyright bill that does not include an iPod tax. That's the way to disconnect from the reality of the way they voted in the past. When Mr. Angus' bill comes up, which is a bill to introduce such a tax, they will have the opportunity at that point to again prove that they're not in favour of it by voting that way. We'll see what happens at that point.

● (1300)

The Chair: Thank you, Mr. Lake.

Thank you to the witnesses.

The meeting is adjourned.

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