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Tuesday, February 15, 2011

Chair

Mr. Gordon Brown

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● (1100)

[*English*]

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

We will call to order this 13th meeting of the special Legislative Committee on Bill C-32.

For the first hour we have witnesses from the Association of Universities and Colleges of Canada, Paul Davidson and Steve Wills. From the Canadian Association of University Teachers, we have James Turk and Paul Jones. From Campus Stores Canada, we have Chris Tabor.

Some of our witnesses are still in the security line, so we will go ahead with those who are here.

Mr. Davidson, you have the floor, five minutes.

[*Translation*]

Mr. Paul Davidson (President, Association of Universities and Colleges of Canada): Thank you very much, Mr. Chairman, and thank you for inviting the Association of Universities and Colleges of Canada to take part in this study by the committee on Bill C-32.

My name is Paul Davidson, President and CEO of the association. Steve Wills, our manager of Legal Affairs, is with me today.

The association represents 95 public and private not-for-profit universities and colleges across Canada.

[*English*]

Let me be very clear: AUCC supports Bill C-32 as a fair and reasonable balance between the rights of copyright owners and users of copyright works. We urge this committee to complete its work and report back to the House. As everyone knows, this is the third effort in recent years to modernize the legislation, and it's important that the work be completed in this session.

Universities really appreciate the need for balance. Universities create intellectual property, universities use intellectual property, and universities sell intellectual property. Within universities you have faculty as researchers and teachers, students as learners, librarians, booksellers, and publishers.

Of all the groups that are appearing before you, and the many more that want to appear before you, I think our organization understands keenly the need for balance in the legislation.

[*Translation*]

Universities in all regions of the country, both large and small, focusing on research or on undergraduate teaching, strongly recommend that the committee make minor amendments to Bill C-32 and then refer it back to the House of Commons so that it can be voted upon as soon as possible.

[*English*]

We believe the bill could be strengthened by reasonable and fair amendments to certain of its provisions, which are detailed in AUCC's submission. Rather than review the written submission we provided, which is with you today—there is also a one-page summary—I want to take a moment to dispel some of the myths that have been propagated by some of the witnesses who have appeared before this committee.

In particular, it has been suggested that the education community does not want to pay for educational materials and that Bill C-32, especially the addition of education as a new fair dealing purpose, will undermine the publishing industry in Canada and decimate the revenues of copyright collectives such as Access Copyright. Another claim says the education community does not wish to compensate creators who produce educational materials. These claims are false and are not supported by the facts.

Canadian university libraries spend more than $300 million annually to buy and license new content for research and learning. In addition, Campus Stores Canada, which represents post-secondary institution-owned bookstores across Canada, estimates that over $400 million is spent every year in university bookstores to buy new textbooks, course packs, and some works in digital format.

It is clear that universities and university students are paying very large amounts annually to purchase and license educational materials. Their spending provides tremendous support to Canadian creators, and nothing in Bill C-32 will cause this spending to decline.

Some have also claimed that Bill C-32 will undermine publishing in Canada and destroy the revenues of copyright collectives. For example, in its testimony before this committee on December 6, Access Copyright claimed that both it and the Quebec reprography collective Copibec will be at risk of losing $40 million in revenue as a result of the amended scope of fair dealing in the education sector, as well as other education-related exemptions provided for in the bill.

This assertion is groundless. Two years ago the Copyright Board of Canada clearly defined fair dealing as it relates to educational copying. Teachers in K-to-12 schools made copies of required readings for each of their students, and the copying in question amounted to an average of only several pages per month per student. The Copyright Board found that the copying by teachers failed to meet the fairness factors laid out by the Supreme Court of Canada. Had Bill C-32 been passed before this decision, the availability of education as a fair dealing purpose would have had no effect on the outcome, because the ruling was based on fairness tests, not on the purpose of the copying.

In other words, the Copyright Board ruling created a strict precedent that severely limits the fair dealing copying for educational purposes. If copying several pages per month for each student in a class is not fair dealing, then surely it is unreasonable to suggest that the legislation would permit the multiple copying under fair dealing of complete journals and journal articles and chapters from books that accounts for most of the licence revenue received by Access Copyright and Copibec from universities and students. Simply put, the proposed amendments to fair dealing would not undermine the sale of books, especially textbooks, or the revenue base of copyright collectives.

Let's take a brief look at our neighbours to the south, who have a fair use exception that is far broader in scope than what is proposed in this bill. The U.S. fair use exception explicitly permits the making of multiple copies for a work of classroom use. Despite this broad fair use provision, the educational publishing industry in the U.S. continues to thrive. Last July the Association of American Publishers noted that higher-education publishing sales increased 6.3% for the month and 21.4% for the year.

Our submission recommends some modest amendments that do not alter the essential balance that has been struck in Bill C-32, and addresses some of the concerns raised by other stakeholders.

I'd like to thank the committee for the opportunity to present these views before you, and I welcome any questions you might have.

● (1105)

The Chair: Thank you very much.

We'll move to the Canadian Association of University Teachers, to Mr. Turk.

Mr. James L. Turk (Executive Director, Canadian Association of University Teachers): Good morning, Mr. Chair. I'd like to thank you and the committee for the opportunity to appear before you today.

The Canadian Association of University Teachers represents 65,000 academic staff at more than 120 universities and colleges across the country. Our members include both creators and users of copyright material. We have had to deal with both sides of some of the controversies that have come before your committee. While we realize it is unlikely the committee will be able to satisfy the wishes of all Canadians, we are hopeful that our presentation will help the committee find a proper balance in this difficult area.

We'd like to begin by recognizing the efforts of successive governments to modernize Canada's copyright law. In particular we'd like to acknowledge the generally open and meaningful consultation process leading up to Bill C-32. The consultation, in perhaps the strongest way yet, heard and seriously considered the interests and concerns of all Canadians.

With respect to Bill C-32 itself, it contains some elements that disappoint us, and we have several amendments to suggest. Nonetheless, CAUT supports the overall direction of the legislation and recognizes it as a good-faith attempt to create balance in copyright law. In these brief opening remarks, we will address two particular issues: digital locks and educational fair dealing.

On digital locks, CAUT believes the efforts of balance found elsewhere in Bill C-32 are absent. The bill's overbroad lock-breaking prohibition will not deter digital pirates; it will only inhibit honest Canadians from engaging in otherwise lawful activity to a very great detriment of free expression, research, and education. Bill C-60 got it right when it banned breaking locks to violate copyright but permitted the activity for lawful purposes such as fair dealing. That is the balanced way to proceed, and we urge the committee to recommend that.

With respect to educational fair dealing, Bill C-32 will allow Canadians to take advantage of teaching and learning opportunities more fully. For example, fair dealing for the purpose of education would permit Canadians to fairly incorporate excerpts from works into individual presentations, lessons, lectures, and academic articles and fairly distribute copies of material that meets a spontaneous in-class educational need such as a poem or song lyric in remembrance of a special event, or a news clipping on a world crisis.

Importantly, educational fair dealing will comply with our international obligations under the Berne three-step test. We know this because the Supreme Court's test for fair dealing itself addresses the Berne requirements. We also know this because Canadian educational fair dealing does not exceed the U.S. fair use practices, the gold standard for copyright compliance.

Equally important, because we have heard suggestions that it will cause the sky to fall, we want to emphasize that educational fair dealing will not cause entire books to be copied or distributed, will not replace the need to purchase course packs, will not significantly reduce the millions and millions of taxpayers' dollars the education sector currently spends annually on copyright material. In this particular regard, CAUT agrees that if there are any savings associated with educational fair dealing, they should be used for additional library acquisitions and site licences.

As well, fair dealing will not unleash a flood of litigation. There will be no litigation storm because the Supreme Court's CCH decision has defined fair dealings parameters. These familiar parameters will not change if new purposes such as parody, satire, or education are added and there will be no need endlessly to relitigate them.

Finally, on the issue of educational fair dealing, there has been discussion about whether or not it should be narrowly defined. CAUT believes educational fair dealing must not just encompass formal educational institutions as defined by the Copyright Act. The beauty of fair dealing is that it is a right for all Canadians, not a special exemption for a privileged few. It should be available in a wide range of settings, including public libraries, galleries, and museums. It should also be available to a girl scout troop learning about trees, a Sunday school class studying the geography of the Holy Land, a photographer teaching a photography class, a hockey coach explaining skating techniques, a Kiwanis club presenting a speaker on the emerging economic power of China. Learning occurs inside and outside educational institutions and from youth into old age. The Copyright Act must recognize and respect this.

Thank you, Mr. Chair. My colleague Paul Jones and I will be happy to answer any questions the committee may have.

● (1110)

The Chair: Thank you.

We'll move now to Campus Stores Canada, to Mr. Tabor.

Mr. Chris Tabor (Director, Queen's University Bookstore, Campus Stores Canada): Thank you for the opportunity today.

My name is Chris Tabor. I am the director of the bookstore at Queen's University. I am here today on behalf of Campus Stores Canada, the national trade association of institutionally owned and operated campus stores.

We have almost 100 member stores nationwide and more than 80 vendor and supplier associates. In short, if you know one of the million or so university or college students in Canada, there is a very good chance you know someone served by Campus Stores Canada.

I would like to spend a few moments highlighting our support for adding education as a fair dealing exemption under the act. Fair dealing is an important academic right. It ensures that students and researchers are able to use the materials that they need without worrying about inadvertently violating copyright. This provision offers an important clarification to the academic community.

It is important to underline that fair dealing and other educational gains are undermined with absolute digital lock protections. By allowing circumvention of digital locks for non-infringing reasons, legitimate research and uses are not unduly hindered and creators' protection is maintained. We should not treat legitimate users the same way we would treat criminals.

A number of organizations have raised concerns that this might lead to the copying of full textbooks without compensation. Others argue, and we agree, that these concerns are unfounded based on current fair dealing jurisprudence. I can add, from the perspective of one who creates and commercially distributes course packs and relies heavily on the revenues from the sales of textbooks, that we do not see the addition of a fair dealing exemption as a risk to our business.

I would like to now focus on a provision of the Copyright Act that encourages the artificial inflation of book prices. It may interest this committee to know that in the years 2008 and 2009, the U.S. federal government and approximately 23 states considered legislation affecting access to and the affordability of course materials for U.S. students. I am very happy to be here today to talk about how, with the stroke of a pen, a change in regulation can save Canadian students tens of millions of dollars each year without any cost to the public purse.

The Copyright Act allows publishers to establish import monopolies on books from authors from around the world and, in turn, outlines what these import monopolies may charge for the cost of books. Specifically, the import regulations stipulate that an importer can charge a bookseller the price of a book in the country of origin plus the difference in exchange rates between the two countries plus an additional 10% or 15% depending on the country of origin.

Campus Stores Canada considers this to be a private tax established by a public policy. It is a tax paid from the wallets of Canadian students and their families and it is collected primarily by foreign private interests. It allows publishers to receive an additional 10% or 15% of pure profit from their products before risking losing a sale to parallel importers. Importantly, this returns no appreciable benefit to the artists or authors who have created the works in question.

These unnecessary costs are not insignificant. The trade in imported books by campus booksellers is worth about $262 million, representing roughly half the books sold at these stores. Removing this tariff would save students about $30 million annually, with savings beginning virtually overnight.

The tax is designed as an artifact of publishing, commercial distribution, and policy paradigms that have changed radically since these regulations were promulgated in 1999, most notably through the development of Internet-based commerce.

Unlike booksellers, individual consumers are not bound by these regulations and are able to freely and legally purchase books from the lowest-cost provider, regardless of location, and they do.

Through Internet retailers, Canadian consumers are often able to buy books more cheaply than Canadian resellers can. It confounds market logic that an individual Canadian student is able to import individual books more economically than a multinational corporation importing commercial volumes of products, but this is the direct result of the tariff's artificial inflation of domestic book prices.

Therefore, to get best value on learning materials, students are effectively forced by this tax to turn to Internet retailers based in other countries, an extra step that is as absurd as it is inconvenient. We believe a substantial reduction in textbook prices can be achieved by removing this book import tax. Doing so will see students spend millions of dollars less but without the need for any expenditure on the part of the government.

Legislatively, it can be achieved by removing section 27.1 of the act. While such changes were not included in the Bill C-32 update, legislative changes are not necessarily needed to remove this tax, as the relevant regulations can be altered with the stroke of a pen.

In an era when fiscal prudence is king, government must be sure to take advantage of opportunities where it can decrease costs to individual Canadians without increasing costs to government. This is one of those areas. This is one of those opportunities.

I thank you for your time. I would be happy to answer any questions that you may have.

● (1115)

The Chair: Thank you very much.

Before we get started, I would like to welcome the Honourable Michael Chong to the committee.

We will now go to the first round of questions.

We'll start with the Liberal Party, with Mr. Rodriguez, for seven minutes.

An hon. member: The Honourable Pablo Rodriguez.

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

You're very popular, Mr. Chong.

The Chair: Welcome to you too.

Mr. Pablo Rodriguez: Thank you very much.

[*Translation*]

Good morning and welcome. Thank you for being here.

First, I'm going to ask a general question. With the inclusion of the term "education" in fair dealing, will the university system, the education world, be saving money?

[*English*]

Mr. Paul Davidson: Just to start off the discussion on this, I think that the challenge of coming to a definition of education could take another millennium to come to an agreement with, and that another approach to address the concern would be to amend the legislation to —

Mr. Pablo Rodriguez: But I'm asking, are you going to save money?

Mr. Paul Davidson: Is who going to save money?

Mr. Pablo Rodriguez: The universities and colleges; by including education there, are you going to save money by not paying some things that you would have paid before?

Mr. Paul Davidson: Well, the universities are paying over $300 million a year in digital licensing now. This legislation clarifies the rules. It's not a question of whether we're paying more or less. It's a question of whether there is a balance between users and creators. We feel this legislation provides an appropriate balance.

Mr. Pablo Rodriguez: Okay. So you don't know if you'll pay less.

Mr. Paul Davidson: I think the way of the world is that everyone is paying more for everything, and that there will continue to be increases in the costs of educational materials.

[*Translation*]

Mr. Pablo Rodriguez: Yes, but you'll be paying for fewer things. The $300 million you pay corresponds to what percentage of your overall budget?

[*English*]

Mr. Paul Davidson: I don't have a precise number in terms of the percentage of our total operations, but I can say that it's a significant cost to the education enterprise in Canada, both in the K-to-12 area and for universities.

[*Translation*]

Mr. Pablo Rodriguez: You don't have an idea, without any specific figures?

[*English*]

Mr. Paul Davidson: Mr. Rodriguez, I would simply say that the universities are in a unique position, recognizing that we use intellectual property, we create intellectual property, and we sell intellectual property. We have to have balance in the legislation and we have to move forward with the legislation.

● (1120)

[*Translation*]

Mr. Pablo Rodriguez: I understand. My parents were both university professors. I grew up in a university environment. A lot of people are concerned about the inclusion of the term "education". Personally, I am one of them.

My question is for the three of you. Would you agree that a copy that is made could not be considered as fair dealing, first, if that has an impact on the market and, second, if a licence is granted by a collective?

[*English*]

Mr. James L. Turk: I'd like to first respond to your initial question.

As I indicated in my brief opening remarks, we don't expect that there will be a significant cost savings as a result of the inclusion of education under fair dealing. We expect any difference would be minimal. It could go up; it could go down. Our own position is that if there are any savings, those savings should be used for further library acquisitions in some places.

In regard to your second question, I'd like to ask my colleague Paul Jones to respond.

Mr. Pablo Rodriguez: Thank you.

Mr. Paul Jones (Policy and Education Officer, Canadian Association of University Teachers): You were asking if copying a work could have a negative impact...?

[*Translation*]

Mr. Pablo Rodriguez: A copy could not be considered as fair or falling within fair dealing, first, if that has a negative impact on the market, so if there is an impact on the market, or, second, if there is a licence from a collective for the use of that type of work?

[*English*]

Mr. Paul Jones: Certainly one of the fairness tests is the economic impact on the owner. Anything that didn't meet the fairness test would not meet the educational use of fair dealing.

In terms of the licence, I guess that's a different issue. Universities license all kinds of things. They pay a great amount of money for them, and will continue to do so whether we have an educational exception or not.

[*Translation*]

Mr. Pablo Rodriguez: Are you saying that the exemption could apply to a work that comes under a licence granted by a collective, or not?

[*English*]

Mr. Paul Jones: It's not the source of the work that determines whether something is being dealt with fairly or not. It's the test elucidated by the Supreme Court decision and by the Copyright Act as it currently stands.

[*Translation*]

Mr. Pablo Rodriguez: If someone deems that, at some point, a copy should be considered as fair dealing, who has the onus of proving and showing that it is not?

[*English*]

Mr. Paul Jones: The Copyright Act itself doesn't define fair dealing. It sets out purposes. The actual test has been set out by the courts, particularly the Supreme Court in the CCH decision.

Mr. Pablo Rodriguez: No, I understand that.

Mr. Paul Jones: The will of Parliament and the way the courts have unfolded has made it a matter of the exercise of good judgment on behalf of Canadians to—

Mr. Pablo Rodriguez: Sorry, but you're not answering my question. Maybe I'm not clear enough.

Mr. Paul Jones: Perhaps you could clarify your question, please.

[*Translation*]

Mr. Pablo Rodriguez: Isn't it up to the rights holder, where he believes that his right is being violated and that he has suffered prejudice, to go to court and show that an illegal act has been committed?

[*English*]

Mr. Paul Jones: I think you have a fundamental misunderstanding of the notion of rights in the Copyright Act. The Copyright Act gives rights to copyright owners. It also gives rights to copyright users.

So in the sense that...is it the right of copyright owners and users to take matters to the court? I suppose so; yes, definitely, in fact.

[*Translation*]

Mr. Pablo Rodriguez: One of the fears—

[*English*]

Did you want to speak on this too, Mr. Tabor?

Mr. Chris Tabor: Yes. I can maybe address your first question on whether the cost will go up.

The provisions that are currently a part of fair dealing have not affected our sales of either course packs—and we do hundreds of thousands of those a year—or the sale of textbooks. I don't see why the addition of education to that list of exemptions will have any effect in terms of cost either way, whatsoever.

[*Translation*]

The Chair: Thank you, Mr. Rodriguez.

Ms. Lavallée, you have seven minutes.

● (1125)

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

Gentlemen, I admit I don't understand you. You represent Canadian universities and colleges, you represent university professors, and, in that sense, you should be concerned with Canadian culture, since it is culture that you represent. You should also be concerned about instilling in the students at your universities the principle of compliance with copyright, respect for artists and the value of artistic works. It seems to me that would be a minimum. You've come here to defend the principle of fair dealing. Last week, some eminent lawyers came and told us that fair dealing in Canada and the United States will never be judged in the same way and that it will take 10 to 12 years of uncertainty and no payments to artists to get through the definition that currently appears in Bill C-32.

In Quebec, the National Assembly has come out against Bill C-32 as it is currently drafted and against fair dealing for education. A motion to that effect has been adopted. Quebec's minister of education has written a letter expressly to assert that she did not approve of this exemption for education. The Fédération des commissions scolaires du Québec has also taken a stand, in a letter, in a press release, in a brief that you can see on the Internet, against this new exemption for education that appears in Bill C-32.

You've come here and you're saying that it won't cost us a lot less, but it will cost you a lot less. In any case, we wonder why you're doing this if it's not in order to pay less. If you're preparing all these briefs in order to pay exactly the same price or to pay more, I'm telling you someone's wasting his time here.

The Copyright Board issued an interim tariff last December so that universities could continue using the photocopying licence with Access Copyright. It's true that the universities are not required to use that licence, but it has issued a tariff of $3.38 per student, plus 10¢ a copy, which is exactly the current tariff.

The universities have preferred to contact the rights holders or foreign societies in order to release the rights on their own. This is one of my questions. Isn't it odd that, to avoid using the 10¢ Access Copyright licence, universities prefer to go directly to the Copyright Clearance Centre, the American society, to release rights to certain American publications and then to agree to pay twice as much, 25¢ a copy. I haven't finished.

The system in Quebec works very well. The National Assembly, the Fédération des commissions scolaires, the minister of education and, obviously, the minister of culture, have come out against this exemption. It's working well. Copibec is working well, the artists are happy, things are going well. They've all come here, or they will be coming, to say that things are going well in Quebec.

So, sincerely, I have to tell you that seeing people from Canada file in here to request an exemption so that they don't have to pay artists or pay them less—people who earn about $23,000 a year—reinforces our desire to make Quebec independent. It makes us want to tell you, never mind, work things out however you want, and we'll do the same on our side because we in Quebec respect our artists. We have a cultural and artistic system that works very well. And no one complains about having to respect the value of artists' works. Quebec as a whole has long been demanding full control over artistic and cultural works, in other words over copyright. To see you here today insisting and to see the entire range of representatives from Canada who will be coming here to tell us that they want to pay less in copyright royalties because they want to pay their artists less merely reinforces our idea that we in Quebec would be much better off alone.

[*English*]

Mr. James L. Turk: I want to start off by saying that we actually take exception to your comment that we don't respect culture and we're not advocating for culture. A significant number of novelists in this country as well as painters and playwrights are members of ours. Our members are engaged in the writing of textbooks, in all sorts of things. And what we're advocating here is a balance.

My colleague Paul Jones would like to comment further.

Mr. Paul Jones: I can start by reminding you of some figures; I don't know whether you missed them in our presentation or the other presentations.

CARL—this is not my Uncle Carl, this is the Canadian Association of Research Libraries—estimates that the annual expenditure by the library sector of the universities is a little over $300 million a year. The bookstores chip in another $400 million or so. That's the university sector. We add into that the college sector and then the K-to-12 sector, and we're looking at an annual expenditure of over $1 billion a year.

For you to come forward and say that somehow we're teaching people to disrespect copyright or to steal things is just offensive. And it has to stop. We have been very clear that we're not looking at fair dealing as a way to save money. This is about making the educational experience better for Canadians.

So people should just tone down on the exaggeration here. It would be really good for this debate and for this discussion.

Thank you.

● (1130)

Mr. Steve Wills (Manager, Government Relations and Legal Affairs, Association of Universities and Colleges of Canada): Madame Lavallée, I'd like to respond to a few of the points you raised.

First of all, in regard to the educational community, nothing in Bill C-32, for starters, is going to change the revenue going to the collectives such as Access Copyright and Copibec. It's not about saving money. What it is about—the change to fair dealing in particular—is allowing certain educational opportunities that right now sometimes don't occur.

Take the process of getting a clearance. Say, for example, a student is putting a portion of a work into a multimedia project. It's not reasonable to expect that the student will go through the process of identifying who the copyright owner is, waiting for a clearance that may or may not come, and then paying a fee to do that.

I can give you another example that was told to me by an individual who works with clearance at a university. One professor wanted to use short excerpts of two television programs to show his class, and he was quoted fees of $8 a second and $66 a second. Now, the net result of this kind of thing is that the works aren't used. There are many, many examples I could cite like that, where educational opportunities have been foregone because the cost of getting further clearances would be quite excessive.

In respect of your suggestion that institutions are paying $3.38 per student, that is only an interim cost, and that does not include the 10¢ per page that will be paid for course packs. The request from Access Copyright is $45 a student. It's not clear where the ultimate fee will come out.

Lastly, just very quickly, in terms of going to foreign sources, one of the reasons universities have gone to the Copyright Clearance Center is that Access Copyright is refusing to process transactional permissions for digital works, something it has done in the past readily, because it's trying to push institutions into using its new tariff. As a result, institutions that do not wish to use the tariff have no option but to go to the Copyright Clearance Center in the U.S.

The Chair: Thank you very much.

Mr. Angus, you have seven minutes.

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

Thank you for coming today. This is a very interesting discussion.

I represent a region that's bigger than Great Britain. Many of my communities have no roads. The opportunities of digital learning are so exciting for our communities: to get access to higher levels of education, for retraining of students, and for people who have been laid off to be able to go back to college. They simply wouldn't be able to do it if they had to travel and add in the cost of living in a complete other community.

So I'm very concerned about the provisions in this bill in terms of long-distance learning, particularly proposed section 30.01, which tells students that if they go into a digital learning environment, they have to destroy their class notes 30 days after a semester is finished.

I'd like to just ask you why this bill would essentially cripple the rights of students in a digital learning environment when the opportunities are so immense.

Mr. Paul Davidson: Perhaps I can respond, Mr. Chair.

I really appreciate your interest in digital learning, Mr. Angus. It is one of the great opportunities that this country has. We have both the technological expertise and the pedagogical expertise and also the need for it. It's urgent. I know the part of the country you're from, and I know we need to do more in this area.

Our first recommendation to the committee in our written submission is that proposed section 30.01 of the Copyright Act be amended to eliminate the requirement to destroy reproductions of lessons. We think this is an area where we can make an amendment that would not change the fundamental balance in the bill, but would significantly improve the educational opportunities for students.

Mr. Paul Jones: I think the drafters of the bill are to be congratulated for recognizing a real need here. I also know that the drafters are trying to find ways to balance out different concerns.

In this case, the requirement to destroy material shortly after it has been delivered simply doesn't meet the real needs of the reality of teaching and learning in Canada, and we certainly would side with the AUCC in terms of the suggestion they've put forward to correct that.

Mr. Charlie Angus: I'm interested in the effect of the proposed section 41 on education—and research in particular. These are the technological protection measures that make it illegal to infringe any kind of lock.

What our colleagues in the Conservative Party say is that we'll take it to the market and let the market decide. Yet it seems that we've clearly outlined legislative rights that Canadians have a right to access, such as, for example, the right of fair dealing, the right of satire, the right of parody, and a number of other rights, but those rights are trumped by the digital locks.

Now, we see that in the U.S., in July 2010, the Fifth Circuit Court of Appeals ruled on the U.S.'s own rights, which had been very restrictive rights in terms of anti-circumvention, and said that the right to access a work did not trigger the anti-circumvention measures under the DMCA. So we would see Canada in even a much more restrictive light than the United States.

From the people I've spoken with in the United States in the education community, there's a real concern about the litigious effects of the digital lock provisions that had existed on the ability to have the research and the innovation that are happening at the university level. Can you talk about your concerns about the TPMs and what it would mean, as it is written, for educational innovation?

● (1135)

Mr. Paul Jones: Yes, I can quickly speak to that.

The TPM or digital lock provisions in Bill C-32 stand out strangely as really containing no balance whatsoever. What it will mean is essentially the end of fair dealing, the end of a fundamental right enshrined in the Copyright Act, in any kind of digital environment.

What's unfortunate about the overbroad application of the TPM rule is that there's a really elegant solution available, and we saw it in Bill C-60, which says if you're going to break a lock in order to pirate a material, in order to steal from an artist, you can't do that. That's something we're four-square behind.

What we are saying, though, is that there are reasons you might want to break a lock for lawful purposes. It could be fair dealing. It could be archival reproduction of material. It could be to help visually impaired people access a work. You can make a simple amendment to the act that says, look, you can't break locks for infringement purposes, but if it's non-infringing, then it's permissible.

Mr. Charlie Angus: Mr. Tabor, I wanted to ask you, because I think you're standing almost unique, of all our witnesses.... I'm not pointing you out just to embarrass you, but we've had people say the sky is falling. We've had people say the end of civilization is nigh, depending, on either side. Here you are, a bookseller, and you're telling us that fair dealing provisions are not going to destroy your business, and you're telling us the technical protection measures don't really help you.

Can you give us a perspective as a bookseller in the education realm in terms of where we should be getting the balance right on TPMs and fair dealing?

Mr. Chris Tabor: Thank you.

On the TPM side, I think what's missed sometimes is the growing movement toward mobile consumption. We want to be able to reproduce a number of products, educational products for our students. They can consume that on their laptops, on their phones, soon on their iPads or Android tablets. They need to be able to move them around. That's increasingly important to them.

As far as fair dealing effects on our business, it has never had an effect on our business in its current form. Adding education won't have an effect either. Frankly, we find it puzzling how a line can be drawn from fair dealing to opening the floodgates of copying. At Queen's we do 10,000 course packs, which include copyrighted material for which the royalties are collected, and millions of dollars in textbooks each year. We cannot draw that line.

We don't understand why the ability now for a professor to throw on a slide, just for a moment, of declining GST revenues in the last month will somehow affect those sales, just as now, someone talking about macroeconomics, which repeats principles in a book, affects the sales of that book. We simply can't find that connection.

Mr. Charlie Angus: All right. Thank you.

Mr. Davidson, I wanted to ask you about technological protection measures in terms of accessibility. I had a member of my family who was in university and who was deaf. We had all kinds of problems getting basic subtitles put on the films that were shown. They said, well, there's a copyright on that; we'd be infringing copyright allowing a deaf student to participate in a class.

Much of these works will now have technological protection measures. Are you seeing that the exemptions within this bill will adequately protect students who have disabilities?

Mr. Paul Davidson: I can start, and then Steve Wills may want to interject as well.

● (1140)

The Chair: It's going to have to be a really quick answer.

Mr. Paul Davidson: Our fourth recommendation to the committee—

The Chair: You have ten seconds.

Mr. Paul Davidson: Okay.

Without fundamentally altering the balance that's been struck by the bill, we recommend that a provision be made to permit the breaking of digital locks for any purpose that does not infringe copyright, so that students who have special needs can access the materials they should be able to access.

The Chair: Thank you.

Mr. Braid, for seven minutes.

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

Thank you to all our witnesses for appearing today. It's been quite informative. It is indeed refreshing to hear that in fact the sky isn't falling, and that there's urgency to studying and passing Bill C-32.

Mr. Turk, I wanted to start with a question for you, please. In your presentation you made the statement that fair dealing under Bill C-32 does not exceed the U.S. notion of fair use. Could you please elaborate on that?

Mr. James L. Turk: Actually, I'd ask Paul, who is our person who focuses on the U.S. legislation, to answer that. He could do that more completely than I could.

Mr. Peter Braid: All right.

Mr. Paul Jones: I'll try to be quick in my answer.

The United States has a robust publishing industry. It has an incredible content or entertainment industry, probably the strongest in the world. It has educational fair dealing. The U.S. copyright law says that you may fair deal for purposes “such as”; it lists some, but you can do other things. It's broadly accepted there that education falls within that. It's set out in certain guidelines, including the right to make multiple mechanical copies of a work for classroom use.

There's no indication that Bill C-32 is heading even remotely in that direction, but that's the standard in the United States. They allow that; they still have authors; they still have writers; they still have all kinds of cultural activities going on. To suggest that Canada moving even modestly in that direction is somehow going to cause the sky to fall is just ludicrous.

Mr. Peter Braid: Thank you.

Mr. Davidson, you mentioned in response to a previous question that currently the university community in our country pays about $300 million annually in copyright and licensing fees. Could you elaborate a little on that, and provide us with a bit of breakdown of where those charges come from?

Mr. Paul Davidson: I'll ask Steve Wills to provide the detail on that.

Mr. Peter Braid: Sure.

Mr. Steve Wills: We were given the figure of over $300 million by the Canadian Association of Research Libraries. It involves spending by libraries in universities across Canada. Of that $300 million, my understanding is that $160 million, approximately, is for licensing digital resources—for example, the digital versions of academic journals.

There are various.... For example, there's the Canadian Research Knowledge Network, which was set up by a consortium of, I believe, about 68 universities. That body negotiates licensing agreements directly with academic publishers for use by the universities in that consortium of digital versions of those journals. Similarly, the regional university library consortia across the country, such as the Ontario Council of University Libraries, together with their counterparts in the west, the east, and in Quebec, all negotiate similar licensing arrangements.

So a significant portion of what's happening is that universities have transitioned towards the use of digital resources and away from photocopying. For that reason, when people talk about the threat to the licensing revenues, for example, of Access Copyright or Copibec, the threat does not come from Bill C-32. The threat comes because in the digital environment those who are offering licences for the digital works are often bypassing these collectives and dealing directly with institutions to negotiate new agreements.

As I said, of the $300 million, about $160 million is licensing of that kind. I don't have a breakdown on the rest of this money.

Mr. Peter Braid: Thank you.

Is it fair to say that Bill C-32 does not alter access copyright fees or any other licensing fees that the university community currently pays?

Mr. Steve Wills: In my view, that would be fair to say, and the reason is that most of the revenue for Copibec and Access Copyright comes from the licensing of multiple copies of such things as journal articles and chapters from books. We have a strict ruling on multiple copying for educational purposes from the Copyright Board of Canada, in 2009. As Mr. Davidson has said already, the copying in question was no more than several pages per student per month, and the Copyright Board was quite clear that that copying is not fair dealing. It does not even come close to the level of copying that is being done for course packs and multiple copies handed out to students, under licences.

Therefore, I think that licensing revenue is not under threat.

● (1145)

Mr. Peter Braid: Following that thread, to your mind, why is the exception for the educational use of Internet materials so important to university students in the digital age today?

Mr. Steve Wills: I think it's important to students and to professors and teachers. If we were just dealing in an educational setting with any individual using publicly available work on the Internet, you could certainly make strong arguments that there's an implied licence to use that or that it might be fair dealing by that individual. However, in the educational setting there are many group uses of material.

Showing an Internet video in front of a class of students is essentially a public performance. It's a different set of rights. In making a work available on a course management site or a course website, you're making a copy available to each student in a class. It's when you get into these multiple uses that the idea of an implied licence or fair dealing becomes far more grey or hazy.

The reason this exception is important is to provide clarity, so that when students and professors use these works in various ways for educational purposes, they don't unintentionally run afoul of the law and unintentionally commit infringements. They need some safety in the law for the purpose of clarity.

Mr. Peter Braid: Thank you.

Mr. Davidson, why is getting a modernized copyright bill passed in Canada so important for our universities, for our young, bright minds in this country, and for our economy?

Mr. Paul Davidson: The bill is critically important. I know that members of the opposition have a wide range of views on how it should proceed, but let me say to them that copyright is one of the most polarized issues this country faces. This is one of the most ideological issues it's faced.

I spent close to half a decade on the last round of copyright reform actually representing the creative side, because there were important gains that needed to be made in that round. This time, I think this bill has done a very good job of getting the balance right, and it's important, because....

I mean, it took 25 years for Canada to come to terms with the photocopier. Are we going to take 25 years to come to terms with the digital age when there are so many educational opportunities that are there, when there are so many challenges that are before Canadian students? We have to make sure our students are the best-equipped, the best-taught students in the world, and this legislation will help us do it. We have to have clarity.

I wouldn't want to be the next minister of international trade going to talk about international trade if this copyright legislation is not passed. I know the committee has been hearing a number of witnesses, and there are many more who would like to appear, but in essence, I think this is the best piece of legislation, the best effort we've seen, in a number of years, and we need to move forward.

The Chair: Thank you very much.

I will move to the second round with Mr. McTeague for five minutes.

Hon. Dan McTeague (Pickering—Scarborough East, Lib.): Thank you, Chair.

Thank you, witnesses, for being here. It's been very helpful to have you stating your positions.

I'll start with the CAUT and then over to you, Mr. Davidson, with the AUCC.

You can appreciate in 2008 I was still trying to go over the ashes of a bill that failed on making RESPs tax deductible, but that'll be for another time.

I did come across CAUT's advisory number three in December 2008. You provided to your members across Canada some guidelines for the purpose of fair dealing, and it was to help, and I'm going to quote, “academic staff know their fair dealing rights and exercise them to the fullest extent”.

The document states that the economic effect of the dealing on copyright owners is “neither the only factor nor the most important factor...in deciding if the dealing is fair”.

I'm wondering if you were actually trying to tell Canadians, your own membership in particular, that a copy can be fair even if it undermines the market for that work.

As for the AUCC position paper—I only have five minutes or less, so I want to ask two questions at the same time, if I could—it seems that your position paper, which you submitted to the committee and which we thank you for, and which you've reiterated here today, suggests that the tests in the CCH should also be brought into law.

It sounds to me like both of you are saying that if fair dealing is extended to education, there's probably going to be the odd case, perhaps even more than we would want, where someone copies work that is in fact undermining the copyright owners' markets, but that doesn't matter, because...and I'm going to quote again, "neither the only factor nor the most important factor...in deciding if the dealing is fair".

To both of you, is that a fair statement?

Mr. Paul Jones: You do realize that that's basically a quote directly from the Supreme Court of Canada CCH case, that that's where it's drawn from?

Hon. Dan McTeague: [*Inaudible—Editor*]

Mr. Paul Jones: What it's saying is that...it lists some factors about whether something is fair or isn't fair, and the economic impact of the dealing is one of those factors. That's not controversial. That's the Supreme Court of Canada.

If you're suggesting that we are trying to find ways—

● (1150)

Hon. Dan McTeague: Mr. Jones, hold on for a second. You're suggesting that we concretize what has been said by the Supreme Court of Canada, putting aside the fact that this may have impacts on the market beyond what is intended by the safeguards that you proposed here in your submissions in terms of recommendations?

Mr. Paul Jones: Are you saying that I'm saying we should put this in Bill C-32?

Hon. Dan McTeague: Mr. Jones, I'm asking whether or not your organization is advocating the possibility of trampling on someone's copyrighted material without any due deference to the fact that they may have to ultimately wind up not doing the work that they've traditionally done or not being compensated for it.

Mr. Paul Jones: Of course we're not suggesting anything of the sort. What we're suggesting—

Hon. Dan McTeague: But your advisory seems to suggest it; in your advisory, you're saying just that.

Mr. Paul Jones: No, no, it's quoting from the Supreme Court of Canada.

Hon. Dan McTeague: You're being very selective about what's in the Supreme Court of Canada.

Mr. Paul Jones: It's quoting from the Supreme Court of Canada.

Hon. Dan McTeague: But you're being very selective about what's there.

Mr. Paul Jones: No, no, we listed all six factors there. You can't just take one thing out.

Do you want me to read it? Do you want me to read all the different tests?

Hon. Dan McTeague: We've read it, Mr. Jones.

Mr. Paul Jones: Then why are you just quoting one portion of it?

Hon. Dan McTeague: The fact is, why did you choose that one in particular?

Mr. Paul Jones: Because it's one of the six tests.

Hon. Dan McTeague: Well, I'm concerned, Mr. Jones, that what you're trying to do is in fact provide a situation where you do create an imbalance.

Mr. Paul Jones: Your concern is misplaced. What we are saying—

Hon. Dan McTeague: No, my concern is not misplaced, Mr. Jones. My concern is that you may wind up in a situation where people are in fact not compensated for the work they're doing.

Mr. Davidson.

Mr. Paul Davidson: I can address that as well.

Mr. Angus talked about some of the witnesses who are concerned about very dire consequences of the legislation. Let's face it, there has been a lot of myth-making on all sides of this issue.

A number of people in the creative community were saying that the ground given to the education community through this legislation was going to significantly disrupt matters. We have proposed that we look at the six fairness factors in the Supreme Court decision and incorporate that in the legislation—all six factors—as being the measured, considered test of what is fair. That's a way of addressing some of the concerns of the creative community.

We're trying to find the appropriate balance here so that we can move forward.

Hon. Dan McTeague: So am I, and so are we.

Thank you for that, Mr. Davidson, and Mr. Jones.

I only have about a minute, so I'll ask you a final question.

You've suggested that in no way—and no one has suggested it—is there a question of motivation of money here. Would you object to an amendment in the fair dealing exception that says "if there is a significant effect on the existing marketplace, the dealing isn't fair dealing"?

To any one of you, would you support such an amendment?

Mr. Paul Jones: No, not at the moment. I mean, it's a suggestion and we'll consider it, but I think that's already encapsulated in the CCH fair dealing test.

Hon. Dan McTeague: Any comments on the Berne convention?

Mr. Steve Wills: Could I just make a comment?

Hon. Dan McTeague: Yes, sorry, Mr. Wills.

Mr. Steve Wills: It's been suggested that the three-step test be incorporated into the law to provide some guidance.

We agree with Professor Pina D'Agostino; when she appeared before this committee she said that would just bring more ambiguity. And we agree with Professor Geist, who said the six fairness tests set out by the Supreme Court in the 2004 CCH decision would provide far more clarity.

In any event, Canada is already subject to the three-step test as a result of our being a signatory to international agreements, such as the TRIPS agreement under the World Trade Organization.

The Chair: Thank you very much. We have to—

Hon. Dan McTeague: Could I ask a last question just to make sure it's clear?

The Chair: Ten seconds.

Hon. Dan McTeague: I just want clarification on whether or not they would also want to infuse the Berne step....

Okay. That's fine.

Thank you, Chair.

The Chair: Thank you.

Monsieur Cardin, pour cinq minutes.

[*Translation*]

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

Good morning and welcome to the committee, gentlemen.

For a while now, you have been saying that, to all intents and purposes, there will be no losses for creators. However, the people who came to see us not long ago assessed the losses at approximately $74 million. Now they assess the royalties of all kinds that could be lost if the bill were passed at $126 million.

You seem to be saying that, no, there will be no losses. In education, for example, we're talking about $40 million for Canada and $10 million for Quebec. Let's consider photocopies, for example. If there aren't any losses under Bill C-32, could there at least be slowdowns in royalty payments? What's happening at the present time? What will Bill C-32 change in this sector, among others?

[*English*]

Mr. Steve Wills: Perhaps I could respond to that question.

First of all, our comments were directed at the amendment to fair dealing and whether or not that might undermine the $40 million in revenue for Copibec. I don't think we meant to say there would be no possible loss of revenue from any of the provisions in the bill. Clearly there is a provision, for example, that allows the performance of audiovisual material, cinematographic works, in the classroom, which is a provision that has existed in U.S. law for a number of years. That would result in institutions not having to pay public performance rights for those works.

However, the works represented by the collectives in that area are mostly U.S. feature films. Given that U.S. educational institutions don't pay public performance rights for the use of those works, it's not clear why it would make sense to continue forcing Canadian educational institutions to pay for the use of those works, especially when most of the royalties would flow outside the country.

In response to the issue of whether there will be any loss, there could be loss from a provision like that, but we were addressing in particular the claims of Copibec and Access Copyright, that they would lose their $40 million in revenue. Nothing in this bill would change their revenue from the university sector.

Even in the K-to-12 sector, as you may well know, there is a dispute over fair dealing that is still in the court process. There's been an appeal to the Supreme Court, and it's not clear whether the Supreme Court will accept the application for leave to appeal.

Even if it were to make a decision that overturns the Copyright Board in the Federal Court of Appeal, at most that would amount to 6% of the revenue being collected annually by Access Copyright, or $1.2 million out of $20 million that's being collected annually.

That dispute has nothing to do with education as a purpose for fair dealing; it's all about the fairness of copying in the educational context.

● (1155)

[*Translation*]

Mr. Serge Cardin: Mr. Tabor, earlier you said that students increasingly need to use computer media, the iPad, for example, and that there could be data transfers on that equipment. How would your production of material on the iPad, among other things, affect rights?

[*English*]

Mr. Chris Tabor: I don't know for certain. Most of what we do now is copying works that were written when digital rights weren't even contemplated. Most of what we produce now are reproductions of printed materials, textbooks—primary sources.

It's my understanding that the publishing industries are including digital rights and distribution rights as they enter into new contracts with their authors. It remains to be seen how that unfolds in a mobile consumption environment.

We have distributed a number of products that are royalty-free. They were created under Creative Commons licences and so on, and we see those used across the different forms of devices. How the publishers will safeguard those—DRM, digital rights management, and the digital rights, and the measures they put on them to control them—is a function of the publishers' manufacturing, if you will, of those products.

The Chair: Thank you very much.

Mr. Del Mastro, you have five minutes.

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

Thank you to the witnesses. I really appreciate the clarity that a number of you have brought to the question of fair dealing, specifically fair dealing for educational purposes.

I really hope that this changes the debate on the committee, because to this point, I think it has largely been portrayed as a government attack on creators, which it's not, and an attack on the copyright collectives related to education, which it's not. I think it's important that we recognize those things.

What it's really about...and I'd love to get your feedback on this.

Mr. Davidson, you said that it took us 25 years to figure out what to do about the photocopier. But the reality is that if we go back to that period of time and compare it to this period of time, technology is changing so quickly. Education has to meet this evolution and progression that's occurring. If we don't, we fall behind, and we run the risk of falling behind at an exponential pace compared to 1975, when the photocopier was first coming to prominence.

Can you talk about why getting these rules right—and I would invite some of the rest of you to comment on this—will help our educational facilities meet the demands of tomorrow and will help our students be better prepared for the challenges of the digital economy?

● (1200)

Mr. Paul Davidson: If I may, I would say that the first reason it's important is because of the balance that's been struck. Like others, I've been very concerned about the way the issues have been cast. Universities do want to pay creators and universities do pay creators. Universities do promote culture. Universities are vital forces for culture and creation in this country, and it's important that we get the balance right.

The second reason it's important is because of the clarity this legislation provides. Let's face it, when you got chosen for this committee, you didn't say, “Yes! I get to spend endless weeks going into the minutiae of copyright legislation.” This is tough stuff. It's dry stuff.

Jack McClelland, the icon of Canadian publishing, said that copyright is the most boring subject—but the most important.

He's right. It's important because we need to make sure that artists are adequately compensated. We need to make sure that people have access to the phenomenal creative works that are achieved in this country.

It's important in global terms because of the fast pace of technological change. I happened to be in India last November with 15 university presidents promoting Canada's brand in India. There are 500 million students under the age 25. They want to know how they can learn online. They want to know how they can access materials quickly. They want to look at digital learning.

There are opportunities for Canadians. There are opportunities for Canadian students. There are opportunities for Canadian instructors. There are opportunities for Canadian researchers. There are opportunities for Canadian technology firms.

We need the clarity that this act provides, and we need to get into the digital age in terms of our copyright legislation.

Mr. Dean Del Mastro: That is a huge opportunity.

Go ahead, Mr. Turk.

Mr. James L. Turk: One of the things that's concerned me in the discussion is this continued polarization of creators and users.

Our organization is probably the largest organization representing authors of books in the country. We had to wrestle with all of the issues before you in developing our position: how to be fair to students and to faculty members and librarians, but also how to be fair to our members in their role as creators of cultural and intellectual material.

The kind of balance we're suggesting—having a clear fair dealing provision—is important to all creators, because they all use other people's work and draw on that and need it for those purposes. It's important for our students, and, as my colleague Paul Jones has said on several occasions, if you look at the provisions for fair use in the United States, they're far more generous than what we're considering, and they have had none of the devastating effects that some witnesses before your committee have suggested.

We've really worked hard to try to balance those things, because our membership is from all sides of this. We think the kinds of recommendations, both on fair dealing...but also asking you to reconsider the absolute prohibition on breaking digital locks and modifying that so it's limiting it to breaking digital locks for infringing purposes but allowing it for non-infringing purposes.

I think if you made that change, that would be a major step to bringing forth a piece of legislation about which all Canadians could be proud.

Mr. Dean Del Mastro: We appreciate your input on that.

I will say that the inclusion of the words “such as” would have brought the roof down on this place, so...but I do understand why you've suggested that.

Mr. Davidson, your point about the opportunities that exist is really what excites me about the potential this bill has to create the economy of tomorrow and help Canadians realize their future in a digital economy, which I really believe we're well positioned to do.

I'm a big believer in the market. We have $750 million of music industry revenue that's been wiped out in this country. If we look at what's been wiped out and then we look at the opportunity, shouldn't that be enough encouragement to get this thing through this process and back to the House?

The Chair: Mr. Del Mastro, you're only going to have 10 seconds for that answer.

Mr. Paul Davidson: One of the problems we always face is that we fight the last war. If we fight the last war on this, we're going to miss the opportunity that presents itself for Canada in the digital age—and for Quebec, I would say.

I might add that Quebec has one of the strongest cultural communities in the world. Its cultural policies are incredibly important, and there are many areas in which Canada could learn from Quebec on this, but this isn't an area that I would pursue.

The Chair: Thank you very much.

Thanks to our witnesses.

We will briefly suspend.

● _____ (Pause) _____ ●

● (1210)

The Chair: I will call this 13th meeting of the special Legislative Committee on Bill C-32 to order for the second hour.

We have with us today, as witnesses, Ernie Ingles and Brent Roe from the Canadian Association of Research Libraries; Jon Tupper and John McAvity from the Canadian Museums Association; and David Molenhuis from the Canadian Federation of Students.

The Canadian Association of Research Libraries has the floor for five minutes.

Mr. Ernie Ingles (President, Vice-Provost and Chief Librarian, University of Alberta, Canadian Association of Research Libraries): Thank you very much, Mr. Chair.

Ladies and gentlemen, I want to thank you for taking the time to hear from CARL today.

I'm here as the president of the Canadian Association of Research Libraries, although I'm also a librarian and the vice-provost at the University of Alberta, with oversight for libraries, but also for some cognate units, including the university press and the bookstore.

CARL is the leadership organization for the Canadian research library community. Our members include the 29 major academic research libraries across Canada. They support research and innovation by facilitating access to scholarly information. They provide library services to support teaching, research, and learning at Canada's largest universities.

We at CARL were pleased to see Bill C-32. Updating of the Copyright Act is long overdue, and we are happy to see some helpful provisions that would permit our libraries to respond to the changing needs of their patrons.

Librarians at academic institutions are constantly encountering copyright issues. On our campuses we assist both users and creators. We facilitate access while respecting rights. This is what we do. This is what we will always do. With this in mind, I will focus my remarks today on why education is appropriately included as a fair dealing purpose.

Many technological changes in the library and in the classroom over the past 15 years have had a significant impact on the ways in which librarians acquire and make available content for research and instruction. For our universities and their graduates to be competitive in the international information economy, it is crucial that students, instructors, and librarians take full advantage of emerging technologies.

It is time to recognize, as other countries already have, that the contemporary university environment does not easily separate its activities according to the current fair dealing categories. In today's classrooms and libraries, research, personal study, review, criticism, and instruction are intertwined. The boundaries of these activities often overlap. The inclusion of education among other fair dealing purposes allows for new and innovative teaching methods while encouraging student creativity through broader use of information in all formats.

Some have claimed that the inclusion of education as a fair dealing purpose will lead to wholesale copying of entire works. This assertion ignores the fact that libraries and universities respect copyright under the present set of fair dealing purposes, and it wrongly assumes that an additional fair dealing purpose will automatically lead to abuses.

We recognize that fair dealing has to be fair. The mass copying that certain groups have talked about is never fair dealing under the current act and will not become so under an amended act. The inclusion of education as a fair dealing purpose will not change what is acceptable as fair dealing. All fair dealing copying remains firmly subject to the fairness test established by the Supreme Court. Libraries have been circumspect, even cautious, when exercising their fair dealing rights, and this is highly unlikely to change.

Currently, Canadian university libraries spend more than $300 million annually on the purchase or licensing of content. This will not change either with the addition of a new fair dealing purpose.

This is not a question of saving money. We won't be spending any less. Indeed, I think we'll be spending much more. This is a question of addressing the realities of the modern classroom and the modern library in support.

Finally, I would like to remind the committee that Bill C-32 is a package of provisions that aim to balance the needs of users and creators. The removal of education as a fair dealing purpose would destroy any balance in this bill—that is, in our judgment.

There are many provisions that address the needs of copyright holders. We must remember that Canadians from all regions expressed a desire to broaden fair dealing, and the inclusion of education among current fair dealing purposes addresses this.

I have one final note. A very important part of the role of the research library is to preserve our great works and our great collections and ensure the safety of these cultural products by organizing, cataloguing, and archiving what is created. This is in pursuit of preserving this human record in perpetuity for Canadians not only five years from now but also, believe it or not, 500 years from now. That is part of what we do.

Our community is concerned that any restrictive changes to the bill—they're not proposed at the moment—may compromise our capacity to preserve information in perpetuity. We ask that the committee take this into consideration when it is proposing amendments.

● (1215)

I'd like to thank the committee for its hard work and for taking the time to listen to us today.

I'd be pleased to answer any of your questions.

The Chair: Thank you.

We'll move to the Canadian Museums Association.

Mr. Jon Tupper (President, Canadian Museums Association): Thank you, Mr. Chair.

My name is Jon Tupper. I'm the president of the board of the Canadian Museums Association. My day job is as director of the Art Gallery of Greater Victoria in British Columbia. I'm here with our executive director, John McAvity.

Established in 1947, the Canadian Museums Association is the national organization to advance and serve the museums of Canada. There are over 2,700 non-profit museums, ranging from large art galleries in metropolitan centres to volunteer-run heritage museums in small communities in every riding of the country.

Museums are interesting cases for you to consider, as they are both users of copyright materials and also owners of copyrighted materials. This forces us to see the balance that is at the heart of copyright legislation between fair public policy and private rights.

We are here today to speak largely in favour of Bill C-32, with several recommendations for improvement and future consideration. We are pleased with most provisions, including the bill's recognition of education as a legitimate fair public benefit.

Today Canadians are attending museums in record numbers. They are interested in heritage and arts and they want to see more of it, not just on our walls but also on their home screens.

However, these are our services in the public interest, and there is little to no significant revenue generated from these due to the failure of the Canadian art marketplace. And yet we face infringements for making works available for non-commercial purposes, even if we own the works themselves. Museums must pay fees to artists to put a work on exhibition even if the museum owns the painting, and this is not right. We cannot copy or place works of art on our websites without payments; we cannot copy documents or photocopy for others to use, without infringing copyright; we cannot offer public lectures with slides of art without paying a fee; nor can we publish a money-losing catalogue without also paying other fees.

There are other issues that we'd like to address here today. One is the artist's resale right. It has been requested by some organizations that you add this new right, which is, we feel, out of the scope of this present bill. We do not support this, as it is premature and requires considerable study. It will have an impact on museums and a much greater one on the art marketplace. Our principal concern is that this proposal will only benefit a very small number of successful artists, and not those who really need greater support.

Expansion of the exhibition right, which was introduced in 1988 amid much controversy and even rejection by the Senate of Canada, today remains an unsuccessful right in Canada's copyright bill. In fact, no other nation has such a right. Last week it was proposed by a witness that the public exhibition right be expanded by making it retroactive. This would not be a wise move, in our opinion.

Despite our having had this provision for more than 20 years, no other nation has followed our lead. It is costly, cumbersome, and has failed to deliver any significant revenue to artists. We recommend that the exhibition right be reconsidered and reviewed in the next round of amendments, with a view to abolishing it and having it replaced with a compensation program similar to the public lending right.

With respect to digital locks, we join our colleagues, the Canadian Council of Archives among others, in concern over digital locks as a grave issue over the ability of our collecting institutions to acquire, access, and preserve materials with such devices. We believe that the circumvention of TPMs for the purpose of preservation in public collections should take precedence over private ownership rights.

With respect to educational exceptions and fair dealing, in a word, keep them as drafted. Bill C-32's proposal to expand the allowable use for fair dealing to include education, parody, and satire is a reasonable step that will slightly increase access to works. This will not lead to wholesale exploitation of works; it will only apply within the concept of what is fair dealing when balanced against the needs of the owners.

Finally, the issue of what we call orphan works is not dealt with by these amendments, and frankly, it should be. Orphan works are those whose copyright owners cannot be located, which produces a difficulty in obtaining rights and licences for their use and is a frequent problem. A mechanism is urgently required.

With respect to clause 46, we are pleased with the provisions of proposed section 38.1 over statutory penalties for non-commercial infringement. This represents a reasonable approach, which we support.

Thank you, Mr. Chair. We'd be pleased to answer any questions from you and your colleagues.

● (1220)

The Chair: Thank you very much, and thanks for keeping it under the five minutes.

We'll now move to the Canadian Federation of Students.

Mr. David Molenhuis (National Chairperson, Canadian Federation of Students): Thank you very much, Mr. Chair and members of the committee.

My name is David Molenhuis. I am here today on behalf of the Canadian Federation of Students, Canada's largest national students organization. I am accompanied by my colleague Noah Stewart, who will answer any questions that members of the committee may have. Our more than 600,000 members are students at universities and colleges, both undergraduate and graduate.

Students are users and creators. We need both ready access to the works of others and the ability to protect our work from unfair use and appropriation. I would like to begin by addressing Bill C-32's proposal to add education to the enumerated categories of fair dealing. While this falls short of the flexible definition of fair dealing that students have called for, it is a reasonable step forward. Listing education explicitly will only be a modest change to the act, which already allows fair dealing for the purposes of research, private study, and criticism—categories that include the vast majority of educational uses—so long as the use is, of course, fair.

Fair dealing involves a two-part test. While Bill C-32 proposes adding education to the list of permissible dealings, it does not propose to alter the second part of the test, which is the fairness analysis. It will not permit the wholesale copying of textbooks, as some have falsely claimed, nor will it permit teachers to replace the use of textbooks and novels with photocopied excerpts.

In Bill C-32, fairness remains the cornerstone of the law. If a dealing isn't fair, it infringes on copyright no matter how educational it might be. What the proposed expansion will do is promote innovative uses of copyrighted works—for example, a teacher showing a clip from a film to their class, or a student distributing a magazine clipping to accompany a presentation, or even a homework assignment in which students build a website dedicated, for example, to the work of a modern Canadian artist.

Post-secondary institutions have often proven reluctant to rely on fair dealing out of fear of litigious rights holders. The inclusion of education will reassure students, teachers, and other members of the educational community that their uses can qualify as fair dealing, provided they are in fact fair.

While some individuals have claimed that educational fair dealing is unclear and will lead to excessive litigation, this is far from true. The proposed expansion will bring greater clarity to the act, filling in the grey zone between research and private study. Moreover, the bounds of fair dealing have been well established by successive decisions of the Supreme Court, the Federal Court of Appeal, and the Copyright Board. The education community is a major contributor to Canada's creative industry. College and university students spend over $1.3 billion on education materials each year. Moreover, this is one area in which spending on copyrighted works is actually increasing, having grown more than 35% in the last decade.

Expanding fair dealing will not diminish these expenditures. Rather, it will encourage students and teachers to make even greater use of copyrighted works, extending the reach of authors and creators and further supporting Canada's creative sector.

The broad language currently used in the bill supports fair dealing as a right for all, not a special exception for a privileged minority. It ensures that educational fair dealing is available to everyone from a church group, for example, to a music teacher, or even to a university student. Educational fair dealing embodies the very best of Canadian values. It recognizes that a commitment to supporting creators can and must be fairly balanced against a commitment to education.

Although by and large Bill C-32 reflects the balance sought by Canadians, one glaring omission is in the approach taken on digital locks. These provisions would stop, for example, a student from using a graph or picture from an e-textbook in their essay; a teacher from using a clip from a video in a class presentation; and a musician from using pieces of recorded music to create an entirely new song. This approach is especially of concern for members of the education community who are increasingly turning to the use of electronic course packs, e-textbooks, electronic reserves, and other digital materials.

Although the bill includes explicit protections for digital locks, it fails to provide any mechanisms to assist users who wish to access locked materials for lawful purposes. Criminalizing the legal use of these materials strips away any and all user rights and gives copyright owners absolute control over how their works are used. The proposal should be amended to modify the definition of circumvention to apply only to infringing uses. This would address many of these problems.

One last area of concern is the special exception for delivery of lessons by telecommunication found in proposed section 30.01. This section is unnecessarily complex and will hamper digital learning. The requirement that lessons be destroyed after the end of a course will force already overworked teachers to rebuild their courses from scratch each term, and students to delete their learning materials at the end of each semester.

● (1225)

Providing for the digital delivery of course materials could be better achieved by simply modifying the definition of “premises” of an educational institution to include any place from which persons are authorized by the institution—that is, including staff, teachers, and students—to access it.

That said, I'll thank the chair and welcome any questions that committee members might have.

The Chair: All right. Thank you very much.

We'll now move to questioning.

Mr. Garneau, for seven minutes.

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

Thank you to all the witnesses for coming this morning and explaining your point of view.

I guess I'll go through in the same order in which you spoke, and start with CARL.

First of all, I have some acquaintance with research libraries. I had the pleasure of working at the National Research Council and became very familiar with CISTI, a very fine internationally recognized facility.

I have two questions. You basically spoke about the education exemption exclusively. You didn't speak about any other parts of the bill. Do you have opinions on other parts of the bill, very briefly?

Mr. Ernie Ingles: Absolutely we do have opinions on other parts of the bill. I can deal with those summarily, if you wish.

The reason we focused on the education is because that is where we think the nuts and bolts are of what we think is good about this particular iteration of Bill C-32. So that's the part we want you to remember and to continue.

But there are other things that are important. For example, the question of the digital locks; this isn't necessarily our issue. In reality, quite often, to do the kind of work that my members do, we negotiate licences that permit us to do certain things with regard to some of that information.

We are concerned...and I was delighted to hear the comment from the student group about the preservation issue. As I indicated in our submission, preservation is very important to what we do and who we are, and we wouldn't want the lock to get in the way of some of those kinds of activities.

● (1230)

Mr. Marc Garneau: As it's written at the moment, if I understood you correctly, with respect to your archiving function, you feel the bill does not prevent you from that task?

Mr. Ernie Ingles: Generally speaking, yes; we think it's fine. We just wouldn't want to see other hurdles put in the way of that important activity.

Mr. Marc Garneau: Thank you.

To the Canadian Museums Association, you raised quite a few things here. One thing you mentioned was that even if you own a work in a museum, you are not allowed to make copies of it without, I presume, payment to the original artist.

What are you suggesting—that this just be totally removed?

Mr. Jon Tupper: No. Actually, I was addressing the exhibition rights and the fact that we can buy the work of art but we can't show it without paying additional fees to the artists. We just feel that this is an inefficient way of—

Mr. Marc Garneau: But you talked about slides and other materials as well.

Mr. Jon Tupper: Right. It's slides for lectures and that sort of thing for education purposes.

Mr. Marc Garneau: So what you're saying is you don't feel that it's necessary to pay to exhibit even though you bought the thing or to make copies for resale or for lectures or whatever.

Mr. John McAvity (Executive Director and Chief Executive Officer, Canadian Museums Association): If I could, I'd like to address the exhibition right.

We're here to talk about copyright. Copyright is about the issue of making copies. The exhibition right is not about making a copy; it is about displaying a painting in a public space, not for sale or for rent, for any work created after 1988.

So we feel, first of all, the concept is an anomaly. It does not belong in copyright legislation. Museums had been, before this was brought into play, voluntarily paying artists fees, and we will continue to do that. We believe in that, when the work comes from an artist.

When the museum, however, purchases a work and it goes into its permanent collection, we believe we should have the right freely to display and not seek the permission or pay a fee to a copyright owner.

Mr. Marc Garneau: Thank you. You've been clear on that.

On the issue of resale, there are countries that have adopted the policy of resale for a certain percentage, and we heard witnesses a week ago on this issue both for and against. You obviously are against it. Your argument was that essentially it's not proven to be necessary or we don't have enough information to make a decision on this. Could you expand a little bit on that?

Mr. Jon Tupper: Sure.

The effect for us is going to be minimal. It's going to be increasingly minimal because our opportunities to purchase works are becoming diminished; we just don't have enough money to purchase them.

So it really doesn't have a big impact on us. We think it requires more study. We are concerned about the ecology: we're very concerned about the effect it's going to have on artists, so we want it studied more.

Mr. Marc Garneau: Yes.

If you buy something, it's presumably because you feel this is a work of art, it's valuable, and it's worthy of being put into your museum. That painting or sculpture or whatever, of course, may have sold very modestly initially, but now you want it because you consider it to be a great work of art, or potentially, one day, a great work of art. And you don't feel the artist should get any compensation whatsoever.

Mr. Jon Tupper: By and large, when we purchase works of art, to be honest with you, we're purchasing contemporary works of art right from the artist. We're not purchasing historical works, because we can't afford them. That's the reality of the situation.

As you say, we look at a work of art and think it should be acquired for the collection as a historical record, but we see the role of acquisitions funds supporting artists in the community as well.

Mr. Marc Garneau: Thank you.

To the Federation of Students, we in the Liberal Party are looking, on the education exemption under fair dealing, to try to define a little bit what we mean by "education". We've asked this question to other groups as well. You don't have to do it right now, but we would appreciate your providing us with what you consider to be a good definition of education, because we think it does require some education.

We've also stated that we intend to codify, or we've proposed an amendment that would codify, the six criteria that were proposed by the Supreme Court for deciding whether or not fair use has been made under the educational exemption.

Would you be prepared to provide us with your proposed definition of what "education" is?

● (1235)

Mr. Noah Stewart (Communication and Policy Coordinator, Canadian Federation of Students): Absolutely.

I can say, I think as a starting point, our position is that we would not to restrict the definition, that the use of the simple term "education", the broad and expansive use, is in line with the view of the Supreme Court that fair dealing is a fundamental users right and is in line with the fundamental values of Canadians. Regardless of the context of the education, whether it be formal education in a college or university classroom, or going to the examples given by my colleague—a church group, a YMCA swim class, wherever—they should have access to this exception.

I think this puts a fair dealing test on to what we consider the more important part, the fairness analysis. It says that as long as you're using the work for an educational purpose, regardless of the context, and as long as that is fair...you have access to this exception, in that it means it's there for every Canadian and not simply a privileged minority.

The Chair: Thank you very much.

We'll move to....

Yes, Mr. Lake.

Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC): Mr. Garneau just asked for that definition to be presented to the Liberal Party. I'd ask that it be presented to the entire committee, if you could.

The Chair: Okay.

Thank you.

Madame Lavallée, *sept minutes*.

[*Translation*]

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

My first comment will be for Mr. McAvity. Earlier you said that the exhibition right had nothing to do with the copyright bill. That's no doubt because we have a very different approach, in English and in French. While, in English, we talk about a copyright bill, a bill on the right to copy, copyright, in French, we talk about a bill on copyright and creators. The difference between the approaches lies in large part in the way the bill is named. In a bill on copyright, the exhibition right makes sense because it is the right of authors of visual works to be compensated when their exhibition is made public. I simply wanted to emphasize that point of view.

Similarly, our approach is also very different from that of the Federation of Students. Reading between the lines of their brief, we see that they believe there is also a user right, whereas the creation always belongs to its creator. Creators can assign certain rights from time to time, a little or a lot, but the creator's fundamental right is that the creation always belongs to him, and he has the right to refuse to allow it to be made public, as was seen in the case of Gilles Vigneault during the Vancouver Olympic Games. I don't know whether you followed that affair in the newspapers, but he refused to allow his song to be sung in tribute to Canada, since his song *Mon pays* is a tribute to Quebec. So he refused, and it was his right to do so, because his creation belongs to him. That's a first case.

Now I want to talk essentially about artists' resale rights. You say you don't agree on resale rights. And yet 59 countries around the world have adopted that right, some of them nearly 100 years ago. To my knowledge, those countries, most of them European, nevertheless have a very profitable and vibrant art market.

You also mentioned that you're afraid this proposal might benefit only a very small number of well-known artists, not those who really need greater support. Incidentally, for those who really need greater support, the Department of Canadian Heritage has a range of subsidy programs. The Government of Quebec also has some. You said that benefited a very small number of artists.

Even if it only benefits a small number, why would you refuse to allow those artists to have a share in the prosperity generated by their renown and popularity?

[*English*]

Mr. John McAvity: I'll address some of your preliminary comments.

I think you have good reason to make a distinction between *les droits d'auteur* and copyright.

We are very supportive of moral rights. We are very supportive of the condition of artists. They are the reason why we have museums. The relationship is very strong.

However, I think you also said that it was very important for artists to profit from their works—that is, when they own their works. We agree. Our difference is when the work crosses the line and goes into a public collection—that is, a museum collection. Up until that point, we think the artist should profit.

With respect to the resale right, *droits d'auteur*—

● (1240)

[*Translation*]

Mrs. Carole Lavallée: Mr. McAvity, as I have a limited amount of time at my disposal, I'm taking the liberty of interrupting you.

Even when a museum acquires a work of art, the work itself continues to belong... There's always a certain right that belongs to the artist. For example, you could never destroy that work without the artist's consent.

[*English*]

Mr. John McAvity: That's a moral right. With respect to the other rights, they are negotiable under licensing agreements. That's all a matter of negotiations about what the artist would retain and what the museum would acquire.

In fact, there is a considerable amount of misinformation about this. Most people buy paintings from dealers and they have no idea what rights they are buying, if any, when they acquire a work. When people land on the doorstep of the museum and say they would like to donate a painting to us, we don't know what we're accepting. We don't know where the copyright is. We have to assume it's still back with the artist.

That gets us to the problem of orphan works, which we've identified, where we cannot find the artist or we cannot find the estate of the artist, and yet we are legally liable for paying fees or getting permission in order to publicly display a work of art. It's a big problem.

[*Translation*]

Mrs. Carole Lavallée: Don't you believe that a copyright collective in the visual arts field would make it possible to more effectively trace the authors of what you call orphan works?

[*English*]

Mr. John McAvity: We've had collectives in place for 25 years, almost 30. Very few artists have actually signed up to them, and we do not find them to be very effective, to be quite honest with you. That's one area.

On the *droits d'auteur*, I wanted to come back to that, because that's a major issue that has been before this committee. Our position is not against it. We have called for further study on it. We are concerned that it could have a very negative impact on what is already a very fragile art market in Canada. What we want to see is the art market developed in Canada. What we want to see are Canadians buying more works of art, supporting our artists, and creating a healthy marketplace in Canada. It's very fragile right now.

If you look across the country, you're going to see condominiums and suburbs having been expanded at a record rate. What are Canadians buying to put on their walls? Very little in the way of contemporary Canadian art. We would like to change that.

[*Translation*]

Mrs. Carole Lavallée: Don't you think that's a wheel that's turning and that, once there are artists' resale rights, that will make it possible to really create a community of visual artists who will want to stay in Canada and Quebec and who will benefit from the resale of their works at galleries?

[*English*]

Mr. John McAvity: The only artists who actually benefit will be those whose work goes to auction, and very few artists' works go to auction. Yes, CARFAC, which was here a week or so ago, gave the example of an Alex Colville painting that sold for $1.5 million. Well, he's a very successful artist. The amount of revenue he would receive would be very insignificant, in terms of the other revenue he has. How is this right going to benefit the average artist?

My mother was an artist. Her work sold a little bit but not much. It's never gone to Sotheby's. It's never gone to Christie's. It's never gone to any of the big auction houses. I wish it would, but it isn't....

The reality is that 98% of the artists will not benefit from this.

The Chair: All right. Thank you very much.

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

Mr. Charlie Angus: Thank you very much.

I'm interested in talking a bit about the interlibrary loan situation and the regulations, particularly those in proposed section 30.2 of this bill.

Many years ago I was working on and researching a book. I needed a master's thesis that had been published. I had to go to the local library. It took about two or three weeks for it to come up in the mail. It came in the mail. I had it for 20-some days, and then I had to send it back. Call me a copyright criminal, but I made myself a copy because I needed to continue doing research. I still have that copy, and I've referenced it many times.

I see how amazing it would be in a digital realm, where I could get a PDF of it and it could be there momentarily, and yet, within the provisions of the bill, this copy would have to miraculously disappear or be burnt after five days.

Why would we put such arbitrary limits on the ability of research and impact our ability to use the library capacity of this country?

● (1245)

Mr. Ernie Ingles: Let me make a start at that, and then I'll turn it over to my colleague.

The other gentleman asked if there were other issues with regard to the act that we have some concern with, and this is one. We can deal with the letter of the prospective law. We can, through technology means, see that the copy is eliminated from the technology that was used to deliver it. What a student or someone at the other end may do to print it off and keep it in the way you've been referring to, we're not too sure.

It is an issue that we would like to see eliminated to some degree in this act. Having said that, we consider it to be an issue that we can live with. There are other issues, like the education issue, that we are much more concerned about. The essence of it, I think, is whether or not there has been substantive damage done to that creator or that author in allowing that to occur. In our judgment there is not.

I'll turn it over to Brent.

Mr. Brent Roe (Executive Director, Canadian Association of Research Libraries): I think Mr. Ingles said our bit. Certainly Bill C-32 allows delivery of a requested item to the desktop of the person who requested it. This is something that is not allowed under the specific exception in the current Copyright Act, so this is real progress, and we're happy about that.

On the necessity that electronic access to that delivered material disappear after five days, as has been said, we'd prefer it weren't there, of course, because researchers do like to use material in electronic form so that they can cite it using electronic means as well so that they can class it with other things they may have. This is modern research, so that's something that should be considered by the committee.

Having said that, I would like to stress that what is in Bill C-32 is progress.

Mr. Charlie Angus: To the students federation, some of these provisions strike me as so out of touch with the real world that...why have them in there? I mean, certainly the libraries will meet whatever letter of the law they're asked to. They will follow that. But you get a piece of research, you cite it for a paper, it goes up in smoke in five days, and then you're thinking, “Did I quote it correctly? Do I have access to it?”

Are you not simply going to somehow make a copy at least for your own ability to do your work? What's the point of looking at it and then having it disappear?

Mr. Noah Stewart: Yes, certainly I think this is one of several provisions that's out of touch with the reality of learning in modern post-secondary education. I think you're right; in many cases students who are using these works will not have run the ambit of uses they need within five days. When you think that a course will often last 120 days, 90 days, they are working with tools throughout that.

I think it's similar to another worrying provision, as mentioned by my colleague, in proposed section 30.01, where for the digital delivery of lessons for online learning, for e-learning, there's a provision that requires that within 30 days of the close of a course, all course materials be destroyed. This is both by the students who are using the materials and the already overworked teachers who have spent many hours preparing the course, preparing their lectures. All materials must be destroyed.

Both these provisions, I think, go to a fundamental lack of understanding of how learning occurs in the academy. The students don't simply take a course. Students don't simply write a paper and then move on to the next course and never think about it again. If you think about a biology student, they take a first-year organic chemistry class, then they take a second-year organic chemistry class, then a third-year. They need to be able to continue to access materials for their courses. They need to be able to take the language that they've used and continue to use it.

I think in the case of interlibrary loans, this is a provision that, for one, would be very hard to enforce. The Canadian Library Association in the last round of copyright reform with Bill C-61 said there was no possible way that they have the resources to enforce this kind of thing.

It also shifts the role, fundamentally, of librarians from being people who are there to assist learning, to facilitate learning, to facilitate education, to being copyright police, and I think that also sets a somewhat worrying precedent. I think that's also something that's very undesirable in the modern institution.

I think more than anything else these kinds of clauses are simply unnecessary. There isn't a problem right now that we have rabid students, foaming at the mouth, just waiting to get their hands on every work in the library so they can copy them and put them on the Internet. I think that's simply not the reality.

● (1250)

Mr. Charlie Angus: Wouldn't that be great if they loved learning that much?

It seems to me, and this is my question here, that they're treating digital learning as though they were the “one book”—so the library had one book and other students have to be able to access that one book, or a chapter from the book.

I want to go back to our librarians in terms of section 32, the rights of the blind. There's this fear if you make a copy in big enough print that a person who cannot see well is going to access it, that there's going to be a flood of people coming to the library and demanding copies of books so they can see them if they are visually impaired. Meanwhile, the iPad allows you to blow it up to as big a font as you want.

Why do you think that's in there?

Mr. Brent Roe: Certainly that had its time and place, that particular provision in the current Copyright Act about the necessity to find commercially available copies of large-print books, whereas alternate formats can be made available to persons with disabilities in other formats.

Certainly, in order to help us serve our students with disabilities, we would prefer that this particular section disappear in an amended act.

If something is easily available commercially, great, we could buy it. But often it's not, and often it's very difficult to find a large-print edition for sale within the time that the student needs to use it and so on.

The Chair: Thank you very much.

We're going to move to Mr. Fast for seven minutes.

Mr. Ed Fast (Abbotsford, CPC): Thank you, Mr. Chair.

Thank you to our witnesses. I want to thank all of you for the testimony you've given us, especially on the fair dealing aspects and how education fits into that. I think generally you're all supportive of the balance we've tried to strike with respect to fair dealing.

A red flag did go up, Mr. Molenhuis, when you said that this bill will be criminalizing the circumvention of digital locks. I believe that's what you said. Did you mean that? Because I've read this act through a number of times now, and there's nothing that makes circumvention of a digital lock criminal.

It does impose civil remedies. It imposes some statutory damages. But I don't see anything in here that criminalizes the conduct in any way. Do you want to retract that or did I misunderstand you?

Mr. David Molenhuis: Well, yes, I would. I'm quite a verbose character—

Voices: Oh, oh!

Mr. David Molenhuis: —at the best of times. My apologies.

Mr. Ed Fast: I understand. I was a university student once as well, so I do understand that.

I'd like to follow up a little further on the digital locks. As you know, the bill actually provides a section that allows the minister to pass regulations that would allow digital locks to be circumvented in additional cases, more than just those set out in the act. That's to provide the kind of flexibility that is required to meet the needs of the digital age.

Undoubtedly there will be cases where it is justified to circumvent digital locks, but I wanted to put this to you. If there is a general right to circumvent for fair dealing purposes, I think you would agree with me that most consumers over time would acquire the technology to be able to circumvent, because all of us will eventually have some reason to access fair dealing content. Once everyone has that available, it renders digital locks meaningless, because everyone can avoid them.

Now that we've done what we've tried to resolve with this act, which is to bring clarity to this and recognize the realities of the digital age, yet at the same time restrict activities so that theft doesn't go on, so that stealing of copyrighted content doesn't go on, if you eliminate the digital locks by allowing circumvention on a general basis for fair dealing purposes, you've essentially opened up that door again. You will have consumers across the country who, essentially with the push of a button, can circumvent those locks and go after not only fair dealing content but also after copyrighted material that they shouldn't go after.

Now, I do believe that most Canadians are law-abiding citizens, but you and I both know that there are many among us who will rip off those who create content. So I'm wondering how you would justify to the creators of content that essentially what you're going to do is eliminate digital locks altogether by allowing the circumvention for fair dealing purposes.

● (1255)

Mr. Noah Stewart: Thank you very much for the question.

I think there are a couple of things. Just to start off with, we're not just talking about circumventing digital locks for fair dealing. We're talking about the broad range of rights, which includes, if you purchase a work, having the right to then use it. So if you buy a CD, it's about being able format-shift it, which is provided for in this bill, whether or not a digital lock exists on it. We're talking about a range of rights that is broader than simply fair dealing.

To go with the beginning of your question, it's true that the act prescribes methods by which the Governor in Council can prescribe regulations to allow further uses. But I think we start off at a problematic point when we say that perfectly legal and legitimate uses will become...I guess not criminalized, but we'll subject somebody to civil remedies, to civil liability, for circumventing the digital lock on their e-textbook, for example, to quote a passage from it, or on a movie, in order to take a piece out to put in a class presentation, and so on and so forth.

I think in terms of access to tools to circumvent digital locks, we live in a digital world, and there are hundreds of countries in it—a couple of hundred countries in it—and I don't think we're going to exist in a world where if somebody with access to the Internet wants to find one of these tools, a law in Canadian law is going to prevent them from doing so. I think the scenario we're getting into here, where you're saying that by adding this liability, by saying that any person who circumvents a digital lock, regardless of their purpose, is liable for damages, that it's somehow going to stop them if their use is legitimate.... For one, I don't think it's the case.

For two, it doesn't get at the heart of this. What we're talking about—and I think what the government was seeking—is to stop large-scale commercial infringement, to stop the Pirate Bay types of sites that are responsible for large-scale infringement. We've just seen a lawsuit filed under Canadian copyright law against isoHunt, a Canadian BitTorrent site. I think we have the tools in the current law to go after these large-scale infringers, and adding protection for digital locks isn't actually going to do much. It will not do much to prevent—

Mr. Ed Fast: With respect to the isoHunt case, that may be litigated. You may assume that the tools are necessary to enforce copyright, but the reality is that case hasn't been heard. My understanding is that the legal expertise appears to be that this may be a losing case. We need this copyright law to ensure that copyright holders have the ability to enforce their rights.

Going on to Mr. Tupper, I really enjoyed your presentation. You articulated some of your support for the education exemption and the expansion of fair dealing rights, and you listed a number of things you cannot do right now. It was early on in your presentation.

Could you expand on that a bit? Are these things that you will now be able to do under our Copyright Act?

Mr. Jon Tupper: Mr. Fast, for me personally, as somebody who runs a museum, if I were to say, "This is going to be great for me, what will I use it for?", it would be having works available for educational purposes on the Internet. That's the bottom line for me.

It has prevented us from showing a lot of works in our collection that we've already paid for, that we pay exhibition rights for. We want to show them for educational purposes, whether it's lesson plan activities for teachers to use at schools, or for people to look at artworks by Canadian artists.

We want to provide Canadian content on the Internet. That's one of the things we all want to do.

Mr. Ed Fast: And the Copyright Act will enable you to do that?

Mr. Jon Tupper: We feel it will, yes.

Mr. Ed Fast: All right.

I'll go to Mr. Ingles for one last question.

You also articulated your support for the balance, especially on the fair dealing provisions. You mentioned that this bill will continue to respect the right of copyright holders to be remunerated, including those who publish textbooks.

These changes to the Copyright Act are going to benefit your industry. Perhaps you could articulate how your business is going to serve students and universities, and others, in a more effective way.

● (1300)

Mr. Ernie Ingles: The reality is that it will help us to deal with our clients in a much better way. Particularly I want to make one point—and I'm not sure it's been discussed—with regard to those in our communities who are taking programming at a distance. I think those people will benefit by some of the provisions in this current bill.

Certainly our student colleagues have been extraordinarily articulate in suggesting the ways—and we agree with them entirely—in which there will be an enablement with regard to this.

You have to understand that the library world and librarians are extraordinarily respectful of copyright. We go out of our way to make sure the creating community and the publishing community are supported and enhanced.

This copyright debate has unfortunately put us in some kind of conflict with one another, when actually we are allies to a much bigger extent. Libraries make and organize product that is produced by the creator. We've done that since 1455, and we do it today.

The Chair: I'm going to have to cut you off there.

That's going to be the last word for today. Thank you very much.

Thank you to our witnesses.

The meeting is adjourned.

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