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Chair

Mr. Gordon Brown

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•(1100)

[English]

The Chair (Mr. Gordon Brown (Leeds—Grenville, CPC)): I call the meeting to order.

Good morning, everyone. Welcome to this 14th meeting of the special Legislative Committee on Bill C-32.

This morning we are going to hear from Wendy Noss, representing the Canadian Motion Picture Distributors Association, and from Ted East, Patrick Roy, and David Reckziegel of the Canadian Association of Film Distributors and Exporters.

Go ahead, Ms. Noss, for five minutes. You have the floor.

Ms. Wendy Noss (Executive Director, Canadian Motion Picture Distributors Association): Thank you, Mr. Chair, *mesdames et messieurs*, members of the committee.

My name is Wendy Noss. I'm the executive director of the Canadian Motion Picture Distributors Association. We represent the six largest international producers and distributors of film, television, and home entertainment programming in Canada.

In the very short time I have, I want to provide you with an understanding of how the film and television industry benefits our economy, and as a result why copyright laws that support the continued health of this industry are so vital. Film and television production last year in Canada was more than \$4.9 billion, generating more than 117,000 full-time equivalent jobs. The production studios associated with the CMPDA are major contributors to the foreign production component, which is valued at more than \$1.5 billion annually. Production provides jobs for local performers, crews, suppliers, and vendors, as well as tax revenues, and of course the benefits go well beyond production alone. Let me give you some specific examples.

In TV, the Vancouver area has hosted *Smallville* for more than 10 years. The television series spends over \$39 million locally each season, more than half of which is spent on local crew.

In film, the latest installment of *The Mummy* was shot in Montreal. It spent approximately \$50 million, including \$22 million on labour and fringe, with cast, crew, and extras totalling more than 1,000 people, and \$4 million was spent on renting local facilities in the Montreal area alone.

Unfortunately, these numbers don't tell the whole story. We can no longer ignore the estimated one-quarter of Internet traffic that now involves the unauthorized distribution of copyrighted material. Illicit

sites that traffic in pirated film and television content threaten jobs and the ability of the industry to remain an economic engine.

What does this mean for Canada? I've heard many of you ask that of other witnesses. A joint study being released today by Ipsos and Oxford Economics examined the harm caused by movie piracy to the Canadian economy in 2010. Further details have been provided to you, but consider that the study estimates that movie piracy resulted in a loss equivalent to \$965 million in GDP across the Canadian economy last year; in terms of jobs, if it weren't for movie theft, we would have had the equivalent of another 12,600 jobs last year alone.

What the Ipsos research tells us is that movie theft has a destructive impact not only on the film industry but throughout our entire economy, threatening all types of jobs and businesses. We desperately need a framework in line with international best practices, establishing clear rules to make online piracy illegal. We know these are the government's objectives; those objectives have been echoed by committee members around this room, and we, of course, support them.

In some critical respects, however, the drafting does not meet these objectives. Technical fixes are needed to ensure unintended consequences do not undermine the very legal framework the government has stated is needed.

Again, mindful of the short time, I'll just briefly mention overarching concerns with key provisions of the bill affecting the illicit distribution of content online. Fundamentally, we appreciate the government's objective to stop those who enable online piracy. The drafting of the enabling section is so restrictive, however, that the very sites the government is targeting will not be stopped unless the bill is amended to clarify the points that follow.

First, the prohibition must apply not just to services primarily designed to enable infringement but to services that operate in a way that enable or induce infringement.

Second, the prohibition must also apply to those who enable or induce infringement by hosting infringing content. This is not clear in the bill, but is absolutely critical, as download hubs—sometimes called cyberlockers—have a business model built on the mass distribution of infringing content at levels as high as 90% and more, and are the most significant growing source of illicit distribution online.

Third, the full range of legal remedies, including statutory damages, must apply to those who enable piracy online.

●(1105)

In addition, unless the drafting of the bill is tightened to match the government's goal, the safe harbours that are intended to only shelter those who act as true neutral intermediaries will provide loopholes that illegitimate operators will exploit to continue their operations in Canada, and will do nothing to stem infringement online. For example, the legislation must provide that online service providers who wish to qualify for the safe harbour be required to adopt and implement an effective policy to prevent use of their services by repeat infringers. A system whereby an infringer simply receives notice after notice after notice, without a belief that there will be meaningful consequences, is not an adequate mechanism for deterring illegal activity. The current drafting of the safe harbour is so overly broad that it will do nothing to stop operators of topsites, large-capacity servers filled with many terabytes of illegitimate content, or content-hosting hubs with many hundreds of thousands of infringing files, from operating with impunity in Canada—

The Chair: I'm going to have to cut you off there. We'll get into your content a little more in questioning.

We'll now move to the Canadian Association of Film Distributors and Exporters for five minutes.

Mr. Ted East (President, Canadian Association of Film Distributors and Exporters): Mr. Chairman and members of the committee, thank you for inviting us to meet with you today.

My name is Ted East. I am president of the Canadian Association of Film Distributors and Exporters, or CAFDE for short.

CAFDE is a non-profit trade association that represents the interests of Canadian-owned and Canadian-controlled feature film distributors and exporters. CAFDE members distribute over 90% of the non-studio and Canadian films released theatrically in Canada each year. CAFDE members distribute films in Canada from all over the world and in the widest ranges of genres and budgets.

With me are two senior executives from CAFDE member companies: Patrick Roy, president and CEO of Alliance Vivafilm, and David Reckziegel, co-president of Entertainment One Films.

Copyright reform is long overdue in this country. The Ipsos study released today emphasizes how urgently Canada needs to modernize its copyright law to stop massive online piracy and encourage the development and delivery of a variety of innovative new business models. Piracy hurts Canadian film distributors because it seriously erodes both the domestic and international markets for Canadian movies, makes it more difficult to finance new productions, jeopardizes the jobs of everyone involved in the creative process, and ultimately affects consumers as lost investment means fewer movies being made for audiences around the world.

We applaud the government's introduction of Bill C-32 and fully support its stated goals and intentions. However, we do not believe the bill as currently drafted achieves those goals.

Changes need to be made in the following areas: the enabling provision must be redrafted to ensure that anyone who enables copyright infringement, including hosting services, is stopped; the

current ISP safe harbour provisions are too broad and could actually legalize the operations of illicit Internet sites; the UGC—user-generated content—exception is so vague that it legitimizes copyright infringements and violates Canada's international treaty obligations; and the statutory damages provisions should apply to enablers and should provide an effective deterrent to large-scale illegal file sharing.

CAFDE also opposes the educational exemptions mentioned in clause 29 and asks that changes be made to protect the legitimate business rights of producers and distributors within the Canadian educational sector.

●(1110)

[*Translation*]

Mr. Patrick Roy (Member, President and Chief Executive Officer of Alliance Vivafilm, Canadian Association of Film Distributors and Exporters): Mr. Chairman, committee members, Alliance Films is a leading distributor of feature films in Canada. Our company also distributes films in the United Kingdom and Spain. Alliance Films distributes feature films to entertainment theatres, on DVD, online and to television broadcasters.

There may be the belief in some circles that film piracy only affects American studios. However, nothing could be further from the truth. Although I do not have a lawyer's skills to analyze Bill C-32, I am sitting in the front row where I can see the growing impact of piracy on our industry. I'm here today to express the wish that Canada become a leader in the fight against piracy.

According to the Ipsos/Oxford Economics study released today, piracy's impact on the film industry, including cinema owners, distributors, producers and retailers, is an estimated \$895 million in sales losses. Government tax losses alone are estimated at \$294 million. Online piracy, the most prolific method of piracy, has eaten into the revenues of all the films that Alliance has distributed over the past several years, including such noted Canadian films as *De père en flic*, *Les amours imaginaires*, *Polytechnique* and *Bon Cop, Bad Cop*.

Like independent films from around the world, Canadian films are financed from a variety of sources. One of the critical components in a film's financing are presales to film distributors. The amount the distributor will put up as an advance for an individual film is determined by expected revenue. This makes it more difficult for the producer to get the film made.

New digital distribution models are emerging and being embraced by consumers both in Canada and around the world. Netflix, Apple iTunes and Cineplex's recently launched digital service are examples.

Like most industry executives, I believe that digital distribution of feature films will replace DVDs in the next few years. Other innovative digital distribution models will provide consumers with a much greater range of choice than currently exists.

However, if piracy continues to flourish, these endeavours will be undermined. This will mean fewer films will get made, a weakening of Canada's production and distribution companies and significant reduction in jobs for the creative and support industries that make these films happen.

Thank you.

[*English*]

The Chair: There's only going to be about another 30 seconds.

Mr. David Reckziegel (Member, Canadian Association of Film Distributors and Exporters; Co-President, Entertainment One Films): I think I'll just focus, then, on the key parts of what I was going to talk about, which is reiterating somewhat what Patrick has said already. This year we've distributed films like *Barney's Version* and *Incendies*, which are two of the most acclaimed films of this year, and if we don't do something about Bill C-32, those kinds of films will have more and more difficulty in being made. Those films are being affected directly already.

We've also suffered from this plague of piracy and we need some clear rules and a deterrent in order to prevent this from happening.

Last summer a young filmmaker whose new film we are distributing received congratulations from an acquaintance who had just seen her film. This surprised the filmmaker, since her film wasn't scheduled for commercial release for another month. What she discovered was that her film was already available online and that dozens of other people she knew had seen it as well. This is one anecdotal piece of information, but this happens regularly.

Online piracy is out of control and is damaging the Canadian film industry today. Currently, four of the top ten most pirated films on BitTorrent are distributed in Canada by Canadian distributors.

• (1115)

The Chair: Okay, I'm going to have to let you get into it in the questioning.

We're going to move to the first round of questioning, but before we do that, I'd like to welcome Scott Simms and the Hon. Maxime Bernier to the committee.

We will go to the first round. It'll be seven minutes.

Go ahead, Mr. McTeague.

Hon. Dan McTeague (Pickering—Scarborough East, Lib.): Chair, you're quite right in not referring to Mr. Simms as "honourable", but that's down the road.

The Chair: He's still honourable in my eyes.

Mr. Scott Simms (Bonavista—Gander—Grand Falls—Windsor, Lib.): Dan's my lawyer.

Hon. Dan McTeague: Not for long, though.

Chair, thank you, and welcome to our members here today.

[*Translation*]

I would also like to thank the witnesses. Their remarks are very interesting

[*English*]

and I am very interested in pursuing them.

Mr. Reckziegel, the last comment you made was with respect to BitTorrents. I want to get right into this, because it seems this is an area in which the committee is going to have to drill a lot deeper. I know there are a lot of discussions out there, but perhaps I'd go to Ms. Noss first.

The Pirate Bay, which is the world's largest peer-to-peer file sharing torrent, had 2.5 million—if my resources are correct here—registered users in 2008. It's also made an incredible \$4 million just from advertising its site alone. They lost an appeal, as some of you know, on conviction in Sweden. The court described it as follows, and I'm quoting here: "The Pirate Bay has facilitated illegal file sharing in a way that results in criminal liability for those who run the service."

This service, as you know, is not just exclusive to Sweden or other countries. It's also here in Canada. I believe isoHunt in particular, which operates out of British Columbia, is the third most popular infringing BitTorrent site in the world. It continues to operate with more than 40 million peers and over 6.7 million active torrents. These figures are from their own website just a couple of weeks ago, on January 31, 2011. I just want to be absolutely clear that I'm not picking these numbers out of the sky.

Ms. Noss, in your opinion, how would Bill C-32 be able to prevent, stop, and arrest sites like isoHunt from facilitating the mass distribution of unauthorized copies of works, if at all?

Ms. Wendy Noss: Thank you, Mr. McTeague, for the question.

I think, as I alluded to in my opening remarks, the government's objectives on this issue have been clear: they want to stop those who enable mass piracy online.

I've heard those objectives echoed by all the members of this committee, so what we're trying to do here is help in arriving at legislation that will address the realities of how these sites operate and learn from international best practices.

As I suggested, the enabling provision, as drafted, needs some technical fixes. With respect to BitTorrent sites in particular, BitTorrent itself is a legitimate protocol. It wasn't designed to infringe. It has utility other than to operate as a vehicle for infringement. The concern is the way that those sites are operated to enable and induce infringement, and those are really the critical words that put them offside. Just to put it into some perspective for you, Canada has been home to five of the top ten BitTorrent sites in the world, whether they are operated here or hosted here. This affects not only the domestic market but the international market as well.

Two BitTorrent sites in Quebec that are operated or hosted there affect the European market by having 70% to 80% of their users in France, Switzerland, and Sweden, so again it's the ability to craft an enabling section that has statutory damages applied to those who enable piracy and has the prohibition against those who enable infringement by the way they operate or induce infringement. Again, finally, it should clearly apply to those who host illicit content.

Hon. Dan McTeague: I've only got maybe three minutes left and I've got a couple more questions, not just for yourself but for the others if we can get to them.

Are you satisfied with the statutory damages provision of Bill C-32 specifically? Let me be clear on this: to some, like myself, there are two problems. The statutory damages do not apply, obviously, to actions of the enablers, but the second problem—and I've raised this with other witnesses who have come before us—is that there's a maximum liability of \$5,000 for all infringements deemed to be non-commercial.

Is it your view in your work that a number of commercial-scale pirates are motivated by things other than commercial gain? I'm concerned more specifically about the issue of notoriety and whether or not reputation also factors into this as well. I'm wondering if the statutory damages we have provided here are not only silent on this but on the extent to which that kind of behaviour may have unintended consequences. If it's not perceived by this committee, it's clear that it wasn't perceived by the drafters of the bill. That's not a slight on them, just a recognition of something that's far greater than anything we've anticipated.

Ms. Noss, you or Mr. East might comment.

• (1120)

Mr. Ted East: Thank you.

I don't believe they're sufficient. I believe that when services like isoHunt are making millions of dollars in advertising, the \$5,000 fine just becomes incorporated into the cost of doing business.

As to notoriety, I think it goes deeper than that. I think it goes in some quarters to a philosophical belief that piracy is okay, to the fact that they don't actually believe in the criminal codes of the countries they operate in, including Canada. It's not just, "Look at me; I'm clever. I got away with this". You've got in some cases people who fundamentally do not believe that what they are doing is wrong and take exception to the laws of the land. I have a big problem with that.

Ms. Wendy Noss: I will give a quick response. There are those like the isoHunts of this world that are built on an advertising revenue and are commercial operations and make money. There is no question about that. However, in the piracy ecosystem out there, there are many people who do not operate for commercial gain; still, the commercial damage they cause to copyright owners is massive. For film and television content you have something they call topsites, which are FTP servers that house the most valuable content, content that is still in the theatres and that has been recently released on DVD. Those topsites are operated by people who do it for Internet credibility, because they want to do it and because within their own peer group it allows them to move up by a level.

Let me give you an idea of what the scale is, though. A topsite that was recently taken down by a Dutch organization, BREIN, had 220

terabytes. One terabyte is 1,000 gigabytes, and 1,000 gigabytes is 250 feature-length films. These people are not doing it for commercial gain. They're doing it for Internet notoriety. We had a gentleman stand up in front of Minister Clement at the Toronto town hall and brag that he had a six-terabyte server filled with Canadian films he was letting people download all over the world. He's not doing it for commercial gain. If you have a statutory damages provision that says to these people that they can cause as much damage as they want and the most they will ever be liable for is \$5,000, you're going to encourage those operations in Canada, not deter them.

The Chair: We'll have to move on.

[*Translation*]

Mr. Cardin, you have seven minutes.

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

Good morning, madam, gentlemen, and welcome to the committee.

The Ipsos/Oxford Economics study was not conducted by nasty separatists or sovereigntists, contrary to what the Conservatives might think. It nevertheless reveals some quite astronomical figures. To date, we've been talking about at least \$126 million a year in copyright losses for various artists and creators, but, to that, you're adding at least \$800 million. You even mentioned \$1.8 billion. These are major economic losses.

The survey reveals a number of things. There is a note on the paper you submitted to us. It states that the survey results paint a conservative picture of the situation. And yet the Conservatives have always told us that this would have no impact on creators. And yet this is a modest picture, and we're talking about nearly \$2 billion in losses. That's a considerable amount, which includes losses assessed at other levels and the \$1.8 billion you referred to.

Certain minor points are interesting. For example, 48% of consumers of pirated films, that is to say nearly half, said that they would have paid to see a film if it hadn't been unofficially available. Obviously, we're talking about prevention, warnings and simulations to protect the economy and the rights to certain productions.

What do we do with that? When the bill was presented to the committee by the Minister of Industry and the Minister of Canadian Heritage, we sensed that it was more an act for the industry than for copyright protection purposes. It seems to me the Internet and computer industry is suitably equipped.

What do you suggest in order to put a stop to this as soon as possible? Are there any examples from other countries that should be followed? Have other countries made perhaps a more radical start on countering these practices?

•(1125)

Mr. Patrick Roy: Thank you, sir. With your permission, I'll answer your question.

I'm shocked by the figures that this new study has revealed today. On the other hand, I'm pleased that we can finally have some figures because we've been asked for years now what impact piracy has on us. We have a modest idea of what that represents. As I said at the outset, I'm not a lawyer, I'm not a legislative specialist, but it's clear to me that we have to adopt a zero tolerance policy in this regard. We need a strong act, without loopholes. We also have to educate people because they take this for granted.

I have a Twitter account. A few months ago, someone sent me a message while I was promoting one of my films. He wrote that he had already seen my film on the Internet. I answered him that that was theft, and his response was that, if he found a \$10 bill on the street, he would pick it up and keep it. He added that he had looked at his computer, that the film was there and that he had watched it. That's the public's perception. People don't get the impression of stealing when they engage in piracy. So there's an educational component. We absolutely have to have strict measures that leave no doubt and that prevent piracy of works in Canada. That's essential in my mind.

I'm not an expert, but I get the impression that there is a very restrictive law in France, among other places. I don't know whether it has been passed, but what I heard gave me the impression that it was a real act, a strong act. Why not have that kind of act in Canada? I'm asking the question. I would like a clear message to be sent to consumers so they know that piracy has an impact on individuals, on Canadian businesses, and that it has to stop.

Mr. Serge Cardin: The individual who put the film on the Internet free of charge is not the one who put the \$10 bill on the ground. That would have cost him \$10. So he wouldn't have done it.

Mr. Patrick Roy: Yes.

Mr. Serge Cardin: What makes an individual look for a film, find it and exhibit it in this manner, free of charge? He gains nothing from it. Some people copy films illegally in order to profit from them, probably, but the impact... Which of those actions is more costly for your associations, for your industry?

Mr. Patrick Roy: I think it's a little of both. I get the impression that people do it for profit, but that others do it for the challenge, so they can boast of copying films, distributing them over the Internet and providing access to movies free of charge. It becomes a game and we shouldn't allow this kind of game.

Mr. Serge Cardin: How can we make Internet service providers accountable as a whole? We're talking about everyone.

What do you think of the system that enables an offender to receive notice after notice without him expecting any significant consequences?

Mr. Patrick Roy: I don't know.

Mr. Serge Cardin: The providers can send out notices—

Mr. Patrick Roy: Obviously, in fact—

Mr. Serge Cardin: —without there being too much follow-up.

Mr. Patrick Roy: We obviously need something more than notices.

Mr. Serge Cardin: It's a bit soft.

Mr. Patrick Roy: We obviously need something more than notices. As you said earlier, I think the companies that provide Internet services have the resources to determine exactly what is circulating on their bandwidth. Those companies should be more responsible and we should compel them to prevent this kind of behaviour.

Mr. Serge Cardin: What approach do you advocate?

Mr. Patrick Roy: I'm not a technical expert. I would ask Wendy to answer your question.

[English]

Ms. Wendy Noss: I would say a couple of things.

There are different models, and one of the benefits of being so far behind the curve here in Canada is that we can learn from international best practices.

Certainly you see different models around the world. Some countries, such as France, have a legislated, graduated response. That is in New Zealand and Korea and elsewhere. Others, like many European countries, have a provision in their legislation that brings ISPs and rights holders to the table by saying that if you want the benefit of a safe harbour, you need to have an effective policy to deal with repeat infringers who use your network.

If all you're doing is sending notices, it's just notice after notice after notice. It's like saying, "Stop, or I'll tell you to stop again". You need to have escalating deterrent measures that people will take seriously to change their behaviour, because that is the objective of any sort of program. It's to get people to change their behaviour, which they're not going to do if all they get is a notice.

•(1130)

The Chair: Thank you very much.

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

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

Before we start talking about how the sky is falling, I'd like to say that I think we're in the golden age of Canadian cinema. Congratulations. I think the products we're putting out are astounding, and we're gathering international audiences, so thank you for your excellent work.

Obviously we all have an interest in maintaining a strong and vibrant Canadian film industry, and we obviously have a number of competing interests. We're trying to find that balance here.

I'm interested in the case of isoHunt, because they're pointed out time and again. Ms. Noss, has your organization ever attempted to sue isoHunt or shut them down?

Ms. Wendy Noss: We're a Canadian non-profit association. The MPAA member companies, which are the companies we serve, have sued isoHunt in the United States. They were successful. They got an injunction because isoHunt is inducing infringement on a massive scale.

Mr. Charlie Angus: But have you tried it in Canada?

Ms. Wendy Noss: No. They've sued in the United States and have been successful because the legal framework there provides that if you induce infringement online, you are liable, so that's where they sued and that's where they've been successful. Unfortunately, the appeals are still winding their way through the courts, and that's the position we're in now.

Mr. Charlie Angus: CRIA has launched a lawsuit here in Canada against what they're doing in Canada. I wouldn't think CRIA would have taken that on if they didn't think they had a chance of winning, so I'm wondering why has isoHunt been sitting out there all this time without attempts to shut them down within the Canadian jurisdiction. If CRIA is doing it, wouldn't you think...? The film industry has a huge stake in dealing with them.

Ms. Wendy Noss: I'd say two things, Mr. Angus. The first is that I'm not here to speak on behalf of CRIA. Second, remember that isoHunt sued in Canada, seeking a declaration that its activities here were perfectly legal. At the same time that our members were suing isoHunt in the United States under their legal framework that made it clear that what they doing was illegal, isoHunt was suing the recording industry in Canada, saying that what isoHunt was doing was perfectly legal.

Mr. Charlie Angus: Yes, but that was a frivolous case.

Ms. Wendy Noss: It's the same case, Mr. Angus.

Mr. Charlie Angus: I'm just wondering, given that there's an immense financial loss with groups like isoHunt, why a case hasn't been brought so far. Has anybody looked into this?

Ms. Wendy Noss: This is what we're here today to do: to look to all of you around this table who have said that you want to make it clear that enabling piracy online in Canada is illegal. That's what we're hopefully here to do today.

Mr. Charlie Angus: Certainly.

The issue of safe harbours comes up again and again. I'm trying to get a sense of where we would want to have our legislation come down, because the issue of enabling massive copyright infringement is something we all have a stake in stopping. There is concern about sweeping up all kinds of people in the wake. In the U.S. we saw 5,000 John Doe lawsuits on *The Hurt Locker*. That was followed by 20,000 lawsuits for five films, followed by 30,000 lawsuits. This is being brought by the U.S. copyright group. In their John Doe lawsuits, basically they track anybody and they go after the ISPs. Would you support provisions like that here in Canada?

Mr. Ted East: We're not interested in sweeping up the John Does. We're looking for legislation that basically stops online piracy and illegal file sharing, which requires changes to the bill that exists. Whatever laws we have here are going to be different from those in the United States. As Patrick referred to earlier, we need massive education, because a significant portion of the population in Canada, particularly younger people, have grown up in an environment where piracy seems to be okay, where it has no consequences. We have notice and notice, but everybody that they know is doing it, so changes have to be made.

• (1135)

Mr. Charlie Angus: I agree with you. There's a lot of interest in whether these lawsuits—now it's 50,000 to 100,000-plus—will start

to succeed. Part of that is a push by some of the rights holders to go after the ISPs in the U.S., even though they have notice and takedown. They're saying they want to be able to get names and all kinds of information in these mass lawsuits, and the ISPs, even though they follow notice and takedown, are reluctant to get involved in mass lawsuits.

Would you suggest we change our safe harbour provisions here to allow those kinds of mass lawsuits, such as 20,000 lawsuits at a time?

Ms. Wendy Noss: I think there may be a bit of confusion, and hopefully I can help you in terms of comparing the notice and notice and takedown. In terms of film and television content, there are two different types of online piracy the business folks here are concerned with. The first is content that is hosted and allows people to either download and stream, and that's where you have a notice and takedown regime to deal with, because you want to get that infringing content off the web.

In Europe, for example, they deal with it in a different way. They say you can't have the benefit of a safe harbour if you have actual or constructive knowledge of what's happening on your server.

Mr. Charlie Angus: No, I understand that. I'm just asking because there's a push by some of the rights holders in the U.S. to push the ISPs to cough up 20,000 to 30,000 names at any given time. Whether or not that is something you're interested in, or you're interested in being able to take the stuff down off the site is what I want to know. Do you support this mass lawsuit approach, or do you want to be able to shut down individual sites?

Ms. Wendy Noss: Again, I don't know to what you are referring, so I can't comment, but what I can tell you is that notice and takedown or a standard that prevents you from having a safe harbour if you have actual constructive knowledge is used to deal with hosted content. A graduated response and a notice program is to deal with getting people to change their behaviour who are operating in a BitTorrent—

Mr. Charlie Angus: I understand that. What I'm trying to find out is this. There were 5,000 lawsuits sent arbitrarily to IP addresses over *The Hurt Locker* downloads. That was followed by 20,000 lawsuits for five films, followed by 30,000 lawsuits. This has all happened in the last year in the United States, so they would be member agencies.

I'm just wondering if this is the kind of proposal you would support in Canada, or are you content with what you are suggesting concerning the other issues on holding the safe harbours to account?

Ms. Wendy Noss: *The Hurt Locker* was distributed by one of Mr. East's members. Maybe he can talk to you about the damage that was done, compared to the market for *The Hurt Locker*.

Mr. Ted East: *The Hurt Locker* is an example of a film.... We don't have exact percentages yet, and maybe the Ipsos study is going to reveal those numbers, but our members have believed for some time that the damage due to piracy is more than 10%. It is maybe 20% of the film's total revenues. There is no way to accurately know that. In the case of *The Hurt Locker*, the film had been on the market for a long time because of the type of distribution pattern that it followed, so people are aware of its being in theatres for months and months, and a significant percentage of people are now watching it illegally.

The Chair: Thank you.

We will move to Mr. Del Mastro for seven minutes.

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

Thank you to the witnesses for appearing today.

What you've outlined today is really important. What we're talking about is an epidemic. This is a theft epidemic, with \$965 million evaporating into thin air and the loss of 12,000 jobs that we would otherwise have in this country. I can't believe that this place isn't being shaken to its foundations or that we're not addressing it. We are going through a process. We're punting the ball down the field. Maybe we'll get consideration of the bill by Thanksgiving. I don't know, maybe. At the current pace, I'm not optimistic. Who knows?

What you are outlining is a sense of urgency. I think that's what you're trying to convey to members here today. Is it accurate to say that from your industry's perspective, there is a sense of urgency that we act? Mr. Angus said it's a golden age for Canadian cinema, but this golden age can turn into iron pyrites pretty quickly, right before our eyes, if we don't act to protect the investments being made and to protect the jobs, whether they are the jobs of actors or all of the support industry jobs and all of the spinoff jobs.

You are telling us that if we don't act, this industry is in peril. Is that correct?

Mr. David Reckziegel: You brought up a very good point because, of course, the Ipsos study is looking behind and not looking forward. You used the word "epidemic". This is what's happening. We are in a digital world and we're going faster and faster into a digital world. That is how people have chosen to watch their content, so this problem is going to be increasing exponentially if we don't do something about it immediately.

There are great services out there currently on iTunes and on Netflix, which just launched in Canada this fall. They are allowing people to watch their content the way they want and in a legal fashion. They're paying for it. I can tell you that when we put almost a million dollars into a movie like *Incendies* or several million dollars into *Barney's Version*, we're looking to those revenue streams in order to make those decisions, and if I see that in the future in this digital world, which is my future revenues, it's all going to be done through pirating, we will not make those investments and those movies will not get made.

• (1140)

Mr. Dean Del Mastro: Thank you very much. That is a very powerful statement. I hope that resounds within the walls of this

place and people understand what it is that we are really dealing with here.

Ms. Noss, you outlined a number of changes you'd like to see, amendments to the bill, to deal with the difference between the intent of the bill or the intended actions of the bill and what some of the outcomes of the bill may be if it's actually challenged in court or through the processes.

I imagine you put those in your presentation. We've heard a few technical amendments as well from the recording industry and some others that they would like to see made to tighten up the portions of the bill that relate to enabling infringement. Have you itemized those for the committee for consideration?

Ms. Wendy Noss: Yes.

To answer your last question first, we'll be submitting a written brief to the committee. We wanted to take your questions today and hear what you'd like to hear more about, and then do so.

In terms of your comments, it is important to appreciate that you have Canadian distributors and American distributors, labour in the form of actors, and IATSE, which represents the 16,000 people working as electricians and grips. You had the Canadian producers' association appear before you not too long ago. All of us—domestic and foreign, producers and distributors, labour, and those who make the films—are saying the same thing to you: this is important to this industry.

We need to have clear rules so that Canada is no longer a haven for people to operate these services.

Mr. Dean Del Mastro: This is almost a nonsensical debate I've heard at this committee, whereby we're really just concerned about getting money to creators. It's as if that needs to be the 100% focus of the committee.

Ultimately, there's an ecosystem in this entire industry. Every industry that relies on copyright protection has an ecosystem, and a big part of that ecosystem is a healthy industry that provides the jobs and the opportunities for the creators, for the actors, and for the workers and labourers who support it, who then support all the other industries and economies and all the spinoff jobs related to a film being made in a community. They are immense and they touch on so many other economies, but at the heart of that ecosystem is most certainly an industry. That industry works on economics, and the economics of that are return on investment. If you can't be assured of a return on investment, you're not going to make the investment in the first place.

Mr. Roy, you said something that I think is 100% true. People think anything they find on the Internet must be free and it must be okay. If they found it for free, it should be free, and I hear that prevailing view even from some members around this place.

If there's one thing I hope this bill achieves—and maybe you can comment on this—it will outline what is right and what is simply wrong.

[Translation]

Mr. Patrick Roy: I believe you have to make a clear ruling on this and to know what is acceptable and what isn't. That's not currently the case. However, this also requires subsequent measures so that citizens understand the consequences of their actions if they choose to opt for what is unacceptable, what is illegal.

As we said at the outset, we support the goal pursued by Bill C-32, but this requires changes so that everything is very clear for the public and so that we get decisive results. This has to result in an effective new act that will quickly change matters in Canada.

•(1145)

[English]

Mr. Dean Del Mastro: You mentioned a couple of very successful films. Certainly there was some celebration of that; the heritage committee passed a motion complimenting Mr. Reckziegel for *Barney's Version*, for example. We're very proud of it as Canadians.

If we meet the world standard, if we come up to our commitments under copyright, in your view, are we going to see more? Does that enable you to create more films like *Barney's Version* in the future?

As well, talk about the opportunity. I really like talking about what we can accomplish if we as a Parliament can come together and update this. What does our future look like?

The Chair: You have only about 15 seconds, please.

Mr. David Reckziegel: There are a couple of points there. One, of course, is that if we can reverse this trend, it will provide more revenue streams back to companies such as Entertainment One and Alliance, and because we're Canadian-based, we tend to reinvest that revenue back into Canada.

Of course, if we don't have the best practices of what's happening around the world, we're also international companies. We operate in multiple territories, and if the framework in Canada is not conducive to our making money, we will invest that money elsewhere.

If we want to continue to do more films like *Barney's Version*, we're not here looking for subsidies; we're looking to protect our revenue streams so that we can reinvest that money into the next *Barney's Version* or *Incendies* or *Splice* or whatever.

Thank you.

The Chair: Thank you.

We're going to move to the second round of questioning. Each member will have five minutes.

Go ahead, Mr. Simms.

Mr. Scott Simms: Thank you, Chair. It's good to see everyone.

In your submission, the CAFDE also opposes the educational exemptions mentioned in section 29. On the heritage committee, I've received a lot of input on clause 29. It's very contentious for a lot of people.

Can you tell me about the changes that need to be made to protect the legitimate business rights of producers and distributors? Can you flesh out what the education exemptions will mean? I'm not looking

for specific numbers unless you have them, which would be great, but maybe you could flesh out how difficult this could be for your industry.

Mr. Ted East: The bill, as drafted, as we understand it, would give the educational institutions an exemption for feature films. I'm just going to speak about feature films, because I know other aspects of the industry are upset about this for similar reasons.

For feature films it would mean that schools would no longer have to pay an educational licence to show films in schools. Our member companies have subdistribution deals with two companies, Audio Ciné Films and Criterion Pictures, which are very active in promoting Canadian films in schools. It's not just selling them the movies, but also providing educational materials on their Internet site, and written material. We have also been in discussion with them and a not-for-profit company called Reel Canada, whose mandate is to promote Canadian films in Canadian schools and to do more innovative things online.

If this bill passes as it's written, if I understand the implications, these two companies, Audio Ciné Films and Criterion Pictures, will be out of business, and any efforts that we're making to enhance the online experience for schools for Canadians films is dead in the water.

Mr. Scott Simms: Would it be safe to say that you've done quite a bit to provide the content to these schools for educational purposes?

Mr. Ted East: These two companies do, yes.

Mr. Scott Simms: It's not at great profit to you, obviously, but...

Mr. Ted East: It's not at great profit. I would say the educational revenue for these distributors is not that significant, but it's more than that. You have two companies that have specialized in this, that represent the films of our member companies, and they have done great work in promoting Canadian films in schools.

[Translation]

Mr. Patrick Roy: Allow me to add that these companies play an essential role by encouraging people to watch Canadian films in the schools. We're not just talking about films as a whole, but specifically Canadian films. In Quebec as well, we're making a specific effort for Quebec films to be seen in the schools. I believe that, if the law is enforced as such, there is a risk that people will essentially watch American films in the schools. So there will be less revenue for Canadian films, and that will also constitute a cultural loss. I really believe we have to encourage more Canadian students to discover Canadian culture. Cinema is a very good way to discover a very interesting part of Canadian culture.

• (1150)

[English]

Mr. Scott Simms: Go ahead.

Mr. David Reckziegel: I was just going to add that the revenue stream is not large for us, but it's a very important thing.

I think these two companies in question do a tremendous job in sales and marketing of Canadian film, Quebec film, and also films other than American films, frankly, from around the world. If they're not there, it's definitely going to end up being American films that are picked up. There's a lot of effort required, and in terms of educating our children about our heritage, it's very important that this continue.

Mr. Scott Simms: One of the arguments they would probably make to you is that since this doesn't represent a large portion of your revenue stream, why would this cause you any great difficulty?

Mr. David Reckziegel: As I said earlier, it's not for financial reasons, I would say, in this case. Obviously any loss is not a good loss. We're Canadian distributors. It's important for us that the local Canadian film industry survive and flourish. If future generations are not educated about our films that have come before, they won't have the taste to go and see Canadian films in the future.

Mr. Scott Simms: That's an interesting take on this. You're saying that because of these exemptions, there will be a diminishing of Canadian content among our education institutions. Am I correct to say that?

Mr. David Reckziegel: I believe so, yes.

Mr. Scott Simms: They have access to—

The Chair: Mr. Simms, we're going to have to move along.

Go ahead, Madame Lavallée.

[Translation]

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

First and foremost, I would like to ask you to send us the Ipsos survey results. I didn't see them this morning in the newspapers; I may have missed them; I haven't seen them anywhere. I believe that would be an excellent document and we should review it. I'm officially asking you to send it to the chair, to send the survey as a whole, as complete as possible, to the chair.

[English]

Mr. Ted East: Yes. It was a study that's being released today, so absolutely you will get copies.

[Translation]

Mrs. Carole Lavallée: Thank you very much.

One of you said you were 100% in favour of Bill C-32. However, you're asking us to make what seem to me to be significant amendments respecting the responsibility of Internet service providers, but also regarding their accountability. You want to make them accountable for what happens on their Internet sites. You're also talking about the system that enables an offender to receive notice after notice without expecting any further significant consequences and where a rights holder whose rights are violated sends a notice to the Internet service provider, which in turn sends it

to the person responsible for the site or to someone who it is believed has violated the act. That's what's called the notice and notice system. There's also the graduated response system, which we've seen in France, England and Australia.

In short, you're telling us that you entirely support Bill C-32, but that we have to make two major amendments. These are not minor amendments. If we don't make them, do you believe that Bill C-32 can achieve its purpose of combating piracy?

Mr. Patrick Roy: I don't believe so. In fact, we are saying that—

Mrs. Carole Lavallée: So you're 90% or 50% in favour of it.

Mr. Patrick Roy: No, we support the approach, but we're suggesting adjustments to ensure that this act has the desired impact on the public at all levels. We support the approach, but significant changes have to be made to it.

Mrs. Carole Lavallée: I understand.

Do you want to add something, Ms. Noss?

[English]

Ms. Wendy Noss: Madame Lavallée, I've heard you speak many times about the importance of the objectives of this bill. I may not be popular in this room for saying so, but I think you have a lot more in common in terms of the objectives of this bill than you may think.

It's clear that we have to stop what's happening, and that's taking money from industries that support actors and creators and improve local economies. It's the same goal.

[Translation]

Mrs. Carole Lavallée: Pardon me. There are some problems with the translation this morning. I don't know what's happening, the sound is so bad. I say that kindly.

• (1155)

Hon. Dan McTeague: It's not just this morning.

Mrs. Carole Lavallée: It's particularly the case today.

Let's get back to business. The Bloc Québécois absolutely wants to eliminate piracy. We believe that Canada and Quebec have to make an effort in this direction and that we have to modernize the act. We are completely with you, but people have told us this is impossible. We've been told that in private meetings. We were told we would never be able to get rid of piracy, even if Canada made all the necessary efforts to do so. What's your response to those people?

We can shut down IsoHunt in Laval or British Columbia, but, tomorrow morning, those people will go to Ireland or another country where the laws aren't as effective as those of Canada or Quebec.

Mr. Patrick Roy: I believe that everything that can be done must be done.

I'll give you an example. We distribute films in Spain. In that country, there is a certain laxist attitude and, consequently, DVD distribution is non-existent. The measures that were subsequently introduced arrived too late. In other countries, like here, there has been more significant protection in this regard, and that's why this market exists.

I think there are some things that can be done and that we must do them. It's true that there will always be piracy, but it shouldn't represent \$1 billion of direct sales lost a year. We absolutely have to reduce that figure and do everything so that people don't feel Canada is a place where you can do that easily. The Canadian public must understand that this is not a legal act and that, by doing it, you're affecting Canadian creators.

Mrs. Carole Lavallée: Mr. East, what do you have to say about this?

[English]

Mr. Ted East: We have to do something as a nation. Yes, piracy is an international problem, but five of the top ten pirate BitTorrent sites are hosted in Canada. That's a disgrace. I would say that the bill is very much in our court. These two gentlemen have companies in other countries. They travel around the world doing film deals. They get it all the time: "Why should we do business with you? You're a pirate haven."

That has to stop.

The Chair: Thank you.

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

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

Thank you to all of our witnesses for being here this morning.

Ms. Noss, let me start with a question for you, please. It relates to the joint Ipsos-Oxford Economics study that you notified us about this morning. It is certainly a very timely study, one that provides a very compelling case for the importance of modernizing our copyright legislation in this country and for the urgency of getting this bill studied and passed.

Do you know what the genesis of the study was, what triggered it?

Ms. Wendy Noss: We commissioned the study. It was born of people like you asking us time and time again what the impact is on the economy and on jobs.

I would say one thing. This study is quite different from studies done before it, because it's not looking at the losses to our six member companies, but at the losses to the industry as a whole—consumer spending loss—and then the spinoff impacts after that, in terms of both jobs and GDP. It really is a comprehensive study. It is our best attempt to quantify for you the impact of this problem in Canada.

Mr. Peter Braid: Thank you for that answer and for making the study happen. It's a particularly helpful piece of information.

You have perhaps touched on this already. You said that this study is more comprehensive than previous studies. I am curious to know whether there have been any similar studies in the past that we can use as a benchmark. In other words, can you demonstrate how the issue of piracy—the impact on our economy, lost revenue, lost jobs—has been changing over time?

Can you comment on that?

Ms. Wendy Noss: Unfortunately I don't think you can, because this study is so different in its scope and its approach, and in the

Ipsos-Oxford Economics methodology, but here are numbers that I think we can't ignore: isoHunt has 40,000,000 peers and 6,000,000 torrents. Those are kinds of numbers that I think speak for themselves, in terms of the kind of impact this has on an industry like ours.

• (1200)

Mr. Peter Braid: Great.

Changing gears somewhat, we haven't heard a lot this morning about the provisions in the bill with respect to TPMs and digital locks. Could you speak to the importance of the TPM provisions in the bill and the benefits to your businesses and your industry?

Mr. Ted East: We agree with them. I think TPMs are absolutely necessary. To create these online businesses, you need to have the ability to control the use of the content in some way, so we agree with them.

I should say that we are at the beginning of what I would call truly the digital decade in distribution of films. You have Netflix coming into this country last fall, you have Cineplex in digital distribution, you have Apple iTunes, and you have the cable companies doing it, so it's just beginning.

They're competing against each other, and that's what they should be doing. What they shouldn't be competing against is the isoHunts of this world, and yet it would appear—and we haven't fully digested the Ipsos study yet—that the pirates in online distribution have the advantage. They possibly have a bigger market share than the legitimate digital distributors existing today, which is a concern.

Mr. Peter Braid: Thank you.

Ms. Noss, do you have a comment on TPMs?

Ms. Wendy Noss: Yes. Thank you.

I keep hearing them called "digital locks", and in fact they are the mechanism by which these individuals get their content to consumers on the device they want, in the format they want, at the time they want, in a variety of different models. TPMs are what control the access. They enable businesses like Netflix, because you are not going to keep paying your monthly subscription if you can crack the access and download all you want for free.

This is how DVDs are sold now; they are sold with a capability for digital copies to be made. When you're a legitimate consumer of a hard disc DVD, they all come with digital copy capability.

If that's what you choose to do with it, this market is expanded, but this market can only be successful if what wraps around this, protecting it from being an unlimited number of copies, is the copies that the consumer wants and needs.

The Chair: That will have to be the last word.

Thank you to our witnesses.

We will briefly suspend to bring in our second panel.

•(1200) _____ (Pause) _____

•(1205)

The Chair: I'm going to call this 14th meeting of the special Legislative Committee on Bill C-32 back to order.

Mr. McTeague has a point of order.

Hon. Dan McTeague: Chair, I realized with the previous witnesses that some information has been put forward in several papers by Professor Michael Geist that suggests somehow that the recording industry itself went after isoHunt legally here in Canada, and I think one of our questioners here had the same view and opinion.

I want it clear for the record that this is clearly misleading and false. It is in fact isoHunt that went to court. CRIA and other organizations, from my understanding, had to respond to that call as a result of a court action undertaken by isoHunt. Call it a pre-emptive move, but it clearly does not support the view that somehow the existing legislation provides sufficient support for the pirating that's going on.

I want that on the record, because Mr. Geist has taken it upon himself to attach my name to that position. I just want it clear for the record that isoHunt itself initiated this legal action, not the other way around, as was represented rather inaccurately by Mr. Geist.

Thank you.

The Chair: Thank you, Mr. McTeague.

Mr. Charlie Angus: I have a point of order.

The Chair: Mr. Angus has a point of order.

Mr. Charlie Angus: My honourable cousin is referring to a question I asked, and I think he's using his platform to grandstand. I asked a question based on a lawsuit that CRIA had initiated. I asked whether the witnesses had looked at a lawsuit. It was nothing to do with being false and misleading, but with whether they had looked at a lawsuit. It was a very straight-up question.

If he wants to fight with Michael Geist, he should go out and fight with him in the media, not use our—

The Chair: Mr. Angus, I think that in both cases this is more of a point of debate than a point of order.

I will move to the witnesses. There was some miscommunication, and I'm going to ask for unanimous consent that we add one group to the list—the Association des producteurs de films et de télévision du Québec.

Some hon. members: Agreed.

The Chair: Okay.

Go ahead, Mr. Del Mastro.

•(1210)

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

I would wholeheartedly support that motion. I would also ask that members consider extending the committee meeting by 15 minutes to allow for questions until 1:15. There will be no votes or anything like that; it's just to allow for a good exchange. We have a number of

witnesses here, and I don't think one round of questioning is going to be sufficient.

The Chair: Mr. Del Mastro is asking for unanimous consent to extend the meeting by 15 minutes.

Is there consent?

[*Translation*]

Mrs. Carole Lavallée: Mr. Chairman, I would like to speak to this point.

During the first round, which lasted an hour, we heard from two witnesses. In the second round, we have four witnesses. The committee previously decided that we would have six per meeting, that is two panels of three witnesses, not one panel of two and another of four.

By proceeding in this manner, we're giving unequal chances to the people who've been invited, who have prepared their presentations, who are expecting a certain number of questions in order to express their views in detail. We are forced to share our attention among four people representing four organizations whose briefs are all different.

I'm going to allow the situation this time, but I don't want this to occur again. I would like our meetings to be more balanced.

Furthermore, I don't know whether Mr. Del Mastro put this on his agenda, but a press conference is scheduled for 1:00 p.m. concerning publication of the report of the Standing Committee on Canadian Heritage.

[*English*]

The Chair: Thank you, Madame Lavallée.

Go ahead, Mr. Angus.

Mr. Charlie Angus: Yes, Mr. Chair—who has the long-suffering position of dealing with this almost on a daily basis—I have no problems extending the meeting. I have to leave just before one o'clock, as some of my colleagues do. We are from the heritage committee and we have a press conference.

I think we have a number of witnesses and I think it's fair to hear our witnesses. If there was a miscommunication and the witness list was mixed up, I have no problem adding the witnesses. On any day that happens, I don't mind giving them the time. People come, and they should be heard. I will not be here for a second round of questioning, but I don't have a problem if my colleagues are.

I think we should get on with the work.

The Chair: Okay. Is there unanimous consent to withdraw the motion and to end at one o'clock?

All right. We're cutting into the time for the witnesses. I'm sorry.

We'll now move to our witnesses. We have, from the l'Association des réalisateurs et réalisatrices du Québec, François Côté and Caroline Fortier; and from the Documentary Organization of Canada, Lisa Fitzgibbons and Cameron McMaster.

From the Writers Guild of Canada, we have Maureen Parker and Jill Golick; and from our additional group, we have Brigitte Doucet and Patrick Boie.

We will start with Caroline Fortier.

[Translation]

You have five minutes.

Ms. Caroline Fortier (Executive Director, Association des réalisateurs et réalisatrices du Québec): Mr. Chairman, members of the committee, good morning. My name is Caroline Fortier, and I'm the Executive Director of the Association des réalisateurs et réalisatrices du Québec, which I'll describe to you shortly. I'd like to thank you for this opportunity to speak to you today. I hope we'll have enough time.

In fact, I'd simply like to skip immediately to Mr. Côté's presentation; so I'll simply talk about the ARRQ. It represents over 650 directors working mainly in French in Quebec, and defend their professional, economic, cultural, social and moral rights and interests. Its mandate is to represent directors at all times and in all cases.

I'll hand over immediately to Mr. Côté.

Mr. François Côté (President, Association des réalisateurs et réalisatrices du Québec): Mr. Chair, members of Parliament, allow me to begin by pointing out that Denis Villeneuve, whose name has been frequently mentioned this morning, the director of the film *Incendies*, who was recently nominated for an Oscar, is an active member of our association, as are Denys Arcand, Xavier Dolan and many others.

So you will no doubt understand our pressing need to defend directors' copyright. You no doubt also understand why we have joined creators across Canada in signing statements denouncing several aspects of Bill C-32.

We are concerned about the impact Bill C-32 would have on the creation of films and audiovisual content in Canada. The combined effect of many exemptions for royalty payments, unclear criteria and the wholly inadequate means proposed to protect content will be to devalue the work of Canadian creators, including directors, across the production line. We've heard that this morning.

We can hardly be surprised if creators eventually seek alternative ways, or countries, to make a living. In attempting to expand free access to cultural content, this bill in fact threatens consumer access to Canadian works that reflect our identity and culture, quite simply because such works may no longer exist. The figures cited to this committee this morning illustrate that point.

It is tempting to draw a parallel between what could happen if this bill were passed and what happened to our American neighbours during the subprime mortgage crisis, which resulted in a global financial meltdown that continues to affect us today.

Content is to the audiovisual and communications industry what loans are to banks. It's our core business. When mortgage loans lost their value, the entire banking system was in trouble. If we devalue Canadian content, the entire Canadian audiovisual and communications industry will be under threat.

But the comparison ends there, since, while loans are a basic, essential and irreplaceable part of the world banking system, Canadian content is just one product among others, one that

broadcasters, access providers and content integrators, particularly if they're not Canadian, can easily forego. There is no shortage of international content these parties can offer in return for subscription fees which they can pocket in full.

After spending billions of tax dollars to support Canadian culture and create a homegrown audiovisual industry, it would be sadly ironic if the federal government were to destroy it all by allowing creators to go hungry. We can only imagine what the rest of the world would think.

To return to Denis Villeneuve for a moment, let me ask you this: how can we be so proud of his remarkable achievement and yet, at the same time, be willing to undermine the ability of Canadian creators to continue producing such works?

The Standing Committee on Canadian Heritage adopted a motion extending congratulations to Denis Villeneuve for the Oscar nomination of *Incendies*. But did you know that Denis Villeneuve, like Denys Arcand and Xavier Dolan, is not recognized by the Canadian Copyright Act as the author of his film? Even though he's been nominated for an Oscar in the Best Foreign Language Film category. The entire world recognizes Denis Villeneuve as the author of *Incendies*, but the law of his own country doesn't. That's why we feel it's entirely legitimate, logical and urgent that the Copyright Act be reworded to include and name the director as the author of the audiovisual work, just like the screenwriter.

The Association des réalisateurs et réalisatrices du Québec would like to cooperate fully in updating the Copyright Act, and will do so in the firm belief that individuals create content and that those individuals should reap the economic rewards of their work.

Thank you for your time and attention.

• (1215)

[English]

The Chair: *Merci.*

We'll go to the Documentary Organization of Canada for five minutes.

[Translation]

Ms. Lisa Fitzgibbons (Executive Director, Documentary Organization of Canada): Mr. Chairman and members of the committee, thank you very much for the opportunity of presenting our views today. My name is Lisa Fitzgibbons. I am the Executive Director of the Documentary Organization of Canada, or DOC, and with me is my colleague Cameron McMaster.

DOC speaks on behalf of 800 members, who are directors, producers and craftspeople in the documentary community across Canada.

[English]

Documentarians create works that receive protection from copyright, but as creators they also frequently need to access and use the works of others. Documentarians routinely use clips, archives, photos, etc. to create their works and tell stories of historical or social significance. Under certain conditions, a documentary filmmaker may claim legal fair dealing in order to access and quote copyrighted material without a requirement for permission or licence payment. Filmmakers do so with great care, because as users and owners of copyrighted material themselves they understand that fair dealing is a two-way street: the works they produce may also be used in a similar fashion by others.

Many stakeholders argue that fair dealing can be abused by copyright users to avoid paying for use of materials. DOC does not condone this practice. Fair dealing is not free dealing. In documentary production, the defence should be applied in legitimate circumstances for the purposes of comment, criticism, and review.

The intersection of fair dealing and documentary production has been at the heart of DOC's advocacy efforts for many years, and this is why we are particularly concerned about the bill's provisions on digital locks. DOC supports digital locks as a form of protecting one's expression from infringement, but the current digital lock provisions proposed in Bill C-32 do not provide exceptions for anti-circumvention measures for the purposes of fair dealing.

Visual materials are the raw matter with which documentary filmmakers work. Having access to various sources, analog and digital, is essential to the craft of the documentary. As technology advances, we encode our history on different media. History is being digitized. The ubiquity of digital media may lead to more digital locks, but how can we have free access to this history if it is unavailable because of a digital lock? Consider the impact this would have on our ability, as Canadians, to tell our own stories.

The introduction of digital locks without the proper exceptions for fair dealing, especially for the purpose of documentary filmmaking, would hinder documentary filmmakers' ability to carry out their trade. If documentary filmmakers are kept from practising their craft because of digital locks, they are being denied their freedom of speech and creative expression. Fair dealing is legal. Criminalizing either the tools or the creation and sale of tools to exercise fair dealing is an inherent contradiction in copyright law.

In other jurisdictions, digital locks have been deemed to hamper creative expression and free speech. Consider that in July 2010, the U.S. Copyright Office reformed the DMCA to allow for documentary filmmakers to break digital locks if the purpose and use is fair. As the Government of Canada updates its copyright legislation, it should start on the right foot by creating exceptions for non-infringing purposes in a meaningful and effective manner.

Now we have just a few words about the educational market. Today we'd like to bring the perspective of the educational video community in regard to Bill C-32—distributors, content producers, and producers who self-distribute their work. Documentarians license their materials to many markets, including theatrical, television, digital, and educational ones. The niche subject matter of documentaries makes them perfect material to be used in the

classroom. With documentaries, professors and teachers have an affordable and accessible way of enhancing their teaching.

Students have access to Canadian stories and Canadian history. Up until now, Canadian students, educational institutions, educational video distributors, and documentary producers have enjoyed a fruitful relationship. Documentarians want to challenge, criticize, and, most importantly, educate Canadians about the most topical and pertinent issues of the day. Without proper compensation for the use of their works in the classroom, documentarians will be unable to create content for use in this setting.

Furthermore, the distributors that facilitate access to these materials will disappear. If the distributors disappear, where will the educational institutions turn to find high-quality topical educational video for use in their curricula? Will they have to turn to a larger resource, namely American distributors? If that were to be the case, the result would be little or no Canadian video content in the classrooms.

• (1220)

We fear that the combined effect of the proposed reforms to the educational institutions and the fair dealing sections of Bill C-32 will result in less Canadian video content being available in Canadian classrooms.

Thank you.

The Chair: Thank you very much.

We'll move to the Writers Guild of Canada.

Ms. Maureen Parker (Executive Director, Writers Guild of Canada): Good morning, members of the committee. My name is Maureen Parker. I'm the executive director of the Writers Guild of Canada. Also with me today is my president, Jill Golick, a digital creator. Thank you for inviting us.

The Writers Guild is a national association representing more than 2,000 professional screenwriters working in English language film, television, radio, and digital production. Screenwriters in Canada have a vested interest in copyright. Unlike their American counterparts, Canadian screenwriters retain copyright in their work and only license the right to produce. Their ability to make a living from their work is based on upfront fees, participation in profits, and secondary use royalties generated by copyright in other jurisdictions.

We agree that Canada's copyright law needs modernizing and we have been consistent advocates for copyright reform over the years.

Digital technologies have made it easy for people to copy and share creators' works. It's not just about music any more. The average consumer's iPod, computer, and tablet are loaded with film and television programming. Audiences download shows to watch and store for repeat viewing, and screenwriters want that. They want their work to be seen by the widest possible audience, but it's important to remember that copies have value, and screenwriters must be paid that value.

Our biggest concern with Bill C-32 is the introduction of proposed section 29.22, which expands the concept of private copying to all works, but without remuneration. Proposed section 29.22 expands private copying from personal use of the person making the copy to private purposes, which allows an individual to make copies to share with an unspecified number of people. This clearly undermines existing sales of copyrighted works. Why would your friends and family buy a movie or a TV boxed set when you can copy the version you bought and share it with them? Proposed section 29.22 deals a potentially crushing blow to the DVD market. Creators need a modern copyright act that protects, rather than undermines, their revenue streams.

Our preference is the deletion of proposed section 29.22. This would allow markets for the copies to develop. Alternatively, the legislation should limit proposed section 29.22 to music only, so that it balances and works in tandem with the current private copying regime, which is related to music only. This would also require a return to the concept of personal use, the language existing in the current act. Amending the bill in either of these directions would allow collective licensing for private copying of non-music works to develop outside the Copyright Act or in future amendments. We will not be able to do either if these rights are given away for free now.

• (1225)

Ms. Jill Golick (President, Writers Guild of Canada): Bill C-32 undermines collective licensing. The introduction of proposed section 29.22 is only one example. Collective licensing, whether legislated or free market, is a very simple solution to so many of the issues facing us. It allows consumers easy access to content and it provides remuneration to the creators of that content. Collective licensing has been working well in many sectors for decades. I know this because I get cheques for secondary uses in other jurisdictions through the Canadian Screenwriters Collection Society. Collective licensing is a working model for consumers' use of content and creator compensation, and it should be the model we embrace in the digital world.

However, even if there is collective licensing for audiovisual works, as a screenwriter I would not be entitled to it, because the author of the audiovisual work is not defined in the Copyright Act or this bill.

Like photographers' rights, the lack of definition has been an anomaly from the beginning. The Writers Guild of Canada and the Directors Guild of Canada agree that the screenwriter and director are co-authors of the audiovisual work. This is the situation in many jurisdictions around the world. By failing to define authorship, the bill fails to offer audiovisual works the same protections as other works. For example, proposed section 41.22 protects rights management information, which allows us to track the use of our work and subsequently earn royalties around the world. Without a

definition of authorship, this proposed section's prohibition against removing the author's identity is meaningless for audiovisual works. After 12 years and several rounds of copyright reform, it's time to recognize the screenwriter and the director as co-authors of the audiovisual work.

It has been said that this bill is good for creators because it gives us locks that we can use to protect our works against piracy. For the record, as creators we have no control over whether a lock is added. That's the decision of the copyright owners, and while digital locks may preserve the existing business models for a time, the patterns of distribution are changing. Even owners may not realize the full value of the work. Protection against piracy only addresses part of the problem. There must be compensation for copying.

The Chair: We are going to have to cut you off there. We will be able to get into it a little bit in the questioning.

Thank you.

[*Translation*]

Now we'll hear from the Association des producteurs de films et de télévision du Québec.

You have the floor for five minutes.

Ms. Brigitte Doucet (Deputy General Director, Association des producteurs de films et de télévision du Québec): Good afternoon. My name is Brigitte Doucet, Deputy Director General of the Association des producteurs de films et de télévision du Québec, the AQPFTQ. With me today is Patrick Boie, Director of Communications.

From the outset, I must apologize to the interpreters. I'm going to skip certain passages of my brief.

The APFTQ has been active for 40 years and represents more than 140 production businesses operating in both official languages and in all sectors of audiovisual production in Quebec.

The APFTQ has filed a brief that states its position and also proposes legislative amendments, and those amendments and our positions are addressed under five component headings concerning our industry.

The first component concerns the new rights that benefit performers. They have been added to comply with Canada's international obligations, but those same obligations state that these new rights should not apply to the field of music or to the audiovisual sector. However, the bill has not made the necessary adjustments to ensure they do not apply to the audiovisual sector. We are asking the government to make those amendments. Our proposals are provided in our brief.

The second component concerns piracy. It appears to be the government's intention to fight or at least limit piracy in Canada, and we believe that the bill, as drafted, does not achieve its objective. It is true that one specific clause of the bill provides that services that facilitate piracy violate copyright. However, one of the conditions that must be met cannot be met since, on the one hand, consumers are required to commit an illegal act by using those services and, on the other hand, there is a new exception, private copying, which legalizes what consumers do in the context of mass piracy. Consequently, any chance for rights holders to obtain justice is short-circuited.

To combat piracy, we propose a number of measures, details of which are provided in our brief. In our view, services that facilitate piracy are clearly illegal. Those services must be subject to a system of pre-established damages and they must have a deterrent effect. These services must not be released from liability through the system of exemptions for Internet service providers. Lastly, any act by consumers to make content available and to reproduce content when they pirate protected content must clearly be made illegal.

In addition, the circumventing of technical protection measures, which should be illegal under the bill, is, we believe, afforded minimum protection as it concerns only access to works and not other protected acts such as reproduction. A number of emerging business models are based on creative and functional protection measures. To allow digital exploitation to be deployed, it would have been desirable for any circumvention of protective measures to be illegal. However, we believe the bill must at least ensure that the circumventing of measures that protect access to work remains illegal.

The third component addresses all the new exemptions provided for under the bill. As you will see in our brief, we believe that a number of those exemptions should not be added, but if the government intends to maintain them, we are submitting a series of adjustments to provide a framework that will prevent potential abuses.

The fourth component proposes a new system for financing the digital use of works. This system would consist of annual contributions from government and annual contributions from service providers that profit from digital content. As an exceptional contribution from government, the APFTQ asks that a significant portion of the sums collected in the next awarding of the fourth generation telecommunications spectrum also be paid into the fund to finance the production of new content that can be digitally exploited and to compensate rights holders for certain digital uses of their works. Further details are provided in the brief, and we will be pleased to discuss them as necessary.

Lastly, the APFTQ reiterates the demand we have submitted on numerous occasions, and on which we have the agreement of directors and screenwriters, that the issue of who is the author of the cinematographic work be resolved once and for all.

There is no mention of this point. The only way to determine with any certainty who the author is is to submit the issue to a court at the very end of a production, for it to determine who are the creators who make it so that a complete work is protected. This is impossible. It cannot be done, and it is not being done.

•(1230)

We are therefore sailing on troubled waters. At times it may be the director, at others the screenwriter and, at still others, the courts have determined that the producer was the author. One can imagine situations in which the costume or set designer might be the author. We have a different solution to resolve the situation—

•(1235)

[English]

The Chair: *Merci.* We'll have to move to questioning.

[Translation]

Ms. Brigitte Doucet: You can see that in our brief.

[English]

The Chair: Mr. Garneau will have seven minutes.

[Translation]

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

I'll begin by speaking to the representatives of the ARRQ. In your testimony, you discussed the exemptions, and you emphasized that that caused problems. I would like to discuss that with you in a little more detail since there are a number of exemptions in this bill.

First let's talk about the exemption for parody. Is that an exemption that's on your list?

Mr. François Côté: Our list doesn't contain those details. Parody is like a citation. A citation is a citation. What we object to is the use of a work and its transformation without the payment of royalties. A parody generally identifies the work to which it refers.

Mr. Marc Garneau: Very well. With regard to content generated by users, what are called mash-ups, what is your view on that exemption, which incidentally is unique in the world?

Ms. Caroline Fortier: It's the YouTube exemption?

Mr. Marc Garneau: Yes.

Ms. Caroline Fortier: It's another form of, not parody, but almost. In fact, content is used in the background and new content is created. No consideration is given to the rights associated with the first content used. So this is a use which, in our view, is illegal and unacceptable.

Mr. Marc Garneau: Would a framework or a much more refined definition of what this kind of exemption constitutes be acceptable to you? Or are you simply opposed to material on YouTube, unless royalties are paid to you?

Mr. François Côté: That's it. To refuse to allow our material to be put on YouTube, but first to recognize the origin of the original work and then to pay the licences.

Mr. Marc Garneau: All right.

Let's talk about the exemption for the education sector.

Mr. François Côté: We pay for education. Teachers are paid and the people who write school text books are paid. The people who make education tools have to be paid for their work. However, I don't mind that there are special tariffs to promote education, but the authors must not be made to go hungry. We have to pay the people who take part in the education of children.

I don't think the exemption can be complete. The education sector should have to pay to use works.

Mr. Marc Garneau: Very well. I don't want to cause a fight, but I'd like to know your opinion on authors. Who are the authors? We are dealing with two appreciably different views here. Can you briefly give us your arguments? Then we'll hear those from the other party.

Mr. François Côté: In our opinion, the authors are, first of all, people. Moreover, the act states that they are persons, not organizations. They are persons who create the document. In our opinion, the two main authors are the director and the screenwriter. Our view is entirely the same as that of the Writers Guild of Canada. We share the same opinion.

Certain arrangements have been made in other countries. In fact, anyone who makes the slightest contribution to the making of a film takes part in its creation. However, you also have to consider the people who have an effect on the work as a whole. Who has an effect on the work as a whole? That's definitely the director and the screenwriter. Then there is research to be done. The director and screenwriter absolutely have to be considered. They alone can be considered as authors.

Ms. Brigitte Doucet: In fact, our position is slightly different, although it is not opposed to that. A lot of subtle distinctions must be drawn. There are differences between film and television, for example.

In television, one can imagine a television program for which the director, for example, does the airwave transmission. The airwave transmission is clearly identified in France, but not here. Airwave transmission does not enjoy copyright. One can imagine a television program like what we call a "chair show" in French, where someone only writes linking texts. That may be a welcome and the introduction of the person who is going to do his number. We believe that is not subject to copyright. There could be a television program where the director and screenwriter would not have copyright. At the same time, if you write that the authors must specifically be the director and the screenwriter, that may have the effect of assigning rights where there are none or, on the contrary, of stripping rights from those who should have them. I'm omitting the details, but I could discuss this at length.

The solution we are proposing is that an exemption be included in the act, as there currently is one in the case of an employer. An employer who pays people to create a work is the primary rights holder. He's not the author, but he is the primary rights holder for the purpose of subsequently exploiting that work.

In our view, the producer is in the same situation, with one exception, and that is that our industry consists mainly of freelancers. So we can't automatically enjoy the exemption appearing in the act. In the same respect as an employer, we pay everyone who takes part

in preparing the work and, we are ultimately the ones who exploit it. That, in short, is our position.

● (1240)

Mr. Marc Garneau: Thank you.

[English]

The Documentary Organization of Canada spoke quite a bit about the issue of digital locks.

I just want to make sure that I understood clearly that you believe there should be provisions for circumventing digital locks for non-infringing purposes.

Am I clearly understanding what you were saying?

[Translation]

Ms. Lisa Fitzgibbons: That's correct.

Mr. Marc Garneau: You work on documentaries. In your case, you often borrow material that comes from various sources.

Ms. Lisa Fitzgibbons: That's the very essence of the material that documentarists work with. Generally, if they are making a documentary that takes the form of a criticism, they will have to cite certain works. In certain cases, we have literary works and authors cite other authors. We are not questioning the citation right. Documentarists need to cite visual material, whether it be from archives or photographs. We believe that, to have access to that material, documentarists should not be penalized, should not be treated like criminals.

[English]

The Chair: Thank you.

Madame Lavallée will have seven minutes

[Translation]

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

First of all, I have a question about the co-authors of an audiovisual work.

Mr. Côté, I'm particularly proud to see you here because I know you are one of the directors of *Passe-Partout*, a program that my children grew up with. *Passe-Partout* holds a particularly important place in the lives of my children and in mine. I also watched the program and I could recite the nursery rhymes my children learned.

What's being done in other countries with regard to the copyright of directors and screenwriters? Who is the director, who is the author of a film or of a television program?

Mr. François Côté: In continental Europe, a region we refer to because the people there are closer to our culture, various arrangements have been made by each country. These are essentially arrangements.

Unless I'm mistaken, there's no act that states that a certain class of persons are necessarily the authors. The French arrangement uses a graduated scale. Essentially, it's always the director, always the screenwriter.

Mrs. Carole Lavallée: That means that, when *Passe-Partout* appears on TF1, for example, you receive copyright royalties.

Mr. François Côté: That's the case for *Cornemuse*, yes, among others. I don't believe *Passe-Partout* is still being broadcast, but *Cornemuse* has been broadcast on TF1.

Mrs. Carole Lavallée: You receive copyright royalties.

Mr. François Côté: I have received royalties for—

Mrs. Carole Lavallée: From France?

Mr. François Côté: From France, yes.

Mrs. Carole Lavallée: And if the program were rebroadcast from a television station?

Mr. François Côté: As it appears here, it's zero.

Mrs. Carole Lavallée: It's zero; you don't get a cent.

Mr. François Côté: No, it's zero.

Mrs. Carole Lavallée: Ms. Parker also mentioned copyright for screenwriters and directors.

Mr. Côté just said that you do indeed receive royalties when your programs or films are broadcast elsewhere in the world.

Is the situation the same for you?

• (1245)

[English]

Ms. Maureen Parker: Can I start by clarifying something?

In the last round of questioning as well, everyone—and maybe it's the translation—keeps referring to “producers” and scriptwriters. It's “directors”. Can we have that struck from the record and revised?

We are not proposing to share copyright with producers, just to be very clear. We're proposing that it's a co-authorship between writers and directors. The reason is that it is a creative position, an act of creation. Producers—the APFTQ and CMPA—are very concerned about authorship, and I understand that, but they're most concerned about ownership and exploitation of the work.

To get to your question, Madame Lavallée, there are jurisdictions all over the world that recognize authorship of the audiovisual work. This is not a new concept. In France, Spain, Italy, and South America, we have been collecting money through our collection society from these jurisdictions for many years. The law generally states that the writer and the director are the author of the audiovisual work, because authorship is a creative endeavour. The “owner-maker” is the producer.

I think producers are concerned about having all the rights they need to exploit their content, and we can assure them that we will give them everything they need to exploit our work. As authors, we are first owners of copyright. We are prepared to transfer it, and we have a legal document drafted to transfer that ownership to producers right off the top, so that they can have all of the exploitation they need. When they exploit, we get money in our pockets.

[Translation]

Mrs. Carole Lavallée: Mr. Côté, how does that work in the United States?

Mr. François Côté: In the United States, I believe they're paid at origin. In any case, the producer is the complete owner of the work. Am I mistaken?

Ms. Caroline Fortier: I don't think so.

Mr. François Côté: I admit I don't know much about this question.

Mrs. Carole Lavallée: The fact remains that, when *Incendies* wins an Oscar, it's the director who will climb up on stage.

Mr. François Côté: The director will go up on stage, but there are two things. In the United States, when a film wins an Oscar for best film, it's the producer or producers who climb up on stage as the film's producers. However, the author as such, the person who created the work, is the director. The Oscar awards, which are production awards, reward the director with a special award for that category, but his role as director is that of having created the work and of being its author.

Ms. Caroline Fortier: I'd like to clarify one point to draw a distinction between Canada, Quebec and the United States. The producer will pay the director even before exploitation in order to buy the rights. He pays for them at a high cost because they have value. He acknowledges the value of that copyright. He pays for the rights at a very high cost. Unfortunately, the situation is somewhat different here.

Mrs. Carole Lavallée: Ultimately, as regards audiovisual, film and cinema, everyone is paid as they work. When the work is completed and ready to be made public, in movies or television, everyone has received their first pay, unlike in the music or literature industries, for example. Am I mistaken?

Ms. Caroline Fortier: No, and that moreover is what makes us say that this is a big food chain and that it starts from the work. If we starve those who are able to create the work, those who are at the origin of this food chain, it will collapse. That's why we've drawn a parallel with the subprime mortgage crisis because the principle is somewhat the same. Those loans are to the banks what content is to the audiovisual industry. If you destroy or alter the creators' ability to create this Canadian content, the entire food chain of Canadian content is threatened.

Mrs. Carole Lavallée: What do you think of the arguments by the producers, who say that this wouldn't apply in certain cases?

Mr. François Côté: They don't want to consider who is at the origin of the work. If, for example, we say that a program has a writer, a director and a sound director, someone nevertheless designed it at the outset. The person who conceived the program, the person who designed the program could perhaps claim the rights. They're referring to non-dramatic programs in this case. However, someone has created that work and it wasn't a company who created it. That's not true. These are individuals and perhaps individuals in the production companies could claim authorship of those creations.

Now we can divide and rule, but here we're revising the Copyright Act. Whether programs don't apply to copyright, we'll see later, but we have to know what the copyright is at the outset and to whom it applies.

• (1250)

The Chair: Thank you.

[English]

Mr. Angus, you have seven minutes.

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

I'm interested in proposed section 29.22. It jumped out at me when I read the bill, and it has received very little attention. It's the idea that you can make copies "for private purposes".

Let's say my relatives actually did want to see me, and I went to a big family gathering where there were hundreds of relatives. If I thought that for a private purpose I'd like to make a copy of my new favourite movie, which I just bought, I could make 300 copies and give them out at the family reunion. That would be for a private purpose, would it not? It would not be the same as a private use.

Why do you think the language is there, and how do we fix it?

Ms. Maureen Parker: Well, you'd be very popular with your friends and family, but it wouldn't be very good for us. Really, that's what we're talking about: an unspecified number of copies going into the marketplace and depriving us of income.

In the audiovisual business, consumers like DVD movies and TV box sets, and that's a revenue stream that we get through our collective agreements. When a bill proposes to give our product away, so that you could make a copy of that box set and give it to your 100 friends—or Jill has 800 friends on Facebook—that really would destroy our revenue model, because we get money under our collective agreements for that.

Mr. Charlie Angus: So "private use" is more specific, because in private use it would be understood that you are making the backup copies, as opposed to "for private purposes", which could be any use under the sun.

Ms. Maureen Parker: They would be unspecified copies.

Mr. Charlie Angus: So we would need to change that.

Ms. Fitzgibbons, I'm glad you're here today.

I've spoken with many producers in Canada, or filmmakers, and I get a different picture on copyright from them than what is usually heard around the table. I often hear how restrictive it is and how hard it is to get rights, even for the most basic footage that would normally be in the public domain anywhere else, but which could be locked under obligations to pay. I even hear about the difficulty of just shooting on location; I was told—I don't know whether it's true—that you couldn't shoot at Niagara Falls, because the image with the lights is under copyright by a large U.S. entertainment industry, so you'd have to pay them if you wanted to shoot on the Canadian side of the falls.

In making a documentary now, you would be excerpting footage, but that would be under a digital lock, so it would basically be illegal.

I raised this issue with one of the groups that were very strong on having no exceptions to digital locks, and they said: "Well, there's no problem. You can take a shot of a television screen."

What does it mean for your industry and your ability to extract works to make legitimate films if you're being treated as though you were isoHunt?

Ms. Lisa Fitzgibbons: We feel that it's curbing the very craft we're trying to develop. If you can't have the tools of your trade

because you can't access the raw material, how are you going to exercise your craft?

Mr. Charlie Angus: I'm interested in this issue of defining authorship. I come out of the music business, and long before I came into the business there were nightmare stories that Creedence Clearwater Revival and Ray Charles and everybody used to get ripped off by the publisher. The publisher would take all the rights.

So the rights were defined. There are mechanical rights and performers' rights, but within the ownership of the song itself, every dollar is divided up into two 50% parts. If one 50% share belongs to the author, it cannot be taken away; the publisher cannot take that share. The publisher can take the publisher's share, or part of the publisher's share, and it could be divided up 20 different ways, including among authors, if there are several authors. It's very defined.

Is the question here something that is an industry problem, or is it a legislative problem? How is it that this hasn't been clearly defined in your industry in the way it has been settled in the music industry for 30 years?

Ms. Maureen Parker: That's a very good question.

It's because the distribution patterns are now changing. We're right in the midst of change. Digital copies look wonderful, and so our work is now widely distributed. What we're really talking about today is copies.

We get a revenue stream from our work and the different forms of exploitation in terms of primary use. If it's in the theatre, or if it's being sold as a TV box set, we get a royalty under our collective agreements, but what we're talking about is compensation for copying our work. For example, proposed section 29.22, if it goes unamended, would allow an unspecified number of copies of our work out into the marketplace, and unless there is some form of compensation regime attached to that through collective licensing, there is no money coming back to the creator. Even if there were a collective licensing addressed in relation to that copying, we couldn't determine who would collect it, because we haven't addressed authorship of the audiovisual work. It's as though we're four steps behind. I can say that most countries in the world addressed this issue a very long time ago.

Just to throw in one last thing, in the U.S. the studios are the copyright holders, and that's because they are the anomaly in the world. They are the complete exception in that the studios have the copyright, but in the rest of the world, authorship is a creator position.

• (1255)

Mr. Charlie Angus: Thank you.

I was going to turn it over to my colleagues in the Conservative Party.

Thank you.

The Chair: Mr. Fast, you have seven minutes.

Mr. Ed Fast (Abbotsford, CPC): Thank you very much, Chair, and thank you to our witnesses.

We have quite divergent opinions here at the table, which is, I suppose, as it should be. When you try to find a bill with balance, you're going to have no one really 100% happy.

I want to bore in on the issue of digital locks again. Some of you haven't been quite clear on where you stand on circumvention.

I think I know, Ms. Fitzgibbons, where you stand. Perhaps I could ask you, Madame Doucet, where you stand on circumvention of digital locks. Just give a short answer, because I'm going to drill down on the issue.

[*Translation*]

Ms. Brigitte Doucet: Allow me to answer in French.

Mr. Ed Fast: Yes.

Ms. Brigitte Doucet: In fact, our position is that the bill currently provides for a minimum, that circumventing, which is illegal, is only illegal for access to works. We could reproduce any way we want and, if we establish a protection, people could circumvent it legally.

In our opinion, we must not go below the minimum. Ideally, we could have more, but what appears in the bill would be fine with us as a minimum.

[*English*]

Mr. Ed Fast: You're accepting the bill as it is right now, which prohibits circumvention of digital locks.

Ms. Brigitte Doucet: It's only for access. That's the minimum.

Mr. Ed Fast: Thank you. Excellent.

Ms. Parker, would you comment, or Ms. Golick?

Ms. Jill Golick: I'd like to take that one, because we absolutely appreciate the spirit of the bill in trying to protect our existing business models. What really concerns us most are the emerging and future business models.

We think that with the digital environment we have the opportunity to reach a global marketplace now. That's why I bring you back to proposed section 29.22 and say that if you give away those rights that I have, you're going to impede my ability to profit in the future.

Mr. Ed Fast: Lets assume we can resolve proposed section 29.22. Getting back to the question, which is circumvention of digital locks, do you feel that anti-circumvention measures support your industry?

Ms. Jill Golick: Yes.

Mr. Ed Fast: All right.

Ms. Maureen Parker: But we think those measures are not stern enough; we think that statutory damages have to act as a deterrent.

We run a union, and the one thing I've learned over the many years of running a union is that you have to have enforcement mechanisms and you have to have deterrence. It's not that we don't trust people; we just have to make the laws enforceable.

Mr. Ed Fast: Okay.

I think I know where Ms. Fitzgibbons stands, and she would differ with you. She would say that for all fair dealing purposes, consumers should be entitled to circumvent the digital locks that the copyright holders put on their content. Am I correct?

Ms. Lisa Fitzgibbons: You mentioned consumers. I'm speaking on behalf of documentary filmmakers. We're coming at it from the creator's perspective.

Mr. Ed Fast: That's understood, but you feel that you should be able to circumvent those digital locks.

Ms. Lisa Fitzgibbons: Yes.

Mr. Ed Fast: I want to drill down into that a little bit more.

Would you agree with me that in order to allow the circumvention of digital locks, you would also have to change this bill to allow the manufacture, distribution, and sale of circumvention measures?

Ms. Lisa Fitzgibbons: There has to be a way to access it.

Mr. Ed Fast: All right. Would you assume, then, that consumers of the content and those using it as you would will have to acquire those kinds of technologies to circumvent the digital locks?

• (1300)

Ms. Lisa Fitzgibbons: I think that's a fair assumption.

Mr. Ed Fast: All right. Now that they're legal in Canada, you would expect that more and more consumers would purchase these circumvention measures in order to access fair dealing.

Ms. Lisa Fitzgibbons: Again, you're talking about the consumer. I'm talking about the documentary filmmaker.

Mr. Ed Fast: Okay. Let's talk about both, meaning those who are going to access the information they need.

Of course, not everyone in Canada is honest. There are going to be those who say that it's legal to buy this now, so I'm going to use these technological inventions to circumvent these digital locks. Because I'm not honest, I'm going to actually cheat, and now I'm breaking locks for a purpose not permitted under the act. Eventually you have this group within our society who are actually causing a problem for those who create the content and hold the copyright, which means it's much more expensive for them to enforce their rights.

I assume you've read Bill C-32, so you're aware that under clause 47, proposed item 41.21(2)(a)(iii) gives the minister a broad discretion to make regulations to ease up on some of those anti-circumvention provisions. I'd like to read at least that item for you, just for the record.

Proposed subsection 41.21(2) says:

The Governor in Council may make regulations

(a) prescribing additional circumstances in which paragraph 41.1(1)(a) does not apply, having regard to the following factors:

(iii) whether not being permitted to circumvent a technological protection measure that is subject to that paragraph could adversely affect criticism, review, news reporting, commentary, parody, satire, teaching, scholarship or research that could be made or done in respect of the work, the performer's performance fixed in a sound recording or the sound recording,

That's what the bill says. Essentially what it says is that we understand that at this time you're not allowed to break digital locks, but the minister has the right to make the regulations; he doesn't have to go back to Parliament for a legislative change. As the industries develop, as we gain more experience with this new legislation, the minister has the flexibility to adapt and to pass regulations that allow industries such as yours to benefit from some of the content that you'd like to access and that digital locks prevent.

So you're aware of that legislation?

The Chair: Move quickly, please; we have to wind up. I'll give you 15 seconds.

Ms. Lisa Fitzgibbons: My response is that you have the opportunity now to build that mechanism into the bill. I would suggest that this is a good time to do so.

Mr. Ed Fast: Of course, we have no experience with the bill yet.

The Chair: Thank you very much to our witnesses.

This meeting is adjourned.

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