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Chair

Mr. Gordon Brown

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● (1105)

[*Translation*]

The Acting Chair (Hon. Maxime Bernier (Beauce, CPC)): Good morning, everyone, and welcome to the 18th meeting the of Legislative Committee on Bill C-32.

Pursuant to the order of reference of Friday, November 5, 2010, today we are continuing our study of Bill C-32, An Act to amend the Copyright Act.

In the first hour, by videoconference from Dubai, we have with us Ms. Margaret Atwood, writer. She is testifying as an individual.

I hope you can hear us.

[*English*]

Ms. Margaret Atwood (Writer, As an Individual): I hear you clearly. I do not see you.

The Acting Chair (Hon. Maxime Bernier): Okay. Thank you.

I'll give you the floor in two minutes from now.

[*Translation*]

We also have with us, from CMRRA-SODRAC Inc., Mr. David Basskin, president; Mr. Alain Lauzon, vice-president; Mr. Casey Chisick, legal counsel; and Mr. Martin Lavallée, legal counsel.

Good morning and welcome.

We also have with us Ms. Marian Hebb, from the Artists' Legal Advice Services.

Good morning, I'm delighted.

[*English*]

We're going to start first with Ms. Margaret Atwood, from Dubai. I will give you the floor for five minutes, and after that we'll have other witnesses, also for five minutes. At the end of all of the presentations, the members of this committee will be able to ask questions of everybody.

Madam Atwood, you have the floor for five minutes. And thank you very much for being with us from Dubai.

[*Translation*]

Ms. Margaret Atwood: Thank you very much, good evening.

[*English*]

Thank you for inviting me.

I address this committee from the position of an author who has been involved in publishing since the 1960s, both as writer and as publisher, and who has lived from the proceeds of writing—fees and royalties—since the early 1970s.

I am in the 10% of North American authors who live from writing. Even those within that 10% often end up with tiny incomes. The loss of a thousand dollars is significant to them.

A writer with a salaried position at a university may have a different view. I frequently allow free use of my copyrights. When I make such gifts, that is my choice.

One, I will speak only about the extension of fair dealing to include education, however interpreted.

Two, I am in favour of cheaper education for students. But if cheaper education is a public good, all should contribute, not just authors.

Three, removing authors' copyright for education, without compensation or choice, would not be fair dealing. It is not fair—why only authors?—and it is not dealing. It takes two to deal.

Four, a copyright is property. It can be owned, sold, licensed, and inherited. There are only four ways in which property can be removed from its owner without consent: one, theft; two, expropriation, which does however include some payment; three, confiscation, as from criminals; and four requisition, as in a war.

If this copyright property grab is confiscation, what criminal act has the author committed? If requisition, what is the war? If theft, those authorizing the stealing should be charged. If this property grab is expropriation for the public good, as in land or highways, etc., the public should pay.

Five, the author will be compensated, we are assured. How? There is no mechanism proposed and no recourse for unfairness except through the courts. Given what I have said about tiny incomes, it is obvious that authors could not afford this, whereas big educational institutions, floating as they do on public money, can.

Six, finally, if the government can snatch the property of authors in this way, without consent or payment, who and what will be next?

Thank you.

[*Translation*]

The Acting Chair (Hon. Maxime Bernier): Thank you very much.

I will now give the floor to the representatives of CMRRA-SODRAC Inc.

I don't know who is going to start.

Mr. Lauzon? No.

Mr. Basskin, you have the floor for five minutes.

[*English*]

Mr. David Basskin (President, CMRRA-SODRAC Inc. (CSI)): Thank you, and good morning.

My name is David Basskin. I'm the president of CMRRA-SODRAC Inc. (CSI). With me are Alain Lauzon, CSI's vice-president, and our legal counsel, Casey Chisick, and Martin Lavallée.

CSI represents the reproduction right in musical works—songs. Broadcasters, including commercial broadcasters, the CBC, pay audio, and satellite radio at present pay CSI when they reproduce works in our repertoire.

Since 1997, the act has required payment only if a blanket licence is available. A single payment licenses the millions of works in our repertoire.

Broadcasters pay CSI either pursuant to tariffs certified by the Copyright Board of Canada or through negotiated agreements. They paid CSI $17.6 million in 2009-10.

The commercial radio broadcasters want you to strip away our rights. Why? They'll tell you that the copies they make are worthless. That's nonsense. Expert evidence, accepted by the Copyright Board, extensively documented the benefits that broadcasters receive from these copies. For one example, through voice tracking, broadcasters can produce a four-hour program in just 20 or 30 minutes.

They'll tell you that it's unreasonable and unsustainable to continue paying seven-tenths of one percent of their earnings for the right to make copies. Unreasonable? They pay 5.7% of their revenue to all collectives for the music that makes up 80% of their programming. Unsustainable? When the commercial radio tariff was introduced, the industry enjoyed average pre-tax margins of 10%. In 2009, in a severe recession, their margin was 21.2%.

And there's this: the broadcasters want a double standard. They license the reproduction rights in their broadcast programs to media monitoring companies. They receive a royalty of 10%, and for 2011 to 2013 they want a 40% increase, to 14%, ten times higher than the 1.4% they themselves pay to reproduce music, seven-tenths of a percent for songs and seven-tenths of a percent for recordings.

There's no similar exception that applies to Canadian broadcasters' reproduction rights.

However, even if the broadcast mechanical right were left as it is, other provisions in Bill C-32 would undermine the rights of our members. Alain Lauzon will speak to those other provisions in the bill.

● (1110)

[*Translation*]

Mr. Alain Lauzon (Vice-President, CMRRA-SODRAC Inc. (CSI)): Modernizing the Copyright Act should aim to create a stable, innovation-friendly environment without eliminating existing or potential royalty sources for creators.

The current law is technologically neutral and this principle should not be called into question. What constitutes copying or reproduction today should remain so as technologies continue to evolve.

In determining the value of various types of reproductions, the courts have thus far applied a range of economic values established on the basis of the reproductions' utility and effectiveness in the eyes of various users. However, Bill C-32 creates numerous exceptions that do away with royalties.

More specifically, section 32 of the bill, which authorizes technological reproductions, should be withdrawn. At the very least, the wording should be revised to ensure that it covers only transient reproductions without real value. If not, the subjective notion of "facilitate a use" will prompt certain broadcasters to think that the reproductions they currently pay for will be free of charge.

Section 22 of the bill, which authorizes multiple backup copies, should be reviewed. Why should multiple copies be authorized when a single copy is sufficient?

In addition, section 22 would allow "commercial intermediaries" such as YouTube to keep on developing profitable business models by distributing non-commercial user-generated content without compensating the rights holders.

One of the solutions proposed in our brief would be to allow these intermediaries to reproduce existing works if they obtain a licence from a collective society.

A straightforward solution aimed at fixing the current bill would be to stipulate that the exceptions created by the bill would only apply if a collective society were unable to issue a licence.

The collective licensing system has been in place for several years now and has not brought about a market collapse. Collective licensing is the best solution to reach a balance that would support innovation while ensuring compensation for rights holders.

Thank you for your attention.

The Acting Chair (Hon. Maxime Bernier): Thank you very much.

Thank you, Mr. Lauzon.

I now give the floor to the representative of the Artists' Legal Advice Services, Ms. Marian Hebb, who is a board member and past co-chair.

Go ahead, please, madam.

[*English*]

Ms. Marian Hebb (Board Member and Past Co-Chair, Artists' Legal Advice Services): Artists' Legal Advice Services is a summary legal advice service that provides free legal service to artists of all disciplines: musicians, visual artists, writers, actors, and dancers. We are therefore acutely aware of how difficult it is for artists to earn a living.

The preamble of Bill C-32 mentions two goals that are in the public interest, which could conflict but can be compatible: for rights holders, recognition, remuneration, and the ability to assert their rights; for users, further enhancement of users' access to copyright works.

Everyone wants easy access to copyright works. That can be achieved by either collective administration or by statutory exceptions. Both provide the same ease of immediate access to consumers, but collective administration also provides creators with remuneration that's either negotiated with users or fixed by the Copyright Board.

Rights-holder-run collective societies administer collectively licences or tariffs, which replace multiple, low-value transactions that could otherwise be between the individual rights holders and users, but in fact it's often impossible for individual creators to negotiate individual licences for secondary uses of their work.

Most independent professional creators in this country earn less than $20,000 a year from their professional work, many of them far less, and comparatively few considerably more. Cutting back further on creators' rights with new exceptions will make it more difficult for them to support themselves. ALAS submits that statutory exceptions should be considered only where individual licences are not practicable and collective administration is not available.

We live in times of rapid technological change. Copyright legislation should remain neutral to changes in the marketplace and not introduce exceptions that will prevent creators from earning revenues from new or future business models. The preamble to Bill C-32 refers to the Copyright Act as an important marketplace framework law, affecting many sectors of the knowledge economy through clear, predictable, and fair rules.

It is hard to see how some of the proposed exceptions can be considered clear or the outcomes predictable, leaving aside the question of fairness. For example, there's no guidance in the proposed legislation to consumers or rights holders on how the new fair dealing exception for education might relate to existing educational exceptions or to the new ones proposed in Bill C-32, or whether it relates to them at all. No one will know what this new fair dealing for education means until the courts tell us.

We do know that savings for education mean less money in the pockets of creators. There are other exceptions for education in the current Copyright Act, which Bill C-32 proposes to revise at the expense of creators, because they either remove or reduce the ability of collective societies to license schools and post-secondary institutions for certain uses.

To take an example, the updated version of the interlibrary loan exception in Bill C-32 would allow a single library to supply the same copyright material copied from either print or digital publications directly to the computer of every student or other person across Canada who might choose to order it from his or her school, university, or local public library. We all want digital delivery from libraries. Creators will be among the most frequent users. But their collective societies, which today license photocopying in libraries, should have a reasonable opportunity, following the update of other provisions of the Copyright Act, to offer licences for digital delivery.

The exception for user-generated content, or mashups, is a brave step to recognize current realities, intended to catch up with consumer behaviour by allowing existing works to be used in the creation of a new work by a different author for his or her non-commercial purposes. But much stronger restrictions are needed to make any user-generated content exception fair to the original author. A new work that uses an existing work by another author, also often including performances by artists, should remain private unless there is permission or payment. Collective societies should collect royalties for the creators from a disseminator such as Google-owned, advertising-rich YouTube.

Another extraordinarily broad exception will allow everyone to reproduce any work without compensation to the author or performer for private purposes. This reproduction is subject to some restrictions, but without the clear, predictable, and fair rules promised in the preamble to the bill, it will be left to individual litigants to find out what the courts may allow as a private purpose. Digital locks are not an acceptable substitute for clear law.

Creators mostly do not want to use digital locks. They want users to access their work freely, but not for free. A collective administration model already exists for the private copying of music, although it badly requires updating for the digital environment.

● (1115)

All of the exceptions I have mentioned are intended to exempt users from licensing and payment for uses that currently are or could be administered efficiently by collective societies, subject to the oversight of the Copyright Board.

Copyright provides the legal foundation for creators' business models and is the economic basis for all of the creative industries. Particularly in the digital environment, collective administration of secondary rights plays a critical role. Confiscating creators' rights means more copying and less licensing of Canadian works. Artists and other cultural workers will find it harder to survive as their markets shrink and jobs disappear. Inevitably there will be fewer made-in-Canada works for all of us to benefit from.

Thank you.

[*Translation*]

The Acting Chair (Hon. Maxime Bernier): Thank you very much.

I now give the floor to Mr. Pablo Rodriguez for seven minutes.

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

Good morning, everyone. Welcome. Since we have little time, I'm going to go ahead with a series of questions.

Mr. Lauzon, you mentioned that there should not be any exemptions if a licence is available from a collective society. You said something like that.

Could you provide a few more details on that point?

Mr. Alain Lauzon: Certainly. There are principles according to which creators must receive compensation for the use of their works.

The act also seeks to strike a balance between compensation for rights holders and public access to works. The exemptions are not the only way for the public to access works.

I'm going to hand over to Casey so that he can explain some of the details surrounding this issue.

● (1120)

Mr. Pablo Rodriguez: Yes.

If you could do so quickly, please.

[*English*]

Mr. Casey Chisick (Legal Counsel, CMRRA-SODRAC Inc. (CSI)): It's important to recognize that the purpose of exceptions to copyright infringement is to guard against situations where otherwise reasonable access to works would be unavailable; it would be compromised. But there is more than one way to achieve that.

CSI's position is that where there are ways to achieve that balance between access and compensation without depriving creators of the right to receive compensation, those alternatives should be preferred. In our view, collective licensing is exactly that alternative, because collective licensing provides access to users at a reasonable and regulated price with reasonable effort at a reasonable time. That principle is already enshrined in the Copyright Act, both in relation to the federal recordings exceptions, which we talked about today, and to many of the exceptions that are available for educational institutions, which are not available if the work is commercially available.

We propose the same for the other new exceptions that are suggested in Bill C-32.

Mr. Pablo Rodriguez: Thank you. *Merci*.

Mr. Basskin, you seemed a little bit critical of the bill. Are there any benefits for music creators in the bill?

Mr. David Basskin: Certainly, on the provisions regarding technical protection measures, DRMs, we're glad to see Canada becoming on the verge of compliance with the WIPO treaties, but to be honest with you, digital rights management matters very little in practice to the music business. Virtually no music products today are covered by them, though it might happen in the future. Protecting them is a good idea.

To be quite honest, the small amount of good that the bill might do in that regard is more than outweighed by the range of exemptions, not just the exemption that would attack vital income for songwriters and publishers today in the ephemeral exception, but all of the other exemptions that carve out compensation and allow use.

We're all in favour of use, and that's what we're here for, to give access to works, but the fact is that the bill would eliminate compensation. That strikes us as unfair. There's not that much in the bill that's good for us.

Mr. Pablo Rodriguez: The bill, as it is, would hurt music creators.

Mr. David Basskin: I'd say, on balance, that is true.

Mr. Pablo Rodriguez: Is that what you guys think, most of you?

Mr. Casey Chisick: It is, and it's important to note that provisions that are intended to fight piracy, especially the online enabler section, really do nothing of the sort because in the end they're completely hamstrung by the caps on statutory damages. So even if music creators wanted to deal with piracy by suing people—which they don't—this bill would not give them the tools to do that because the cost of litigation would far outweigh any potential benefits.

[*Translation*]

Mr. Pablo Rodriguez: Last week, the broadcasters were here, and I asked them the question about the value of the copy. I wanted to know whether the copy they were making so that they could then play it had a value, and I didn't really get an answer. Does that copy have a value?

Mr. Alain Lauzon: Certainly the copies of musical works have a value. The Copyright Board of Canada determined at our hearings before it that broadcasters achieve major savings because they reproduce our works.

As I mentioned in my address, the Copyright Board has recognized the value of those copies from the standpoint of utility and efficiency. So it has recognized that there is value, given the savings made by broadcasters, and as a result of which, according to economic theory, authors, composers and publishers must receive compensation. So there is definitely a value.

[*English*]

Mr. Pablo Rodriguez: Anything to add? That's fine? Okay.

They also told us that broadcasters in most developed countries didn't have to pay for that right. Is that the case?

Mr. Casey Chisick: That's false. We provided specific information about that in the CSI brief. We've established that in the jurisdictions of most of Canada's major industrialized trading partners, broadcasters are required to pay for the reproduction right—or could be required on demand to pay for the reproduction right because of the lack of an exception. I won't go into detail, but suffice it to say that in most of those countries there are either no exceptions or exceptions that are more limited than those in Canada. So broadcasters pay the same or more in those countries for the reproduction right.

● (1125)

[*Translation*]

Mr. Pablo Rodriguez: They tell us that a large part of that money goes to other countries than Canada—we had a debate on this point. Do you have any comment to make on that subject?

Mr. Alain Lauzon: For the societies that we represent, we receive the reproduction royalties that are collected for our repertoire in the countries of Europe, in South America and so on. And, of course, for commercial radio, for example, when we allocate the royalties that we collect, we give royalties, equivalence, to foreign societies.

That's based on the repertoire that we own, but I can assure you that the royalties that we collect from outside Canada are greater than those we send outside Canada.

[*English*]

Mr. Pablo Rodriguez: Anything to add?

Merci.

[*Translation*]

The Acting Chair (Hon. Maxime Bernier): Thank you very much.

Ms. Lavallée, go ahead, please.

Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ): Thank you very much, Mr. Chairman. First, I have a question for Ms. Atwood.

Ms. Atwood, can you hear me?

[*English*]

Ms. Margaret Atwood: Yes, it's clear.

[*Translation*]

Mrs. Carole Lavallée: Do you have simultaneous interpretation?

[*English*]

Ms. Margaret Atwood: Yes.

[*Translation*]

Mrs. Carole Lavallée: First, I would like to thank you for testifying before the Legislative Committee on Bill C-32.

Earlier you talked about confiscating copyright. These gentlemen from CSI said that Bill C-32 prejudiced authors.

Do you believe that too? Do you believe that Bill C-32 prejudices authors? What do you believe? Should we adopt it as such or not?

[*English*]

Ms. Margaret Atwood: They are being negatively affected by it because property is being taken away from them without their consent and without compensation. If somebody took your piano out of your house without your consent and without compensation, you would call it theft. I assume you would consider that harmful to you. For me it's simple. Something is being taken away that you own, without your consent and without compensation.

[*Translation*]

Mrs. Carole Lavallée: So you are of the view that we should not adopt Bill C-32.

[*English*]

Ms. Margaret Atwood: We need a revised copyright bill. I do not feel that the exemption I spoke about should be passed in its present form, because it takes property away from people without compensation. That is either theft, requisition, or confiscation. Do you want to do that?

[*Translation*]

Mrs. Carole Lavallée: Thank you very much. Now I'm going to put some questions to the people who are here, with your permission.

I don't know who wants to answer my questions first, Mr. Lauzon or Mr. Basskin.

Last week, the Canadian Association of Broadcasters came here and seemed to be strongly defending small stations. It mainly said two things: first, that there has been a 140% increase in royalties payable and that that was having an effect on broadcasters' ability to innovate. It also said that they were forced to pay twice for the same thing. Is that true?

[*English*]

Mr. David Basskin: First of all, describing the royalties that are paid as “punishment for innovation” is an interesting way of looking at it. We obviously disagree.

Broadcasters are taking advantage of remarkable technology that has developed in the last few years that enables them to save a great deal of money and resources. They don't have to have a room full of CDs or vinyl records anymore. They don't have to pull the records from the shelf and line them up in the order they're going to be played. Nothing gets lost; nothing gets rolled under a filing cabinet.

The operational advantages go beyond that. In the world of broadcasting, advertising pays the bills, and the advertisers are naturally very interested to know that their ad went at the correct time. In the old days, before automation, somebody had to be there with a clipboard writing it all down, and lots of errors happen any time you do that.

In the world of automated broadcasting, the system generates precise documentation: your commercial aired here and here and here and here. Advertisers demand that; the system delivers it. That's fine. I think it's great. I love computers.

Copies of music are at the absolute heart of this system. Copies of songs and recordings are necessary to make this system go. Broadcasters are taking advantage of the technology, and they're compensating those who create the music. To me that's value for value.That's a fair proposition.

To say that paying royalties is punishment for innovation is like saying it's punishment to pay for electricity to light up the building. It's part of the operating environment. We're happy to enable them to take advantage of these technologies, but as for what broadcasters pay, particularly small broadcasters, let me remind you that the most recent decision of the Copyright Board says that on the first $625,000 of revenue, broadcasters pay us, CSI, one-third of one percent of their income. So for a small station that makes, for example, half a million dollars in sales, that's $1,500. This is a relatively small component, and I would say it is very fair value for the fact that they get to make copies of every song in the world.

● (1130)

[*Translation*]

Mrs. Carole Lavallée: The Canadian Association of Broadcasters also said that broadcasters were forced to pay twice for the same thing. They pay twice for the same disk. Is that true? Do they in fact pay twice? We know they pay for it when they receive it, for the ephemeral recording, and that they pay for it once again when they broadcast it to the public.

[*English*]

Mr. David Basskin: They are paying for two different things, first of all. The right to perform or communicate the work is one right; the right to reproduce it is another. That has been long, long established in our copyright law.

But let's talk about the copies they make. When broadcasters receive music, whether they receive it electronically or on a CD, and start copying it, they're doing a lot more than making one copy. Let me describe it. In our brief we have an extensive technical brief from a gentleman named Michael Murphy that details all of this. But I'll just outline it in very brief terms. They make a copy when they pull the music into their system, when they ingest the music into their system. They make additional copies to evaluate the music so that people in the station or the organization can listen to it. They make copies of the music on their main libraries—and bear in mind that these are permanent libraries of all the music they have. They make copies of the music when they create shows by voice tracking. This means pre-recording a show by assembling the songs, the commercials, and the various other bits with the disc jockey doing the talking. There are other purposes outlined in the report.

So broadcasters make very extensive use of the right to copy, which again we are happy to license them for. So they are paying for one thing to SOCAN—the right to communicate the music—and they're paying us for the right to make copies. Two very useful rights.

[*Translation*]

The Acting Chair (Hon. Maxime Bernier): Thank you.

Now I give the floor to Mr. Angus.

[*English*]

You have 10 minutes.

Mr. Charlie Angus (Timmins—James Bay, NDP): *Merci, monsieur le président*.

The Acting Chair (Hon. Maxime Bernier): I'm sorry. You have seven minutes.

Mr. Charlie Angus: You were correct the first time, I think.

Madame Hebb, it has been raised here before, the question of why the word private “purposes” has been put in as opposed to private “use”. It seems that if we are not clear, one could make copies for everyone, relatives and everybody's friends on the street. Would you think changing “purpose” to “use” would help close this?

Ms. Marian Hebb: I think it would help. There are other places in the act where they also refer to “personal uses”, “private use”, and “private purposes”, and I think there's another one too, which I can't remember just at the moment. But all these things seem quite vague, and we should stick to the same language to be consistent in the bill, if it has the same meaning.

But quite apart from that, in that context of making this copying for private use by individuals or anybody, that still isn't clear what it means. Can I send it to my friend? What can I do with it? Maybe I can't. I guess we have some interpretation of the “private use” regime now, but it's a different kind of copying, so it isn't really clear what it refers to.

Mr. Charlie Angus: Mr. Chisick, last week when I was speaking with CAB, I was trying to get a sense of how we break down these mechanical royalties, because I've heard the advertisements on the radio. I haven't heard your advertisements yet. Do you get radio advertisements? They were running advertisements that all their stations were going to close down. So I tried to get a sense from them, and they didn't seem to want to...or maybe they didn't know the numbers.

You take these to the Copyright Board. You don't get to pick this, right? The Copyright Board hears all sides and then sets a rate. There's a rate for small stations and medium and large stations. What is the breakdown in terms of what they're on the hook for?

● (1135)

Mr. Casey Chisick: The Copyright Board certifies rates that are organized by tiers of revenue. So for revenue under $625,000, a station that makes ordinary amounts of use of music is paying roughly three-tenths of one percent. Between $625,000 and $1.25 million they're paying roughly two-tenths of one percent. Over $1.25 million they're paying just under 1.24% of all their revenue. So when you average that out, that turns into an effective rate of approximately seven-tenths of one percent of their revenue for the use of the reproduction right. That's for the reproduction right in songs. Then they pay a similar amount for the use of the reproduction right in sound recordings and performers' performances.

All in all, you're looking at an effective amount of about 1.4% of all of their revenue for the use of the reproduction right in all of the music they use. It's a relatively small amount of money, we would argue, to pay for the right to use what really amounts to 80% of their program content in ways that, as Mr. Basskin has explained, are so vital to the efficiencies of the radio stations.

Mr. David Basskin: If I could, Mr. Angus, let me just add one point. This doesn't happen in a vacuum. Broadcasters pay good money for the computers. They pay good money for the very complicated software used to program, operate, and manage radio stations. They pay good money to send their staff on training courses to use this software, because it is complicated software. They pay annual maintenance and licence fees on the computer and the software. This is all as it should be. And of course, they pay their own staff and operators.

So it looks to me like every component in the value chain is receiving compensation, value for value. What this bill proposes to do is to say to those who create the music that the reason they bought the stuff in the first place..."We don't have to pay you. We'll pay everybody else." I don't see legislation here making free software or free computers, nor would I expect to. It seems grossly unfair to say to those who create the music, "You alone will work for nothing."

Mr. Charlie Angus: I want to continue on this line. The other question I had was in regard to a concern in their brief that all this money was leaving the country and paying U.S. multinationals, or they said foreign multinationals.

I remember back when I was playing music, every now and then I'd get a royalty cheque that would come in from Europe. It might not be a lot, but it made me think they were actually tracking my song on radio in Europe. Do we not have licensing agreements with our international trading partners so that if one of our songs is played here, and it's from a U.K. artist, they're getting paid, and if it's one of our artists, they're paid over there? Is this not the reciprocal agreement that radio has been involved with since the 1930s or 1940s?

Mr. Alain Lauzon: You're absolutely right. We have a reciprocal agreement with foreign societies, and we receive money out of the broadcast mechanicals, whether it's radio, television, satellite radio, or other things. Obviously, we receive it because we have reciprocal agreements, that's for sure.

Mr. Charlie Angus: Last week or the week before we had CRIA and MapleMusic here. They've blown off the issue of the digital levy, and I don't know what their position was on the mechanicals. They didn't seem to be all that important. They said that this is a $400-million-a-year industry. These revenues were fairly inconsequential to them.

It seems that it's a fairly large chunk of your revenue stream, and that revenue stream is going back to artists. How important do you think maintaining these revenue streams is in today's music environment?

Mr. Casey Chisick: I guess it all depends on how you define "inconsequential". Accepting that $400 million figure is true. We can also say that between 2009 and 2010, broadcasters paid $17.6 million for the reproduction right in musical works alone. That's a substantial amount of money in the pockets of songwriters and music publishers, any way you slice it, regardless of the amount of money that's at issue in the music industry at large.

Again, while I don't quibble with the suggestion by CRIA and MapleMusic and others that there is a larger problem at stake here, we can't throw out the baby with the bathwater. It's been said that music and music publishing is a business of pennies, and that's very true. As you know, as a former musician, and I would argue still a current musician, every penny counts, and $17.6 million is a lot of pennies.

● (1140)

[*Translation*]

The Acting Chair (Hon. Maxime Bernier): Thank you very much.

Now I give the floor to Mr. Dean Del Mastro.

[*English*]

Dean, you have the floor.

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

One of the things that keeps coming up at the committee is this issue of education as an included item under fair dealing. One of the big problems we've had is that we have people commenting on it without understanding what fair dealing means.

Ms. Atwood, could you, for my benefit and the benefit of the committee, define fair dealing as you understand it?

Ms. Margaret Atwood: Fair dealing as it is in this bill or as it would be used in common speech?

Mr. Dean Del Mastro: No, I mean how it's defined by the Supreme Court of Canada and the Berne three-step test. In that context, could you define fair dealing?

Ms. Margaret Atwood: Well, let's just say what it would mean to an ordinary person like me who is not a lawyer. Number one, it's fair. Number two, it would mean that some form of dealing has taken place between two sides to reach an agreement. That's what fair dealing means to the ordinary person.

What it means to the Supreme Court of Canada is up to them to define, and they haven't done it clearly enough for me.

Mr. Dean Del Mastro: Actually, you're right. The Supreme Court of Canada established that the dealing must be fair to begin with and then identified six factors to consider in gauging the fairness of the dealing. They established that copying a work is not fair dealing. That's not fair dealing. That's why there's payment for fair dealing, and no one in the education industry who has appeared before this committee...no one is suggesting that the $43 million that they are currently paying for the right to copy is in any way affected by this bill. They understand that the Supreme Court has already established that copying is not fair dealing.

The sixth point of the Supreme Court is the effect of dealing on the work. That means that the dealing can't diminish the value of the work. Therefore, this idea that including it under fair dealing wipes out the revenue of artists is absolutely false. The Supreme Court has established this, as has the Berne three-step test. But I think this all comes back to people not understanding what fair dealing is.

There are a number of good pieces out there on fair dealing. For example, Michael Geist in December 2010 wrote a good piece on fair dealing, what it means and how it reflects on education. I'd encourage you to seek that out on the Internet. I think he did a good job outlining the concept.

Ms. Margaret Atwood: I have met with Michael Geist and I have read his piece. And I've read a number of other pieces. What seems to come out of that is that although these people are saying the money will in no way be affected, it is still up to the artist. If a piece of unfairness comes into their view, they are the ones who have to go to court and establish that it wasn't fair.

Mr. Dean Del Mastro: If I could—

Ms. Margaret Atwood: If that $43 million is in fact intact, why are the educators going around saying that they won't have to pay any money anymore for copying—

Mr. Dean Del Mastro: Please stop cutting off my microphone. Thank you.

They're not saying that at all, Ms. Atwood. In their appearances here, they've indicated that they represent people who are both writers and educators and that they want to be fair to both sides.

I think it's safe to assume that the rules established by the Supreme Court of Canada and the Berne three-step test...I'm pretty confident that our educators, our educational facilities, and our provincial governments will follow the law. They have a good record in that regard.

I want to say what establishing education as an inclusion under fair dealing does. It allows education. It opens the door to the use of new technologies in the classroom without fear of liability. This relates to new, electronic materials that could be used, things that are freely posted on the Internet. It allows some of these things to be presented to a classroom for educational purposes. It's about taking our education to the next level. It's not, and it has never been, according to the witnesses we've had before us, about taking away the revenues that are established for copying. The Supreme Court has established that copying is not fair dealing. The six-step test for the Supreme Court is well established and is consistent with the spirit and nature of this bill, as is the Berne three-step test. I encourage people coming in to say it's going to wipe out educational revenues to first learn what fair dealing is.

Ms. Hebb, you have a comment.

● (1145)

Ms. Marian Hebb: Could I actually add to that—

Ms. Margaret Atwood: I stated that myself. Who's going to apply these six rules? Who's going to make sure that they are being applied? Are we in a—

Mr. Dean Del Mastro: Ms. Atwood, to allege that educational facilities, post-secondary facilities, educators around Canada are going to knowingly breach the law because they're not afraid of the enforcement I think is a very serious allegation. You've used very strong language, and I think the allegation—

Ms. Margaret Atwood: No, but who's going to—

Mr. Dean Del Mastro: —that post-secondary educators, educators in Canada, will knowingly breach copyright because they're not afraid of being punished is outrageous. It's outrageous.

The Acting Chair (Hon. Maxime Bernier): Ms. Atwood, you have the floor.

Ms. Margaret Atwood: Just tell me who is going to enforce the six steps. Who is going to do that?

Mr. Dean Del Mastro: The courts are enforcing it. The Supreme Court has already established this, and what you're alleging is that without enforcing it our educational facilities are going to knowingly and frequently breach copyright law.

The Acting Chair (Hon. Maxime Bernier): Ms. Atwood, you have the floor, and you have 30 seconds to answer.

Ms. Margaret Atwood: Yes. It's exactly what I said before. It will have to go to court, and what I said before is that authors can't afford that.

Mr. Dean Del Mastro: No, in fact, you're exactly wrong.

Ms. Hebb, go ahead.

Ms. Marian Hebb: I was going to say that some copying is fair. In the current case that is probably going to the Supreme Court of Canada now, there was a sample done, and teachers wrote down for what purposes they did their copying. Some of it was for research and private study, which is covered by fair dealing already. So when it was covered by research and private study, that was considered to be fair dealing for the purpose of this negotiation.

Now that there is going to be a new category, which will be education, there will be again some copying for education, which is fair dealing—

Mr. Dean Del Mastro: No, not copying. You're wrong.

Ms. Marian Hebb: —and some copying, which is not.

The Acting Chair (Hon. Maxime Bernier): Okay. Thank you very much. I will have to give the floor to Mr. McTeague.

Yes, *point d'ordre?*

[*Translation*]

Mr. Pablo Rodriguez: Yes. I have a point of order specifically concerning the exchange between Mr. Del Mastro and Ms. Atwood, but this should also apply to all of our meetings.

When one witness speaks to us by videoconference, it is hard for that person to answer questions and to explain his or her point of view if that person's interlocutor constantly interrupts, especially when the latter leaves the microphone on and tends to always leave it on

Mr. Chairman, it then becomes impossible for the witness to state his or her point of view as the volume of the witness's microphone is much lower than that of the microphone of the person asking the questions.

This concerns the debate we are having today, but I would like us to take this into account in all cases in future where an individual is invited to testify by videoconference. We have to respect the witnesses and the fact that they are taking the time to speak to us.

The Acting Chair (Hon. Maxime Bernier): Thank you.

Go ahead quickly, Mr. Del Mastro.

[*English*]

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

For clarification on parliamentary procedure when it pertains to committees, all the witnesses are provided an opportunity to make their presentations in a manner in which they are not interrupted, and that is their time. However, when we go around the table, that is not their time. That is the time of the committee members, to allow them to ask questions of the witnesses, and when they get the answer to the question that they're seeking, they can move on to the next question because it's their time. You can elect to use your time, Mr. Rodriguez, however you see fit.

[*Translation*]

The Acting Chair (Hon. Maxime Bernier): Mr. Rodriguez, go ahead because I would like—

Mr. Pablo Rodriguez: We'll eventually have to find a way to proceed when people testify by videoconference. From what Mr. Del Mastro says, those people, whether they're in favour of the bill or not, will never be able to speak to us: we'll just have to prevent them from speaking using microphones.

The Acting Chair (Hon. Maxime Bernier): In that situation, the Chair will use his discretionary power to ensure that everything works well. Thank you.

Mr. McTeague.

[*English*]

You have seven minutes.

Hon. Dan McTeague (Pickering—Scarborough East, Lib.): That's five, Chair.

The Acting Chair (Hon. Maxime Bernier): No, you have four because we want to have everybody. So you have four minutes.

Hon. Dan McTeague: Chair, I will be very quick.

And thank you, witnesses.

To the CSI, you've indicated that in addition to ephemeral recording exception, a number of other provisions in the bill are giving you some concern that they would actually threaten the broadcast mechanical right.

I'm wondering if what you're actually trying to present here is that unless those provisions are withdrawn, the actual broadcast mechanical right would be threatened, even if the proposed amendment to the ephemeral recording exception is abandoned. Can you elaborate?

[*Translation*]

Does someone want to answer my question?

● (1150)

Mr. Alain Lauzon: Yes, thank you. We are very concerned about the exceptions for technological reproductions, back-up copies and other exceptions introduced by the bill which put revenues at risk, mainly broadcasters' revenues.

I'll ask Mr. Lavallée to clarify that position.

Mr. Martin Lavallée (Legal Counsel , CMRRA-SODRAC Inc. (CSI)): Yes, absolutely. The discussions are focused to an enormous degree on ephemeral recording. And yet there are three other provisions in the legislation that concern the technological reproduction right. Those provisions are drafted in a vague and general way. I'm going to read you, for example, excerpts from clause 32 of the bill on the technological process: "It is not an infringement of copyright [where] the reproduction forms an essential part of a technological process..." So once again, no compensation is paid to rights holders.

What is an essential part? We've seen the types of copies that broadcasters will be able to make.

Hon. Dan McTeague: It isn't well defined.

Mr. Martin Lavallée: It isn't well defined. It refers here to facilitating a use, which is vague and subjective. In our brief, we suggest ways of [*Inaudible—Editor*].

Hon. Dan McTeague: Thank you.

[*English*]

I was wondering if you could answer a question for me with respect to broadcasting in general. Radio stations actually charge a fee or a tariff to media monitoring outlets. I'm of the view that those same radio stations in fact provide and must go to the Copyright Board to uphold these tariffs to have their rights upheld.

It seems to me that if this is the case, one questions the reluctance of the Canadian Association of Broadcasters to pay Canadian artists for the copying of their work. Where I come from, it certainly sounds—call it for what it is—like a bit of hypocrisy. Would you like to comment on that, Mr. Basskin?

Mr. David Basskin: Certainly, Mr. McTeague.

We support the right of broadcasters to be paid for the use of their work. It seems to make sense. We want to be paid for the use of ours.

But it's a rather stark contrast, as you say. Broadcasters filed a tariff with the Copyright Board a few years ago. Their initial proposal to the board was that they were seeking 25% of the revenue of media monitoring companies. The board's decision was subsequently for 10%. As I said earlier, their current proposal is for 14%. They are certainly ambitious numbers. Personally speaking, I'd love to get 14% of what the broadcasters make. That's obviously not happening.

Hon. Dan McTeague: So they're comfortable with saying to everyone, “If you copy anything from our radio stations, you pay.”

Mr. David Basskin: Absolutely.

Hon. Dan McTeague: But as far as your organization and artists and creators who provide 80% of their programming are concerned, they don't want to pay, and that's what this bill would give licence to.

Mr. David Basskin: That's exactly what it would do.

Hon. Dan McTeague: Well, I'm sorry, it is hypocritical.

Let me ask a final question, then, on the subject of small radio stations that appear to be demonstrating.... Is it fair to say, as CAB does, that if this legislation is not passed, small stations will go bankrupt? In your opinion, why are small stations actually being pressured?

Mr. David Basskin: Well, I'm struck that there are a lot of other forces facing broadcasters today. There's competition from other media. There's competition from listening to music on the Internet. There are the exigencies of operating in small markets. There's competition coming from larger cities.

Frankly, if the relatively small amounts, the tiny amounts, of money that broadcasters in that category pay...as I said, under even $1 million worth of revenue, a broadcaster would pay us $4,100. I sincerely doubt that a $4,100 charge will take down a company.

[*Translation*]

The Acting Chair (Hon. Maxime Bernier): Thank you, Mr. Basskin.

I now give the floor to Mr. Cardin, for four minutes.

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

Good morning, ladies and gentlemen.

The broadcasters talked to us about the smallest stations, ephemeral copies and so on. They are ephemeral but they are becoming increasingly eternal. I think that the issue is whether copies of all kinds—there are apparently a dozen types—have a value. That's central to the debate.

For example, it happens that larger stations sell smaller stations entire programs that they've produced. They can be four-hour programs that, with the current technology, require only 30 minutes of musical production and reproduction. That is happening and it can earn revenues. How much is that sold for?

It's probably big stations that sell productions to small stations. How does that in fact take place?

● (1155)

Mr. Alain Lauzon: I don't know exactly whether any programs are sold to small stations. There are flagship stations, and local or small stations can belong to an enormous group. We know there are major conglomerates that own large stations. However, we don't exactly know what goes on.

Furthermore, as Mr. Basskin mentioned, we don't think the value of the reproduction right for those small stations is high enough to cause them to go bankrupt or to shut down.

And as regards the first tariff and the tariff currently in effect, the Copyright Board has granted reductions to small stations because they're not necessarily as profitable as the big stations.

[*English*]

Mr. David Basskin: Mr. Cardin, what you are referring to is sometimes called syndicated programming or packaged programming. There is some programming like that. The majority of stations basically run music most of the time and produce their own programming.

The important point is that the licence that CSI grants authorizes the broadcaster to copy the music regardless of its source. It can come to the broadcaster on a CD; it can be electronically delivered; it can be acquired from the independent production of programming. It's all covered. Our licence covers all the reproductions. That's my understanding of how the SOCAN licence works as well.

So whatever they choose to broadcast, from whatever source, the copying and the performance of the music are covered by these blanket licences. It's the simplest possible form of licensing.

[*Translation*]

Mr. Serge Cardin: What I simply wanted to show is that this copy of a program has a value that can be transferred.

Ms. Atwood, even though there is not a lot of time left, I would like you to be able to speak to the topic of education. Sometimes you give away some of your works, and that's entirely to your credit, but with regard to authors who need to receive royalties, exactly what do you suggest?

[*English*]

Ms. Margaret Atwood: How should educators and students be allowed to use people's work in their classroom? The way they do it now is through Access Copyright. There's a blanket licence. It's much like the licence that has been described for music. An individual person would have a lot of trouble tracking each and every use if they work in a classroom, and therefore it's covered under a collective licensing agreement.

The Acting Chair (Hon. Maxime Bernier): Thank you, Ms. Atwood.

I will give the floor now to Mr. Lake.

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

Mr. Basskin, I have a bit of a problem with the things I'm hearing. You make it sound like broadcasters don't pay anything for the right to play music. They pay for technology, for software, for people to work, but they don't pay anything to the creators. That's kind of what you said a few minutes ago.

Mr. David Basskin: No, sir, that is not what I said. Broadcasters pay SOCAN. They pay CSI. They pay the collectives that represent record producers and performers, namely AVLA and SOPROQ.

What I am suggesting—

Mr. Mike Lake: So clearly you would say that they pay for the right to play the music they play.

Mr. David Basskin: I'm suggesting that this bill would allow the broadcasters to not pay for the reproduction of songs and sound recordings.

Mr. Mike Lake: But they pay for the music they play in the first place.

Mr. David Basskin: They presently pay for the right to perform and the right to reproduce that music.

Mr. Mike Lake: It seems that the strongest argument you have for the fact that they should pay for these copies is that it's not much.

Mr. David Basskin: No, sir, that is not my argument.

Mr. Mike Lake: Well, that sounds like what you've said throughout the entire meeting.

Mr. David Basskin: No. There have been questions as to economic impact. If you want to go straight to the point, the copies have value. The amount of value is determined by the Copyright Board. We can debate all day whether it's a lot or a little. The bottom line is that those who create music have a right, in copyright, to be paid for the reproduction of that music.

Broadcasters presently pay to reproduce recordings and songs, and that's as it should be. After all, broadcasters want people to pay when others reproduce the programming they create.

Mr. Mike Lake: When they reproduce the programming that they create to take on a new right, they don't already have.... They've paid for the right to play the music. They've paid for that right already. They're using technology to change the way they organize. That's all they're doing.

You talked about taking advantage of remarkable technology, but the extra benefit is derived because of the technology, not because of the music. The music didn't create new technology. It's the technology creators who have created the new technology.

● (1200)

Mr. David Basskin: Well, sir, we can debate chicken and egg all day. The bottom line is that before these technologies existed, broadcasters were obliged to maintain physical libraries, with LPs and then CDs. They had to put them on a cart and roll them down the hall. The technology has enabled them to operate at lower cost, and they're smart people so they're doing so.

Mr. Mike Lake: They weren't obliged to maintain those libraries; it was a practical reality. They had to play the LPs, so they had to keep the LPs there.

Mr. David Basskin: Sir, they were obliged to maintain libraries. I have been, and I currently am, a radio broadcaster. I know what I'm talking about. Unless they hire musical performers to appear in their studios—which still occasionally happens—radio stations are obliged to maintain some source for the music they play. According to the CRTC, music makes up 80% of the programming.

Mr. Mike Lake: They pay for that, though.

Mr. David Basskin: They paid for the right to perform the music, which they presently do.

Mr. Mike Lake: You're right.

Mr. David Basskin: And the reproduction is separate from performance.

Mr. Mike Lake: I would argue that in the adoption of new technology we would compensate the people who create the new technology. That goes across the board. It's not just in broadcasting; it's throughout this bill. We're trying to encourage the adoption of new technology so that Canadian creators can take advantage of new technology, that there are markets for their works, and they're compensated for the creation of those works. That's what this bill is all about.

When we have a scheme that basically punishes the adoption of new technology and it has absolutely no benefit for the operation of a business, that's a problem.

Mr. David Basskin: I'm sorry, sir, this has not punished anybody. There is no punishment. It is not punishment for the adoption of technology.

Mr. Mike Lake: It is. They're paid—

Mr. David Basskin: No, sir, it is not. Broadcasters are no more being punished by those who create music than they're being punished by those who write software for its use.

Mr. Mike Lake: So then, to clarify, they could actually avoid paying the reproduction fee by simply keeping catalogues of only LPs. They wouldn't have much practical use to them, but—

Mr. David Basskin: Absolutely. They could avoid the reproduction royalty by not making reproductions. But I'll tell you something; since the tariff was introduced, not a single radio station has gone back from using copies. They know perfectly well that there are costs incumbent upon making those copies. They pay us the royalties. They also pay for the reproduction of the sound recordings.

One station did attempt very briefly to say they weren't making copies anymore and they'd go back to loading them by hand. It lasted less than two months. Why? Because the advantages they get from the technology more than outweigh the costs.

Mr. Mike Lake: They pay for that technology—

Mr. David Basskin: Of course they do.

Mr. Mike Lake: —and they continue to pay for the rights to the music they play.

Mr. David Basskin: As they should.

Mr. Mike Lake: Perfect.

[*Translation*]

The Acting Chair (Hon. Maxime Bernier): Thank you. That was a very constructive exchange.

Now we'll suspend for three minutes and then hear from our next witnesses.

I want to thank the witnesses, especially Ms. Atwood, who is in Dubai, for being with us. Thank you very much. I don't know what time it is there, but your participation was very much appreciated. Good day. Thank you.

● _____ (Pause) _____

●

● (1205)

The Acting Chair (Hon. Maxime Bernier): Good afternoon, everyone, and welcome again to the committee. We are continuing our 18th meeting on the study of Bill C-32, An Act to amend the Copyright Act.

We have with us Ms. Morin from Artisti, and Mr. Legault, from the Union des artistes du Québec. We also have with us, via videoconference, the assistant dean of the faculty of law at Laval University, Mr. Azzaria. Thank you for being with us.

Before starting, I'm going to give the floor...

Ms. Lavallée?

Mrs. Carole Lavallée: I have a point of order. Mr. Chairman, I would like us to treat all our guests with courtesy. Margaret Atwood is a grand dame of Canadian letters, and I believe she is entitled to respect as a result of her rank. Regardless of who our guests are, we must treat them with courtesy, even when we do not agree with them.

The Acting Chair (Hon. Maxime Bernier): Thank you. We will therefore proceed now. I'm going to give Mr. Azzaria five minutes to make his presentation to us.

We can see you very well. I hope you can hear us.

Mr. Georges Azzaria (Assistant Dean, Faculty of Law, Laval University of Quebec, As an Individual): I can hear you very well.

The Acting Chair (Hon. Maxime Bernier): Then I'll give the floor to the other witnesses.

Go ahead, Mr. Azzaria.

Mr. Georges Azzaria: Thank you for listening to my testimony.

I am briefly going to outline a few basic principles of copyright. First, I remind you that copyright is the main piece of legislation designed to give economic value to the work of authors, performers and their talent, as well as to the investment of producers, broadcasters, publishers and so on.

In my view, this bill clearly dilutes the economic value of the work and of this entire chain of stakeholders. It places us before a legal puzzle—and I am weighing my words here—as a result of which producers, broadcasters, service providers, educational institutions and users reduce the position of the author and rights holder, particularly as a result of the increase in the number of exemptions, which are not associated with compensation. Even though you know this, I consider it a good idea to remind you that copyright is based on a simple principle. It is a right of ownership that has been recognized for hundreds of years and that confers the power to grant permission. The author gives his permission because there is a right of ownership at the outset. The issue behind that is the acknowledgement that a work has an economic value.

Copyright has always been built on this model, on this economic exchange. The incomes of authors are sporadic, and this is what is being jeopardized by this bill. The rise of new technologies can obviously change the situation somewhat. This is a culture in which works are accumulated and are free of charge, in some cases. And yet there are no studies showing that, with the Internet, consumers are being deprived of works and are becoming acculturated. On the contrary, we realize that legal purchases are increasingly being made. So we see that the Internet is not a kind of lawless area where everything is permitted, but that, on the contrary, the law and its rules are firmly established there. With these new technologies, copyright can absolutely transpose the rules that prevailed in the 20th century. The Internet has not changed the basis of copyright.

I believe it is important to focus on the bases of copyright. And one of those bases is collective management. It is the natural economic relay of this model of exchange between authors and users which has been applied for nearly a century, since the 1930s in Canada. This is what simplifies the exchange. It is the equation between access to a work and compensation for the author. We even see that, in France, agreements have been signed quite recently between YouTube, Dailymotion and the collective societies. This clearly shows that, if we leave the rights to the authors, the users and user networks will necessarily negotiate with them. Access will not be cut off. In France, everyone has access to YouTube and can post works there, but authors are compensated under that model. People don't realize that this economic model is viable and functional. I believe it is important to emphasize that point. We must preserve and even reinforce this economic model.

Bill C-32—and a number of people have had occasion to say this—is becoming much too complex, in my view. I was hoping that this bill would help clean up the situation, but I see that, on the contrary, it is contributing to a certain amount of disorder. The act is becoming opaque, and Parliament curiously is extremely interventionist. It is quite curious to see that it is interventionist in this very specific economic sector, whereas it is much less so in most other sectors. You all know the requirement in a democracy that an act must be clear and well understood in order to be complied with. In this instance, that is not necessarily the case.

I would like to draw your attention to one effect, an instance of confusion in the act, and to the extent of the exemptions it provides for. Subsection 38.1(2) of the current Copyright Act provides as follows:

> (2) Where a copyright owner has made an election under subsection (1) and the defendant satisfies the court that the defendant was not aware and had not reasonable grounds to believe that the defendant had infringed copyright, the court may reduce the amount of the award to less than $500, but not less than $200.

In my view, in the current state of the bill, defendants will quite easily be able to say that they thought they were dealing with an exemption, that the bill has become so strange and complicated that they thought, in good faith, that they were entitled to do what they did. Then the judge may perhaps decide to impose a fine not of $15,000, but of $200. This bill will indeed have very concrete effects. Perhaps later we can talk about the three-step test, which is obviously still a problem. I know a number of people have emphasized that fact.

● (1210)

On that point, I would simply add that, when we analyze the economic effects of an act, we don't wonder in each case whether they are significant or not. We examine the whole. If there is a systemic effect, that's where we see that the effect is significant.

In closing, I would say that the bill emphasizes the following right for authors in the visual arts, among other things. This following right is absent for reasons that I am unable to understand. This isn't a measure that is costly for the government, on the contrary. The point is to let people in the sector organize matters amongst themselves.

Thank you.

The Acting Chair (Hon. Maxime Bernier): Thank you very much, Mr. Azzaria. You were very specific.

Now I'll give the floor to Ms. Morin, from Artisti.

Mrs. Annie Morin (Director, Artisti): Thank you, Mr. Chairman.

As a collective society that administers and distributes to performers who have taken part in a published sound recording royalties from fair compensation from the private copying and right of reproduction system, Artisti has a number of concerns with regard to Bill C-32.

The first of those concerns relates to the private copying system. The private copying system was put in place in 1997 to enable users to make copies of musical works for their personal use and, at the same time, to grant compensation to rights holders in the music sectors for those copies of their work.

Since the private copying system was implemented, royalties from that system have been a crucially important source of compensation for rights holders. Between 2002 and 2007, royalties from private copying constituted more than 50% of amounts from Canadian sources distributed by Artisti to its Canadian members. However, that is now less and less the case.

The private copying system has been outpaced by technology. Currently, only sales of blank CDs generate royalties. However, they are used less and less to copy music. The medium now preferred for making copies is the digital audio recorder, such as the iPod, which is virtually excluded from the system. Consequently, royalties from private copying are declining at an incredible pace, despite the fact that users are still making as many copies of musical works. We had requested that the amendments made to the Copyright Act correct this problem, but Bill C-32 does not correct this unfair situation. What is worse, it adds to the problem.

If Bill C-32 is passed, everyone will have a right to reproduce for private purposes any work, performance or sound recording, if the original version has been obtained lawfully, and if certain other criteria are met. However, this new exemption will not apply in the case of private copies of musical works made on a blank audio medium such as a CD. Furthermore—Mr. Legault will have the opportunity to talk more about this—it will also be possible to make copies of programs for later viewing or listening, for example.

The introduction of new exemptions covering certain reproductions made by consumers, which does not involve changing the system of royalties for private copying has the harmful effect of in fact creating three separate private copying regimes, two of which do not provide for any financial consideration for creators. There is the present regime which provides for the payment of royalties on audio media such as CDs. There is also the new exemption for reproductions for private purposes, which permits reproductions on a medium or device other than those provided for under the existing system, but which does not provide for compensatory royalties. Lastly, there is the new exemption which permits reproduction for later listening or viewing, without compensation for rights holders.

If Bill C-32 is passed, these three exemption regimes will stand together, each with its own set of non-standard rules. Consumers will not understand them and will ultimately do what they want in any case because there will be no way for rights holders to ensure that reproductions done in homes are performed lawfully. The complicated aspect of the exemptions and the absence of any logic in the proposed amendments runs counter to at least one of the principles stated in the preamble to Bill C-32, that the act should contain "clear, predictable and fair rules".

There is no logical justification for this distinction between the various copies made by consumers for personal use. A copy, whether it is made on a blank CD or on a digital audio recorder, is still a copy, and rights holders should be able to receive royalties for the use of their work, regardless of the medium used. Furthermore, Artisti is of the view that the proposed new exemptions would not pass the three-step test contained in the international treaties to which Canada is a party.

Artisti's second concern is the exemption for reproductions made by broadcasters. Bill C-32 provides for the deletion of subsection 30.9(6) of the current version of the act. The deletion of this provision seems to indicate an intention to eliminate broadcasters' current obligation to pay royalties for reproductions made for broadcasting purposes. It goes without saying that this measure would deprive Artisti's members of a source of revenue since broadcasters are currently required to pay them royalties for the reproduction of their performances.

Lastly, Artisti's third concern pertains to the exemption provided for in section 68.1 of the Copyright Act. In the 1997 reform, Parliament introduced a right to fair compensation requiring broadcasters to pay royalties for using music by distributing it over their airwaves. However, section 68.1 of the act currently provides for an exemption that releases broadcasters from the obligation to pay royalties on the first $1.25 million of their annual advertising revenues.

This situation is utterly unfair as it concerns solely the royalties intended for performers and producers of audio recordings, whereas the royalties paid to authors and composers are subject to no such exemption.

● (1215)

The same is true for the royalties collected by broadcasters.

Artisti deplores the fact that this unfair and obsolete exemption has not been deleted from the act despite its requests to that end.

Thank you.

● (1220)

The Acting Chair (Hon. Maxime Bernier): Thank you very much, Ms. Morin.

I'll now give the floor to Mr. Legault, from the Union des artistes.

Mr. Raymond Legault (President, Union des artistes (UDA)): Thank you, Mr. Chairman.

Thank you for having us.

The Copyright Act must be amended. There can be no doubt about that. It is obsolete. It no longer meets Canada's international obligations and has not been adapted to the digital universe.

However, there are a number of elements in Bill C-32 that do not meet stated objectives or comply with the international treaties that Canada has signed. In addition, Bill C-32 generally runs counter to social choices made in the past, including the decision to promote collective management in order to guarantee creators a right to compensation for the uses made of their works.

Today, by adding exceptions without providing for a right to compensation, and by absolving certain players in the new economy of all responsibility to the detriment of creators, Bill C-32 runs counter to the modern orientations that Canada has adopted in the field of copyright.

Bill C-32 creates new exemptions for private copying. I will limit myself to the possibility for users to make private copies for later listening or viewing. The problem with this new exemption is that the numerous conditions for its implementation cannot readily be verified. How could a rights holder determine whether a user has retained the copy solely for the time necessary to watch the program at a better time? And what does "the time necessary" mean? A week, a month or a year? It's not defined.

It will clearly be impossible to verify whether the conditions of the exemption are met. Consequently, rights holders will be able to exercise no control over copies made by users, and, in actual fact, consumers will ultimately do what they want.

The bill provides for no compensation for rights holders whose works, performances and sound recordings are produced in that manner. And yet it would have been possible to expand the private copying system to include audiovisual copying as is the case in France.

Another stumbling block in Bill C-32 is the issue of technical protection measures and recourse offered to rights holders. Bill C-32 contains provisions prohibiting the circumvention of technical protection measures.

However, this opportunity for rights holders to put these measures in place is quite theoretical, in the case of performers, because they are not the ones who make the media incorporating their performances available to the public.

I would also like to emphasize that virtually none of the works that have been produced to date are equipped with these mechanisms or locks. And virtually all works circulate on the net through illegal downloading networks. This therefore means that it will never be possible to protect those works, which nevertheless enjoy immense popularity.

Bill C-32 does not come close to creating the necessary incentives for these TPMs to be effective in Canada. Most rights holders cannot afford to institute proceedings to collect to the paltry sums provided for under Bill C-32.

Another matter addressed by Bill C-32 is Internet service providers and their obligations with regard to copyright violations. The proposed amendments provide for a "notice and notice" system rather than a "notice and withdrawal" system that would require the service provider to withdraw the material in violation of copyright, as in the United States, for example.

The creation of this kind of obligation would have given rights holders real means to put a stop to the violations, and to do so quickly, thus limiting the economic damage caused. Internet service providers are absolved of responsibility for copyright violations that are committed on their networks, whereas they benefit from them to a large degree.

In another connection, Bill C-32 introduces new rights for performers. Although the UDA approves these additions, it deplores the fact that they are applied only in cases where the performance is fixed in a sound recording.

Consequently, performers whose performances are fixed in a medium including a visual aspect, such as music DVDs and digital audio files containing videoclips, do not enjoy the exclusive right of reproduction or other rights created by Bill C-32. This distinction is unfair and serves no purpose.

Furthermore, with regard to these new rights, Parliament should have ensured that the rights initially granted to performers could actually benefit them by providing that those rights could not be assigned before they were even created by the act.

The utility of this kind of transitional provision is not merely theoretical. There are practices in the industry whereby producers request that performers assign all copyright over their performances.

Lastly, Bill C-32 grants moral rights to performers, a fact that the UDA is very pleased about. However, we note that the moral right of a performer is recognized only where the performer's performance is given live and fixed in a sound recording.

It follows that artists whose performances are included in an audiovisual or cinematographic work will not enjoy a moral right over that performance.

● (1225)

The UDA notes that Bill C-32 provides that performers may be led to waive their moral rights, which poses a serious problem from the standpoint of Quebec's civil law.

In conclusion, I would say that, unless it undergoes significant amendments, Bill C-32 should be abandoned. While it claims to be modern and to favour creators, it in fact favours the users and businesses that benefit from their work.

Thank you.

The Acting Chair (Hon. Maxime Bernier): Thank you, Mr. Legault.

I'll now give the floor to Mr. Rodriguez.

Mr. Pablo Rodriguez: Thank you, Mr. Chairman.

Thanks to each of you for being with us today.

My first question is for you Mr. Azzaria. You said that Bill C-32 faces us with a legal puzzle. The government is telling us that this will simplify and clarify matters. You're telling us the contrary. Can you clarify your thinking, please?

Mr. Georges Azzaria: Mr. Legault's remarks were also along those lines. There are increasing numbers of quite confused rules and exemptions. Honestly, I would challenge anyone to explain not only this bill, but the summary of copyright that it will provide. This is a very complex law. For private copying, I was told that we have a right to make a copy. Sometimes it has to be destroyed, but we don't really know when or how; sometimes we can retain it, sometimes the authors are compensated. I believe there is a great deal of confusion here.

This is a strange legislative policy. Curiously, in this bill, Parliament is highly interventionist. It will really go into very small details to tell us certain things. Ultimately, it's going into people's homes to determine whether they have destroyed the copies. At the same time, it's telling people they'll have to go through the courts if they want to change this and interpret the act. It's a strange way to make law, to go into details and then to tell people they'll have to settle the matter in the courts. This does no favours for culture or consumers, in any case.

Mr. Pablo Rodriguez: Thank you.

Ms. Morin, according to what you said, it's as though the bill would result in a loss of vested rights and income for creators. Is that correct?

Mrs. Annie Morin: Yes, absolutely, even just in the private copying system. Once people no longer use blank audio media, which are currently covered by the act, there will obviously be a dead loss in this area. Reproductions could be made without there being any financial compensation.

The same is true for the reproduction royalties currently paid by broadcasters, although, for the moment, those royalties, at least for Artisti and its members, are much lower than the royalties resulting from the private copying system.

Mr. Pablo Rodriguez: That's fine.

You briefly talked about one important point. You said that radio stations did not have to pay royalties for the first $1.25 million of their revenue. Can you clarify your thinking on that? This is a topic that we haven't really addressed, but that I consider important.

Mrs. Annie Morin: Indeed, an exemption is included in the act. Broadcasters do not have to pay royalties on the first $1.25 million of their advertising revenues. They only have to pay a lump sum amount of $100 in all.

The president of Ré:Sonne would probably be in a better position than I am to tell you about that, but if we consider all the rights holders who would normally be entitled to fair compensation, that is to say the performers and producers of sound recordings, the annual amount of money that would not wind up in creators' pockets would be $6 million to $7 million, if I'm not mistaken.

Mr. Pablo Rodriguez: Thank you.

Mr. Legault, you talked about digital locks as being a theoretical solution. The bill is based in large part on the existence of those digital locks. You say this is a theoretical solution, whereas the government says they're essential. Could you explain to us whether there are any other ways or devices besides locks?

Mr. Raymond Legault: To block?

Mr. Pablo Rodriguez: Yes, to achieve the same objectives.

Mr. Raymond Legault: It's a theoretical solution because developing software to install a digital lock costs money. These aren't big producers. The performer in this case isn't necessarily always the producer. The performer can't afford to do it, unlike the producer who can.

Furthermore, you know that the major sound recording producers have abandoned the digital lock model. I'd simply like to emphasize that for every digital lock there is a key. From the moment there is a key, creators can allow copies to be made, which will be distributed over the Internet.

So the solution, in the field of copyright in general and even in the book sector, is to provide access to works. That's the solution that has been selected. On the other hand, the idea is to provide for a right to compensation, which grants access to works and enables creators to be compensated.

The digital lock route is therefore a dead end street for us and one that the major producers have even abandoned. Consider the example of iTunes and Sony, which have decided to remove digital locks from their CDs and downloads to permit wider distribution in response to consumer dissatisfaction.

● (1230)

Mr. Pablo Rodriguez: Ultimately, we don't want to restrict access; we want there to be more access, so that people can use more cultural products, but we also want artists, creators and rights holders to be compensated for their work. That's the goal and that's what has to be demystified. The idea isn't to block access; we have to make it available, but while being fair.

My question is for the three of you. If I'm not mistaken, in your view, Bill C-32, as presented, not only does not improve the situation, but worsens it and should not be adopted. Is that the position of each of you?

Mrs. Annie Morin: It is.

As it currently stands, it's preferable for Bill C-32 not to be adopted.

Mr. Raymond Legault: It's a step backward.

Mr. Pablo Rodriguez: Thank you.

Mr. Azzaria.

Mr. Georges Azzaria: We erase everything and start over. With certain basic principles, which would include compensation and access, it's entirely possible. There are copyright acts that are much clearer and that successfully achieve these objectives.

Mr. Pablo Rodriguez: You said that copyright is based on the right to property. In your view, what becomes of the right to property in Bill C-32?

Mr. Georges Azzaria: It is extremely weakened.

The right to property is always exchanged for compensation. A model that we can think of and that respects that is the blanket licence. Some countries are increasingly moving toward that model, under which access is granted and, in exchange, compensation is paid to the collective societies.

So that's entirely conceivable. As I said earlier, I haven't seen any study showing that citizens, consumers, have access to fewer works. I would say that, on the contrary, what we're seeing is that authors are receiving less revenue.

In my view, the Copyright Act is not an act that will suit everybody. It's an act based first of all on the principle of the author's ownership.

Mr. Pablo Rodriguez: All right.

Mr. Georges Azzaria: That's true in this case and in other fields of law.

Mr. Pablo Rodriguez: I have a few seconds left.

In your view, will Bill C-32 enable us to meet our international obligations?

Mr. Georges Azzaria: I don't believe so.

This is one of the problems, and it has to be said because there will be challenges. If Bill C-32 is passed as it stands, there will be challenges for 10 years before the international and Canadian economic tribunals.

I don't see how Parliament has any interest in telling people to go and fight in the courts and then we'll see what happens.

Virtually all stakeholders who have come and talked about the three-step test have said—in any case, I heard a few say it before you—that this wouldn't pass the international test.

The Acting Chair (Hon. Maxime Bernier): Thank you very much.

I'll now give the floor to Ms. Lavallée.

Mrs. Carole Lavallée: Thank you very much.

First of all, good afternoon, everyone.

Good afternoon, Mr. Azzaria. I wanted to answer one of the questions that you asked at the end of your presentation. Then I'll put some questions to my friends from the UDA.

You're wondering why the government hasn't included the following right in its Bill C-32. That's because, as you noted, all revenue is taken away from artists under Bill C-32.

For the government, this is a loser-loser-loser situation. There is no respect for artists. Earlier we saw how Mr. Del Mastro addressed Ms. Atwood.

Furthermore, with this bill, the government impoverishes artists and culture; it establishes a main barrier to prevent the Copyright Act from being modernized; it prevents itself from combatting illegal downloading and also fails to comply with international treaties.

This kind of loser-loser-loser situation is incomprehensible. Bill C-32 strips artists of all their revenue streams and gives them no others.

Mr. Legault and Ms. Morin, welcome. I've had a question for you for some time.

The Minister of Canadian Heritage, James Moore, has often said that Bill C-32 addresses four of the six concerns of the UDA and Artisti. Now that you're here together, you'll be able to answer me.

Is that true? And what are those concerns?

Mrs. Annie Morin: I'm going to let Mr. Legault answer.

Mr. Raymond Legault: I heard that question asked in the House and I heard that statement when I met Mr. Moore on Parliament Hill, when we got on board the "show business bus".

Mrs. Carole Lavallée: That was on November 30.

Mr. Raymond Legault: Mr. Moore referred to six requests submitted during the seminar at which we were consulted. That was in August 2009. At the time, we delivered a brief, evidence, to Mr. Moore. That evidence included nine requests. I'm going to read the list. However, I can tell you that only one request was accepted. As for the others, one was half-accepted and the other seven were rejected.

The requests were as follows: private copying; a system extended to include the audiovisual sector; exclusive rights granted by WIPO with transitional measures: exclusive rights would be granted, but not transitional measures; performances included in cinematographic works—as I said earlier, this is not the case in Bill C-32; a moral right—this appears in Bill C-32, but it states that an artist may waive it, which means that something is being given with one hand and taken away with the other; the impossibility of assigning uses that are not already provided by the act—Bill C-32 makes no reference to this; with regard to revenues over $1.25 million, we asked that both writer composers and performers have the right to the same thing—and that does not appear in Bill C-32; and lastly, with regard to the responsibilities of Internet service providers, we ask that there at least be a "notice and withdrawal" system. However, everything in Bill C-32 is a "notice and notice" system, that is to say that an artist is given the opportunity to say that a person is downloading music illegally and to request that a notice be sent to that person.

● (1235)

Mrs. Carole Lavallée: Ultimately, the ratio is 1.5 in 9.

Mr. Raymond Legault: Exactly.

Mrs. Carole Lavallée: It doesn't pass the test.

Mr. Raymond Legault: No.

Mrs. Carole Lavallée: Is Bill C-32 acceptable?

Mr. Raymond Legault: No.

Mrs. Carole Lavallée: Would you say that it would be preferable for artists to live with the current act, which was amended in 1997, rather than accept Bill C-32?

Mrs. Annie Morin: The Copyright Act nevertheless needs to be improved, but not in the way proposed in Bill C-32. In the circumstances, it would be better to keep the present act rather than include the provisions of Bill C-32, which might cause utterly irreparable harm. One need only think of private copying. From the moment consumers can make copies in all kinds of artistic fields for private purposes—that wouldn't just involve music, but books as well, in particular—it will be difficult for a subsequent government to repair that. People will have enjoyed that option without ever having to pay a cent. Free copying will have become an acquired privilege. Once everything is free of charge, it's hard to say you're sorry, but that this is the result of the work of people who deserve to be paid. In short, in the circumstances, I believe it would be preferable for Bill C-32 not to be adopted.

Mr. Raymond Legault: Ms. Lavallée, I simply want to add that the texts were highly legal in content, but that we really tried to see how this bill could be amended. Right now, there is a shortfall. In the case of iPods, royalties were previously paid, just as royalties were paid on all patents subject to a licence. However, the Supreme Court overturned the decision of the Copyright Board of Canada on a technical detail.

Thank you.

The Acting Chair (Hon. Maxime Bernier): Thank you.

I'll now give the floor to Mr. Angus.

[*English*]

Mr. Charlie Angus: There have been many technological revolutionaries in history. University courses are full of studies about Gutenberg, Thomas Edison, and Henry Ford. I'd suggest Karlheinz Brandenburg should be included.

Karlheinz Brandenburg perfected the MP3. He took audio analog files and with very high rates of compression and a very low bit rate he destroyed one of the biggest entertainment industries in history, without meaning to, but that was the effect, because it was so easy.

Let's suppose a friend comes over to my house and says he's got this great CD I should listen to. I put the CD in my computer and I make a copy. It takes all of 20 seconds. I give his CD back to him. Then because I think it is a great song, I e-mail the song to my daughter, saying that she should really check out the song. She listens to the song and thinks it's great, and she might e-mail that song to two or three of her friends.

It could be argued that this is all lost revenue, or it could be argued that some people actually would buy a copy. It's hard to define exactly what's going on with the copying. It seems to me there have been numerous attempts to, as the record industry says, put the genie back in the bottle. They thought they would ignore the technology, and that didn't work. Then they decided they would sue a lot of kids to teach them to respect the rules, and 35,000 lawsuits later, the kids moved on to other things and it didn't restore the market.

Now the Conservatives are working on this belief that if they shut down isoHunt and they put digital locks in place, somehow the market will come back. I think that is an absolutely naive belief. That's not to say anybody supports what's happening with isoHunt, but I don't know anybody who goes to isoHunt. The copying that's being done all across Canada, all across the world, is by people trading music because they love it.

I'm asking what our solution should be. It seems to me in 1997 Canada came up with a solution when cassettes were being recorded, and that was minuscule compared to what's being copied today. The copying will go on regardless of isoHunt, regardless of lawsuits, regardless of shutting down BitTorrent. Does it not seem that we need to have a revenue stream in place that we've already had as a principle to ensure that artists get something out of the copying? Isn't that the principle of the private copying levy?

● (1240)

[*Translation*]

Mrs. Annie Morin: Part of the solution would definitely be to have an exemption in the private copying system for everything that can potentially be used to copy music, for all devices that are designed, created and marketed to make copies of musical works. That's one of the possible solutions.

On the other hand, you're getting into a broader debate, concerning illegal exchanges that are currently being done over the Internet. In their briefs, the UDA and Artisti have advocated a basic solution in which there should at least be a "notice and withdrawal" system. Such a system would make it possible to withdraw content as soon as there is any indication of illegal activity on the Internet and thus to prevent files from being increasingly exchanged and from being accessible to more people illegally. That's one option.

We also advanced a model during the consultations that had been developed in France by Mr. Patissier. That model also calls for payment of financial consideration that would be collected by Internet service providers. They benefit—perhaps involuntarily—from the significant economic impact of illegal downloading. Whether we like it or not, with illegal downloading, there is very high bandwidth use and, as a result of that heavy traffic, providers can charge ever-increasing amounts to download more content.

[*English*]

Mr. Charlie Angus: I guess I'm concerned about the copying, as opposed to the illegal...and people posting. Copying is going on. I certainly support the provision to allow you to be able to back up what you want to your iPod or to your computer. That is going on all over, but it seems we don't have a revenue stream for it. When the Copyright Board adjudicated the original tariffs that were going to be put on the iPod, it seems to me they made it very clear that it was strictly for music players. I don't know, maybe some of the artist groups wanted a very wide interpretation, but the Copyright Board was very narrow in their interpretation. They were also very narrow in terms of the prices they were going to allow.

Do you believe we can have a reasonable regime in place for private copying within a digital realm that will not be market distorting or that will not unfairly impact other music uses but that are not music players?

[*Translation*]

Mrs. Annie Morin: That's precisely the beauty of the innovative system we have in Canada. The Copyright Board of Canada is an economic regulatory body that ensures that the royalties charged are not unreasonable. It also ensures that the market suffers no harmful effects.

To date, the Copyright Board has done a very good job. At the time, it had to set a tariff for digital audio recorders—it was aiming solely at digital audio recorders, that is iPods and MP3 headsets—that was $2 to $25 depending on the capacity of the device. While those amounts were collected, there was no negative impact on the market.

[*English*]

Mr. Charlie Angus: Is it not correct that the minister can set the rate? For example, what if iPods dropped dramatically in price and you had a $15 fee? That could be market distorting. At the end of the day, the minister has the right to set...or to do it by percentage, in terms of what that fee is going to be.

● (1245)

[*Translation*]

Mrs. Annie Morin: In fact, the Copyright Act makes it possible to establish a percentage, by regulation, if I'm not mistaken. I had the opportunity to testify on this subject when I appeared before the committee as president of the Canadian Private Copying Collective. It is possible to limit the amount, to set a ceiling. I believe it would be possible to establish a percentage, if that was what the government wanted.

[*English*]

Mr. Charlie Angus: Thank you.

[*Translation*]

The Acting Chair (Hon. Maxime Bernier): Thank you.

I'll give the floor to Mr. Braid.

[*English*]

Peter, you have the floor.

Mr. Peter Braid (Kitchener—Waterloo, CPC): Thank you, Mr. Chair, and thank you to our witnesses for being here this afternoon.

Professor Azzaria, in your opening statement you used some terms and descriptions of Bill C-32. For example, you said you thought it was a bit of a legal puzzle. You also said you thought it was opaque. I might suggest that those descriptions more appropriately apply to some of the presentations we've heard before this committee, including the ones today.

In any event, I'd like to try to get some more specifics, because you've made some broad statements.

As well, in your opening statement you said you thought the bill needed a little bit of housekeeping, but then in a response to a question you suggested the whole thing should be scrapped. Which is it?

[*Translation*]

Mr. Georges Azzaria: I'm going to answer in French.

In my introductory remarks, I merely set the table. We can definitely say that the bill is confusing, that it is unclear, as I said earlier. And here is evidence of that.

When I present this bill to my law students, they have to take two or three hours to understand what it means. It's quite something for law students not to understand a federal bill. They have to refer to the act, ask each other questions and discuss the matter amongst themselves in order to arrive at an understanding of what it might mean. They wind up thinking that a judge may explain it to them one day. There's a problem here. I could give you a number of other examples.

I've already cited the example of the definitions of "fair dealing for the purpose of... education", "lesson" and "for instruction", which are in the bill and are being added to other existing definitions.

For example, the difficulty in understanding the aim of the proposed subsection 27(2.3) constitutes evidence for a legal proceeding. I challenge all of you to explain what the proposed subsection 27(2.3) means. It is one way of prohibiting Internet service providers from providing Internet services.

[*English*]

Mr. Peter Braid: Great. Thank you. So Bill C-32 needs a little bit of housekeeping, then.

We've had a number of eminent organizations, national organizations, before this committee. They've come to us and they've said the government should be applauded for the work that's been done on Bill C-32, that it's clear there have been extensive consultation processes that have taken place, that the bill perhaps isn't perfect, that it needs to be tweaked here, refined there, but that we've done a tremendous job of buttoning it down.

We had the Canadian Chamber of Commerce. We had the Canadian Council of Chief Executives. We had the Association of Universities and Colleges. We had student associations. We had the recording industry and we had the movie industry. They've all come here and said that.

Were they all wrong?

[*Translation*]

Mr. Georges Azzaria: I was here when Mr. Manley came and testified before the committee. Personally, I'm trying to get a more comprehensive perspective. That's why I'm telling you that, when we look at the whole, we see that it is opaque.

Some might say that they're very pleased because they're saving $25 million, of course, but, on the whole, it may not be that true.

I would even say that, in Quebec, I'm not sure the education community is that pleased about the technical protection measures, for example. I've heard a lot of people from that sector in Quebec, in the universities, among other places, say that this is a problem. People are being told that they have access to works, that they qualify for exemptions, but that, if there is a technical protection measure, they will no longer to be able to enjoy that work.

When you dig a little below the surface, you realize that there definitely isn't any consensus. The consensus is based on details. In my view, the people applauding are only there for very specific interests. I'm trying to offer you an overview that addresses the effects that this act could have.

● (1250)

[*English*]

Mr. Peter Braid: Thank you.

In your opening comments you spoke about some of the realities of the Internet as well. One of the things that Bill C-32 does finally is allow Canada to implement the provisions of the WIPO treaties. Do you agree with that?

[*Translation*]

Mr. Georges Azzaria: Yes. I think we're going too far into the technical protection measures. You must remember that the WIPO treaties were signed in 1996 and that technology has vastly changed, a fact that has been emphasized on numerous occasions. It is virtually no longer being used. Moreover, a lot of people wondered whether this was copyright. A technology is being protected, and it was already sanctioned in any case.

There's the right of access, for example, which is a good thing. There are definitely measures that enable us to head in the direction of certain provisions of the WIPO treaties because reference is generally made to them. However, on the whole, I believe this doesn't pass the WIPO test and that a "notice and withdrawal" system, for example—which has often been emphasized—would be much more effective than technical protection measures.

In this case, there's no attempt to involve access providers, and that's why they applaud, but I believe they're part of the equation.

[*English*]

Mr. Peter Braid: Do you agree that piracy within the music industry, piracy within the movie industry, is a problem with respect to the Internet and a problem that we should be addressing?

[*Translation*]

Mr. Georges Azzaria: I didn't hear the start of your question, sir.

[*English*]

Mr. Peter Braid: Do you agree that piracy, music and movie industry piracy, is a problem on the Internet?

[*Translation*]

Mr. Georges Azzaria: Of course, we have to find ways of doing things. That's why I'm telling you I'm not sure we're finding the right ways with this.

As Mr. Angus said earlier, in the late 1990s, the industry's tendency to sue Internet users, in my view, was not good. A different business model should have been developed more than 10 years ago to compete with the illegal supply. I think that was a historic business mistake on the industry's part.

I believe piracy has to be condemned and that ways have to be found to combat it. One of those ways would be a legal offer, a blanket licence. Another way would be a "notice and withdrawal" system. That's one of the ways that are easy to understand.

[*English*]

Mr. Peter Braid: Thank you.

This is my final question. You are a professor of law. Does the Berne three-step test and the previous Supreme Court decision in Canada provide us with sufficient case law to understand the notion of fair dealing?

[*Translation*]

Mr. Georges Azzaria: I imagine you're referring to CCH Canadian Ltd. v. Law Society of Upper Canada.

Mr. Peter Braid: Yes.

Mr. Georges Azzaria: I don't think so. Instead I think we're going much further, that we're considering clause 29 of the bill, which concerns education, all non-commercial content generated by the user—I'm talking about the "reproduction for private purposes" exemption that we've talked about. If you consider sections 22 and 29, everything concerning recording for later listening and viewing, back-up copies, copies for broadcasters, I don't believe we're meeting the three-step test.

The Acting Chair (Hon. Maxime Bernier): Thank you very much, Mr. Azzaria.

I now give the floor to Mr. Pablo Rodriguez, for two minutes.

Mr. Pablo Rodriguez: Thank you, Mr. Chairman.

Mr. Azzaria, you said it might take two to three hours for some students to understand the bill, which I consider quite good. However, I agree with you that it is vague and that it can cause more problems than anything else.

With regard to the responsibility of Internet service providers, I believe that each of you has told us that the "notice and notice" system is not enough. Is that correct?

Mrs. Annie Morin: No, it's not enough.

Mr. Pablo Rodriguez: What are you advocating then?

Mrs. Annie Morin: We're suggesting at least the "notice and withdrawal" system, or else a solution that would involve more Internet service providers, particularly in a financial way, perhaps.

Mr. Pablo Rodriguez: Mr. Legault, do you share that view?

Mr. Raymond Legault: Yes.

Mr. Pablo Rodriguez: Mr. Azzaria, do you agree as well?

Mr. Georges Azzaria: "Notice and withdrawal" would indeed be the minimum, in my view. It's becoming roughly the international minimum. That's what we have to tell ourselves. Canada may isolate itself in the digital universe. I don't think this way is a good legislative strategy.

Mr. Pablo Rodriguez: I'm going to go back to the ephemeral rights issue. Broadcasters told us last week that the copies they make for communication and broadcasting purposes have no value. Do you think that copy has any value?

Mrs. Annie Morin: Yes, it definitely has value. In particular, it vastly facilitates their broadcasting activities and, if it had no value, they wouldn't invest as much in technology in order to be able to do it, clearly.

Mr. Pablo Rodriguez: Thank you.

Mr. Legault?

Mr. Raymond Legault: I find it hard to understand why broadcasters claim they're paying for material twice. I heard the questions asked earlier. It seems to me that most broadcasters receive the CD or material free of charge, and they're currently receiving MP3 files. It seems to me that—

● (1255)

Mr. Pablo Rodriguez: Thank you.

Mr. Azzaria.

Mr. Georges Azzaria: That's the price you have to pay for a licence. It's nevertheless an authorization. It's a use in the copyright sense. So that seems normal to me.

Mr. Pablo Rodriguez: What do you do with mashups, that content on YouTube? No one's really talked about that. Do you have a view on that subject?

The Acting Chair (Hon. Maxime Bernier): I ask you to answer briefly, Ms. Morin.

Mrs. Annie Morin: We're talking, for example, about people who decide to make a family video with background music and then put it up on YouTube.

Generally speaking, performers, at least those in the music industry, may eventually be in favour of this use. However, they'll wonder why no compensation is paid, as is currently the case in France, where negotiations are underway.

The Acting Chair (Hon. Maxime Bernier): Yes, perfect. I believe you put it well.

You have no more time left, Mr. Rodriguez. I'm going to give Mr. Cardin two minutes.

Mr. Serge Cardin: Two minutes. You're generous, Mr. Chairman.

Good afternoon, madam, gentlemen.

Mr. Azzaria, I have a question for you.

Mr. Del Mastro told us, citing Michael Geist, that the addition of the term "fair education" would make no change to the current revenues of the collective societies. What do you think about that?

Mr. Georges Azzaria: I don't agree. I believe you have to put the question to the collectives that have agreements in the education sector. I believe that's destabilizing them to an enormous degree. A collective, you must recall, is not a company; it's a place where there are rights holders, authors, and publishers in those cases. So this provides an essential economic contribution to those collectives. They're not private companies. Authors support them.

If we consider the revenues that are distributed by the collectives under agreements with the universities, in particular, you see that this absolutely is not insignificant and that it's part of revenue. It's been said, and I repeat it: an author's income is sporadic. It's the sum of a number of small income streams. An author is not a salaried employee who receives a pay cheque every two weeks.

We can't touch that. If we start touching important income like that, we destabilize the authors and make their situations more precarious. I think the purpose of the Copyright Act is precisely to enable them to live from their work.

Mr. Serge Cardin: Do I have any time left, Mr. Chairman?

The Acting Chair (Hon. Maxime Bernier): Yes, one minute.

Mr. Serge Cardin: Thank you. Earlier Mr. Braid asked you a question about the tests established by the Supreme Court of Canada. Do those six tests enable creators to retain their rights?

Mr. Georges Azzaria: I believe the decision in CCH Canadian Ltd. v. Law Society of Upper Canada went too far. I don't agree with that decision. There is an entire legal discussion that should be conducted on that matter. Are you asking what I think of that judgment?

Mr. Serge Cardin: Yes.

Mr. Georges Azzaria: It seems to me it's a decision that went too far, especially because it invents a user right. It's a pure invention. In fact, it's no longer been a fiction since the decision, in 2004, but there was no previous legislative trace of it. So to say that a user has rights, in my view, is an invention by the Supreme Court, and it has somewhat destabilized the very precarious balance on which copyright was based. As for the six tests, they must be looked at one by one. Some are obvious, but others, I think, go much too far.

The Acting Chair (Hon. Maxime Bernier): Thank you very much.

I now give the floor to Mr. Ed Fast, for two minutes.

[*English*]

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

Professor Azzaria, I think I just heard you say that the CCH case went way too far. That's a Supreme Court of Canada decision. I think you said they were inventing a regime for fair dealing that went too far.

I assume you're expressing non-confidence in the Supreme Court. Am I correct?

[*Translation*]

Mr. Georges Azzaria: It's an odd question because the Supreme Court, as we know, is still—

[*English*]

Mr. Ed Fast: It's very appropriate. You were very bold in your statement that the CCH test went way too far. You asserted that the Supreme Court was guilty of invention.

Have you lost confidence in the court?

[*Translation*]

Mr. Georges Azzaria: Yes, because I obviously trust the legal system. It's because there's no Supreme Court above the Supreme Court that this judgment was not overturned.

At some point, in our legal system, a higher court makes the decision, but very often the Supreme Court's decisions are not challenged, even by the—

[*English*]

Mr. Ed Fast: Professor Azzaria, that's a very interesting concept you're suggesting—

A voice: It's radical.

Mr. Ed Fast: —that the Supreme Court of Canada has no higher court that supervises it, especially coming from a law professor.

Let me ask you one other question, and that has to do with your statement. You made a statement that Bill C-32, with the amendments it makes, does not comply with our international obligations. Yet, on the other hand, you said that we are, with this bill, in fact implementing the WIPO treaties.

So you're saying that there somehow is non-compliance, and yet, on the other hand, there is compliance with WIPO. Which is it?

A voice: It's opaque.

Mr. Ed Fast: Is it opaque? Is that your position?

● (1300)

[*Translation*]

Mr. Georges Azzaria: The three-step test comes from the Berne Convention, not the WIPO treaties. That's the distinction that has to be drawn. So this three-step test comes from article 9.2 of the Berne Convention and article 13 of the TRIPS Agreement, and thus from the WTO. I don't think the bill is consistent with that.

There are also the WIPO treaties that refer to the right to access, for example, and that will also refer to technical protection measures. That's fine as far as it goes. In any case, the right to access exists.

At the same time, if you looked a little into the WIPO treaties, you'd realize that the match may not be perfect. And I believe the Artisti people said that.

The Acting Chair (Hon. Maxime Bernier): Thank you, Mr. Azzaria.

Thank you, Ms. Morin and Mr. Legault, for being here with us.

Thank you, members.

This ends the 18th meeting of the legislative committee on Bill C-32. The meeting is adjourned.

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