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Chair

The Honourable Michael Chong

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● (1530)

[*Translation*]

The Chair (Hon. Michael Chong (Wellington—Halton Hills, CPC)): Welcome to the 39th meeting of the Standing Committee on Canadian Heritage being held today February 7, 2010. We are meeting today pursuant to Standing Order 108(2) to study the Canada-European Union Comprehensive Economic and Trade Agreement, Anti-Counterfeiting Trade Agreement and issues regarding cultural diversity.

We are joined by two witnesses. I would like to welcome Mr. Vallerand and Mr. Drapeau, from the Coalition for Cultural Diversity.

[*English*]

We'll begin with an opening statement.

Mr. Charles Vallerand (Executive Director, Coalition for Cultural Diversity): How much time would you allow us each, or how do we split that?

[*Translation*]

The Chair: You have ten minutes.

[*English*]

Mr. Charles Vallerand: I'm going to try to race through. Do you have a copy of my text already? That has been circulated. Okay. I can answer questions at the end in both languages, but I'll do my introduction in French mostly.

[*Translation*]

My name is Charles Vallerand and I am Executive Director of the Coalition for Cultural Diversity and the General Secretary of the International Federation of Coalitions for Cultural Diversity. I am accompanied by Mr. Daniel Drapeau, Counsel at Smart & Biggar and member of the Canadian Anti-Counterfeiting Coalition who will speak to you about the Anti-Counterfeiting Trade Agreement (ACTA).

I do not think that I have to remind you of the role played by civil society in the adoption of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions. My brief, which I will leave with you—as well as the additional information I will distribute—focus on the pivotal role we have played over the past ten years and more specifically on the leading role Canada has and continues to play internationally.

I would also like to point out that Canada was the first country to ratify the UNESCO convention and also contributes to the International Fund for Cultural Diversity. Canada is therefore, actively involved in implementing the Convention. This is the reason why the coalition is following the negotiations between Canada and the European Union with such great interest.

I will now pick up my prepared brief at item 19 on page 3. Several people believe that once the Convention has been adopted, it is mission accomplished. This is far from the case. It's like thinking that the adoption of the Universal Declaration of Human Rights somehow eliminated all abuse and inequality. Indeed, we're only at the starting point of a long process.

I would now like to focus on two urgent issues relating to the Convention. The first of these challenges is the need to build co-operation between countries of the north and those of the south to provide southern countries with the resources to implement the Convention as well as the technical capacity to develop and sustain cultural industries and artists. This is also crucial to ensure that UNESCO has the necessary financial resources to support the implementation process.

Our specific focus today is to ensure the UNESCO Convention be given its full legal and political weight with regard to other international mechanisms. The original idea behind the Convention was to develop a completely fresh legal mechanism to offset and frame the specific and special situation of culture, which is a commodity or a service with a recognized commercial value but also, and more importantly, a cultural value. What is required now is to develop the legal value and the jurisprudence. These trade negotiations are so important because the Canadian Government has, right from the outset, clearly focused on developing an extensive, broad modern trading relationship with a significant economic partner. Indeed, this is why the coalition and its 31 member associations, such as the Writers Guild in English Canada and the Guilde des réalisateurs and the Union des artistes and other French-language associations in French Canada are watching these negotiations so closely.

We are following the talks with great interest because it would be unfortunate to see the gains made through the Convention negotiated away or weakened by a potential free-trade agreement.

The coalition was quick to make its position on the issue known by way of a letter to Minister Moore at Canadian Heritage and to the Minister of Foreign Affairs and International Trade at the time, Stockwell Day. They both wrote back informing us that the Canadian Government was committed to negotiating an agreement and a complete exemption for culture. We were reassured.

Quebec's Minister of Culture, Communications and the Status of Women and its Minister for International Relations gave the same undertaking. Unfortunately, it is clear that the talks are continuing and have now reached a critical point in the negotiation of issues yet to be resolved. Culture remains on the table. Obviously, reaching an agreement on a cultural exemption with the European Union is not as easy as might have been imagined. As you are aware, and Minister Van Loan referred to this last week—we represent civil society and as such, greatly appreciate these opportunities for consultation and dialogue with the senior negotiation officials.

We are aware of the challenges. We realize that the European Union and its negotiators have a different view of the cultural exemption and therefore, have to ask questions to understand our position and how it would apply across the agreement. The Europeans are asking some surprising questions given that the European Union and 26 of its 27 member states have ratified the UNESCO Convention. They are committed to diversity of expressions. Why are they asking these questions about the cultural exemption when Canada's practice and approach have been well known for the past 20 years? They have requested clarification. Let's hope that Canada is able to provide sufficiently reassuring clarification to coax the Europeans into signing an agreement. We have offered our co-operation and expertise in providing comprehensive answers to issues raised by our European counterparts.

We believe that just because the European Union is asking questions, does not mean that we should change our position or rush into an agreement just for the sake of it. Quite the opposite in fact. Canada has shown great leadership and must continue to do so. From the start of the process, France, which is a major player, as you know, has joined Canada in advocating a complete exemption. Premier Charest was in France recently. Both he and President Sarkozy stressed States' legitimate right to enact cultural policies to preserve and promote their cultures.

For us the real issue here is developing the jurisprudence that I referred to earlier. This is important because there are very few legal texts, court decisions or international trade mechanisms that establish or recognize the legitimacy or even the very existence of the UNESCO Convention that we fought so hard to achieve.

Not only should the clause be watertight, we would suggest it also be reviewed and modernized to include new types of cultural industries, such as the new media and convergence. As you know, these are virtually an extension of audiovisual today.

Has any thought been given to reviewing the wording of the exemption clause in preparation for the future? Is there a reference in the agreement itself to the necessary consistency between the exemption, UNESCO Convention and the trade agreement? Achieving that and developing mutually satisfactory wording would help to develop jurisprudence. This would be a major step. We are lucky to be dealing with a major trading partner, which supports our position. These are perhaps the only bilateral trade negotiations where this will ever be the case.

I would like to share one caveat with regard to the review of the clause that officials working on this file have expressed to us. Be proactive, be modern and prepare for the future but do not open the door to a review of existing bilateral trade deals and agreements. We should ask legal experts to do an in depth assessment of my proposal to ensure that it does not create more problems than opportunities.

I would now like to address the Cultural Co-operation Agreement or Protocol. Quebec has played the lead, through its negotiator Pierre-Marc Johnson, in promoting this idea. I have to tell you that there is no consensus or unanimous support for this proposal. Why? The problem does not lie in any way with the concept of co-operation. The issue is really one of format.

How can we reconcile the desire for greater co-operation with the Europeans with the goal of achieving a cultural exemption in the comprehensive trade agreement? We believe that we have to clearly distinguish the two issues. The exemption is our primary goal. Canada has to endeavour to negotiate a loophole and weakness-free exemption as well as, if possible, clarification of the exemption as regards the international mechanism. As far as a co-operation agreement is concerned, we support co-operation and we will take part in talks on the development of such an agreement if we are invited to do so. However, this should only be tackled after the main agreement has been signed. Let's sign the agreement, agree on the exemption and then discuss culture.

If we do decide to go ahead with these talks, do not entrust them to trade officers but rather to cultural experts and officials, who really understand the issues in this field.

One of the issues we have is with the use of the word protocol. The word protocol seems akin to a binding agreement, which some see as implying restriction. It would look like there were two separate conflicting agreements and an attempt to move the discussion to a separate forum.

If I have understood the Quebec proposal properly, it is suggesting generous, open co-operation, exchanges of experts, information and best practices. If this is the case and if the terms of reference are properly defined, it will go some way towards allaying concerns. If we are to do this, let's do it properly by developing a monitoring mechanism.

As you know a joint committee on audiovisual has existed for a number of years. It has enabled experts and officials from participating countries to… Let's develop the necessary financial resources as well as a mechanism to monitor the co-operation agreement. A declaration of intent announcing improved co-operation between Canada and the European Union without the necessary multi-year funding might end up being just some vague initiative gathering dust somewhere.

I will conclude here. We believe this is a historic opportunity that Canada must seize. Canada has always shown leadership. The provinces, or at least, Quebec, support the Federal Government on this file. I think that if we develop the right formula and answers to the questions we are asked, Europe will also sign this agreement that includes a cultural exemption.

Thank you.

● (1540)

The Chair: Thank you Mr. Vallerand.

We have 45 minutes left for questions and comments. We will start with Mr. Rodriguez.

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

Mr. Vallerand, Mr. Drapeau, welcome and thank you for being here today.

Does the term "cultural exemption" mean the same thing in Canada as in the various European countries? Are we talking about the same concept and scope? Does it cover the same areas, such as audiovisual, books and music? Does it include a range of items?

Mr. Charles Vallerand: I believe that as has already been mentioned here, the Europeans have a slightly narrower view of the concept as regards to audiovisual. Their take is not as broad or as generous as ours. The committee heard last week that the Europeans have specific positions in the area of books. Therefore, I do not think we can say that we have the same understanding of the concept.

Historically, the European Union has always taken a pretty restrictive view of audiovisual when negotiating agreements or co-operation protocols.

Mr. Pablo Rodriguez: If we are not even able to agree on what is included, where are these negotiations heading?

Mr. Charles Vallerand: We are moving towards a change in the position of the European Union and its member states. They are not here to confirm this but I feel that it all boils down to an issue of jurisdiction. Who has jurisdiction over what? Do the European Union and its negotiators have the authority to negotiate offensively in this area?

● (1545)

Mr. Pablo Rodriguez: Are you saying that this is still up in the air?

Mr. Charles Vallerand: Based on the information I have, this is something they are still discussing within the European Union.

Mr. Pablo Rodriguez: Are you saying that at the same time they are negotiating a free-trade agreement, they are conducting internal discussions to determine who has jurisdiction to negotiate?

Mr. Charles Vallerand: No, not to establish jurisdiction but rather to clarify the mandate or relationship between the European Union and its member states.

Mr. Pablo Rodriguez: That is no small thing.

Mr. Charles Vallerand: It is significant. However, once again, this is secondhand information. I am not European and I am not privy to their discussions.

Mr. Pablo Rodriguez: As far as this specific negotiation process is concerned, how can we hope to reach an agreement if we do not really agree on the definition of or what is covered by the cultural exemption?

Canada tends to be more inclusive, which would lead me to believe that we will ask for everything to be included. However, the Europeans will balk at that and there will be negotiations, will there not? Is there any possibility for give and take here?

Mr. Charles Vallerand: Do you think that this issue is more important for the Europeans than for us? It will ultimately come down to who is able to convince the other party to…

As far as I am concerned, Canada has always had a clear, coherent and consistent position. Personally speaking, the Europeans do not currently seem to have a clear, coherent position. They do not have a strong bargaining position. However, this is only a personal observation, which is also the coalition's view.

Mr. Pablo Rodriguez: In the final analysis, the negotiations as they pertain to culture have not progressed very far. We had been under the impression that quite a bit had been accomplished.

I questioned the minister about this last week. I asked him to give a general idea of what the negotiations have accomplished in the area of protecting cultural diversity. He gave the following answer:

[*English*]

"Of course, we're at an early stage and there is no complete negotiation yet."

[*Translation*]

Personally, given the Conservatives' traditional position on culture, I have a problem with the minister telling me to "trust him".

What progress has been made on cultural protection?

Mr. Charles Vallerand: The negotiators are being pretty transparent when they tell you that they have not made much headway. This is because they have made a lot of progress in many other areas. They have focused on specific issues that were not particular showstoppers. You can look at the situation like that also.

Mr. Pablo Rodriguez: All right.

Just for argument's sake, let's imagine that the negotiations are quick and dirty and that the protections are not as strong as in the treaty with the United States.

Could the Americans eventually turn around and say that we did not ask for this type of exemption and that, as a result, they want to review and reopen the agreement?

Mr. Charles Vallerand: There is nothing to indicate that the negotiations will result in anything but a complete exemption. However, we are not there yet... We do not have the wording in front of us today. Consequently, no one can assume the outcome of the negotiation process.

Mr. Pablo Rodriguez: I am going to quote your brief. In it you say the following:

> We must hope that Canada's Governments and civil society will continue to work together to give this new mechanism its full legal and political weight, [...]

What do you mean exactly? What is missing?

Mr. Charles Vallerand: Merely adopting an international convention does not immediately give it its full weight. The signatories to the Convention are required to implement it and to undertake concrete action.

What do I mean by concrete action? Countries with no or very few cultural policies run the risk of trade agreements or market regulations jeopardizing their cultural expression. Implementation and concrete action means adopting the goals and approach set out in the Convention. Basically, it means activating the Convention and, in so doing, giving it meaning and weight.

As far as international co-operation is concerned, the Convention clearly challenges signatory countries to co-operate with each other. Genuine co-operation between states leads to the development of a robust community, which will have a much stronger voice in multilateral discussions on cultural issues. This is what we need now.

I gave the example of the Universal Declaration of Human Rights. That Convention gained significance and weight as soon as violations were exposed and concrete action was taken.

Mr. Pablo Rodriguez: We just have to hope that they do not withdraw us from that too. We signed onto the Kyoto Protocol but they brought us back out of it.

The Chair: Fine, thank you.

Ms. Lavallée.

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

Welcome gentlemen.

If I am not mistaken, the Convention on cultural diversity, that is so precious to your coalition, is designed to impress upon signatory and non-signatory countries alike that our culture is so important and fragile that it requires protection and should not be negotiated away in future treaties.

Am I right?

● (1550)

Mr. Charles Vallerand: Indeed, that would be one way of looking at it.

In actual fact, it states that cultural goods and services are also economic commodities, and as such, embody culture, identity, meaning and values. They occupy an entirely different space from commodities such as carpets, trains and cars in the lives of our societies.

Mrs. Carole Lavallée: Consequently, one of the first sections of any free-trade agreement should refer to the Convention on cultural diversity, to which we are a signatory, and specifically exclude culture or cultural products.

Mr. Charles Vallerand: You have it. That could be included in the preamble for example.

Mrs. Carole Lavallée: Therefore, including it in the preamble would specifically prohibit protocols or negotiations on audiovisual or publishing.

Mr. Charles Vallerand: That is right. It could even be more detailed than that. Past treaties, for example, have included definitions, lists and inventories as well as an explanation of exempt culture.

Mrs. Carole Lavallée: In terms of these current negotiations, why does the European Union, which was one of the first signatories to the Convention on Cultural Diversity, want to negotiate sectors such as audiovisual, publishing and a co-operation protocol in one treaty? Surely, by signing the Convention, they have agreed that these areas are off limits?

Mr. Charles Vallerand: Publishing is a clear-cut case. However, I do not see what you are referring to when you mention audiovisual since the Europeans have made no representations in this area. At least, I am not aware of any.

It was really Quebec that floated the idea of the protocol, not the European Union.

Mrs. Carole Lavallée: As far as audiovisual is concerned, I seem to remember hearing here that the Europeans do not share our definition of culture. They want to exclude audiovisual from culture. That is what I heard.

Mr. Charles Vallerand: The scope of the exemption is more—

Mrs. Carole Lavallée: I think it was either the Minister of International Trade or one of his representatives that raised the issue.

Mr. Charles Vallerand: Indeed it was. In this case, it applies more specifically to audiovisual rather than to culture industries as a whole.

Mrs. Carole Lavallée: I would like to understand why, when 27 of the 29 member countries have already signed the Convention on Culture, the European Union has brought this back to the table.

Mr. Charles Vallerand: I have already explained that, as far as we understand the discussions between the negotiating teams, the Europeans want to understand our definition of the provision and how it applies to the agreement as a whole. This is what the minister explained last week. It is basically an issue of form. Should this broad provision apply to the whole agreement? Should it also naturally apply to intellectual property? They are asking these legitimate questions. We have to provide answers. If our responses are not the right ones, we will be in trouble. However, if we provide convincing answers and succeed in rallying the Europeans to the appropriateness of our point of view, we will, in my opinion, carry the day.

Mrs. Carole Lavallée: Has your coalition been involved in any way shape or form in these negotiations? Have you had access to privileged information?

Mr. Charles Vallerand: As I said earlier, we are in conversation with the negotiators. They share information with us that is generally confidential. We endeavour to keep that information confidential.

Mrs. Carole Lavallée: Imagine that you become aware of initiatives, which you feel are inappropriate, such as the co-operation protocol. You have said it does not belong in a treaty of this type. What opportunities are there for you to lobby to ensure they are not adopted?

Mr. Charles Vallerand: Our appearance before this committee today is one opportunity. We also widely promote our positions that are already known to the negotiators and to Quebec. Our members also talk about these issues. Everyone is in favour of co-operation, but there needs to be agreement on the format and substance of any co-operation protocol.

Mrs. Carole Lavallée: Preventing the protocol is a matter of principle for you, is it not?

Mr. Charles Vallerand: It is—

Mrs. Carole Lavallée: However, it is pretty inoffensive. Take the agreement with India for example. I read up on the issue some time ago. In any event, a co-operation agreement on the film industry was reached. The whole process was rather tentative, but an agreement was developed.

Mr. Charles Vallerand: As I explained earlier, the danger is that an exemption agreement be followed immediately by discussions on a protocol. This might tempt those whose business initiatives have been stymied by the exemption to interfere in the debate on cultural co-operation. There could be attempts to link the substance or format of the exemption with that of the protocol. The exemption and the protocol need to be dealt with in separate frameworks. They are totally different concepts.

The Chair: Thank you.

Mr. Angus.

● (1555)

[*English*]

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

The issue is fascinating, but I'm concerned about what exactly we're talking about in terms of an exemption, because Europeans are tough operators when it comes to trade, and so are the Americans. I don't think the Europeans or the Americans mind that we have clog-dancing in some communities and that we might speak two official languages. They're thinking products.

When you're dealing with trade, culture comes down essentially to discs, to films, to their competition against your competition, so if we start to say that we want to ensure cultural diversity, are we talking about maintaining a certain domestic right to ensure that we can set policy in terms of how we use our domestic production and what we limit? That's something they'll certainly take a dim view of, so is that part of what the exemption is?

Mr. Charles Vallerand: Yes, clearly.

Mr. Charlie Angus: Okay.

On the issue of telecom, for example, before Maxime Bernier's decision in 2006, telecom was considered an issue of national sovereignty. But the issue of broadcast is tied into telecom because we're now dealing with four or five players that control your cellphones, your cable, and your Internet access, and now they are the content providers.

Any of these very large giants in Canada would probably be a perfectly reasonable medium-sized takeover for one of the large European telecom players. So are we saying that under the exemption on cultural products we would include our telecom and ISP vertically integrated industries? Or would we say that broadcast would be open? Again, where do we start drawing the line in terms of cultural diversity versus economic competition?

Mr. Charles Vallerand: Well, what I've understood is that the minister made it clear that foreign ownership or investment from Europe would not...you know, the policy remains, so that's one area. But when I was alluding to whether we should revise the exemption clause to consider new forms and new ways.... I mean, we now have the new media fund, and that obviously looks to the future and how audiovisual and new media forms sort of coincide and work together. But I don't have the answer; I have the question.

I don't have the answer. What's the boundary? Right now, telcos and software, for instance, are not within the sort of narrow definition of cultural industries. That's certainly not the case in the existing bilateral trade agreements or the way the exemption clause was drafted, but that doesn't mean, going forward, that it cannot be.

Again, my word of caution was, how would that impact on past...? Oh, it was not in there, so therefore....

Mr. Charlie Angus: The broadcast exemptions were looked at, at the GATTs, as an issue of trade, but it comes to us in terms of cultural policy because we have very clear standards for what's broadcast, being Canadians, so we ensure Canadian voices on public airways. But it has been challenged at the GATTs, so even if we could separate telecom, which I'm not sure we can now that they're vertically integrated, are you looking at saying, under the cultural exemption, that we have certain delivery mechanisms to ensure vital cultural industries broadcast—for example, publishing? Are we talking about the industries themselves? Are we talking about the products they create?

Mr. Charles Vallerand: Well, we've touched the surface of how far we should go into this, but obviously these are industries. It's like book publishing and sound recording. It's sort of a long list of industries. In fact, what you want to secure is a capacity to create content and to have policies and measures to support content, ether production or access of distribution. But how do you define that? Is there a need for an opening line that says that everything that has to do with original content that is Canadian and meant to be made accessible either...should it be or could it be technologically neutral? I don't have the answer to that; I have a question.

In terms of telco, broadcasting, and so on, these serve various functions in terms of distribution and access, maybe not in terms of content production. Therefore, even telcos will eventually rely on broadcasters and producers and sound industries to produce the content that goes on their wires. So could you say they're part of the package or not? Probably not, because they're carriers. They're not producers of content.

Mr. Charlie Angus: Would the European Union have domestic tax incentive policies for film production? Is that the case?

● (1600)

Mr. Charles Vallerand: Yes, I believe so.

Mr. Charlie Angus: Because we have Telefilm, the Canada Media Fund, and our other funding agencies, you trigger tax dollars based on a certain scale in terms of Canadian involvement, and sometimes it seems somewhat arbitrary what is Canadian and what isn't. Is it the actor? Is it the producer? Those can trigger international agreements with France or with England to do co-productions. That's all fine, but it's the question of...within our own domestic sphere, in order to have a domestic industry we've made the decision nationally that we have domestic delivery vehicles, and I would think the Europeans would be very interested in getting their telecom, their broadcast, their main players moving in on that jurisdiction. So are you going to come forward with recommendations on where this exemption needs to be defined, because it seems going into trade, we're going to have to have a pretty clear position?

Mr. Charles Vallerand: Well, we first have to secure the exemption itself, as it stands, before we are moving forward on any new proposals or any reconfiguration of the clause itself. Let's win the day on that first, and let's secure the grounds that we have secured thus far.

In terms of the audiovisual, I would venture to say that probably audiovisual is the best way to capture the new forms of media expression, because they tend to flow out of that sort of function, rather than telecommunications. Maybe I stand to be corrected on that. So I would...sorry.

The Chair: No, go ahead, finish your thought.

Mr. Charles Vallerand: If there is a revision of sorts, that's where I would see it coming from, rather than saying that telco has to be brought into the fold and defined as culture-creating content.

The Chair: Thank you very much, Mr. Angus.

Mr. Del Mastro.

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

I have a couple of things. First of all, you should know that I've always been of the opinion that this conversation should be happening at the international trade committee, where they actually deal with international trade and the various treaties that have been signed over time. This is the Canadian heritage committee, and I'd love to be talking about things like the War of 1812, but instead we're here debating the Canada-EU trade negotiations, which I'm sure members are interested in.

I certainly see the incredible importance of signing bilateral trade agreements, not just on things like manufactured goods and obviously other industrial exports, financial or otherwise, but certainly for heritage and cultural exchanges as well. I think everyone here would agree that while we do have a business relationship in the arts with Europe, it could always grow. I think one of the great ways to grow that is to expand our relationship with them.

Notwithstanding all of those things, I really appreciate your appearing here today and providing the presentation you've made.

Could you just tell us, what was the motivation behind ACTA in the first place? Why did we sign this? What are its benefits? How has it worked? Are there things that you would improve? Perhaps you could just give us a little background on these sorts of things.

Mr. Daniel Drapeau (Counsel, Smart & Biggar, Coalition for Cultural Diversity): I'm the ACTA spokesperson. I addressed those questions in my opening statement, so perhaps if we could direct the questions on the EU agreement...and then when my turn comes, I'll answer those questions.

Mr. Dean Del Mastro: Sure. No problem.

The Chair: There's only one panel today. This panel is over at 4:30. This is your opportunity to address questions on the issue the member has asked about.

Mr. Dean Del Mastro: If you would like, Mr. Drapeau, we'll have a second round of questions, and I'd be happy to give you the rest of my time to make your presentation. Then we'll have another opportunity. Would you like that?

Mr. Daniel Drapeau: It's really whatever the chair directs.

The Chair: Just to clarify, were you expecting to make a separate 10-minute opening statement?

Mr. Daniel Drapeau: I can cut it down to five minutes for you, but I was expecting to make an opening statement.

The Chair: Well, my apologies. We had set aside only an hour for the both of you together.

Mr. Daniel Drapeau: I'll be quick.

Mr. Dean Del Mastro: Please use my time, because it all dealt with that.

The Chair: That's okay. We'll get back to you, Mr. Del Mastro.

Mr. Drapeau, why don't you go ahead with five minutes for opening remarks about your role in the Anti-Counterfeiting Trade Agreement, and then we'll continue with questions from members.

Mr. Daniel Drapeau: My opening statement will address some of the questions you've put forth.

First of all, I'd like to thank you all for this opportunity to assist you. I would like to thank Mr. Vallerand for allowing me to share some of his speaking time, because I am not a member of the Coalition pour la diversité culturelle.

My name is Daniel Drapeau. I am counsel with the law firm, Smart & Biggar. I conducted my first seizure of counterfeit goods 13 years ago and I've been active in that field since then. I'm also the past president of the Intellectual Property Institute of Canada's anti-counterfeiting committee, which I've represented within the IP Working Group of the Security and Prosperity Partnership with Canada, the United States, and Mexico.

One thing I noticed during my practice is that there's really something that does not work with the Canadian anti-counterfeiting system. When I took over the presidency of the anti-counterfeiting committee, I noticed that nothing is moving legislatively; hence, my interest in being here today.

Two years ago I took a year off, and as part of that year off, I met with various people in the anti-counterfeiting community: people at the World Intellectual Property Organization; people at the World Customs Organization; people at the Union des Fabricants and the Comité national anti-contrefaçon in Paris; and also rights holders, which are my clients.

I wanted to get a continental European perspective on how Canada is seen in the anti-counterfeiting world. We get beaten on the head quite often by the Americans, but I was wondering, maybe the Americans are exaggerating because we're always on their special watch list. Unfortunately, what I can report to you is that other countries don't see us any better than the Americans do.

● (1605)

[*Translation*]

When Mr. Vallerand invited me to share his speaking time, I was keen to put this opportunity to good use. Consequently, I will present my thoughts on the weaknesses of the Canadian system, throw out some suggestions for correcting these shortcomings and then talk to you about how the Anti-Counterfeiting Trade Agreement, or ACTA, can help. I have read the transcript of your January 31 meeting.

[*English*]

I will be in a position to provide you with some answers to questions that were made then but to which answers were not provided.

What is a counterfeit? It's important for you to understand what a counterfeit is, because a lot of people are going to try to confuse you by referring to things that are not counterfeits as counterfeit.

A counterfeit is a fake product bearing an indication that would lead the consumer to believe that it comes from a source from which it does not come. A classic example would be a fake Lacoste polo shirt. It's not made by Lacoste but it has a little alligator on it. You can find a host of other products. When I started my career, I did luxury goods. Now I do electrical boxes.

It's important to note that counterfeits are not grey goods. Grey goods are authentic goods that come into Canada in violation of the Canadian distributors' rights. That's what the Supreme Court decision in Euro-Excellence two years ago was all about. That's not counterfeit. But these items will often be confused with counterfeits.

Nor are counterfeits goods that bear a trademark that is confusingly similar to the genuine one, say, some other form of reptile besides the little alligator. These are not counterfeits. Counterfeits reproduce the trademark.

The reason I place emphasis on this is that it's really pretty cut and dried. You don't need to debate this ad nauseam. It's goods that are lying, basically.

As a parallel to counterfeits, you'll also hear about piracy. Piracy is the unauthorized copying of a work—like software, a book, or a movie. That was partly addressed right after Arnold Schwarzenegger paid us a visit in Canada. That's not what I'm here to talk to you about today.

ACTA is an initiative that was launched in 2006 by the Japanese and the American governments. One question that was asked at the January 31 hearing is, why was this done outside of WIPO? WIPO is the United Nations agency for the protection of intellectual property.

There's a simple answer to that question. WIPO, at least as far as anti-counterfeiting efforts are concerned, is paralyzed by a north-south conflict. The north wants to have protection on IP. The south wants to have access to IP and protection of traditional knowledge and traditional culture. Things aren't moving at WIPO in respect of anti-counterfeiting. Also, WIPO can only suggest. It doesn't have *un pouvoir contraignant*.

Another question asked on the 31st is, why was this done behind closed doors? This is a criticism that has been levied against the act of process quite frequently.

[*Translation*]

The answer is very simple. It enables countries with often diverging views of intellectual property protection to discuss the issue more openly.

● (1610)

[*English*]

The real answer as a Canadian is that it's a lot less embarrassing for us if the comments are made privately than if they're made publicly.

There have been some comments that ACTA was brought about to bring Canada in line. ACTA is now at a stage where the final text was approved in Tokyo in October 2010. The parties that we expect will become signatories are Australia, Canada, the EU, New Zealand, the U.S., and Switzerland, but also Mexico, Morocco, the Republic of Korea, and Singapore, so two Asian countries and two countries that are not part of the first world.

As you can see, there are a lot of countries that act in the counterfeiting world that are not present among those signatories. The agreement is currently in the process of being translated into the languages that will be considered official, and one would assume that after that the treaty will be adopted.

This treaty is divided into a number of chapters. The meat of the treaty is found in chapter 2, which itself is divided into four sections. Section 2 is on civil enforcement, so here you're talking about the work that I do, obtaining injunctions, obtaining damages, and doing civil seizures. The next chapter deals with border measures. So what does customs do? We have big problems in Canada in terms of the weakness of our customs program in terms of anti-counterfeiting. I'll talk about that later. The next section talks about criminal enforcement, and I'll go into that in more detail a little later. Finally, there's a section that was also added with respect to the digital environment. This section deals with Internet service providers and the circumvention of anti-copying devices.

My comments will focus on this chapter 2. I thought it would be interesting for you to know what the link is between current legislation in Canada and ACTA and where we're going. Four years ago, I testified before the parliamentary committee on industry, science, and technology. I identified for the committee what doesn't work in the Canadian anti-counterfeiting system, and I provided recommendations as to how to make our system better.

All my recommendations were adopted by the committee. Four years later, I can tell you that we're no further advanced. However, I'm pleased to report that my recommendations are found in ACTA, so this should help us remedy our system. So I think ACTA will actually help us make our anti-counterfeiting system better. What I deplore is that we're completely behind the curve. While we should be a leader, we're really a follower here, and actually a follower that's been dragged along.

I hope you all have my handout. Do you?

The Chair: Yes, the chair has distributed them.

Mr. Daniel Drapeau: In my handout, you can see my observations on the weaknesses of the Canadian system, which are on the left, and my recommendations, which are on the right. In the middle I've added a column on the relevant provisions of ACTA.

Now please note—and I know there's a lot of discussion on Bill C-32 and on the Copyright Act—ACTA will impact not just on copyright. ACTA also impacts on trademarks, and a number of my comments today will be directed to trademark protection, which receives very little *temps d'antenne*.

The problems I've identified and that are dealt with in ACTA are in the left-hand column. I'll go through them briefly. From a criminal point of view, the RCMP and crown prosecutors do not act under the Trade-marks Act for the very simple reason that there are no criminal dispositions under the Trade-marks Act. We need criminal law, because fighting counterfeiters only under civil terms is basically fighting crooks by the books: it doesn't work. From a cooperation point of view, we have a blockage of information. The RCMP and Canada Customs cannot provide information to rights holders, which impedes their ability to institute civil actions in a timely fashion.

And finally, from a deterrence point of view—which I think is the worst part of our system—we have no statutory damages under the Trade-marks Act. The maximum penalty under the Copyright Act is $20,000, which is completely not comparable to the profits that are made by counterfeiting, and this maximum amount has been awarded only three times, in three cases where the plaintiffs were represented by our firm, since 2006.

Finally, case law is very ill equipped to deal with this. We still have some notions that the cost of the fight against counterfeit is the cost of business and should not be paid by the counterfeiters. This is jurisprudence from the Federal Court.

The solutions—and I have 30 seconds left—that I propose to you, which you have on the right side of my handout, you can implement either through piecemeal legislation—you can amend the Trade-marks Act to provide for criminal dispositions, statutory dispositions, and statutory damages—or you could have an omnibus bill with civil and criminal components that would ensure parity between trademarks and copyright, so not a different outcome, depending on which rate you can fit yourself under.

● (1615)

The Chair: Okay. Thank you for that, Mr. Drapeau.

Mr. Del Mastro, one question, and then I'll proceed to the next member.

Mr. Dean Del Mastro: I agree with you 100%. I do think it's critically important. In part, while you said you didn't think Canadians wanted to hear what some of these folks have to say, I think in some ways we need to hear some of that. Because we are a bit of a pariah when it comes to the protection of...I don't care if it's IP, I don't care if it's cultural products in this country, whether it be music or otherwise, we're currently an outlier, and I never realized we were experiencing similar difficulties on trademark protection.

You have made some specific recommendations in this document. Maybe you'd like to go over those for the benefit of the committee, because I don't think you had an opportunity to do so.

Mr. Daniel Drapeau: In terms of what other countries are saying about us, I had informal discussions with people who are obviously much more open. However, in the public sphere you have the U.S. trade representative's special watch list, where we've been high up there with China, Algeria, Pakistan, India, and Venezuela for at least the last 10 years, with respect to our border enforcement, with respect to the lack of resources afforded both to order enforcement and law enforcement.

More recently, the EC mentioned in a document that's called, “Assessing the costs and benefits of a closer EU-Canada economic partnership: A Joint Study by the European Commission and the Government of Canada”...at page 88 it reports that Canadian “court, customs, and police enforcement mechanisms can be difficult to activate”. When you consider the amount of diplomacy that goes into these documents, this is a pretty strongly worded statement.

So you're getting it not just from the Americans, you're getting it from the European Union. It is publicly known that our system is quite weak. During the hearings at the security committee and at the science and industry committee, that was also mentioned.

We're beyond that stage. My recommendations....

Yes?

The Chair: Just finish that thought and then we're going to go to Madam Crombie.

Mr. Daniel Drapeau: My recommendations, in short.... In Canada right now we've got a problem, in that if you go under the Copyright Act, you can have statutory damages. Statutory damages, for those of you who don't know, are damages for which you do not need to prove your actual loss. This is very important in the fight against counterfeits, because the minute you get a counterfeiter, the first thing he's going to tell you is his $5 cheapo doesn't cause a serious loss because he's selling it so cheaply. That's not the issue; it's the aggregate of the problem that creates an issue. That's been recognized under the Copyright Act. The Trade-marks Act has no statutory damages, so you have to prove your actual loss under the Trade-marks Act.

Copyright is good for the life of the author, plus 50 years. Trademarks can potentially be eternal. So you have a lot of rights' owners who will rely on trademarks rather than copyright.

If you have one take-home message, that's the one I'm giving you. There are other points in my handout.

The Chair: Thank you, Monsieur Drapeau.

Madam Crombie.

Mrs. Bonnie Crombie (Mississauga—Streetsville, Lib.): Thank you to both our witnesses today.

I'll start with Mr. Drapeau, and if I have any time I'll move over. I'm really surprised that Canada is part of the problem and not part of the solution.

Can you explain how that is? There are nations you've described that are far worse, obviously. I don't know if I'm supposed to list them, but I'll let you do that. So tell me how it is that we're so much a part of the problem.

Mr. Daniel Drapeau: I find it somewhat disheartening that you're surprised, and I don't mean to say this aggressively, because I'm sure you're not the only one who is surprised, both in this room and outside this room.

The work the anti-counterfeiting community has been doing for at least the last five years is to raise awareness. Our awareness campaign is so good that it is the only awareness campaign that is featured at the Musée de la Contrefaçon, operated by the Union des Fabricants in Paris, which I think is quite good.

Why are we behind the curve? The Trade-marks Act is quite old. It hasn't been updated to reflect modern realities. Counterfeiting has taken an incredible effort in the last 10 years. We're just not up to date.

That's the underlying reason. Other reasons include there being no political champion for this. We need a strong member of Parliament, a minister, somebody who champions this cause. You don't want to wait until people die because bus parts are counterfeit or medication is counterfeit. So far there have been instances like that, but the evidence is not strong enough to demonstrate an absolutely undebatable link. Once that happens, you'll have Canadians asking you what you were doing. And guess what? The transcripts of this testimony will be public.

● (1620)

Mrs. Bonnie Crombie: Now tell me, how will ACTA impact the copyright bill, Bill C-32, if it's passed?

Mr. Daniel Drapeau: First of all, on C-32, my overall comment is that ACTA aims to “responsibilize” various people, including Internet service providers, and to provide remedies against anti-circumvention devices. When one reads Bill C-32, one gets the impression that the aim is to “de-responsibilize”.

Here are a couple of examples for you. I was talking about statutory damages. Currently they are $20,000, and you get $20,000 for each work that is infringed upon, no matter how many rights owners are pursuing a given infringer. Usually when counterfeiters sell, they don't just sell one brand; they sell a number of brands. Under C-32, we now have statutory damages reduced from $20,000 to $5,000, and we have this new rule, which I'll describe in French, because we have a term that describes it so accurately: *au plus fort la poche.* So you have five rights holders who are suing an infringer. Well, the first rights holder who sues gets the $5,000. The others get diddly-squat.

My view on C-32 is not a very positive one. Also, the way the liability of ISP service providers is framed, it seems as if we're dealing with the exceptions rather than the liability.

In terms of the impact ACTA is going to have on C-32, I read the testimony of January 31, and initially I wasn't in agreement that C-32 complies completely with ACTA. That's because I was reading earlier versions of ACTA, mainly the version that immediately preceded this one. With the one we have right now, yes, C-32 complies. But once again, we're not ahead of the curve. We're not showing the way to anybody.

Mrs. Bonnie Crombie: What's in place right now? What regulations are in place now? What kinds of enforcements do we have? Who's responsible for enforcing? In fact, who's going to be responsible for enforcing ACTA? You've already talked about the penalties, which are statutory damages. Are there criminal charges as well?

Mr. Daniel Drapeau: Who's in charge of ACTA? There will be an ACTA committee, which is provided for in chapter 5 of ACTA. Now, will it have the *pouvoir contraignant*? I don't know. Honestly, I don't think so. It's a general demonstration of an intention on the part of developed countries to do something about counterfeiting.

By the way, the reason I was saying that part of ACTA was to bring Canada on board is that a lot of these countries don't really have problems in their legislation, so there's no overwhelming need for them to get together to make a treaty.

In Canada, you have things split in a number of directions. Customs is a first line of attack. The problem here is that customs has no power to seize counterfeits because they're counterfeit. They have power to seize when somebody makes a false declaration of importation, but they have no power to seize and no power to destroy.

Mrs. Bonnie Crombie: The person may not be aware that they purchased a counterfeit.

Mr. Daniel Drapeau: Well, that leads to another problem. Canada, contrary to most other developed countries, does not have a system of recordal of rights at the border. So when you want to sensitize customs to your rights, what you have to do is make sure that your sales representatives make friends with customs or the RCMP and that they basically interest them in checking shipments that come in and show them how to recognize counterfeits. It's actually quite easy to recognize a number of counterfeits. It's just a question of whether you have the resources to allow that verification to take place.

Customs is one place. The RCMP is another. But as I said, the RCMP won't act under the Trade-marks Act.

The last thing is civil enforcement, where the penalties aren't strong enough.

● (1625)

The Chair: Thank you very much. Thank you Madam Crombie.

We'll go to Madam Lavallée or Monsieur Pomerleau.

Monsieur Pomerleau.

[*Translation*]

Mr. Roger Pomerleau (Drummond, BQ): Thank you Mr. Chair.

Thank you, both of you, for your presentations. In my opinion, they were among the best and clearest we have heard in a long time.

My question is for you Mr. Drapeau. The minister recently told us, with a straight face, that Bill C-32 would be dealt with first before tackling the Anti-Counterfeiting Trade Agreement.

Do you not think that it would be better to tackle things the other way around in order to send the message that our legislation will comply with the treaty we intend to develop?

Mr. Daniel Drapeau: Do it in any order you like, but just do it! It has dragged on for long enough. You have everything you need. You have recommendations from the Canadian Anti-Counterfeiting Network, numerous other groups, practitioners like me and also from an institute of intellectual property. Whichever one you choose to do first … just do it!

In my opinion, the current version of Bill C-32 makes the problem worse not better. However, I realize that that is not the topic of the discussion today. Consequently, I will stop there.

Mrs. Carole Lavallée: Tomorrow morning at 11 a.m.

Mr. Daniel Drapeau: If you want to invite me back, it would be my pleasure to appear before you again. I gave a presentation on the issue to the ADISQ.

Bill C-32 does not resolve the disparity between the Trademark Act and the Copyright Act. It will not tackle the lack of legal provisions to protect trademarks.

There are provisions in the Criminal Code but they are not tailored to the issue of trademarks. In answer to your question: do it whenever you want but do both, and quickly.

Mr. Roger Pomerleau: My second question is for you Mr. Vallerand. European Union negotiators have some reservations about giving a blanket exemption to culture. This is extremely surprising because this is not what we believed their position to be.

Mr. Charles Vallerand: Indeed.

Mr. Roger Pomerleau: I know that you have answered most of the questions we have asked you but I have more questions than I have answers. Just how do you account for the European position exactly? Where is the problem? Is it just because they cannot agree?

Mr. Charles Vallerand: You are asking me to answer for the Europeans.

Mr. Roger Pomerleau: Yes, you have not—

Mr. Charles Vallerand: Oh, oh! It is not a simple issue.

These negotiations are being led by trade officers and not by culture or UNESCO international relations officials. When the mindset is trade-oriented and the goal is to expand trade as much as possible, you do not close doors and you try to see just how far you can push them open.

The European Union has a relationship with its member states and therefore must work with them to properly define the scope of both its agenda and any potential exemption. It is indeed surprising that there is no one single position. It is as if the right hand had ratified the UNESCO Convention while the left hand is keen to focus on a trade agenda. This is what I meant when I mentioned consistency earlier on. Canada, on the other hand, has had a clear and consistent position for the past ten years. We know what our goals are and we have always adopted the same approach to bilateral negotiations for trade agreements and legal texts.

Mr. Roger Pomerleau: Fine.

I will now give the floor to my colleague.

Mrs. Carole Lavallée: Mr. Drapeau, you have urged us to sign ACTA. You say time is of the essence but at the same time you have told us that it is not binding.

Last year, there was what can only be called a worldwide uprising among civil society, which was very concerned about ACTA. What should we take away from this?

Mr. Daniel Drapeau: I am not urging you to sign ACTA as quickly as possible. I am asking you to consider and correct the shortcomings of our own anti-counterfeit system. This will bring us into compliance with ACTA standards.

You should not lose sight of the fact that ACTA is really a group of countries paying lip service to minimum standards that they can easily get around. However, it all looks very good—

Mrs. Carole Lavallée: For instance neither ACTA nor Bill C-32 cover the Internet providers you were talking about earlier. However, you are asking us to sign up as early as possible.

Mr. Daniel Drapeau: No, I am not asking you to hurry up and sign ACTA and I do not wish my testimony to be interpreted in this way.

ACTA requires Internet providers to disclose the identity of the counterfeiter. This is very relevant in Canada because of the Federal Court of Appeal ruling in BMG Canada Inc. v. John Doe (F.C.A.).

[*English*]

In Canada this is of particular relevance, because the only case we've had in which an Internet service provider was called upon to disclose the identity of an infringer is the BMG case, which was decided by the Federal Court and then went on appeal. The end result is that the Internet service provider was—

● (1630)

[*Translation*]

Mrs. Carole Lavallée: I am sorry to interrupt but I only have a limited amount of time. If I understand correctly, you are saying that section 19, which amends the Access to Information Act, requires specific businesses to disclose the identity of offenders. I will have to find the actual section but I think you are referring to section 21. This section could also apply to Internet providers. It would be a pleasure to give you the information.

Mr. Daniel Drapeau: Yes, but in what situation would it apply?

The Chair: Thank you Ms. Lavallée.

Mrs. Carole Lavallée: The Access to Information Act.

The Chair: Mr. Drapeau.

Mr. Daniel Drapeau: This is an intellectual property infringement and I would therefore suggest that it be enshrined in intellectual property legislation. Bill C-32 in its current form does not provide for this requirement. It is not easy to obtain from the Federal Court either since it is only possible through an equitable Bill of discovery.

[*English*]

an equitable bill of discovery.

The Chair: Thank you very much.

Lastly, Mr. Del Mastro has a short intervention to make.

Mr. Dean Del Mastro: Yes. Thanks, Mr. Chairman.

I was all prepared to be your charged-up fighter here, a street fighter on trademark, until you kind of dumped all over Bill C-32—

Voices: Oh, oh!

Mr. Dean Del Mastro: —and then I thought I had better spend my time bringing you up to speed on Bill C-32 instead.

You see, in Canada I think there are a couple of things. ISPs have been determined to be essentially infrastructure in Canada; in other words, they're the Internet super highway. We don't send the police out to charge the highway when somebody is speeding; we go after the driver. That's the approach we have taken in Canada—

Mr. Daniel Drapeau: The Federal Court has found liability for flea market vendor operators: people who rent premises to people who sell counterfeits have been found liable. It's the same principle.

Mr. Dean Del Mastro: Right, because they knowingly.... I don't think it's quite the same, but I agree that it's an instance where that has occurred. But I would argue....

There are a couple of things. Also, on statutory damages, for commercial infringement there is no limitation for statutory damages. In fact, it's much, much higher. It doesn't start at $5,000, is what I'm saying.

This is private. This is for individuals for statutory damages. But I think $5,000 is a lot of money. We can debate whether it should be more. Some groups have come forward, including industry associations, and have said that statutory damages can in fact start at a much lower level than this and they think it's important that we establish statutory damages. What I would argue is that the main groups—

Mr. Daniel Drapeau: But the point is that the message you're sending out is that you're lowering damages. You're going from $20,000 to $5,000.

Mr. Dean Del Mastro: We're actually making it applicable for opportunities where it does not apply right now. It's important that it's established in law.

I think you need to understand what the complexities in copyright are. There are two main groups that will oppose copyright no matter what. There's a group on the left that I call the "sticking it to the man" group. In other words, they don't want industry to make any money. Whatever you try to do that might push money into industry, where somebody might make money, they don't like that.

The other side is the extreme right. They're the libertarian group. They're the "stay the hell out of my life" group.

Those are the two groups, right? Most people are somewhere in the middle. But if you want to appeal to the voters on either side of that, then you take a position that is inherently opposed to them.

Now, most of the interventions I'm hearing at Bill C-32—certainly a lot of them from my colleagues opposite—seem to be appealing to the sticking-it-to-the-man group. They're very concerned about the creators. But whenever you talk about trying to re-establish a marketplace or an opportunity for groups to earn money legitimately, that doesn't appeal. What we need instead is a system of levies, taxes and so forth, that we can send out through various bodies, because we all know you can't have a marketplace. I actually think that's....

Unfortunately, your comments will be interpreted as being against Bill C-32, because you don't believe that Bill C-32 does anything to re-establish a marketplace. And that's unfortunate.

The Chair: Thank you very much, Mr. Del Mastro.

I want to thank Monsieur Drapeau and Monsieur Vallerand for their testimony....

Mr. Angus.

Mr. Charlie Angus: You know, I have to ask why this meeting unfolded the way it did, Mr. Chair. I'm actually somewhat surprised by it.

We had two witnesses. One spoke, we had a round of questioning, and suddenly the second one spoke.

I thought, "Well, now that we're starting a second round...", but it was still the first round. He suddenly spoke in the middle of the first round.

And now it's over. I would have asked him questions, but I had nothing to ask him. I couldn't ask him questions without hearing his testimony—

The Chair: Well, there was a misunderstanding on the part of the chair, for which I apologize.

I understood that....

An hon. member: Chair, he can take a few minutes.

● (1635)

The Chair: Can I finish what I have to say?

An hon. member: Sure. Go ahead.

An hon. member: Give him five minutes.

The Chair: There was a misunderstanding on the part of the chair, for which I apologize.

I understood that these two witnesses were appearing as part of one organization. I accorded Monsieur Vallerand an opening statement of ten minutes on behalf of that organization. I did not realize that Monsieur Drapeau was appearing in a separate capacity regarding the anti-counterfeiting accord.

My apologies for the misunderstanding, but we have afforded, in our orders of the day, only one hour for this panel. We have two motions to consider—one is yours, Mr. Angus—and we have the consideration of this draft report.

At this point, I am going to suspend the meeting for a minute—

Mr. Charlie Angus: I would like to have it on the record, though, that I think—

The Chair: —let me finish—to allow members of the public to leave the room before we go in camera.

Go ahead, Mr. Angus.

Mr. Charlie Angus: I'm sorry; I have lots of respect for you as a chair, but I think what just happened is completely unprofessional. I did not ask this man a single question because I was led to believe by the chair that they came as a group. Then suddenly, in the middle of it, he was allowed to make a statement. Now it's being cancelled.

I have many questions on ACTA. If he had given me a statement on ACTA, I would have asked my questions on ACTA. But it would have been completely unfair of me to ask questions, or to be asked to ask questions, of someone who hasn't had a chance to make a presentation.

The Chair: Okay. Mr. Angus, would you like to have an intervention of five minutes to ask Mr. Drapeau some questions?

Mr. Charlie Angus: That would be perfectly fair.

The Chair: Okay. Mr. Angus, you have the floor.

Then we will suspend.

Mr. Charlie Angus: Thank you.

Mr. Drapeau, I'm not quite sure; is this a law enforcement treaty? Is this a trade treaty? Is this a copyright treaty?

Mr. Daniel Drapeau: You didn't mention, is this is a trademark treaty?

Mr. Charlie Angus: And a trademark treaty.

Mr. Daniel Drapeau: This is a multi-faceted treaty. It deals with civil enforcement, and civil enforcement can be under the Trademarks Act or under the Copyright Act. One thing is for sure: we're all in agreement that it's primarily trademark- and copyright-based.

Mr. Charlie Angus: So it's copyright-based.

Mr. Daniel Drapeau: It's trademark- *and* copyright-based.

Mr. Charlie Angus: Okay.

Mr. Daniel Drapeau: There's civil enforcement, so that touches trademark/copyright. There's criminal enforcement, so that touches the criminal act. There's also border enforcement, so that touches on customs. And there's the digital environment, which—

Mr. Charlie Angus: What aspects of our domestic law in Bill C-32 have to be rewritten to make us meet the standard of ACTA?

Mr. Daniel Drapeau: As I said in my earlier comments, Bill C-32, to my understanding, meets the ACTA requirements—

Mr. Charlie Angus: But you don't like it.

Mr. Daniel Drapeau: —but therein is not the question. Bill C-32 is a portion. There's the whole trademark issue. There's the customs issue. That's not addressed by Bill C-32.

Mr. Charlie Angus: No, but that's not the role of Bill C-32.

I think the issue here.... And we all certainly support strong measures to take on counterfeit. We want the police, we want our border officials to have the power to get those products off the shelves and go after them. What concerns me is that...you said, "Why the secrecy for ACTA? Well, people are just more comfortable talking." That could be used at municipal town hall meetings. That could be used by politicians of all sorts. People don't like doing their business in public because it raises questions. But we have a process in terms of assuring accountability that there is a public process.

Now you can roll your eyes, but we have WIPO, we have the WTO, and you—

Mr. Daniel Drapeau: Sir, that's not all I said.

Mr. Charlie Angus: Yes, but you don't like—

Mr. Daniel Drapeau: I also said it would be less embarrassing for Canada—

Mr. Charlie Angus: It would be less embarrassing for Canada.

Mr. Daniel Drapeau: —if it's behind closed doors.

Mr. Charlie Angus: I find this shocking, that the international community said they're worried about Canada; they can't hurt our feelings. You've certainly done a good job of painting us as international pariahs, yet the global intellectual property index ranks us sixth out of 22 in terms of property, trademark, patent protection.

We're ranked fourth in the World Economic Forum. The recent February study to the USTR by major software competitors said that the ranking of Canada as an outlaw state was completely irresponsible. And it's not helpful.

You can come in and you can get everybody worked up, but the issue here is how we separate legitimate counterfeit issues from the fact that you set up a secret process that circumvents the WTO and sidesteps the WIPO treaty when this is where we deal with intellectual property.

Now you might say WIPO is not strong enough, but that has been, since 1996—and before that going back to the Berne Convention—how we do this. Now suddenly we have a whole separate deal. So we have a small, select club that is involved in ACTA. Who gets to join? Are we going to take this to WIPO and be WIPO-compliant, or does ACTA supercede the provisions that we've all agreed to internationally for WIPO?

That is where we deal with intellectual property. We deal with the other issues at the WTO. Now we have a whole different private setup among, what, six, seven, ten countries when the majority are outside of that. I don't see why that's of benefit to Canada.

● (1640)

Mr. Daniel Drapeau: Sorry, six, seven, ten countries? There are 27 countries. The EU is not just one country, but many countries.

I have issues with a number of points that you raise.

First is the characterization of what I've said on the secrecy issue. The whole process I think enables to arrive at a result.

On your comments about WIPO and the WTO, my question to you in return is, where is the WIPO or WTO treaty on anti-counterfeiting? There is none yet—

Mr. Charlie Angus: Well, bring that forward.

But what you're doing is you're overriding the WIPO and WTO on the issues of copyright infringement.

Now the issue, for example, of ISP liability—

Mr. Daniel Drapeau: You focus on copyright infringement. I am telling you it is broader than copyright infringement.

Mr. Charlie Angus: But you mentioned it was one of the key elements.

Now I'm interested in the issue of ISP liability, because you obviously think that our ISP liability isn't good enough. ACTA could deal with it; WIPO wouldn't.

But the issue here is that under the government, and the government has had their own legal opinions on the three strikes provision, which was one of the key elements that ACTA wanted, it wouldn't pass Canadian law—

Mr. Daniel Drapeau: The three strikes provision is not in ACTA—

Mr. Charlie Angus: It's not in it now; it was in previous drafts, because we managed to see the secret drafts. But it wouldn't pass Canadian law. So are you saying that our laws aren't good enough, that if we sign something at ACTA, we should then have to revise Canadian law because the ISP liabilities wouldn't meet that?

You're nodding.

Mr. Daniel Drapeau: You're certainly going to have to review the Trade-marks Act—

The Chair: Thank you, Mr. Angus.

Go ahead, Mr. Drapeau.

Mr. Daniel Drapeau: You're certainly going to have to review the Trade-marks Act; you're going to have to review the Criminal Code.

As far as ISP.... And I'm happy that we raised the three strikes. Three strikes originated in France. When I first studied this, I told myself, "Well, we're a common law jurisdiction. Our British principle of each man's home is his castle would never allow three strikes." Guess what? The British have it.

So I don't think that's really the issue. On top of that, it's not in the current version of ACTA.

The Chair: Thank you once again to our witnesses for their testimony. We appreciate—

Mr. Charlie Angus: And put on the record, Mr. Chair, how much I respect you as a chair. I've always respected you, and I take back anything bad I ever said about you.

Voices: Oh, oh!

The Chair: My apologies for the mix-up. I apologize to Mr. Drapeau for the mix-up, but we appreciate your brief and your testimony.

We'll suspend for two minutes to allow the members of the public to leave, and we'll return in camera.

[*Proceedings continue in camera*]

● _____ (Pause) _____ ●

[*Public proceedings resume*]

● (1645)

The Chair: We're back in public session.

Before we go on to the consideration of two motions, I just want to bring two items to committee members' attention. The first item I want to bring to your attention is that a bill has come to us from the House. It's Bill S-203, An Act respecting a National Philanthropy Day. It is sponsored by Mr. Warkentin, and we, as a committee, have to deal with it by May 31. So we have quite a bit of time, and if needed, we can always seek an extension. That's the first item I want to bring to members' attention.

The second item is that four orders in council have been given to us for four appointments. There are two appointments to the board of trustees of the Canadian Museum of Immigration; one appointment to the board of trustees of the Canadian Museum of Nature; and the reappointment of Kevin MacLeod as Canadian secretary to the Queen.

If members of the committee wish to review any of these four appointments, let the chair know and we'll figure out when we'll call those witnesses.

Those are the two points of information I draw to your attention.

We'll now go to the consideration of the notice of motion from Mr. Angus.

Mr. Angus, would you care to move your motion?

● (1650)

Mr. Charlie Angus: Yes, I'd like to move my motion forward and speak to the issue.

February 9 is the closing date for public comment on a change in regulations of the Canadian Radio-television and Telecommunications Commission in terms of the obligations of licence holders of television, radio, and specialty television networks in order to maintain accurate reporting. The actual wording is “not to disseminate false or misleading news”.

The CRTC was approached on this issue back in 2000 by the parliamentary regs committee. Now it's not the committee's function to say whether they like a regulation or not; it's to ensure that the language is clear enough and that it would meet any legal challenge. Nobody has ever challenged the CRTC regulations. In fact, in the CHOI-FM decision in 2005, in which the CRTC pulled the licence from CHOI-FM because of many of its outrageous comments, it was upheld in the Federal Court that the CRTC had a right to hold the licence holder accountable for its use of the airwaves in many belligerent and misleading manners.

The question that the regs committee put in 2000 to the CRTC was in light of the Supreme Court decision on Zundel that had struck down some language about the dissemination of false and misleading news. It had asked for clarification. This seems to have gone nowhere for the better part of 10 years.

It was raised again. Again, is the language clear enough? The CRTC seems to have come back with the words—and this is the change—“knowingly misleads and endangers human life”. The “endangers human life”, as part of the obligation of violating a licence, is new. The word “knowingly” would certainly change the criteria for licence holders because you would have to prove definite culpability of the licence holder, and that isn't in there at this time. And there is concern that it actually would be struck down by the court.

I brought this forward to committee not because we believe we want to second-guess the CRTC on every single decision it makes, but if we change the broadcast standards that we have in Canada, it could have profound implications, not only for the way news is covered but for the way we relate to our airwaves. I think it would be worth hearing from the CRTC and from some representatives from civil society in terms of the potential implications of such a regulatory change.

The Chair: Thank you, Mr. Angus.

Madame Lavallée.

[*Translation*]

Mrs. Carole Lavallée: As far as my colleague Charlie Angus’s motion is concerned, I would just like to point out that people are interpreting the CRTC proposal as making it possible to report news which although false is plausible. You have no idea, Mr. Chair, the plausible facts I could give about you even though I know them to be false. We have to look at the CRTC proposal and clarify it with them. Consequently, the Bloc Québécois will be supporting the NDP motion.

● (1655)

[*English*]

The Chair: Mr. Del Mastro.

Mr. Dean Del Mastro: Mr. Chairman, I have to be honest. It seems Mr. Angus indicated we don't want to review every decision the CRTC makes, but I'd argue that in minority politics, it seems we do want to review every decision the CRTC makes. That seems to be the new reality.

I'm also concerned that there seems to be an ongoing attack on free speech in this country. I'm not exactly sure where it comes from and I'm not exactly sure why. I'm concerned that's really what this motion is getting at. Some folks would indicate that you're presenting something as news that you know to be false, when really what you're presenting is your vantage point. People have varying vantage points on what is the news. In fact, I would argue that I could witness something and my take on what I witnessed might be somewhat different from that of each and every person around this table, but I would be providing true witness as to what I felt I saw. We all see things through a lens. I think that's what the CRTC is recognizing in this ruling.

I'm interested to hear what the Liberal Party has to say. We drag the CRTC before this committee quite often. We beat them up somewhat regularly, and I don't see this as something the committee needs to do. In fact, the committee is pretty busy. I've got some important things that I'd really love for us to do, but I do think that if it's the will of the committee to see it, I don't have a strong objection to it; I just look at it and think it smacks of an attack on free speech.

The Chair: Thank you, Mr. Del Mastro.

Mr. Rodriguez.

Mr. Pablo Rodriguez: I don't think it's a question of dragging them here all the time, and I understand where you're coming from. On the general principle, I agree with you. I don't think we should second-guess the CRTC, but in this case I'd like to hear them clarify the process and the decision. I'd like to hear from them on this one—just a meeting.

The Chair: Okay.

Mr. Angus.

Mr. Charlie Angus: I heard my colleague's concern about free speech, and again, I think we have to clarify what this regulation is about. This is about the licence holders. It's not about journalists. It's not about people who go on and have opinions.

One of the great things in Canada is that we have a pretty rough and tumble media. They aren't prima donnas. We read all matter of partisan commentary. We see journalists speaking out on all manner of things. None of that comes under the issue of the regulations we're dealing with.

The licence holder regulation is about the fact that there is a stated social commitment under the Broadcasting Act. Subsection 3(1) of the Broadcasting Act is very clear that a licence holder has to maintain a high standard of journalistic integrity. So you can allow your journalists to have many different points of view, and many times maybe those journalists might provide information that's inaccurate—maybe they made a mistake—but the licence holder has to have an overall obligation to some standard.

The issue of allowing false and misleading information as long as it doesn't endanger human life is a pretty low bar. I don't think you could get lower than that. How would you even be able to prove that they endangered human life? This is the horrific discussion that's happening in the U.S., that putting a target on a politician's forehead leads someone to shoot them. We could never quantify that answer, but someone did get shot, and there is a huge backlash in the United States.

This isn't about suppressing anybody's opinion. This is about ensuring that those who have the licences to broadcast on television and radio have to meet a certain obligation. For example, say in the middle of an election, one television network or radio station decided they were going to supply false information about a politician they didn't like, which could fundamentally change the outcome of the election, change the political dynamic. It would be okay because they didn't get him killed; they just misrepresented who he was. We see that in the U.S. It has happened. It's something we have to be concerned about.

I would like the CRTC to come and explain this to us. I'd like to hear from some civil society groups that might be able to give us a perspective on what the wording should be if there are changes to the regulations so they come in line with law, but certainly what's being offered is much too low a standard.

● (1700)

The Chair: Are there any other interventions?

Seeing none, I'll call the question.

(Motion agreed to [See *Minutes of Proceedings*])

The Chair: I will try to schedule a meeting sometime in the next month.

Mr. Angus, thank you very much. We'll try to get a meeting. I'll invite the CRTC to come and talk to its considerations in this matter. I'd also ask that anybody who has additional witnesses from broadcasting and civil society to suggest to please pass them to the clerk.

We now will go to the last business of this meeting, which is to consider the motion from Madam Lavallée.

Madam Lavallée, would you care to move your motion?

[*Translation*]

Mrs. Carole Lavallée: If you want I could read the motion. However, it essentially congratulates Denis Villeneuve and his team on their Oscar nomination for the film *Incendies*.

I would just add that I made a serious omission. I forgot to also congratulate Montreal make-up artist Adrien Morot on his Oscar nomination for best make up for the film *Barney's Version*. If you will allow me to add this paragraph, I can submit it all in one single motion.

[*English*]

The Chair: Is there any discussion on this motion?

Mr. Del Mastro.

Mr. Dean Del Mastro: Conservative members are delighted to support this motion wholeheartedly. The minister was pleased to present this to all parliamentarians. I think the response is fantastic, and I think it speaks to the feelings of all parliamentarians. We're always proud when Canadians do well.

The Chair: Is there any further discussion?

Did the clerk get the additional wording from Madam Lavallée?

Seeing no further—

Mr. Dean Del Mastro: Don't sneak anything bad in there, Carole. I said we wholeheartedly support it.

Some hon. members: Oh, oh!

[*Translation*]

Mrs. Carole Lavallée: I would like to add the following paragraph:

> The same congratulations are extended to Montreal make-up artist Adrien Morot on his Oscar nomination for best make-up for *Barney's Version*.

I will give it to you now.

[*English*]

The Chair: Is there any further discussion? Seeing none, I'll call the question. All those in favour of the motion as moved by Madam Lavallée?

(Motion agreed to [See *Minutes of Proceedings*])

The Chair: Thank you for your cooperation.

This meeting is adjourned.

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