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Chair

Mr. Glenn Thibeault

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● (0900)

[*English*]

The Chair (Mr. Glenn Thibeault (Sudbury, NDP)): Good morning, ladies and gentlemen and members of the committee.

Welcome, witnesses, to the fourth meeting of the legislative committee on Bill C-11. We'll get right to introductions.

From the Canadian Federation of Musicians, we have Bill Skolnik and Warren Sheffer. Welcome.

From Pineridge Broadcasting, we have Don Conway.

From Re:Sound Music Licensing Company, we have Ian MacKay and Matthew Fortier, director of communications.

Welcome, gentlemen.

Each of you has been informed that you have 10 minutes maximum for opening presentations. That's the total for each organization. After 10 minutes I will unfortunately have to cut you off. Hopefully, we can get that done within 10 minutes.

With that, I'll hand it over to Mr. Skolnik.

Mr. Bill Skolnik (Chief Executive Officer, Canadian Federation of Musicians): Thanks very much, and thank you for having the Canadian Federation of Musicians.

I am Bill Skolnik, and I am a musician. I've worked in theatre, television, and radio in different studios for a long time. I did a lot of writing for *Sesame Street*, so I may have affected some of you sitting here. I am now the chief executive officer of the Canadian Federation of Musicians.

Joining me today is Warren Sheffer, who is our counsel and a lawyer with Hebb & Sheffer.

CFM has represented musicians in Canada for more than 100 years, and many of our 17,000 members are international stars and household names, but the majority are not. I got elected to serve the 17,000 folks in the organization, but there are also a number of non-members, according to the Canadian Artists and Producers Professional Relations Tribunal, CAPPRT, which I speak for on federal matters. So I'm not just speaking on behalf of the folks who pay my salary; I'm speaking on behalf of anybody who picks up an instrument and gets paid for it.

Musicians are self-employed business owners and often earn less than $20,000 a year. While they make some of their wages from performing and hitting the road, a significant portion of their income comes from recordings and the rights to past performances and work. You may not realize it, but when you go to the Sanderson Centre for the Performing Arts, the National Arts Centre, or Centre In The Square, those players you see accompanying featured performers are not with those featured performers from city to city. They are hired by a music director, and they operate as independent business people.

Some of you may know these folks. I know most of them, and I'm going to give you names of some from smaller places so you can acquaint yourselves with them. From Sudbury, we have Christian Robertson, Victor Sawa, and Yoko Hirota. The three Gray boys, John, Charlie, and Phil, are originally from Truro and now live in Toronto. I think John lives in Vancouver. He wrote *Billy Bishop Goes to War*. They're from a small town in Nova Scotia. From Kitchener, there is Frank Leahy, a well-known player, and Wendell Ferguson, one of the funniest guys in Canada. I also want to mention Doug Perry and Paul Mitchell. From Peterborough, we have the Cherney brothers, who don't live in Peterborough anymore, but their father was a well-known appliance dealer, Washboard Hank. If anybody has ever seen Washboard Hank play, you know who I mean. These are our members. These are the people I'm talking about.

The Leahy family is well known, from Lakefield. Frank DeFelice, Garry Munn, and Rusty James are from Brantford. You may know these folks. From Sackville, there is Ray Legere. I'm just giving you these names because these are people who bought houses, raised their children. They don't necessarily live in the big cities—some of them do—but most are from the small towns. This is who I'm talking about. These are the small business people I'm referring to.

Musicians can only make a living if there are robust copyright laws that allow them to negotiate and exploit their rights in the marketplace through collective bargaining and collective licensing. Diminished rights mean diminished income.

We support the government's effort to modernize the Copyright Act by implementing provisions of the WIPO Internet Treaties. In particular, we welcome the establishment of moral rights for performers. That's really vital to us.

We acknowledge the government's desire to address the fact that people are enjoying music in a digital format anywhere and anytime; however, just because digital technology has made it easy for works to be reproduced, it doesn't mean that it should be free. Technological advancements cannot be a rationale for depriving creators and performers of their right to be rewarded for the reproduction and use of their work.

Music has value. This work is the product of creative labour and it still has value. Unfortunately, in too many places this bill removes the value.

The Canadian Conference of the Arts has put together a package of 20 technical amendments to Bill C-11. CFM is one of the 68 cultural organizations that helped put those together, and we fully endorse each of those amendments. I want to stress how remarkable an achievement it is to get these diverse organizations to agree on this package.

Today I want to speak specifically to four amendments that would go a long way towards protecting the intellectual property and income of musicians.

Number one, put a fence around the widespread exceptions to copyrights and neighbouring rights introduced in the bill by including explicit language from the Berne three-step test.

● (0905)

The Berne three-step test, as found in the Agreement on Trade Related Aspects of Intellectual Property Rights, TRIPS, to which Canada adheres, provides that:

> Members shall confine limitations and exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the rights-holder.

We want users to be able to access and enjoy our members' work, whether for personal enjoyment or education, but not at the expense of the musicians who seek to make a living from the use of their works and performances. Make this provision explicitly in the act and it will get the government and the courts on the same page.

Second is user-generated content. This is an example of where the three-step test would be helpful by putting fences around exemptions. The UGC or mashup provision is a remarkable departure from the objective of the Copyright Act to confer exclusive rights on creators and performers. We understand what the intent is here: to allow families to post videos of their kids dancing to pop music without breaking the law. That's reasonable, but the wording in the bill goes too far for us. It would remove the ability of creators to license or have any say in what happens to their work. YouTube is the big winner here, at the expense of creators.

We recommend the exception be removed altogether, or at a minimum amend it so that moral rights are properly protected. We need to leave the door open for collectors to enter into agreements with businesses like YouTube so that performers can get paid, as is the case in other countries.

I can tell you from my perspective that a lot of our members are as much concerned about control of what their works are as they are about the payment. Both are important, but control is a big aspect with respect to moral rights. They need to have some teeth behind those.

Third is statutory damages. Bill C-11 proposes to drastically reduce statutory damages for infringement, that is for non-commercial purposes, to between $100 and $5,000. This is not an adequate deterrent. We also see no need to make a new distinction between commercial and non-commercial infringement. Such a distinction conveys the wrong message that so-called non-commercial infringement is not at all harmful to creators and performers. For example, I can take a CD, make 100 copies of it, and give it to everyone I know for Christmas. I'm not making money off it, but that's potentially 100 copies of the CD the artists aren't going to sell.

It only makes it harder and less worthwhile for small business people with limited resources to pursue damages for infringement. We understand what the government intends with this change, but it's not necessary. We have seen no cases in Canada where individuals have been forced to pay exorbitant awards for copyright infringement.

Even more puzzling is the bill's proposal to exempt those who enable acts of copyright infringement on the Internet from statutory damages. Statutory damage awards must be a proportionate deterrent and must be applicable to mass infringers like peer-to-peer sites that makes tons of money off the backs of hard-working artists.

Fourth, and finally, is private copying. CFM members earned more than $4 million from private copying in the past 10 years. Unfortunately, Bill C-11 will allow that critical source of income to dry up by not extending the private copying regime to new technologies. The revenue stream needs to be replaced—and I emphasize replaced—to recognize that long-standing principle that copies have value, and that exclusive rights-holders are to be compensated when copies are made.

The first choice is to make the bill technology neutral by extending the current private copying regime to digital audio recorders that are designed, manufactured, and advertised for the purpose of copying music. But if the government chooses not to take that route, part 8 of the Copyright Act should be supplemented by another restitutive mechanism. What I'm saying here is that there is a principle involved that's already been established: that copies have value and that people seem to have a right to make some money from that.

We're not intending to say extend the technology if that's not palatable. We believe there are other methods. We have examples of other methods of getting remuneration to artists for the extended use of their copies, the storage, and the duplication. So it's the principle that we're arguing and the ability to keep that principle going and keep money going. You know, a musician would get statements. As I say, they're business people, and they can't go into the bank and say, “Well, I have six, seven months of contracts coming up, I've got tours coming up.” They say, “What if you get hit by a car? What if that happens?”

● (0910)

But they can go with those statements that they get from Re: Sound and Canadian Private Copying and they can go with other things that show their income and regardless of what happens to them get money. And they don't need much. The average guy maybe gets $2,000 or $3,000 from private copying in a year, but that can get him studio time, it can get him sidemen to play with. This is an important aspect of their income. It's been there for—what?—20 years, and it's now being removed. It's being removed because of technology, not because anybody here believes they shouldn't get it.

The Chair: Thank you, Mr. Skolnik.

Mr. Bill Skolnik: Is that 10 minutes?

The Chair: It's over 10 minutes.

Mr. Bill Skolnik: Okay. Thank you.

The Chair: Thank you.

Now I'll go to you, Mr. Conway.

Mr. Don Conway (President, Pineridge Broadcasting): Thank you, sir.

Good morning. My name is Don Conway. I'm the president and the majority owner of Pineridge Broadcasting. We're a small private broadcaster serving Cobourg, Port Hope, Northumberland County, Peterborough, and the Kawarthas in Ontario. Thank you for inviting us to appear before you.

I hope that by the time we part you'll have an understanding of small-market radio, the part we play in the everyday life and economy of our communities, and the financial stresses we live with each day in order to do it.

Due to the tight timelines, my comments to you will be limited to my oral presentation, but I'd be pleased to follow up with any written submission, if you require it.

I was born in Chute-à-Blondeau and raised on a farm at Alexandria. I sold my first calf to buy a transistor radio so that I could listen to music on the Cornwall station and the stations in Montreal to hear the play-by-play of *les Canadiens* and *les Expos*.

I started in radio in 1974 as a sales rep in Brockville. In 1983 the owner purchased a little, bankrupt AM radio station in Cobourg and asked me to go and run it for him. It was called CHUC, but on the street it was better known as “up-chuck radio”.

A Voice: Oh, oh!

Mr. Don Conway: It took many years and a lot of work to turn it around.

I'm going to skip the details of how we got to today, other than that I purchased the company in 1991. Suffice it to say that what we did to grow our little company out of bankruptcy in 1983 is not much different from the way we operate the company today. It takes hard work, a dedicated staff, fiscal patience, and a strong community involvement.

Local radio reflects retail. When retail is down, as in this past year, then radio revenues are down. That means cutting expenses and staff. In small markets, there are not a lot of staff to begin with; we live very close to the profit-loss line. Add in the extra expenses this past year for new and retroactive copyright tariffs and there was no profit.

Our small main office is in Hamilton Township. We are one of the largest employers, with about 25 staff for our two stations there. Our new Peterborough studios have about 15 staff.

We desperately need more staff, but with the state of the marketplace we can't afford to add. Yet when I have to figure out how much to pay in copyright fees for each of our stations, we are classed as bigger than a typical medium-sized station.

I can tell you that we are small and that the “small” classification should be closer to $2 million than to $1.25 million.

Before I get to talking about copyright, I'd like to spend just a minute to explain how a small-market radio station survives.

We build loyalty. Not only do we daily talk about the community and promote the activities of community groups, but the staff become personally involved in the community. We talk on air about what matters. If it is snowing, we talk about what school buses are cancelled; if council voted to limit garbage to two bags, we put the mayor on; if the 401 is shut down, we tell the best detour to use and give a toll-free number to call to update us.

We do not subscribe to a costly national news service. Most days, each of our newscasts is 100% local. We are part of the disaster plan for the various municipalities. When the two water pumps went down recently in the town of Port Hope and an emergency was declared, the town coordinator called me at home to set up airing messages to residents.

Local emphasis extends throughout our programming. The Community Booster Club twice an hour promotes community events at no charge. We put community groups on air to discuss their event. This is not just a casual relationship. Their success helps build loyalty to our brand and ultimately helps build a better community.

For example, the Northumberland United Way supports 16 member agencies. We promote the United Way itself and each of its member agencies, and each fall we air a weekly update with the campaign chair.

The Canadian Blood Service.... Since my leukemia marrow transplant in 1987, we do live broadcasts every month from the blood donor clinic.

Our stations were instrumental in the success of the first annual anti-bullying awareness event sponsored by the Northumberland Youth Advisory Council. Through an on-air campaign and interviews with those involved, we brought county-wide awareness to the issue of bullying.

Relay For Life is the Canadian Cancer Society's largest fundraiser in Northumberland County. Our stations have sponsored this event every year, and in 2011 alone the event raised over $270,000.

There are many community initiatives that our stations support financially and through on-air campaigns. I could give you a list of community groups that we've worked with in the past year, but in the interests of your time, I'll not read them here.

All our staff walk the talk. We are all directly involved in many community groups. I myself am past chair of the United Way campaign, the United Way board, the Hospital Foundation board, the Waterfront Festival, and the Cobourg Rotary Foundation Committee, amongst others.

● (0915)

In addition to many charitable organizations, Northumberland has a large arts and music community, and our stations make their time available to help promote their activities. For example, Summerhouse, a local rock band: our station was the key supporter of the release of their debut CD, and they are interviewed and perform on air regularly. Zack Werner and his band Haymaker: our station hosted studio live performances and interviews with Haymaker during the release of their debut album and subsequent fundraising efforts with the ALS Society of Canada. For Blue Sky Revival, our concerts to raise environmental awareness featuring an all-Canadian line-up of established musicians and emerging artists, we provided an on-air campaign as well as on-site support with organizational assistance and an emcee.

We have developed a great relationship with people in the music industry over the years. They understand that our stations want performers to be successful and that we will do what we can to promote those artists.

Community extends to our high schools and our community colleges. Each semester we provide co-op training for three to four students from the four high schools. Each spring we also provide co-op training to students taking various radio courses at Loyalist College in Belleville and others. Our staff sit on various advisory boards at Loyalist College.

Pineridge Broadcasting is not some big corporation with a head office in a lofty office tower. We don't have vice-presidents. We don't have unlimited funds for staff. We are community folk not afraid to get our hands dirty. We want to be a good promoter. We would like to do even more in our communities. We want to be a good employer. We'd like to hire more staff. We believe in supporting the artists who make the songs that allow us to put a product on the street. But we believe in fair play, and I don't think being forced to pay multiple times for the same thing is fair.

In the past we received music from the record labels on 45s, and then, even up to four years ago, on CD. We've always had the music from the labels and we've never had to pay for it. It doesn't make sense that because they now force us to download digital tracks we have to pay for them. In each of our stations the music is downloaded to the very same computer that then plays it back over the airwaves. The only other time a clip might be copied is to create a promotional ad to tell listeners about the artist.

If anything has changed in the 39 years I've been in radio, it is that we have reduced to almost nil any need to copy music. I told you of our shortages of staff. Is it fair play, then, that you would pass a bill that requires our company to reassign one of our very busy staff members to erase and re-record every piece of music in our library every 30 days? You're just adding prohibitive costs to our operations. Let's say I have 3,000 songs in our musical library and let's say they average three and a half minutes. That's 10,500 minutes. When re-recording the music, we'll have to do it in real time, which would take, let's say, 175 hours. If a person works a solid seven hours each day, they're going to take 25 days to re-record that library and they're going to have to do it every month.

I'm asking you to remove the requirement that music be deleted every 30 days. The resources required to do that are just beyond the scope of possibility for a small operation like ours. Simply put, the 30-day limit doesn't make sense, nor does the fact that we should be paying any reproduction tariff.

Folks in the music industry know how important radio airplay is. That's why they've always worked with us to get performers on the air. We know how important music is. That's why we pay our core copyright fees for broadcasting; that's why we promote the artists. It's a fair balance.

To conclude, we're a small private broadcaster trying to make our communities better. We're trying to be good corporate citizens, we're trying to be good employers, and we're trying to grow our business. We promote the music and the artists we play. We pay the copyright royalties. But ever-increasing tariff payments are threatening our ability to do all of these things.

Thank you for the opportunity to appear before you today. I'm happy to answer any questions you have.

● (0920)

The Chair: Thank you, Mr. Conway. Congratulations. You are under 10 minutes.

We'll hand it over now to Mr. MacKay.

Mr. Ian MacKay (President, Re:Sound Music Licensing Company): Thank you.

Re:Sound is the not-for-profit collective dedicated to obtaining fair compensation for artists and record companies for their performance and communication rights. We represent the royalty rights of more than 12,000 musicians, including featured and session musicians and record companies. The money we collect is split 50-50 between the performers and the labels.

We appreciate that many of you have had your fill of copyright discussions, so I can assure you we would not waste the committee's time if our proposals did not align with the economic and job creation goals behind Bill C-11 and if they were not properly in order.

Re:Sound has tabled three straightforward proposed changes to Bill C-11.

One of these is highly technical, so in the interest of time I invite members to consult the background document and proposed amendment language we've given to the clerk. On this amendment I'd only state that it is a very simple language omission in the Copyright Act related to ministerial statements on reciprocity.

The other two amendments I believe warrant some more discussion at committee as they mean more money for more people. The first amendment would bring needed clarity and would allow Re:Sound to get millions of dollars out of a trust account and into the hands of musicians and businesses.

The second amendment addresses the serious market distortion in the current Copyright Act that dates back to the 1990s. Fixing this would inject millions of dollars a year into Canada's creative sector at no cost to taxpayers or consumers.

The first amendment is what we call the orphan amendment. What are orphans in the copyright context? They're eligible rights-holders, musicians, or labels who have not yet signed up with us at a particular point in time. They may not have signed up because they don't know about their rights or they may not have made a recording or existed as a band at the time a particular tariff was set.

The concept of orphans is not unique to us. They also exist in the context of reproduction rights, retransmission rights, private copying, and others. The difference is that in all of those other cases there are clear and expressed provisions in the Copyright Act that set out clear rules and obligations with respect to orphans. We are alone in not having these kinds of rules and this kind of clarity and can only think this was an oversight at the time of drafting.

Without any rules in the Copyright Act to clear up what obligations we have to these orphans, we may need to hold some funds indefinitely. To correct this problem, we simply seek an amendment—it's two lines long—that would give us the same clarity regarding obligations to orphans that all these other collectives have.

In short, this amendment would provide clarity on the entitlement of orphans to be paid, empower the Copyright Board of Canada to establish clear rules around limitation periods, and, crucially, it would allow Re:Sound to pay out millions of dollars in royalties that we've been forced to hold indefinitely due to the lack of clear rules under the Copyright Act.

Our job at Re:Sound is to collect and distribute money, not to collect and hold money in a trust fund. We're a flow-through organization and we need clear, transparent rules in order to do our job. If you can make this technical change to the act, we'll get money —that's money that's already been collected—out the door and into the hands of the rights-holders.

The other amendment I will talk about today is the elimination of the $1.25 million exemption for commercial radio in section 68 of the Copyright Act. The last time the Copyright Act was reviewed in the mid-1990s, Canada was in the middle of a deep recession and the future of commercial radio was uncertain. In 1995, for example, the entire Canadian radio industry—that's the entire industry—posted a total profit of only $3.6 million. So the government of the day enacted a “Special and transitional royalty rates” section of the act. Under this section, performance royalties to musicians and labels were phased in over time and each commercial radio station was only required to pay $100 on their first $1.25 million in advertisement revenues. This was and remains the only such subsidy in the Copyright Act and the only subsidy of its kind in the world.

Fast forward to the last few years and radio has been thriving and posting record profits in every market, in every language, and in every region of the country. In fact, between 2006 and 2010, the Canadian radio market experienced the second-largest absolute increase in revenue in the world behind only China. It grew by $330 million. This growth story is great news, and I want to be clear that we want to see the continued success for commercial radio in Canada.

● (0925)

However, because the Copyright Act has not been reviewed since 1997, neither has the $1.25 million subsidy been reviewed to reflect the huge and growing profits of the Canadian radio industry. All the while, musicians and labels, including hundreds of Canadian independent labels and musicians, are not receiving fair market compensation for the content they provide. This subsidy reduces the royalties earned by musicians and labels by about one-third, or $8 million a year. The bulk of this subsidy goes to a handful of large radio groups—not small radio groups but the large radio groups. This is a serious market distortion that benefits a very profitable industry at the expense of those who create the content that drives that industry.

Once again, I would state that we love radio and we recognize the tremendous work that many stations do in their communities, but please remember, commercial radio is a for-profit venture. That's why it's called commercial radio, and the business model is simple. Stations play music because music draws listeners. Listeners attract advertisers. In fact, 13% of all advertising dollars spent in Canada are spent on commercial radio. That's the highest proportion in the world.

Simply put, music drives commercial radio. It helps with the station branding and it helps target and retain certain demographics. Our proposed amendment allows the musicians and businesses who invest in and create the products that radio puts on the air to get properly compensated.

Remember, this is a legislated subsidy, so radio stations do not have any option but to be subsidized. To their credit, broadcasters acknowledge the importance of paying for music. In fact, the chair of the Canadian Association of Broadcasters stated to the precursor of this very committee that, and I quote, “We want to emphasize that broadcasters are not opposed to paying for the communication right.” That is, they are not opposed to the paying of royalties to musicians and labels that Re:Sound collects.

As far back as 2005, the Copyright Board weighed in on this subsidy and stated, and again I'm quoting here:

> Even the smallest of stations would be able to pay the tariff. Allowing large, profitable broadcasters to escape payment of the full Re:Sound tariff on any part of their revenues constitutes at best a thinly veiled subsidy and is seemingly based on no financial or economic rationale.

So radio acknowledges that they think it's important to pay for the communication right, and even the Copyright Board, the expert regulatory body that is tasked with reviewing all economic data before it sets fair rates, has stated that every station can afford to pay the full royalty rate.

This amendment would have no impact on any other part of the Copyright Act and would ensure that $8 million a year is injected into the Canadian creative sector at absolutely no cost to taxpayers or consumers.

Re:Sound is very supportive of the goals behind Bill C-11, particularly to generate economic activity and jobs in the creative sectors. We believe the two amendments we have detailed today align very closely with those goals, and we would be happy to take any questions.

Thank you.

● (0930)

The Chair: Thank you, Mr. MacKay.

We will now start our first round of questioning for five minutes. First up is Mr. Braid.

Mr. Peter Braid (Kitchener—Waterloo, CPC): Thank you very much, Mr. Chair. Good morning. Thank you very much to all of our witnesses for appearing this morning and for your presentations.

Mr. Conway, I'll start with you. You explained in your presentation that you believe that radio stations shouldn't have to pay for the same digital piece of music multiple times. Could you explain to the committee approximately how many times today a radio station pays for the same piece of music, and then what would be different under Bill C-11 down the road?

Mr. Don Conway: First, we're charged with reproducing music, and as I stated in my presentation, it is the record labels that have set up the server. They moved from CDs about four years ago to a secure server. In fact, they set me up when they did.

Let me take you through it. They have a server. The server knows your typing speed or how you type something in, so only you can download something. I don't know why they did me. I guess it was just to show me how to do it. I have one particular individual who would go to the server for that station, get the music, download the music to that computer, and then it gets played back on that computer through our system on air. So there are no multiple copies of the music that is downloaded. Yet that apparently is what we're paying for in the various tariffs, and I just don't think that's right.

Mr. Peter Braid: Okay.

Now you expressed concern about the 30-day requirement currently in the bill. Is it fair to say you are perhaps seeking a technical amendment with respect to that? Could you elaborate a little on it, please?

Mr. Don Conway: The 30-day requirement just seems really strange for radio. It may work for some other part of the whole copyright thing, but for radio.... I'm already short-staffed, so if I have to reassign somebody and that is their sole responsibility—because I just took 3,000 songs and it's going to take roughly 25 days in real time for them to re-record all of that music—that means I have to take that person away from what they're presently doing and their sole job is to re-record our whole library every month. That to me seems like a waste of time.

I'd much rather have that person doing something. I'd rather grow our business so that.... The tariffs we pay are based on revenues. The more we grow our business, the more the artist is going to benefit. So instead of taking it at this end, allow us to grow the business, and they're going to get more dollars.

● (0935)

Mr. Peter Braid: When a radio station like yours plays an artist's piece of music, who wins? Who benefits, in your mind?

Mr. Don Conway: Ultimately, it's a win-win on the whole thing, because we're taking the product the artist has created, so we're taking their music and putting it on air, and we're then adding value to it by working within our community to create community awareness. I mentioned a whole bunch of different community groups that we support and how we tell people about snowstorms or whatever matters in their daily life.

In fact, we take this product, we pay for this product, and we enhance this product. If we grow, we're actually going to come full circle by helping to give more dollars back to the artist, in simple terms.

Mr. Peter Braid: Okay.

Mr. MacKay, I'll turn to you. I heard two different things this morning. Mr. Conway said that particularly local radio in Canada is on the edge of the profit-loss margin. Then you explained that radio is posting record profits, particularly as compared to international markets. Could you speak to that?

Mr. Ian MacKay: Yes. Some of the numbers we have and some of the quotes I was given before come straight from Copyright Board decisions. When they render decisions on tariffs like those on commercial radio, they go through all the economic evidence presented by the radio stations in terms of their ability to pay tariffs. They specifically assess that. They're the expert regulatory body to do that.

So the evidence they evaluated through that process, which was evidence presented by the CAB and by radio stations, led them to the conclusion that every radio station in the country could afford to absorb the full tariff.

Mr. Peter Braid: Mr. Conway, could you—

The Chair: Sorry, Mr. Braid.

Mr. Peter Braid: We'll have Mr. Conway address that, perhaps, through another question.

The Chair: Sure. We're already over time, unfortunately.

Thank you, Mr. Braid and witnesses.

We'll now go to Mr. Angus for five minutes.

Mr. Charlie Angus (Timmins—James Bay, NDP): This has been a very interesting discussion. It was making me think of when I was first starting out in music and we had a record. We'd go to the radio station, and if it was going to get played, the record gal down in the library brought the record up and played it. Now when you go into radio, there's a guy sitting behind the desk and everything's on a server. All those other people who used to have to rack your record and bring it up and move it around and keep it filed are all gone.

We're now in a situation where the radio station can press a button and the song gets played. I love what radio does, but when I hear that it's all about snowstorms and telling kids when the school bus is closed, that's great, but nobody phones the heating company and says, hey, give us a break on our heating bill this month because we do a lot of good community work. Nobody says to the telephone company, hey, we don't want to pay our phone bill. But it seems when it comes to musicians, the artists, there's a sense from the Conservatives that paying them is a problem. The win-win is that they get a bit of free publicity.

I'm thinking this whole business model was based on a relationship, and a relationship that is adjudicated at the Copyright Board. These tariffs aren't made up; they're decided.

Mr. MacKay, you're talking about this $1.25 million subsidy that allows radio stations to not even pay, basically, to get the stuff for free. Is there any place else in the world that does that?

Mr. Ian MacKay: No, there is no place elsewhere in the world that has a subsidy for commercial radio.

Mr. Charlie Angus: I'm just thinking, because of all the Canadian bands I know, most of them are pretty much hand to mouth, so radio is essential for them, and it's a great relationship. I'm thinking, why is it that a band like Bedouin Soundclash has to work for free, whereas the telephone company doesn't? If it's adjudicated by the Copyright Board, do you think it's right for the government to come along and say that copyright royalties don't have to be paid because they don't like them? Is that fair to maintaining a reasonable business model for musicians?

Mr. Ian MacKay: The $1.25 million exemption is, as far as we're aware, the only provision in the act that prevents the Copyright Board from doing what they're there to do. When they have looked at it every time in their decisions, they set out separate rates for low-use music stations, for community radio stations, for all-talk radio stations. That's them doing their job. They take into account the size; they do graduated rates according to the size of the radio station. They're the experts on doing that. They listen to all the evidence.

The $1.25 million exemption prevents them from actually doing that. They can't do their job because of that exemption, and it's the only instance where the Copyright Board is not left to do their job.

● (0940)

Mr. Charlie Angus: So you're saying that amounts to about $8 million. We have $8 million there. We have about $20 million in mechanical royalties that will be struck. We have probably another $30 million that the Copyright Board figured was in updating the digital levy. That's a serious amount of money in an industry that has been pretty much reeling it on the ropes.

Do you think we can address some of these shortfalls in the bill to ensure that we maintain a reasonable business model so that the creative community can continue to actually create the music that's driving radio, that's driving Canada as such a world leader? Can we do that with this bill?

Mr. Ian MacKay: We certainly hope so. In terms of the $1.25 million exemption, as I said before, it's in a part of the act that was called "Special and Transitional Royalty Rates". It was very much a product of the time and where radio was at, at the time. Those times have changed a lot. It's been 15 years since that legislation was enacted, so yes, I think it's very much time that it was dealt with.

The Chair: You have 40 seconds.

Mr. Charlie Angus: Thank you.

Could you just explain the orphan rights clause? I think it's a really key element.

Mr. Ian MacKay: Every other collective licensing regime and even reproduction rights regimes in the act have clear rules that set out that an orphan, when they come forward later, have the right to claim moneys. It also sets out the ability for the Copyright Board to set clear regulations and clear limitation periods for claims and rules as to how claims come forward. In the absence of that, we're left relying on different provincial legislation, different legal opinions as to what our obligations may be to different rights-holders, and that's problematic because it's not clear; it's not transparent. What we're asking for is the clarity so that we know exactly whom we should be paying and how to go about doing it.

The Chair: Thank you.

Sorry, Mr. Fortier, we're already over time. Maybe you can get that in on one of the next questions.

Thank you, Mr. Angus.

For the next five minutes of questions is Mr. Moore.

Hon. Rob Moore (Fundy Royal, CPC): Thank you, Mr. Chair. Thank you to the witnesses for being here.

I've listened to Mr. Angus. I guess he has a little beef with local radio—I don't know why. We do appreciate those messages we get when our kids are going off to school. In a day of satellite radio and so many hundreds of options out there, local content in our communities is certainly valued.

Mr. Conway, on the issue of Canadian broadcasters, local stations, how do you see their role in supporting Canadian content? Mr. Skolnik listed some of the performers in our communities that we value. What do you see as your role in allowing those individuals to make a living, buy a house, raise a family in Canada, make us proud both nationally and also on the international stage as we develop our talent here in Canada? How do you see the role of the local station?

Mr. Don Conway: I think it's pretty important. Everything that is local—that's why we call it local radio. It doesn't matter whether it's a community group or it's artists. I mentioned in my presentation some of the local groups we've brought in and done live performances with in the studio.

We work with many others. If they're putting on a fundraiser, we're helping to promote their fundraiser. If we can do anything to help local bands, that's what we do. That's part of our mandate—what we feel is our mandate—as local radio. We were lucky enough to be awarded the licence for Peterborough by the CRTC. As part of being in that market, we promised we would spend $175,000 over the next seven years promoting Canadian content.

There is a showplace—a theatre—there is the festival of lights, there is the Kiwanis Music Festival, there's FACTOR, and there is another one I can't recall. There are five things—oh, the high schools, two scholarships each year for journalism students at the high schools. I've met with all of them now, because this is our first year. We just got on air this past summer, and I've now met with all of them so that we can determine how we can meet their needs. Do we just cut a cheque? No, we want to get right in. That's what I told them. I told them that we want to get involved in helping their organization. This is going to be a win-win relationship for at least the next seven years.

● (0945)

Hon. Rob Moore: I'll throw this to Mr. MacKay, and also to you, Mr. Conway, for comment.

You mentioned the person-hours, which are possibly labour intensive with some of the changes that are coming on the 30-day rule. We've seen so many technological advancements in the last little while. Do you think technology could play a role in the future as stations are dealing with future issues in lessening that burden?

I'll throw it open to either one of you.

Mr. Ian MacKay: What we're talking about in terms of performance communication rights...technology does not play a role. It is just the right to perform and communicate the music over the air. Technology has not changed that at all over the years.

Mr. Don Conway: Mr. Angus has unfortunately gone. I thought what Mr. Angus talked about was that he used to take it in and now they just push a button.

When we bought the bankrupt AM radio station in 1983, there were 12 of us who operated that station for a number of years.

Right now, in the Cobourg office, we have 25 folks. In the new Peterborough station, we have 15—40 staff over three stations. All this technology that he was talking about has not reduced our staff. You can't go below the minimum. You have to have a certain number of people to run a radio station.

The Chair: You have three seconds left, so if you have a very quick question—

Hon. Rob Moore: Is that 30 seconds or three seconds?

The Chair: That's three.

Hon. Rob Moore: Okay. Thank you.

The Chair: Thank you, Mr. Moore.

Thank you, Mr. Conway and Mr. MacKay.

Now we have Mr. Regan for five minutes.

Hon. Geoff Regan (Halifax West, Lib.): Thank you very much, Mr. Chair,

Thank you all for coming today as witnesses. You know, this is a little different, having government so involved in making decisions that will affect whether or not industries thrive or individual artists thrive.

There are many industries in this country where it doesn't happen as much. In fact, we're a government far less involved as an arbiter in that way, and in the way the CRTC plays a role, and in the way that Parliament making legislation will play a role in your case. We have to ask ourselves, I guess, in view of the fact that we are involved in this, how do we ensure—and what is the role of government in ensuring—that small radio stations of that industry and all artists thrive?

Do we have to really worry about every single one of them? I don't think any of you would ask that the government ensure that every single station or business of any size makes a profit. In a lot of ways, we don't control the various factors in terms of productivity, and their business models, or that every artist will prosper, because not every artist will survive. I suppose if I were singing, people would say that I shouldn't be doing that, and shouldn't be making a living at it, for example. I'm sure many of my sisters would argue that.

The question is, how do we do that? How do we ensure that both artists and small radio stations, for instance, survive?

Mr. Skolnik.

Mr. Bill Skolnik: I agree with you about the government intervention. I can tell you it was a shock to me to find out that the government paid my salary when I started writing music. I had no idea. I appeared before, at that time, the Copyright Appeal Board, and I looked at all these people who were getting paid a heck of a lot more than me and realized that there were three people up there who were determining what type of food my kids would eat and what clothes my wife would get. I of course never bought any.

How to ensure it? We've gone a far way. Federally, we've done status of the artist, which permits us to bargain on behalf of musicians. Mr. Conway's station, for example, is susceptible to that. We can go into Peterborough and we can ask the CAPPRT to have him sit down and bargain with us to make sure that those players are compensated properly, or different actions can take place.

We haven't gone around to every small town and done that. We can't. We have relied upon the community to determine that. So, yes, we are dependent on the local radio stations, we are dependent on the local theatres, we are dependent on the local clubs, and we have let the market take its place. That's why the supplemental income that these people need to keep going is so important to us. That's why the licensing to ensure that artists can continue, and continue without having their supplemental income diminished.... If they have a project they can go to a bank and get a loan—that this continue. The only way so far is through the licensing, either of the performance or the performing.

It is federally regulated; it is internationally regulated. When you look at WIPO, it's not something we're going to change, but it is something that we need to look at. We need to make sure that it remains rejuvenated, that it remains there as a level, and that there's an ability for all of our performers, all of our creators, to take part in it, so they can continue to present this country to the rest of us.

● (0950)

Hon. Geoff Regan: I only have seven minutes. One minute is left, but this is so compressed, I need thirty minutes.

Mr. Conway, you talked about the fact that you've always gotten music from the labels and never had to pay for it. You started out with 45s, of course, so you have seen big changes. Of course, so have the artists, as you know, and they've gone from a time when they had lots of revenue from selling records that people like me would buy to a point where they aren't selling nearly as many, and they have a challenge.

What's your answer to this? How do we ensure that artists get revenue and that a small station like yours survives? Should we make a distinction based on the size of radio stations?

Mr. Don Conway: I don't have any problem paying artists. I've never said I had any problem. I think we should, but it has to be a fair balance.

One of the things we're doing right now, in the last couple of years, is this. We're paying multiple times for the same thing, so we supposedly have multiple copies on hand. Well, we don't need it because it comes to one computer.

That's where you asked the question about government involvement. I'm not sure that I see government being involved in this, because when government gets involved, you get to something like this 30-day thing, which in our case just doesn't make sense. Why put somebody to work and reassign them from doing something else just to re-record something? It just doesn't make sense, I'm sorry. I don't see government being involved in this. If we can grow our revenues, the artist is going to get more revenue—bottom line.

The Chair: Thank you, Mr. Conway and Mr. Regan.

That ends our first round of five-minute questions. Moving on to the second round, for five minutes each, we'll start with Mr. Armstrong.

Mr. Scott Armstrong (Cumberland—Colchester—Musquodoboit Valley, CPC): Thank you very much, Mr. Chair.

And thank you all for being here. I enjoyed your presentations.

Mr. MacKay, you've proposed an amendment that would repeal the $1.25 million exemption. Is that correct?

Mr. Ian MacKay: That's correct.

Mr. Scott Armstrong: Mr. Conway, I think you talked about actually expanding that. How would repealing that affect your small radio station?

Mr. Don Conway: I think I've already mentioned the state of affairs last year. Last year, to be fair, it was retroactive tariffs. We were nailed with retroactive tariffs. Maybe the big guys can swallow it, but it hurt the little guys like us who live on cashflow. It created a non-profit situation.

When we live that close to the profit-loss line and we have to determine whether or not we can hire another person here to do this, even though we really need to, if you're going to take away the $1.25 million, that's substantially going to impact on my being able to hire somebody else. If I can't hire somebody else, I can't grow my revenues. If I can't grow my revenues, I can't pay the artist anymore.

So you either cut off the leg over here or allow me to grow over here—one or the other.

● (0955)

Mr. Scott Armstrong: Mr. Conway, your business has obviously changed, and your business model has changed. As it is, technology changes; everything changes. It's changing things for artists, it's changing things for producers, it's changing things for broadcasters like yourself.

A recent change that's growing in radio, from what I've been told, is the impact of satellite radio. Have you seen satellite radio damage your ratings, or does the fact that you focus so much on local content protect you from that?

Mr. Don Conway: We live right beside Toronto. There are 40 radio stations that come into our little Cobourg-Port Hope-Northumberland market. Our station finished number one and number two. We play the same music those guys do. The only thing is, if there is a snowstorm, they can't tune to CHUM-FM in Toronto to find out what's happening to their bus number. That's why we finished number one and number two. That's the same model we're now taking to our new station in Peterborough. That's the only way a local radio station can survive now. They've got to be 100% local. That's why we don't even subscribe to a national news service. All of our news is generated locally. They go to the town meetings. They make local newscasts.

Mr. Scott Armstrong: So if you lose some of the support from the subsidy—you have kind of a niche market—is that going to make it difficult for you to operate in the profit margin?

Mr. Don Conway: Absolutely. If I can't hire somebody right now, it's going to delay it down the road because I'm going to have to put what I would pay that new staffer over here to the tariff.

Mr. Scott Armstrong: Thank you.

Mr. Skolnik, can you talk about piracy and how piracy has recently affected your clients?

Mr. Bill Skolnik: That's not in our brief because it's actually handled by the CCA brief, which has also been put in there. Of course, it's a concern. It's something we worry about, but we looked at different ways of dealing with it. We're grateful for the government putting in some of the aspects to try to contend with it. We don't think it's enough. We don't think necessarily that it's going to help. I defer to what's in the CCA declaration rather than my own.

Mr. Scott Armstrong: Okay. Thank you.

Mr. Conway discussed the 30-day erase issue, which is going to cause them some labour issues, trying to hire somebody else to put in place or reassigning someone because of their short profit margin. Do you think this is an effective plank in this bill? They have to re-record things after 30 days. What's your opinion on that?

Mr. Bill Skolnik: I don't even think there should be a 30-day exemption. I think you should just pay. I support our artists, and I support getting them re-paid.

It's interesting to me, and I understand that this is an extra cost perhaps, but why us? We're the product. We provide the content. Why not go to the power company and say that we need a break on our rates because we've used so much?

I have no objection to subsidies. I just don't think they should come off the back of the artist. That's the last place it should come from.

Mr. Scott Armstrong: You expressed support for the moral rights clause in the bill. Do you want to expand on that?

Mr. Bill Skolnik: Sorry, I didn't hear you.

Mr. Scott Armstrong: The moral rights clause.

Mr. Bill Skolnik: Would you like to hear about that?

The Chair: As briefly as possible, please.

Mr. Bill Skolnik: The moral rights clause gives you the right to control where your product goes, where your performance goes. I think the most extreme example, and it's possible, but if it's not controlled, somebody could find their music underscoring a commercial for the Nazi party or a porno film. Nobody wants that, and that can happen. It's not the intention, but it needs to have more control. I'm giving you an extreme example, but that's an example.

The Chair: Thank you very much, Mr. Skolnik, Mr. Conway, and Mr. Armstrong.

Now for the next five minutes of questioning, Monsieur Nantel.

[*Translation*]

Mr. Pierre Nantel (Longueuil—Pierre-Boucher, NDP): Thank you, Mr. Chair.

Thank you everyone for being here this morning.

My questions will be quick.

Mr. MacKay, we worked together in the mid-1990s for Sony Music Canada. At that time, two things happened. One was very bad for the music industry and for creators, and the other was very good for creators; one was Napster, and the other was neighbouring rights, which came out at that time, if memory serves.

I think Re:Sound deals specifically with neighbouring rights. It is important to remember that the radio industry in Canada is still protected compared to American radio, for example, when it comes to broadcasts. Broadcasters here have protection. I would like to know if other protected markets have similar rights in terms of paying for the public use of music. Is the cost of playing music on a radio station in Canada a bargain compared to the cost of playing music in other countries?

● (1000)

[*English*]

Mr. Ian MacKay: Yes. I think you could say it is a bargain.

If you look at other Rome Convention countries, all of whom have neighbouring rights, the rates there are not subject to subsidies or not subject to legislated reductions. That is something unique to Canada. Our overall rates on radio are lower than those of most other territories around the world.

[*Translation*]

Mr. Pierre Nantel: Thank you, Mr. MacKay.

I would also like to ask Mr. Conway a question.

Clearly, your radio stations broadcast music, but they are also involved in community activities. So your music bill cannot be huge. If you were broadcasting only music between ads, you would pick up a huge tab for music. But you don’t play that much music, so your music bill is not huge.

This bill reminds me a lot of what my mother used to say: it is robbing Peter to pay Paul. In order to make sure that it does not cost you anything and that the artists do not get royalties for mechanical copies, which are made on the radio, you are asked to waste your time by making backup copies every 30 days so that you don't have to pay.

You don’t like that procedure and I can't blame you. The artists would like to be paid. Your stations clearly do not play a huge amount of music, so would you be ready to pay a bit more for the music that they do play? I am not talking about mechanical copies, but the performance, meaning when the songs play on the radio. Would you be ready to pay more to not have to deal with the rest of this mess?

[*English*]

Mr. Don Conway: If I understand the question correctly.... We are a music station. The three radio stations that we do own are music stations. When we talk about local, it's what we put in between the pieces of music that is local.

I'm not quite following where the questioning is going on....

Mr. Pierre Nantel: I'll say it again.

You tell me that you play a lot of music, and that every time you speak you talk about snowstorms and local issues, which is great. I would probably listen to your radio station if I were in your market.

What I'm asking you is if you're so bothered about asking one of your employees to make backup copies every 29th day, would you agree to pay a little more when you play music to compensate for this? Which one would you choose? Since music is truly important in your programming, you don't want to spend that time. Are you willing to pay a little more when you play the music?

Mr. MacKay was telling us that we have fair rates and that they are actually lower than those for most international situations. Would you agree to pay more in order to pay less, let's say, for mechanical rights?

Mr. Don Conway: First of all, thank you very much for asking the question in English. I appreciate that.

We pay all the copyright fees that are asked of us. What we don't particularly approve of is having to pay multiple times to keep copies. The purpose of the presentation I gave today to tell our story was to say that we're not keeping multiple copies. We download it. We play it. That's it. If you want to call them backup copies, you back up a server. I don't know if that's really a copy.

I'm not quite following how else we would pay more, because we're already paying all that is asked of us. All I'm saying is I just don't feel we should be paying multiple times when we're not making multiple copies. We're not a big organization. Maybe in Toronto, Montreal, Winnipeg, and Vancouver they have to make multiple copies of that to protect themselves. In our little station, it's one computer down to this computer. We don't play off any other things.

● (1005)

The Chair: Thank you, Mr. Conway and Mr. Nantel.

We're well over the five minutes.

Moving on, the next questioner is Mr. Calandra for five minutes.

Mr. Paul Calandra (Oak Ridges—Markham, CPC): Thank you, Mr. Chair.

Mr. Conway, just to be sure I'm correct, you pay for the music that you play?

Mr. Don Conway: That's correct.

Mr. Paul Calandra: Mr. Skolnik, I was looking at some of the previous testimony we had. Mr. Regan suggested that if he were an artist he probably wouldn't be a very good one. So if Mr. Regan were out there and he had made a CD, he would not likely have sold any CDs, based on what he has told us today.

Hon. Geoff Regan: I didn't need you to carry on with that.

Voices: Oh, oh!

Mr. Paul Calandra: So if he's out there and he has not sold any of his CDs and has no radio play, how much is he making from the levies that you talk about? What is his cut?

Mr. Bill Skolnik: From the levies? If he's not getting any—

Mr. Paul Calandra: What's he getting from...?

Mr. Bill Skolnik: If he's not getting any airplay and he's not—

Mr. Paul Calandra: He has no CD sales and no airplay. What is he getting?

Mr. Bill Skolnik: He's getting his dad helping him; that's what he's getting.

Voices: Oh, oh!

Mr. Paul Calandra: I'm sorry, what is he getting?

Mr. Bill Skolnik: In that case he's only earning from live performance, so he's getting nothing. If he's playing—

Mr. Paul Calandra: I'm sorry, I don't have a lot of time. I don't mean to be rude, but I have to go quickly.

So he has sold nothing, he has no CD sales, he has no airplay, and he's not getting any royalties.

Mr. Bill Skolnik: He's getting live performance royalties, perhaps.

Mr. Paul Calandra: Okay.

So it stands to reason that the more airplay he gets, the more CDs he sells and the more revenue he gets. Is that correct?

Mr. Bill Skolnik: It's a crazy formula. That is possible, yes.

Mr. Paul Calandra: Is it possible, or is that...?

Mr. Bill Skolnik: They have a system whereby necessarily airplay has nothing to do with this. Airplay doesn't necessarily get you more money, but it could.

Mr. Paul Calandra: But there would be record sales.

Mr. Bill Skolnik: Sales would get him more money, sure.

Mr. Paul Calandra: So the more popular he becomes and the more successful as an artist he becomes, the larger his share of those revenues.

Mr. Bill Skolnik: That is so for him as an individual, but not for his band.

Mr. Paul Calandra: Okay. How, then, does it follow—because in your presentation you seemed to suggest that on average artists are getting about $2,000 from this and that it helps with the recording time and.... What you're seeming to suggest to me is that the more popular you are, the more sales you make and the higher your revenue. To me this would seem to suggest that the more revenue you're making, the less support you're going to actually need.

So the $2,000 that you may be suggesting becomes a little less important. You almost seem to be suggesting to me that the entire music industry will collapse and go away if this is removed.

From reading some of the last testimony, I think it was Maïa Davies who said that she hadn't even heard of this. I think it was Loreena McKennitt who said it was maybe 1% of her income, that this portion of her income was very insignificant.

These are fairly well-known artists. How does it follow that the industry will collapse when the artists who are just starting out, such as Mr. Regan, have no real access to the funds that you're suggesting will force the industry to collapse and when it's actually the successful ones who need less and are getting more?

Mr. Bill Skolnik: Well, Loreena McKennitt is one of our members, and she does very well with live concerts. In fact, she doesn't have to do clubs anymore, so she's reached a certain echelon. The people I'm talking about are not the feature performers; I'm talking about the people who play for the feature performers.

By the way, all this discussion about reproduction is about a mechanical royalty in which musicians don't share in any way. Mechanical royalty is for the publishers and the creators. It doesn't even go to players. Players get neighbouring rights and they get private copying.

Mr. Paul Calandra: So it stands to reason that the industry will not collapse and musicians will not stop performing, as you're suggesting.

I'm sure somebody will follow up on this.

For Mr. MacKay—

● (1010)

Hon. Geoff Regan: Could you let them answer that question?

Mr. Paul Calandra: I only have 30 seconds left and I want to get to Mr. MacKay.

Mr. MacKay, you talked about unleashing some funds that you haven't been able to release. Why have you not been able to do that on your own? Why do you need a technical amendment?

Mr. Ian MacKay: We haven't been able to do it on our own because there aren't any rules in the Copyright Act that set out how we can do it. In every other regime in the Copyright Act those rules exist, and the ability of the Copyright Board to set regulations exists.

Mr. Paul Calandra: How much is it?

Mr. Ian MacKay: It's millions of dollars. Basically, if we can't locate 5% of the rights-holders each year, it just grows from year to year. It becomes a bigger and bigger problem.

The Chair: Thank you, Mr. Calandra and witnesses.

We're now moving on to the next five minutes of questioning, with Mr. Cash.

Mr. Andrew Cash (Davenport, NDP): Thank you so much, Mr. Chair.

This panel is very close to my background. I'll fully disclose that I'm a member of the Canadian Federation of Musicians, so when the government tells us that we're following cues from our union bosses, I suppose this is my union boss, and I can confirm that I've never spoken to him in my life, especially around things that we vote on in the House.

I do want to underline something that I think is very troubling. Here we have, essentially, representatives of small businesses—musicians really are—and here we have a representative of a small radio station, and we are trying to make them beat each other up over very small amounts of money. In fact, I'd argue that Mr. Conway's representation here does not really represent the shape of broadcasting in Canada. In fact, he's a small player in a very large business, and his issues are actually different from the majority of radio.

That said, I wanted to ask you, Mr. Conway, when you talk about having to make copies every 30 days, why would you have to do that?

Mr. Don Conway: As I understand it, that was in the bill.

Mr. Andrew Cash: Well, there is an alternative to making copies every 30 days, no?

Mr. Don Conway: To keep paying when we don't need multiple copies.

Mr. Andrew Cash: Not necessarily to keep paying, but to actually pay for the licence.

Mr. Don Conway: To make multiple copies.

Mr. Andrew Cash: To make a copy, to retain—

Mr. Don Conway: Yes, we pay the download fee, right? We didn't have to before, but now we do.

Mr. Andrew Cash: What I'm asking you is, do you not have an alternative to what you're describing as an incredibly onerous process? We can leave that aside, because that sounds a little odd too, that you'd have to make copies of 3,000 songs in real time.

Mr. Don Conway: That's what the bill says, sir. That's all.

Mr. Andrew Cash: I don't see that in there. Is there not an alternative? You could seek to go to the rights-holders and get a licence. Why wouldn't you do that? What is the issue here?

What you're saying is that rather than pay the licence, you're going to make copies every 30 days. I just want to be clear. Is that what you're saying you are going to do if things remain they way they are in C-11, that every 30 days you're going to make a copy...?

Mr. Don Conway: Ultimately, if you pass this bill, that's what I would have to do, because as I understand the bill, and I am—

Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC): On a point of order, it's an important clarification that the 30 days is not in the bill; it's actually in the existing act. It's probably helpful to the conversation.

The Chair: Thank you, Mr. Lake.

Mr. Andrew Cash: Okay, just a clarification here....

The Chair: Yes, we'll stop the time. Time is stopped.

Mr. Andrew Cash: In C-11....

Mr. Mike Lake: The 30-day requirement is not in the bill. The 30-day requirement is actually in the act; it was in the act before. The bill doesn't change the 30-day requirement.

Mr. Andrew Cash: I understand that.

Mr. Mike Lake: He referenced a couple of times that it was in the bill. I just wanted to clarify that it's not actually in the bill.

The Chair: Okay. Now we'll start your time again.

Mr. Andrew Cash: Thank you.

What I'm trying to get at here is that substantively nothing.... Your requirement as a broadcaster is to retain a licence from the rights-holders.

Mr. Don Conway: When I download it the first time I pay that licence. What is now required, in the last several years...I now have to pay multiple times because supposedly I'm making reproductions, and I'm not.

● (1015)

Mr. Andrew Cash: Actually, the way C-11 reads, in fact you now have a 30-day exemption. So in fact once you pay the licence, you actually have 30 days for free, right?

Mr. Don Conway: No, I've paid mine for 30 days. Basically I've paid for 30 days.

Mr. Andrew Cash: No. Actually the way this reads is that when you get the copy from the record companies, you have 30 days essentially to have that music.

Mr. Don Conway: Okay.

Mr. Andrew Cash: Then at that point you have a decision to make. You either pay for the licence or you copy it.

What I'm trying to clarify here is which one you will do. Will you copy your library every 30 days or will you go to the collective society? As you know, just about all of the music that you play is licensed by collective societies. They have those licences. Which will you do? Will you make the copy, therefore avoiding the collective licence, or will you go to the collective society and pay the licence?

Mr. Don Conway: Sir, I'm just asking to be fair. I pay for a licence to download a piece of music for which I never before had to pay. Then, after each 30 days, basically, from what you just said, I'm being charged to reproduce it—when I don't reproduce it; I play it back on the same computer on which I download it.

The Chair: Thank you, Mr. Cash and Mr. Conway.

We will now go to Mr. Del Mastro.

Mr. Dean Del Mastro (Peterborough, CPC): Thank you, Mr. Chairman, and thank you to our witnesses today.

I had a number of different questions that I wanted to ask, but I'm going to pick up on this, because it's really important.

There have been a number of things said today that by the way are not entirely accurate about what radio contributes to the music system, so I want to make this clear. To begin with, radio stations right now buy music, but the record companies don't sell it in the format in which they use it. So then they have to buy the music a second time. This is called "ephemeral rights". Ephemeral rights didn't exist until about 2006, when they started charging for it. Since that time, they've gone up in price—you can correct me if I'm wrong, Mr. Conway—about 300% since they were originally brought in.

Mr. Don Conway: I honestly couldn't tell you.

Mr. Dean Del Mastro: They've roughly doubled, or they may have gone up a little more than that; I'll check to be sure.

This is the crux of the issue. When it's suggested that we subsidize our radio stations because we have this $1.25 million threshold, what you are not pointing out, Mr. MacKay, is that our radio stations are contributing significantly to the Canada Music Fund and through FACTOR. Many companies don't have this kind of tax that is placed on the radio stations.

We also have something called Canadian content laws in this country, which over-the-top services like satellite radio, YouTube, and all of these services don't have to compete with. That's something that local radio has to compete with each and every day. When you suggest that they have this massive subsidy that's supporting their business, you are not being wholly transparent; you are neglecting to point out all of these other fees, which are significant. They are millions of dollars, I believe. The fees provided into the Canada Music Fund by radio stations are about $30 million per year. It's a lot of money. You are neglecting to point that out. You're only looking at half of the story, and this is important.

Mr. Conway, the crux of what is being discussed is that you have a value placed by the Copyright Board on music. You don't argue with that value; your issue is that you are not able to buy that music in the first place in the format that you use, and then you are forced to pay again.

Is that not the crux of the issue? Is that not what you are talking about?

Mr. Don Conway: I am paying to make multiple copies when I don't make multiple copies.

Mr. Dean Del Mastro: Right. This is what's called ephemeral rights.

The bill does deal with ephemeral rights in that it seeks to strike them down; however, the bill suggests that in 30 days you must erase the music or you must pay ephemeral rights. Is that correct?

What you are suggesting is that it doesn't make any sense to say that you have to pay for the music and then transfer it into the format you use, but that if you don't delete it in 30 days, you have to pay again for the music.

Is that your point?

Mr. Don Conway: That's right.

Mr. Dean Del Mastro: Thank you. That's exactly what I needed to get at.

Now, you talked about increasing the $1.25 million threshold to $2 million. What impact would that have on radio stations? How much money would it remove from the system? How much more are you paying in copyright fees with $2 million in sales than you would pay if you had $1.25 million in sales?

● (1020)

Mr. Don Conway: That's a very hard question, because I don't have my figures at hand.

It's rather interesting. When I was writing my presentation on Sunday, I didn't know that this was even going to be discussed by Re:Sound. When I got the copyright information, back two years ago when it came out, and saw that it showed a medium station as being $1.25 million, I just laughed. We're not a medium radio station and we make more than that in revenues.

That has been my big concern. I thought that here was an opportunity to tell some folks what that really means: that while the folks we pay the tariffs to tell you folks that a medium-sized radio station should be $1.25 million, we're a small station and we have to make more than that and we're still right there on the profit-loss line.

That's why I said $2 million would be much better than $1.25 million. Now, to come here and hear them say they want to wipe it out.... Man, you want to kill me.

Mr. Dean Del Mastro: All right. I understand.

I actually have a point that I want to make to Re:Sound. I'll just start out by saying I think you perform a necessary function, and I don't take issue with that. However, you'd probably have to admit that for local businesses and so forth, you're about as popular as a tax collector or cod liver oil to children. They don't like it when Re: Sound comes in and—

The Chair: You need to make this quick, Mr. Del Mastro.

Mr. Dean Del Mastro: —hands out a bill.

I am interested in this issue of orphan files. How many artists are we talking about, and how much money are we talking about redistributing if we get this fixed?

Mr. Ian MacKay: As I said before, we're talking about millions of dollars. From year to year this applies to about 5% of rights-holders who may join up with us; after a tariff has been certified it may be longer. So if you're looking at 5% of our revenues being subject to this orphan provision on an ongoing basis, that's just going to add up year over year over year. Our overall gross revenues are about $30 million a year, so 5% of that each year...this just grows and grows and grows.

The Chair: Thank you, Mr. MacKay and Mr. Del Mastro. We were well over the five minutes there.

We will now go to Mr. Benskin for five minutes.

Mr. Tyrone Benskin (Jeanne-Le Ber, NDP): Thank you.

I have two things to cover, and I guess they will be mostly to the Canadian Federation of Musicians.

First off, on the moral rights issue, I liken it to how you build a house, and somebody moves in and decides they're going to paint it orange and green and put a windmill outside, and you're supposed to be okay with that. If you own that property, it stands to reason that you should have some control as to how that property is used, whether it's for commercial use or not.

I'm assuming this is something that is truly important to musicians or to artists and rights-holders.

Mr. Bill Skolnik: Yes, it's vital, absolutely, for the examples I gave—not that these things will occur, but we're talking about mashups and unauthorized use.

Moral rights are our right in Canada, and we're grateful for that and we're entitled to that. We just think they need to be strengthened under this act, and it's not being looked after as well as it could be.

Mr. Tyrone Benskin: Thank you.

I'd just like to get on to the funds distribution. You brought up that basically mechanical rights and airplay rights are paid to the rights-holders, which are the writer and the publisher, right?

Mr. Bill Skolnik: Mechanical? Yes.

Mr. Tyrone Benskin: Yes. Now the private copy levy money that comes in, that is collected and it goes to all the people involved. I think that's a very important distinction, because that's where the danger lies.

When the session musicians and the background singers are not participating in the revenue that is coming in and being generated by this song, they themselves cannot then make a living. Not to use the rather histrionic “the sky is falling” and “the industry is going to collapse” terminology, but this is something that has helped individual musicians, session players, participate in the money being generated by songs being played or becoming popular. Would you expand on that?

● (1025)

Mr. Bill Skolnik: Yes, exactly. A session player, for anybody who's wondering, or a side player, is someone who accompanies the featured artist. So when you see a band, you think that band remains intact. Most of the time they don't. Those are individuals who are hired by what's called the musical contractor or the musical leader to play for that particular artist, particularly in a concert situation and in recording. So the band that you see live is not the band, necessarily, that you will find in the studio. Those players who participate—and they bring rights through Re:Sound and through the other collectives. That comes to, yes, $2,000 to $3,000 a year, depending upon the airplay, you're absolutely right. What's important is it's a source of income that they've come to depend on.

Nobody's arguing with the principle, by the way. Nobody here at this entire committee says it's not correct that they get that. What we're arguing about is the means of delivering that, and how it's stored and how copies are made.

We believe—and that's what we're asking the government to consider—we need to keep that principle in front and say, yes, okay, the technology doesn't work anymore, it doesn't make sense, but we need to find a mechanism that still upholds the principle, still gets this cash back to the players who have depended on it. It's a small amount, but it does pay for studio time, it does pay for instrument maintenance and a number of different things, and it's been there for 20 years.

We're just asking for maintenance. We're not asking for something new. We're asking to keep something that's been there for a long time.

The Chair: Mr. Benskin, you have one minute.

Mr. Tyrone Benskin: That hasn't been around for a very long time. It's taken a while for musicians to get to that point where mechanisms were in place to make a living doing what they do. My fear is that things are being pushed back to, “Here, we'll give you 50 bucks, shut up and go away, and we're going to make money on it.”

Mr. Bill Skolnik: Absolutely.

Mr. Tyrone Benskin: Would you expand on that?

Mr. Bill Skolnik: It's a lot tougher now to make a living as a musician than it used to be, there is no question. We thought it was hard then. The 1980s I think were the apex. I think that was the best time. Since then, because of digital distribution, because of a number of pressures, it's become more and more difficult. Successful musicians who get airplay have become more dependent on this type of supplemental income.

The music industry is not going to collapse and people are going to be creative, no matter what. It seems to me that in this country we should at the very least maintain the standards we've established for them and encourage them. We've encouraged them by keeping these standards, and now we're looking at diminishing those standards. I don't think it's deliberate. I don't think anybody means to do it.

The Chair: Thank you, Mr. Skolnik and Mr. Benskin.

For the last five minutes we will go to Mr. Lake.

Mr. Mike Lake: Thank you, Mr. Chair, and thanks to the witnesses for coming.

I just want to clarify. Mr. MacKay, you made a comment in your presentation when you were talking about the $1.25 million that you want to see changed. You talked about an opportunity to bring in millions of dollars at no cost to taxpayers and consumers—I think that was the wording you used when you referred to that. Am I correct in understanding that if the rules were to change, it would result in a cost to a radio station of about $60,000? Is that about accurate in terms of the royalties they would pay more for?

Mr. Ian MacKay: The royalties that radio stations would pay more of would depend upon the size of the radio station. A radio station that was right at the $1.25 million mark would pay about $18,000.

Mr. Mike Lake: This is based on what calculation, if you don't mind?

Mr. Ian MacKay: That's based on the rate the Copyright Board sets even with the existence of this subsidy. The Copyright Board sets tiered rates. They set different rates for different types of radio stations and different sizes. They have always set a lower rate for stations under $1.25 million, and then they have said they cannot apply it in our case because of this legislative position.

Mr. Mike Lake: So how would that impact a station bringing in $2 million in revenue?

Mr. Ian MacKay: A station with $2 million in revenue at the moment pays nothing on that first $1.25 million.

Mr. Mike Lake: How would it impact if there were changes made?

● (1030)

Mr. Ian MacKay: They would pay in addition to what they're paying now; they would pay the $18,000 for the first $1.25 million.

Mr. Mike Lake: So $18,000 in the same month.

Mr. Conway, in terms of running your station, you say you employ I think 25 in one area and 15 in another. If you were to incur a cost to your business of $18,000 more, how would that impact your ability to hire people to do the things you need to do? Would there be an impact on one or more of your employees perhaps? Is that possible?

Mr. Don Conway: Actually, that's what I said in the presentation and in a response before, that any further payment of tariffs is going to impact the hiring of someone else. Whatever we would pay for a particular...and it's a graded salary grid. I'm not sure how, but the $18,000 certainly would have an impact on us hiring folks.

Mr. Mike Lake: So it's fair to say that the idea that there would be no cost to any taxpayer or consumer would be incorrect. Obviously there would be an impact: the person who doesn't get a job or is let go because of the change in the rules. Right?

Mr. Don Conway: Right, and this is all in station.

Mr. Mike Lake: I just want to clarify. Mr. Skolnik, I believe when you were talking about extending the levy to digital audio recorders you used terminology—I can't remember it exactly, and I quickly wrote it down. You said something about extended use of copies, storage, and duplication. It just struck me. I got to thinking about the way I listen to music or use music. In the past, say in the mid-1990s, I would buy CDs and get one of those storage towers and put them in the living room of my apartment. Then I'd have a few different CD players that I'd play the music on. I paid for my CD, but that was it. I paid for my CD and then I could play it.

Now the parallel to that is I buy my music. I may still buy CDs because sometimes I like to get the liner notes and things like that, but I store them on a computer, which becomes much more convenient than the CD tower, and I can put the CDs away if I want. I play them on my iPad or iPod.

It seems to me this idea of paying an extra levy for where you store your music or where you play your music from would be like having a levy on a CD tower that I would buy from IKEA or the stereo that I played my music on in the past.

The irony here is that because it's more convenient, I actually buy much more music than I ever bought before. I spend more money on music than I ever would have spent before. There is more revenue coming from me than before because of the new models, the new technology. Yet your argument is that somehow I should have to pay for my storage. I should have to pay additionally for my iPad. I also have an iPod, so I pay additionally now for my iPod, even though I'm playing the same music. I don't very often sit in a room and listen to it on three different devices at the same time. It's the same music. I'm listening to it on the same device, as I would have taken my CD and played it on a CD player or a stereo in a different room.

Why should I pay three times to listen to the same piece of music once I have paid for it?

Mr. Bill Skolnik: The storage I'm talking about is the capacity.

I did the same thing you did, but if I wanted to take one on my Discman to the gym, or if it I wanted to have it in my office, I either carried it with me or I bought another copy. That is the type of storage. The tower you're talking about, at IKEA? Yes, I had one too. I still have one, actually. That was because you needed the physical framework to put the different CDs in. There is no requirement for that anymore. It's duplication. You have to duplicate what the product is and store it somewhere so that you can play it in your car, the gym, when you're walking around. That is what I'm referring to.

Mr. Mike Lake: You are—

The Chair: I'm sorry, Mr. Lake.

Do you want to finish that very quickly?

Mr. Bill Skolnik: I can say one thing.

Mr. Mike Lake: Rare is the consumer back in the day...and you may have been one who would have had three copies of every CD you owned—one in your car, one in your office and one in the gym—but I don't think most people operated that way.

Mr. Bill Skolnik: I just wanted to say that the principle is there for duplication, that's all, that people did get paid for that. We think it's the technology that has removed that ability.

I think there is another means of recognizing the principle. I wouldn't get hung up on the technology. I don't, but I would like the committee at some point, not here, to look at another means of how to maintain the principle.

The Chair: Thank you, Mr. Skolnik.

With that, on behalf of the committee, I would like to thank all of our guests and witnesses for coming today. It was very informative, and it was great to have all of you here.

We will suspend for five minutes, and we will start in five minutes sharp.

● (1030)

(Pause)

● (1040)

The Chair: I'd like to welcome all of our witnesses.

From the Association nationale des éditeurs de livres, we have Aline Côté and Jean Bouchard. From the Canadian School Boards Association, we have Cynthia Andrew. From the Association of Canadian Community Colleges, we have Michèle Clarke and Claude Brulé.

Each of you has been briefed. You have 10 minutes for an opening statement. We'll start with the Association nationale des éditeurs de livres.

[*Translation*]

Ms. Aline Côté (President, Les Éditions Berger, Association nationale des éditeurs de livres): Good morning. My name is Aline Côté and I am the president of the copyright committee at the Association nationale des éditeurs de livres.

The Association nationale des éditeurs de livres represents a hundred French Canadian book publishing firms across Canada. Over the past few years, and despite all the pieces of legislation in place, we have been asking for more protection, or at least we have been constantly reaffirming the copyright principle in order to protect our capacity and stability in terms of both revenue and investment.

People do not always realize that Canadian publishers are competing with giants. Over the past 40 years, we have had to get back a significant share of the market. In the 1970s, French Canadian publishers were barely claiming 20% of their own market, the rest was being taken up by France or other countries. The situation was pretty much the same for English Canadian publishers. Today we control 51% of the market. It took 40 years to slowly conquer that share of the market, to develop expertise, to increase the professionalism of our employees and to establish an entire book industry.

We have also worked closely with the people from the Canadian Conference for the Arts to bring our proposals to the table and to reach consensus with the other cultural sectors in Canada. That was an unprecedented effort. In my view, the fact that cultural associations from all sectors, working in both languages, have managed to reach a consensus is unprecedented around the world. That takes weeks and weeks of work. We have made a series of proposals, knowing that, if they were accepted, we could really establish and develop sustainable industries in Canada that would prosper in the digital era.

The French Canadian book industry has been successful in adapting to the digital era. Very early on, we developed a business platform and model. We have developed partnerships and we now have a sale and distribution platform that is connected to all francophone digital bookstores in Quebec and in France. Our original model inspired large publishers from France, Italy and the United States to join. There is still a general feeling that the book industry is a bit prehistoric, but we have been really proactive and we have had a great success. We have received support from governments, Canadian Heritage, SODEQ, and our ministries in Quebec. We are now estimating the cost of this collective effort at about $25 million at least. Please note that these numbers are the actual math. They are not based on extrapolations or projections of potential losses, but that is what was really invested.

We now know two things. We are increasingly hearing people everywhere say that the added value of culture is a factor in sustainable development. WIPO studies have also revealed that the key to the success of cultural industries is the legal environment of copyright, of intellectual property. The two countries that currently have the best numbers are the United States and Australia and they are the nations with the strongest industries. That is where cultural industries take up the largest share of the market.

Books, physical books, disks, support materials or CDs are not our main asset. Our main asset and our only asset is intellectual property. It is not tangible.

We feel that the significant changes that Bill C-11 will bring will create an artificial disruption. We have been able to develop gradually over the years with the market rules that were in place. We have managed to take up more and more of our markets. We have a Canadian aboriginal industry—if that is the right term—that is successful, dynamic and competitive, but it could be better positioned in the market. Compared to the position of the book or culture industry in other countries, we are still lagging behind and we could do better. We still have room to grow.

● (1045)

We have shown that we were able to do very well with the way the game was played. The shock of the digital revolution did not affect us because we took action very early on, six years ago. We convinced the governments to give their support; we have put in about $25 million in development and private investments. And now that it is all starting to roll and we are on board, we realize that a piece of legislation might jeopardize all those business models that work well. That will create an artificial tidal wave in the current market. It is not a normal evolution; it is something abrupt when we have already developed everything that we wanted to develop.

We are also going to look at our close ties with the national education system and I hope that you will have questions about that. If our education systems had to outsource to produce materials, they would create a book industry. Our close ties with culture are very important. We feel that allowing free use without permission in education is extremely dangerous for our industry.

I will let my colleague continue.

Mr. Jean Bouchard (Vice-President and General Manager, Groupe Modulo, Association nationale des éditeurs de livres): Aline is right: publishers represent the research and development of the education departments in the country. If there were a single most important thing one could do to improve this bill, it would be to leave out the word "education" from the fair dealing exception in section 29. Because it gives educational institutions and all other commercial or non-commercial private training businesses the right to use any copyright protected work without permission or compensation, it is the one exception that will have the direst consequences on the book industry. On the one hand, academic publishers will see their textbooks largely reproduced without compensation. And on the other hand, literary publishers will lose the benefits of having one of their works studied in class. Moreover, this right is created even though educational institutions have no problem accessing material thanks to the copyright licensing agencies. We are talking about 0.5% of the total annual budget for education in Canada, which is around $70 billion.

Without a precise definition of fair dealing, everything has been said about this exception. The government says it means restricted to "a structured context, including private training but not for the public in general". The Canadian Association of University Teachers defines fair dealing as "the right, within limits, to reproduce a substantial amount of a copyrighted work without permission from, or payment to, the copyright owner", while the Conference of Rectors and Principals of Quebec Universities says that the proposed exception "does not mean in any way the end of compensation for creators".

Let us resolve the issue this morning: it is open ended, free and without permission, as long as it is fair. This one and only restriction to the free use of any given material for educational purposes, fairness, does not protect the book industry in any way.

Establishing what is fair under the new law will drive to litigation and judicial proceedings. The destabilization of legitimate and well-established business models and the costs of litigation will jeopardize middle and long term investments until the courts will have decided on which uses are fair and which are not.

Without a precise definition, The Supreme Court developed a non-exhaustive list of six factors to assist in determining whether a use is fair: purpose, character and amount of the use, alternatives to the dealing, nature of the work and effect of the dealing on the work. However, the court ruled that: "Although the effect of the dealing on the market of the copyright owner is an important factor, it is neither the only factor nor the most important factor that a court must consider in deciding if the dealing is fair". In other words, a court could conclude that dealing is fair even if it harms the market for a work. In contrast, in the "fair use" regime of the United States, this factor is the "most important, and indeed, central fair use factor". This gives American publishers the comfort they need to invest in innovative educational resources. If Bill C-11 passes as written, Canadian publishers and foreign investors would not have the same comfort level.

This is why the second and most important thing to do to improve Canada's Copyright Act would be to make sure the "three-step test" of the Berne Convention is incorporated into our legislation so as to become the basis on which courts will rely for the interpretation of fair dealing. This would, among other things, ensure the effect of the use on the work would be prioritized in the determination of what is fair and by the same token ensure our law meets our international obligations.

● (1050)

The Chair: Your 10 minutes are up. Thank you.

[*English*]

Ms. Andrew.

Ms. Cynthia Andrew (Policy Analyst, Ontario Public School Boards Association, Canadian School Boards Association): Good morning.

My name is Cynthia Andrew. I appear before you this morning as a representative of the Canadian School Boards Association.

The Canadian School Boards Association members are the provincial school board associations that represent over 250 school boards across Canada and serve more than three million elementary and secondary school students.

I am an employee of one of the provincial associations, the Ontario Public School Boards Association. I am the key staff person both in Ontario and within CSBA member boards on matters relating to copyright, and I am pleased to be able to join you this morning to talk about copyright and Canadian school boards.

CSBA submitted a response to the previous copyright reform legislation. It is my understanding that this committee has access to those submissions and does not wish to see ours again. I thank you for saving me that time, and I direct you to that brief that was submitted to the committee in December of 2010. Our recommendations between then and now have not changed.

Copyright directly affects all of Canada's school boards, and it is reflected in policies and practices in school board administrations and in classrooms across the country. Technological advances have made the current Copyright Act all but obsolete. The lack of clarity that arises from this outdated legislation is the reason that Canadian school boards, along with other national education organizations, have been persistently urging the federal government to clarify digital copyright law. Therefore, CSBA is pleased with a great deal of what we see in Bill C-11 and we want to see the legislation passed. We believe Bill C-11 is good for education in Canada, and with minor amendments to certain sections it can be even better.

I wish to highlight for you this morning some matters that are of particular importance to school boards.

First, CSBA supports the inclusion of the educational use of Internet amendment. Technology has changed teaching and learning in Canadian schools. From kindergarten to advanced calculus, classrooms are filled with innovative, new learning opportunities. The proposed Internet amendment is important because the current copyright law is not clear about the extent to which teachers and students and other educational users can legally engage in what are now routine classroom activities, such as downloading, saving, sharing text or images or videos that are publicly available on the Internet. Without exception, provinces are investing in technological infrastructure in schools, but without this amendment, Canadian schools may be legally obliged to forego many learning opportunities and curtail Internet use in the school out of concern that they may be breaking the law.

The proposed amendment applies only to publicly available material, that is, material posted on the Internet by the copyright owner without password protection or technological restrictions on access or use. Most of this material is with the intention that it be copied and shared by members of the public. It is publicly available for those who wish to use it.

School boards develop and guide and administer policy and procedures in schools across the country. Legislative clarity ensures that school board policies on copyright appropriately guide teachers and other board employees without restricting access to material that supplements and enhances the typical learning experience. It is important to remember that school boards are also creators of intellectual property. As both creators and users, Canadian school boards believe that this legislation does provide a good balance, the right balance, between the rights of users, creators, and industries that market the work of creators.

Secondly, CSBA supports and is encouraged to see the inclusion of education in the fair dealing provision; however, although welcome, we do suggest that the education and fair dealing amendment needs to be clarified. For this amendment to have its desired effect, the term “education” should be clarified by stating that education includes teachers making copies for students in their classes. This clarification is needed so that teachers may copy short excerpts from copyrighted material for their students.

The wording of our proposed clarification is similar to the United States fair use clause, which has been in place since 1977. Adding education, including multiple copies for class use, to the list of enumerated fair dealing purposes will not mean teachers can copy whatever they want. Simply qualifying as a fair dealing purpose does not automatically deem that all copying for that purpose is fair. Such copying must still meet the standards of fairness that are set forth by the Supreme Court of Canada.

● (1055)

Third, it has been suggested that the education community does not want to pay for education materials. This is incorrect. Education institutions currently pay for content and for copying of these materials. These payments come at both the ministerial level and the school board level, depending on the material in question and the provincial financial structure.

CSBA is not suggesting, nor have we ever proposed, that school boards should not pay for intellectual property. The education sector currently pays hundreds of millions of dollars to purchase and license content, such as printed and digital curriculum in many formats, film, music, and art. With Bill C-11, the education sector will continue to pay hundreds of millions of dollars. Nothing in this proposed legislation alters our current relationship with education publishers, content providers, copyright collectives, or the Copyright Board.

Lastly, CSBA is not in favour of the amendment that requires teachers or students of online courses to destroy their notes upon completion of that course. This amendment is unreasonable and impractical, and it does not reflect current practices in online learning where teachers reuse their course materials each year that they teach the same course. Requiring them to destroy their materials will result in wasted time and limit a teacher's ability to effectively teach that same course multiple times.

In closing, the Canadian School Boards Association has always believed that a modern and balanced copyright framework will protect the public interest and produce many societal benefits. The need has reached a critical state, as schools across the country increasingly rely on the Internet and other digital resources to deliver programs.

CSBA supports the passage of Bill C-11 with the minor amendments we have put forward, so that the necessary legislative framework exists to support Canadian students learning in a digital world.

Thank you.

The Chair: Thank you, Ms. Andrew.

Now to the Association of Canadian Community Colleges.

[*Translation*]

Mrs. Michèle Clarke (Director, Government Relations and Policy Research, Public Affairs, Association of Canadian Community Colleges): Good morning, Mr. Chair and members of the committee.

[*English*]

My name is Michèle Clarke. I'm the director of government relations and policy research for the Association of Canadian Community Colleges. I'm accompanied today by Claude Brulé, the dean of the faculty of technology and trades at Algonquin College, here in Ottawa.

I would like to thank the committee for extending an invitation to our association to appear here to speak on this important bill.

The Association of Canadian Community Colleges, or ACCC, as it's commonly referred to, is the national and international voice of Canada's 150 colleges, institutes, polytechnics, CEGEPs, university colleges, and universities with a college mandate. With campuses in 1,000 rural and remote communities and urban communities, and 1.5 million learners and 60,000 educators, these institutions draw students from all socio-economic quarters and supply graduates with the advanced skills essential to Canada's economic growth and productivity. Canadian colleges host applied research and innovation projects carried out in partnership with Canadian business communities.

Colleges play a pivotal role in Canadian skills development and in building greater capacity for our Canadian economy. Copyright law is therefore important to them as both creators and users of copyright material.

Colleges understand the need for balance and clarity in the Copyright Act. Bill C-11 helps achieve this by providing a legal framework for areas of copyright law that are currently not addressed in our country's current written law.

Digital technology is rapidly changing the face of post-secondary education in Canada. New technologies are providing teachers and students with fantastic opportunities for teaching and learning in many new ways. Without a clear and modern copyright law, teachers and students may have to forego some of these opportunities provided by technological development.

We welcome the education amendments in the legislation, particularly those dealing with the educational use of the Internet. ACCC supports Bill C-11 for it passes two fundamental tests for our post-secondary community: number one, it strikes a fair and reasonable balance between the rights of copyright owners and users of copyright works; and number two, it has achieved, in large measure, being technologically neutral and meeting the needs of teachers and students today.

ACCC recommends some minor amendments to Bill C-11 that do not alter the essential balance that has been struck in the bill. A summary of these can be found in ACCC's brief addendum, which will be submitted to the committee in the days ahead. The addendum is relatively identical to the brief that was submitted last year by ACCC, with some minor modifications to reflect the new language in Bill C-11.

I would like to share three key points.

First, ACCC strongly supports the educational use of the Internet amendment. It is balanced, reasonable, and a necessary clarification of rights for teachers and students in the digital age. Bill C-11 is needed to provide a clear, modern, and balanced framework for educational use of copyright in the digital age.

Second, ACCC supports the addition of education to the fair dealing purposes. The fear that adding education will allow unlimited copying is unfounded. Copying must still be fair in order to be fair dealing, as set out by the Supreme Court of Canada in 2004. Colleges are not trying to get out of paying for copyright materials. Colleges have paid and will continue to pay for millions of textbooks, periodicals, course packs, digital databases, and collective licences. Nothing in Bill C-11 will change that.

However, the bill needs to clarify that fair dealing can include making copies for a class of students, provided the dealing otherwise qualifies as fair. The U.S. has a fair use provision that is far broader in scope than what is proposed in Bill C-11. The U.S. fair use provision explicitly permits the making of multiple copies of a work for classroom use. Despite this broad fair use provision, the educational publishing industry in the U.S. would appear to continue to thrive.

Third, Bill C-11's digital lock provisions are unnecessarily broad. A better approach is to prohibit breaking a lock only if the purpose is to infringe. Breaking a lock to engage in a lawful activity such as fair dealing should not be prohibited.

We urge the government to enact this legislation. This is an opportunity to safeguard Canadians' learning objectives for generations to come.

I thank you for this opportunity. My colleague and I would be pleased to answer any questions the committee may have.

● (1100)

The Chair: Thank you, Ms. Clarke.

Now we will start the first round of five minutes of questioning. We're starting with Mr. McColeman.

Mr. Phil McColeman (Brant, CPC): Thank you, Chair.

And thank you to the witnesses for coming today and representing your organizations.

It's interesting to see the interdependence of the groups, how they've had their basic structure of working together over the past, and have succeeded, have faced challenges, no doubt, on both sides of the witness table here today. But as we go forward, I think what we're attempting to do, as has been said, is strike the right balance between those interdependent groups—and the witnesses who were here just previous to this are in the same situation—by bringing a piece of legislation that is fair and balanced.

When it comes to education, we heard again yesterday from a professor from the University of Western Ontario that the current provisions are fair in the sense that teachers and professors, and post-secondary educators and educators right across the full educational spectrum for that matter, will have the ability to use this as they have in the past to a certain extent. Not a lot really is changing, in the sense that the new frame of reference or the new reference points will be put into this legislation for the benefit of all parties on a certain balanced scale. That's where we're debating it at this committee.

In a general way, maybe we'll start with Ms. Andrew, with your views on striking that balance. You're in support of it. You have a few amendments. Do you think educators in general are going to change the way they do things under a new Copyright Act and the way they have been doing it and have supported that interdependence in the past?

● (1105)

Ms. Cynthia Andrew: I think what we're dealing with in the education sector is that practice has outpaced legislative frameworks. Because technology has been changing at such a rapid pace over the past, let's say, 20 years even—because when I was in school they didn't even have photocopiers in schools—educators change with it, and the act does not reflect those technological changes.

What we're looking for mostly out of Bill C-11 and what we believe it does effectively is remain technologically neutral. It doesn't say specific technologies in it, which is good, because then as technology continues to change, we won't need to continually update the act every time.

It brings Canada's copyright laws into a legislative framework that recognizes current practices with respect to digital copying and digital access to resources that did not exist before, and it allows educators and students to use those within obvious certain restrictions in a classroom way, in a learning opportunity way, so that they can benefit from the information and the technology at the same time.

Mr. Phil McColeman: To carry on, Ms. Clarke, maybe you could comment on the next point I'd like to make. We received a brief today from one of the organizations at the table here. It's titled, "A bill that weakens our industry and our national education system". To me, that's pretty alarmist in some ways. What are your comments about that?

Ms. Michèle Clarke: Well, I haven't had the privilege of seeing the brief that is before you, so I'm not sure which organization it's from and what it says.

Mr. Phil McColeman: It's actually from these folks at the end.

Ms. Michèle Clarke: Certainly, the education community has for many years purchased textbooks, and they will continue to purchase textbooks. There are millions and millions of dollars invested on the part of our members to be able to provide textbooks to their learners.

Clearly, the way education is delivered is changing. There have been incredible technological developments in the post-secondary sector, and the world of academics has changed. Their role has changed in how they educate learners to be able to get out into the workplace.

We're all aware of the skill shortages that exist in our country at this time. There are some pressures to be able to get advanced skills out into the workplace to be able to meet those demands. Colleges are having to really step up to the plate to incorporate some new technologies into their teaching methodologies and to be able to work with what's available to them legally to be able to pass it on to their learners.

The Copyright Act is currently restrictive in the sense that there are provisions in it for fair dealing, but even some of the materials that are available, for example, through the Internet that might presumably be free and publicly available...it's not quite clear whether teachers and faculty can readily use that and distribute it to their students. So on the Internet side there are some real advantages there for that to be changed.

From the book perspective and the purchasing of books—

The Chair: Please be very brief, Madam.

Ms. Michèle Clarke: Okay. I'll just ask my colleague—

The Chair: We're well over the five minutes. We're closer to six.

Ms. Michèle Clarke: All right.

The Chair: Unfortunately, I'll have to get you to answer that another time.

Now to Mr. Angus for five minutes.

Mr. Charlie Angus: Thank you for the excellent presentations. I think we are all agreed that we have a huge stake in getting this right.

My young daughter is suffering through grade 9, and when I get home I look and she's reading the same crappy novels I had to read in grade 9—and we were wearing bell-bottoms then. I think it's really important that we make sure we have a vibrant textbook industry so that we can get new materials to our students because, God, those novels were bad back then.

I'm just doing a plug to update—get us some great new novels and get them into our classrooms.

Madame Côté, it's so important that we have a book industry that is feeding our schools and our education system, and I understand the concerns about fair dealing and how we define that.

It has been defined by the Supreme Court, and even Parliament is under the Supreme Court. We have concerns that if their language isn't clear enough, it could be misinterpreted or they could say that the legislation means a different thing in the Supreme Court. Would you agree that if we brought it in line with the Supreme Court decision within this legislation then it would still be clear? It might still lead to litigation, but at least we would have a clear understanding of education here, and education is defined by the Supreme Court through the six-step test.

● (1110)

Ms. Aline Côté: The three-step test is really important because it defines what it's going to be.

[*Translation*]

That is going to define the main criteria.

I would like to say a couple of things about everything we have heard so far. We are seeing all kinds of practices that show that the impact of Bill C-11 and its predecessor, Bill C-32, is already being felt. For example, 35 universities have opted out of collective management. Two of them have gone back because they realized that rights management is quite a big deal.

There is also a drop in educational material purchases. With tablets, whiteboards, and so on, there is an upward trend toward buying one set of materials for the whole class. We realize that the Supreme Court also meant that fair dealing will be defined by current practices.

Over the past 15 years, digital practices have gone in all directions. We are talking about 15 years without any specific legislation for that. Even thinkers—one of them was here yesterday but maybe he did not talk about this—encourage you to hurry up and interpret fair dealing as widely as possible, as defined by the criteria in the CCH Canadian Limited decision. This way, when there is a dispute, it will be possible to rule in favour of current practices.

People call us fear-mongers, but we are already seeing things. Not only will this make us lose money and reduce our capacity to develop new materials, but the neutrality of the bill allows for format shifting. As a result, anyone can create something in any format, and shift from one platform to another, go from paper to digital or vice versa, and so on. This feature of the legislation results in a huge loss of control. And the loss of control, with everything that will be available, will make things more complicated.

For example, in many classes, they use digital tablets or iPads. That is very appealing, but then you also have access to YouTube. In light of everything that can be reorganized, posted on the Internet and reused in the classroom, we think that this will have an impact on our ability to keep track of the identification of works. Which one is the original work? Is the work I will be using truncated or tampered with?

[*English*]

Mr. Charlie Angus: Sorry, Madame, I only have five minutes.

Ms. Aline Côté: Oh, I'm sorry.

Mr. Charlie Angus: He's very strict.

I wanted to address the issue because we talk about the three steps, but we have it defined at the Supreme Court, and I think the Supreme Court is where this will continue to come back.

I just have to ask Madam Clarke a question.

In terms of the long distance learning issue, we're very concerned about the 30-day provision, because it seems we're creating a two-tier set of rights. We have enormous potential. I have a riding bigger than Great Britain. Many of my potential students never get to a college, but they can take it as long-distance learning.

Do you think the provision to force the student to destroy the notes after 30 days will hamper our ability to use the potential of the digital learning environment?

● (1115)

[*Translation*]

Ms. Aline Côté: The whole problem stems from the so-called lecture notes. Right now, they are subject to collective licensing.

[*English*]

Mr. Charlie Angus: Sorry, I'd asked Madame Clarke.

Ms. Aline Côté: I'm sorry, but I had a good answer to that one. I want to come back on this.

The Chair: And you have about 30 seconds to answer.

Ms. Michèle Clarke: I'm going to be very brief, and I'll give most of those seconds to my colleague. Online learning is very huge for the colleges and the 30-day provision does not seem realistic. It's not manageable.

Mr. Claude Brulé (Dean, Algonquin College, Association of Canadian Community Colleges): Thank you.

We're trying to create lifelong learners in a primarily knowledge economy. The thought of destroying intellectual property to prevent someone from having that with them throughout their career in the marketplace, once they've graduated from an institution, is not seen by us as a reasonable or effective use of the resources. This is both for the learner, once they've graduated, who may need to continue to rely on that material in their day-to-day work in the workplace—

The Chair: Thank you, Monsieur Brulé.

Now to Mr. Braid for five minutes.

Mr. Peter Braid: I'm actually going to pass.

The Chair: Okay. We'll go to Mr. Calandra.

Mr. Paul Calandra: I just want to follow up on the distance learning, just to get my head around this. I'm a student at home. I'm watching my course at home, and there's a student in the class who's watching and the professor in the class plays a video. Is the student in the class supposed to tape the video? It's a copyrighted video. Is the student in the class supposed to tape what he or she is watching in class and carry that around with them for the rest of their life? The person at home, you're suggesting, can or should be able to do that. Should the students in the class who don't have the benefit of having taped this have that same right? Should students be taping their in-class portions and carrying it around with them for the rest of their life?

Ms. Michèle Clarke: I don't think that's what we're suggesting. I do think my colleague might have a perfect example to share with you with respect to how online learning actually occurs. Certainly, you have students, and there is the textbook element, there is the notes element, and there is the video element. Colleges pay for the use of materials that are copyrighted through licence agreements, whether that be through access copyright or through providers and publishers. But online learning is so huge in the post-secondary system that the expectations are that students, when they're in the classroom, can see the video. When they're at home, it's next to impossible to control what they're going to do with it. It's not necessarily that we're expecting them to make copies of it.

But I will ask my colleague to provide us—

Mr. Paul Calandra: That's my point, though. I've taken distance education, and the better part of a number of my last courses were at Carleton University. You're expecting that the student at home would have a greater advantage than the student in the classroom, by what you're saying. The bill contemplates the copyrighted material used, not the notes. Nowhere does it suggest that the professor or the student, after 30 days, needs to have a huge bonfire and destroy their notes and everything involved. What it contemplates is that if the copyrighted information that Aline Côté says is so very important needs to be reused again, it be paid for and reused again. Why is that such a problem?

Ms. Michèle Clarke: The students who are at home are not being treated differently.

Let me ask Claude to give you an example of how it is used at his college.

Mr. Claude Brulé: The idea is not to treat students differently between modes of how they learn. If the professor intends that the students have access to this material, he or she needs to make it available to all students, whether they're at home, on the other side of the planet, or in class at that time. How that's done after the fact is determined by the teacher and the technology available. There should never be an intent to treat the students differently, because that creates unfair learning elements in the classroom.

What we're talking about here are elements of copyrighted material that currently, under fair dealing practices, we're attempting to be able to issue multiple copies of in the classroom. The same could be said of a piece of video, for instance, that the professor wants to have the students work with to write an essay or dissect and report on. They need to be able to have access to this beyond the live class activity in order to do that work. It is not unfair to presume that they could have access to that in the same way they have access currently to the printed version. To us, it should be the same.

We're talking about two different modes: synchronous or asynchronous modes of delivery.

● (1120)

Mr. Paul Calandra: But the debate seems to be that online or distance education will fall apart and collapse or become even less available because students are going to be burning all of their notes and teachers will be redoing their lesson plans all over again. That seems to me to be (a) not true and (b) completely unrealistic. If I'm a student taking the course and don't turn it off 30 days later, what stops me as a student from taping and giving a copy of that course to my neighbours because they are taking it next semester and telling them to watch it now and not worry about it?

What benefit would it be for you to never turn that course off? How is that a benefit to your institution? How is it a benefit to distance education learners? Will it increase the availability of distance education? If everybody is allowed to make a copy of your course and just disseminate it at will or put it on YouTube, how does that help you?

The Chair: You have 30 seconds, please, Mr. Brulé, to answer.

Mr. Claude Brulé: I think we're not talking about the same thing here.

Mr. Paul Calandra: Let me ask this. Is it unrealistic to suggest that students and teachers are burning their notes after 30 days? Does this bill, in your opinion, force students to burn all of their course notes after 30 days?

Mr. Claude Brulé: It suggests that in clause 27 at the moment.

Mr. Paul Calandra: All of their course notes and everything to do with that course needs to be burned, not just a copy of...?

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

The Chair: The time is up, but I'll go to the point of order.

Mr. Angus.

Mr. Charlie Angus: It says, “The educational institution...shall (a) destroy any fixation of the lesson within 30 days after” the lesson. That is within the bill; that's what they're being told to do. So I think—

The Chair: It's now a debate. We'll shut it down, please, Mr. Angus.

Thank you very much.

Thank you, Mr. Brulé and Mr. Calandra.

Mr. Paul Calandra: I suggest that Mr. Angus read—

The Chair: That's debate as well, Mr. Calandra. Thank you very much.

We'll move on to the next person, to Mr. Regan.

Hon. Geoff Regan: Thank you, Mr. Chairman.

I will start with Ms. Andrew.

You said that in fact you expect that with this bill teachers would still have to meet the test of fairness set out by the Supreme Court of Canada. Would I therefore be right to assume that you would not be opposed to having that test spelled out in the legislation?

Ms. Cynthia Andrew: I think it's fair to state that by making one thing.... The Supreme Court test has two stages, and the first sets out those things that will be fair use purposes. Simply making one thing, education, a fair use purpose does not automatically deem that one thing or any of those other purposes meets the standard of fairness set out in the Supreme Court. I don't see how placing education under the first step automatically means that it's going to pass the second step; it is not.

Placing those things into the act.... I'm not a lawyer, so I can't foresee what long-term ramifications that might have. I'm hesitant to say there's no danger in doing it, because I haven't thought about it and I'm not a lawyer.

Hon. Geoff Regan: Let me ask Ms. Clarke, then.

You also said you anticipated still being subject to the Supreme Court of Canada's test in CCH. In view of the fact that you're both saying this, I'm wondering what objection you have to the recommendation from the book publishers that in fact this be spelled out.

Ms. Michèle Clarke: Let me give you an example. I'll try to do it briefly.

If you had education in the first allowable instances for fair dealing and you had a teacher in a classroom who wanted to make use of two pages of a particular book or a page of a particular book for a particular class of 20 students, and there's only that one page of that book, if it were for education purposes then it would pass the first test of the two-step test. The second test is whether it is fair, and there are six standards to look at with respect to whether it is fair.

If it is one page out of one book for one class, one time only, to be studied because of a statement by an author, and it's for education and learning purposes in that classroom to get a point across, will it be fair? Compare this with a professor who in the same instance, for education purposes, wants to copy five chapters out of a book to share with a class. Perhaps in that instance it would not be fair, because it would still have to pass that second test.

I would suggest that if education were in the first step, when you have two different circumstances, one that would be fair and one that would not be fair, it wouldn't pass the second test.

● (1125)

[*Translation*]

Hon. Geoff Regan: Ms. Côté, do you have anything to say about this?

Ms. Aline Côté: One of the things we need to keep in mind is that most of the current course notes would not be covered by this type of provision because they come under collective management licensing. All of that is based on knowing whether it falls within the limits allowed under licensing or if we must withdraw licences because there is fair dealing for education. Everything sort of becomes up for grabs.

We think that the fact that this provision exists and that it will be controlled by external criteria—the two tests that Ms. Clarke spoke about—will lead people to withdraw from collective management, and so the problem will remain whole. If the problem is much better defined, there will be an entire portion of the rights that will effectively be paid, which will enable the entire education sector to do its work, no problem.

So we are suggesting that, for all these types of excerpts, we strongly maintain these provisions that ensure the survival of collective management and that enable the classes to do this very well. We are suggesting limiting this much more, by using the three-step test to define with much greater clarity what is fair. We must make sure not to have too many courses on the market, particularly community courses, courses offered by language schools or many other courses in the private sector, that benefit from this exception in favour of the needs of the school.

We want to develop a legal offer. We have developed a lot and this is what we are talking about. Currently in Quebec, there are 7,800 digital titles, and that number is constantly growing. We experienced an increase of 1,000% in 2011 alone.

What we are currently putting forward is these provisions to ensure that schools have the materials. We would like the excerpts of the work to not move from platform to platform without permission or royalties. However, we must note that, with the ability to shift formats and with reproduction in class, the new provision of Bill C-11 will make it possible to show complete works in full compliance because they will not be subject to the fair dealing criterion.

Given the jurisprudence, all the provisions together will have a significant impact on the market. It isn't about any one provision, but rather how the provisions are interpreted.

Thank you.

The Chair: Thank you, Ms. Côté.

[*English*]

Thank you, Mr. Regan.

That is the end of the first round of questions.

Moving on to the second round, for five minutes of questioning as well, we have Mr. Braid.

Mr. Peter Braid: Thank you, Mr. Chair.

Madam Côté, I want to try to pick up exactly where you left off. It sounds as if you have certainly embraced the digital age and that you're well positioned for that.

I have not only one but actually two universities in my riding. It's my understanding that, more and more, our universities are purchasing textbooks in digital format. Is that your understanding, and are you not well positioned to continue to take advantage of that?

[*Translation*]

Ms. Aline Côté: The universities have a long tradition. Scientific, technical and medical publishers were the first to provide legal offerings. In some ways, universities have made use more quickly of a legal offering that was very important. The same thing is done in French-speaking Canada. We are developing this offering.

Personally, I think that the technologies will end up resolving the problems they have caused. For example, we have an agreement with 1,000 libraries in Quebec that lend chronodegradable files, which self-destruct after 30 days. So we do not have the problem of wondering whether we need to stop a student and confiscate his or her iPad and remove the material. We don't. Instead, we offer a license. We made exceptional agreements with the libraries. This could be done in the education systems. We could make chronodegradable documents.

● (1130)

[*English*]

Mr. Peter Braid: Thank you.

I'm going to try to cover everyone with my questions here.

Ms. Andrew, there's been a lot of discussion today about the notion of fair dealing. Do you believe that, among the teachers in your school board systems across Ontario, teachers will generally understand the standards of fairness?

Ms. Cynthia Andrew: I do, actually.

I think it's important to point out that while Bill C-11 provides a legislative framework that clarifies what is allowed and what is not allowed in classrooms, it doesn't substantively change the way we pay for those things.

The Copyright Board has set a tariff for Canadian schools, and it's $5.16 per student currently. We will continue to have to pay that tariff every year per student to ensure we can continue to use print—that tariff doesn't cover digital—materials in the classroom. So that means textbooks.

Mr. Angus was talking about old novels that his son is studying. I'd like to point out that it's a matter of curriculum choices and not a matter of availability.

Mr. Charlie Angus: Someone is to blame.

Ms. Cynthia Andrew: There are lots of available resources that are not old, but I dare you to find anything better than *Jane Eyre*—

Mr. Peter Braid: Or Margaret Laurence.

Ms. Cynthia Andrew: School boards will continue to pay this tariff that allows them to use material in the classroom, and teachers understand what is allowed in that tariff. It is set out not only at every photocopier, but there is a booklet that CSBA and the Council of Ministers have made available for every school board and every school in the country to understand copyright issues. I know those are very widely distributed.

Also, there is nothing in Bill C-11 that will permit blanket copying of resources. It will not allow school boards, instead of purchasing textbooks, to photocopy them. That is not allowed. It has never been allowed and it is not allowed under Bill C-11. We don't encourage it; we actively discourage it, and where it happens, those teachers should be instructed by their supervisors about appropriate classroom resource use.

Unless the boards purchase a licence, which they have to do under access copyright and they may do under various digital resources, they should not be using those materials without permission. That is our position, it has always been our position, and it will continue to be our position.

Mr. Peter Braid: Great.

Yesterday we heard from a University of Western Ontario professor who suggested that he felt professors and universities are overly cautious when it comes to the application of these requirements. Is that the case in the secondary system and the primary system as well?

Ms. Cynthia Andrew: I would certainly say that teachers are extremely aware, largely because of a lot of the public media coverage that Bill C-11 has started to receive, of how under the law their use of copyright materials in the classroom may differ in their professional role from their personal role. That is something on which we've just begun working with our colleagues, the teachers' federations and other educational organizations, to talk to teachers about.

Would I say they are overly cautious? I would say they are overly excited about the new law, because one of the things that has changed is that there are now far more resources available than there ever have been for schools before. Sometimes teachers aren't relying on textbooks. That doesn't mean there isn't a textbook; there is. They are supplementing with information they would not have received before.

● (1135)

The Chair: Ms. Andrew, thank you.

Thank you, Mr. Braid.

Up next is Monsieur Dionne Labelle.

[*Translation*]

Mr. Pierre Dionne Labelle (Rivière-du-Nord, NDP): Good morning, everyone.

Mr. Bouchard, you haven't spoken much today. So my question is for you.

When we talk about a bill that aims to modernize copyright, we should be concerned with protecting the acquired rights. The bill should make it possible to consolidate the acquired rights of creators and the industry to go further, while ensuring that what is working well remains in place.

The licensing scheme developed in Quebec, particularly in the area of education, is working well at the moment. It provides financial compensation to copyright holders, which is motivating enough to encourage them to produce more materials. But the current bill is a head-on threat to the royalties and the scheme developed in Quebec. Could you tell us a little bit more about that?

Mr. Jean Bouchard: We have heard that sometimes one page from a manual is used in the classroom and that this would be fair. But it would also be fair to compensate the writer and publisher that created the material, even though it is only one page.

In education—which is what interests me—authors work with publishers to create documents that fit with the programs. These documents are learning tools that provide structured and scientifically validated information. And we acquire all sorts of rights, for the illustrations, the tables and the text, and now digital rights, to create a whole, an overall tool that is truly relevant for the classroom. The department of education ultimately validates the material by approving it for use in the classroom.

As Aline just said, the publishers are considered the research and development unit for our departments of education. We provide them with the tools. I think that if we do not recognize it and do not adequately compensate the work of writers, they will stop working with us. We must also keep in mind—

Mr. Pierre Dionne Labelle: As I understand it, the day after the act as written takes effect, authors and people in publishing are going to lose money. Based on what I've been told, the copyright holders would lose about $6 million in the first year.

Mr. Jean Bouchard: It would be more than $6 million.

Mr. Pierre Dionne Labelle: How much do you think the losses would be?

Mr. Jean Bouchard: It would be around $11 million, in the first year. We are talking about writers and publishers, but also the education system.

In the short term, you won't feel the effects because you'll be able to use the existing material. It has been developed and will be relevant for a certain number of years. But when the departments of education think about renewing their programs, who is going to be interested in investing in the development of this content? The work is complex. It will involve an investment of $1 million to $1.5 million per resource and per level, meaning for each discipline, and those are just initial investments.

So the people who will get into this will do so because there is a stable, well-established business model and no uncertainty.

Mr. Pierre Dionne Labelle: Ms. Clarke just mentioned that Canadian colleges, with a few exceptions, support the measures in the bill. But I think that the Fédération des commissions scolaires du Québec is not in favour of the bill as written.

Mr. Jean Bouchard: The Fédération des commissions scolaires du Québec thinks, as do we, that the provisions of this bill jeopardize the development of future educational resources.

Mr. Pierre Dionne Labelle: We have received proposed amendments from the Canadian Federation of Musicians, where you worked. I'd like to quickly read one of the proposed amendments, which sets out one of the application criteria for fair dealing:

> e) the use … by itself or together with similar dealings:
>
> (i) would not have an adverse effect, financial or otherwise, on the exploitation or potential exploitation of the existing work…

With the amendment worded this way, it would meet your expectations and eliminate your concerns.

Mr. Jean Bouchard: Yes. It would also serve the education of Canadians in the future.

[*English*]

The Chair: You have time.

[*Translation*]

Mr. Pierre Nantel: May I step in?

Mr. Pierre Dionne Labelle: Go ahead, Mr. Nantel.

Mr. Pierre Nantel: Thank you, Mr. Chair.

Thank you all for being here. My question is for Mr. Bouchard and Ms. Côté.

Do you not have the impression that, unfortunately, the legislator here could have drawn more inspiration from the system in Quebec? Clearly, this system seems to be working with the collective regime. There was an agreement but, today, the bill is literally stirring up ill feelings among the parties that agreed previously. Is that right?

● (1140)

Mr. Jean Bouchard: Yes, we are next to each other, and we are all concerned about the education of young people. On the one hand, the people who pay for the rights are in favour of the bill; on the other, those who reap the benefits, in other words, the return on their investment, are against it. In principle, we work well together most of the time.

[*English*]

The Chair: Up next is Mr. Armstrong for five minutes.

Mr. Scott Armstrong: Thank you, and thank you for your presentations. I have so many questions and so little time here. I'm going to try to move quickly.

First of all, Ms. Clarke, just back on the distance learning issue, I have a copy of the legislation here and I'm going to read a quote from it and see if you can tell me what's unfair about it or what changes you'd like to see. It says:

> Subject to subsection (6), it is not an infringement of copyright for an educational institution or a person acting under its authority
>
> (a) to communicate a lesson to the public by telecommunication for educational or training purposes, if that public consists only of students who are enrolled in a course of which the lesson forms a part or of other persons acting under the authority of the educational institution;

It's clarified under "Reproducing lessons". I want to focus on the reproduction of lessons. The bill says, "It is not an infringement of copyright for a student who has received a lesson by means of communication by telecommunication", which I referred to earlier, "under paragraph (3)(a) to reproduce the lesson in order to be able to listen to or view it at a more convenient time." So you can tape a lesson and look at it later.

The bill then states:

> However, the student shall destroy the reproduction within 30 days after the day on which the students who are enrolled in the course to which the lesson relates have received their final course evaluations.

So if I'm a student taking a distance learning course, I tape a lesson off the Internet or off television, however it is broadcast, and I say that I can go back and actually look at it the night before an exam. But 30 days after I get my final grade, I'm asked to erase that. That sounds inherently fair to me as both an educator with 18 years of experience as a professor and a teacher and also as someone who has taken a lot of courses online. Isn't it fair that you would erase something like that that would be copyrighted after 30 days of getting your final course evaluation?

Ms. Michèle Clarke: Let me try to answer that succinctly.

First of all, I'm not a lawyer, so I'm not well positioned to be able to respond legally, if you wish, to your particular question. I'm happy to come back to you at a later date, maybe in a week with some details.

Mr. Scott Armstrong: Sure.

Ms. Michèle Clarke: I'll confer with my colleagues at the office.

The element of destroying course.... Online learning and being able to provide, as Mr. Brulé said earlier, that opportunity for learners to go back and look at that material whenever they wish to learn it.... It is to establish, certainly, that the learning process is as fair for individuals who are in the classroom as it is for online learning. I've mentioned twice already that online learning is growing exponentially with the institutions, via offering courses in rural and remote areas. In some areas that's the only way to offer learning and to get to those particular learners. To require them to destroy those class notes in 30 days is very difficult. It's not manageable.

Mr. Scott Armstrong: It doesn't say destroying class notes.

If I'm sitting in my home watching the lesson, I'm taking my class notes. I'm not required to destroy those after 30 days.

Ms. Michèle Clarke: No.

Mr. Scott Armstrong: I'm only required to destroy the reproduction of the lesson that I'm watching.

Ms. Michèle Clarke: Yes.

Mr. Scott Armstrong: If I'm taking notes, I can keep those, and I can refer back to them in later courses. That's not what we're talking about—

The Chair: We have a point of order.

Mr. Charlie Angus: A note doesn't mean a handwritten note. It means—

The Chair: This is debate, once again, Mr. Angus.

Mr. Charlie Angus: It means something that was distributed as part of your class notes.

The Chair: No, sorry, Mr. Angus.

Mr. Armstrong.

Mr. Scott Armstrong: I'm just clarifying what a note is. I don't have to destroy those.

Ms. Michèle Clarke: If you're referring to the course note, the investment of the institution to produce and prepare for these particular courses—it doesn't make any sense to destroy those after 30 days. They're reused. They're reused for other online courses for other classes. It's not an efficient use of the materials to destroy them after 30 days.

Mr. Scott Armstrong: I'm going to move along to Ms. Andrew, as a representative of school boards.

As a school principal, I had to purchase educational resources, but I think you would acknowledge that teaching is different now. Before, teachers were responsible for teaching a course or a subject.

I think most school boards in the country have switched the paradigm to one where the teachers are now becoming more responsible for the learning of students and showing that all of the students in the classroom are learning. I think you'd agree with that, would you not? Is there a shift in that direction?

● (1145)

Ms. Cynthia Andrew: I would suggest that's accurate, yes.

Mr. Scott Armstrong: As a teacher, you're required now to do more individualization of classes. You're trying to get more resources to actually meet the needs of individual students, whether they have severe disabilities in the classroom or whether they're a high-achieving student. You try to individualize that instruction. That requires the purchase of special technology maybe for students who are disabled. It requires the production of special resources for students who may be achieving to enhance that learning. Is that accurate?

You guys are facing a much greater cost now than you would have in previous ways, because of the way teachers are actually teaching individualization of the course material that they didn't have to do before.

Ms. Cynthia Andrew: The costs that are increased for that purpose will be reflected not only in curriculum but will be reflected in staff and infrastructure as well, but yes....

Mr. Scott Armstrong: This legislation will clarify a lot of the details on that—

The Chair: Briefly, Mr. Armstrong.

Mr. Scott Armstrong: This legislation will clarify what teachers can and cannot do. Because they have to use such a broad range of resources, it's going to—

Ms. Cynthia Andrew: Yes.

Mr. Scott Armstrong: —be a real guide to teachers of what they can and cannot do.

Ms. Cynthia Andrew: What it does is provide a legislative framework for teachers to follow that did not previously exist, and that's important for clarity.

Mr. Scott Armstrong: Thank you.

The Chair: Great.

Thank you, Ms. Andrew and Mr. Armstrong.

Now to Mr. Cash for five minutes.

Mr. Andrew Cash: Thank you Mr. Chair.

And thank you all for being here.

I think it would be helpful, Madame Clarke or Mr. Brulé, to give us a sense of how professors and teachers actually build their course outlines and how they build their teaching techniques for their students, because it seems that what we have in this bill runs very counter to the practices that teachers use today.

Could you just give us an outline of that and how the deleting of essentially their course in 30 days affects their work?

Ms. Michèle Clarke: I'm going to let Mr. Brulé respond to that as the dean at Algonquin.

Mr. Claude Brulé: Sure. Thank you very much, Mr. Cash.

Courses for colleges are built from program standards that are established, learning outcomes, and those are passed on to individual courses. So you have a program. Courses are made up of different learning outcomes at the course level. Teachers will select material, either material that he or she intends to use solely in the classroom or that he or she may want the students to have by way of purchasing those materials, whether they are published materials, e-books, or anything of that nature. How they construct their lesson plans will be based on an attempt to achieve those learning outcomes. This will include, possibly, live, in-class lessons, skill-based work, reading material, and a whole host of methods in order to impart or facilitate the transfer of knowledge. Then they assess and evaluate that those outcomes have been met.

So they rely on either textbooks or material they create themselves. That material is purchased by the college and by the students as well. The learning takes place with that material. It's supplemented by anything that can be found within the public domain, for instance, that can be appropriate for that class.

I'm not sure beyond that.

Mr. Andrew Cash: Okay, fair enough. When we talk about the issue of teachers, would they have to rebuild their outlines every semester?

Mr. Claude Brulé: We've moved completely online.

Mr. Andrew Cash: Yes.

Mr. Claude Brulé: We have a learning management system called Blackboard. We are moving to a mobile environment for all of our students. Students will bring the device of their choice—they are already doing that—and interface with the college and our systems to gain access to their material that way. Everything we do for one semester that is going to be reused next semester is stored. We want to be able to continue to port that forward in the following term. It's not economically reasonable to assume that we would dispose of all of this and recreate from scratch. It's just not reasonable or economically feasible.

● (1150)

Mr. Andrew Cash: We've been focusing on distance education as it pertains to this 30-day clause here. In fact, all students are completely wired right now. One of my kids is in second year at Ryerson. He's not in distance education, but all of his notes are online. He downloads those notes; he downloads the resources. He has also paid the tuition. He's buying textbooks as well.

Mr. Claude Brulé: That's right.

Mr. Andrew Cash: It strikes us as counterproductive for learning that he wouldn't be able to refer to those resources down the road.

Mr. Claude Brulé: That's correct. That's why we oppose that particular part of the bill.

Mr. Andrew Cash: I'm just wondering as well about this. We've been talking a bit about the Berne three-step and the six steps for fair dealing that the Supreme Court has defined. Would it, in your view, be helpful to have that Supreme Court definition clearly mapped out in Bill C-11?

Ms. Michèle Clarke: I'll respond to that. I don't have any legal background, so I'd certainly like to take that back to our organization and confer. I certainly can get a response back to you in about a week on what position we would have on that.

The Chair: Great. Thank you for your answer.

Thank you as well to Mr. Cash.

We're now in the home stretch.

Mr. Lake.

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

Again, thank you to the witnesses for coming today.

I just want to clarify a few things.

First of all, on Mr. Cash's comments, there's nothing in the legislation that requires deletion of courses, teachers' notes, or the preparation materials they do to get ready for class. There's no reference to destruction of notes, per se, that a student might make, or whatever the case might be.

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

Mr. Charlie Angus: We have to be clear here: it's in the bill. It says they will destroy any of those notes 30 days after—

The Chair: The point of order has to relate to a Standing Order that's being breached.

Mr. Charlie Angus: But it's just so that people back home don't misinterpret this.

Mr. Mike Lake: On the point of order, so that my time is not being eaten up with this, I will point out that it clearly doesn't read "notes"; it reads "destroy any fixation of the lesson within 30 days", and it defines "lesson" at the beginning of the section we're talking about. It clearly does not refer to notes.

If you're going to raise a point of order that isn't a point of order, at least get the facts correct.

The Chair: Gentlemen, this is done now, so let's move on. We'll start the time again for Mr. Lake and will go forward from there.

Mr. Mike Lake: To look at the proposed section that's being referred to, what it says at the beginning is that:

> For the purposes of this section, "lesson" means a lesson, test or examination, or part of one, in which, or during the course of which, an act is done in respect of a work or other subject-matter by an educational institution or a person acting under its authority

—and here is the key wording—

> that would otherwise be an infringement of copyright but is permitted under a limitation or exception under this Act.

Just to be clear, what we're talking about here is the allowance of an opportunity to do something that you otherwise wouldn't be able to do. Everything else in terms of the way teaching is done is still allowed in the way that it always has been. Teachers will prepare their notes. My wife is a teacher. She'll still be able to prepare lesson plans and keep those lesson plans and use them in the future. What it allows is a situation wherein.... I'll use an example.

I don't know where Andrew Cash went to school, but he is a performer. If he decided that he wanted to, and one of the teachers invited him back to perform for a class—perhaps an arts class, or something like that—he could go back and perform. In our previous world, where there weren't distance learning opportunities, he would perform, everyone would watch that, it would be part of the lesson, they would learn something and maybe take notes on it—whatever the case—and everything would be okay. What is not allowed, and has never been allowed, is for a student to tape that performance and keep that performance forever, unless Mr. Cash gives permission to do so.

That's what this is trying to address. What it's saying is that it's necessary to make a copy of this performance, or a "fixation" as the rules call it, so that a student in Nunavut could actually see that performance and take part in the class and be able to benefit from seeing Mr. Cash perform and perhaps hear him talk about his experience. But it doesn't allow them to keep a copy forever of Mr. Cash's performance, unless, of course, Mr. Cash decides that he wants to allow that, in which case, according to the first paragraph here, it wouldn't be an infringement of copyright anymore, because Mr. Cash would have given people the right to do it.

That's an important clarification. I don't know whether you have any comment on that, but I think the focus needs to be on this as an opportunity that otherwise doesn't exist. And it takes nothing away from teachers' or professors' ability to teach the way they always have or prepare the way they always have, or from students' ability to take notes on those things and keep them forever.

● (1155)

Ms. Michèle Clarke: I would agree with your term "opportunity".

Ms. Cynthia Andrew: I think the scenario you just proposed is reasonable. It's not the advice I was given by legal counsel when preparing my response to this bill, so I'd like to have an opportunity to talk to her about this again and just make sure that the information we're dealing with is agreed upon on both sides. Then maybe I can respond in writing with a more definitive answer on this, so that I'm not misrepresenting.

What you outlined there is very different from the way I was instructed the law would be interpreted. I just want to make sure that I'm not misrepresenting anyone.

Mr. Mike Lake: To be fair, this is one example. I think what you're saying is reasonable and I appreciate that.

I guess I'll just ask one follow-up question on it to Mr. Brulé or Ms. Clarke—or Ms. Andrew, if she wants to answer.

Does it seem reasonable, in your opinion, that a student at a distance or within that class should be able to keep a copy of Mr. Cash's performance or lecture, whatever it might be, forever, without having permission from Mr. Cash to do so?

Ms. Cynthia Andrew: It was never the intention of the Canadian School Boards Association to allow students to keep and to continue to use copyrighted materials that were provided to them for the sole purpose of their instruction.

Mr. Mike Lake: Mr. Brulé or Ms. Clarke?

Mr. Claude Brulé: I guess my only comment would be that with the introduction of education under fair dealing, there needs to be a reconciliation of this clause with the need to have a balance between fair dealing and the ability to pass on to students extracts of copyrighted material without infringing the law. So again, there's a balance: here you're saying, on one hand, “destroy all those things after 30 days”; on the other hand, we're saying that fair dealing in the context of the classroom allows us certain exemptions.

Mr. Mike Lake: Again, though, the law is pretty clear when it talks about what has to be destroyed. It's talking about something that would otherwise be an infringement of copyright but is permitted under a limitation or exception of the act. It's very clear on that, and I think this needs to be clear, because there's all sorts of talk of destroying notes or destroying lesson plans. That is absolutely not the case. It's crystal clear in the bill as presented.

The Chair: Thank you, Mr. Lake.

Mr. Charlie Angus: I think it's as clear as mud.

Mr. Mike Lake: Well, it's not crystal clear when people misrepresent what's written in the act.

The Chair: Mr. Lake, Mr. Angus, this is debate for clause-by-clause deliberation. Thank you very much.

Does anyone want to respond?

Go ahead.

Ms. Michèle Clarke: I have a point. Since there would appear to be, obviously, between those of you here at the table, some differences with respect to the interpretation, it's difficult for us too. Obviously, we're not lawyers. I'd be pleased to go back to my organization to get some clarity in order to respond to all of you with respect to what our position is on this.

The Chair: Thank you, Ms. Clarke.

To the members of the committee, most of that discussion we'll save for clause-by-clause. You can talk it out then.

I want to thank our witnesses for coming today. Thank you very much for your information. It was very helpful for the committee.

We are the hardest-working committee on the Hill, so we meet again tomorrow from 3:30 to 6:30 in room 237-C. Again, that's at 3:30.

Until then, this committee is adjourned.

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