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Chair

Mr. Glenn Thibeault

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● (1530)

[*English*]

The Chair (Mr. Glenn Thibeault (Sudbury, NDP)): Good afternoon, everyone. Welcome to meeting number 5 of the Legislative Committee on Bill C-11.

I'd like to welcome our witnesses, our guests, and the members, and also just do a quick acknowledgement to all of the members and individuals today who are wearing pink on Anti-Bullying Day. So Mr. Regan and others.... Mr. Braid, you have it on your tie. I'm very obvious with the shirt and the tie. I'd like to acknowledge everyone on that.

Mr. Charlie Angus (Timmins—James Bay, NDP): I can see they're doing laundry.

The Chair: Thank you, Mr. Angus, for sharing a bit too much information. We'll move forward from there.

I'll start off to introduce our witnesses: from the Canadian Independent Music Association, Stuart Johnston and Robert D'Eith; from the Canadian Artists Representation Copyright Collective Inc., Janice Seline and Adrian Göllner; and then from the Canadian Consumer Initiative, John Lawford and Janet Lo.

Welcome, guests. You will have a ten-minute presentation per organization. I will inform you that I am a stickler for time, so at the ten minutes I will be interrupting you if you haven't concluded by that time.

We'll start off with the Canadian Independent Music Association, for ten minutes.

Mr. Stuart Johnston (President, Canadian Independent Music Association): Good afternoon, and thank you very much for the opportunity to address you today on what my industry considers to be the most important bill to go before government.

As mentioned, my name is Stuart Johnston, and I'm the president of the Canadian Independent Music Association. Joining me today is one of my volunteers and board members, Mr. Bob D'Eith. He's the secretary of my board, the chair of my government affairs committee, and in his day job he's the executive director of Music B.C., a provincial music industry association. Bob's also an entertainment lawyer, record label owner, and two-time Juno award nominated recording artist.

You should already have our submission on Bill C-11, which outlines our 12 recommendations for improvements to the bill, so we will try to be brief in our remarks.

By way of background, CIMA represents more than 180 Canadian-owned companies and professionals engaged in the worldwide production and commercialization of Canadian independent music, who in turn represent thousands of Canadian artists and bands. They are exclusively small businesses, which include record producers, record labels, publishers, recording studios, managers, agents, licensors, music video producers and directors, creative content owners, artists, and others professionally involved in the sound recording and music video industries.

To put our industry's size in perspective, the Canadian independent music sector, taken as a block, is one of the largest in terms of sales in this country, second only to Universal Music Canada. According to Nielsen SoundScan sales figures, the independent sector accounts for approximately 24% of all music sales in Canada, which is larger than EMI and Warner Music put together and Sony Music by itself. In short, our members are the owners and operators of small businesses who invest in the creation of intellectual property that spurs economic benefits in terms of jobs, increased GDP, contributions to our nation's trade balance, and are an integral component of Canada's culture as expressed through music.

As Canada's economic sectors continue to evolve, CIMA believes that the creation and protection of intellectual property is one of the few potential growth areas for our economy, particularly through exports. We wish to thank you for this process, and for the responsibilities that you are undertaking to ensure that all views are heard and considered before final approval of the bill is given. We are pleased that we will finally see the bill go before Parliament this spring, because we've waited far too long for a new copyright act.

CIMA members and the broader independent music sector in Canada, as noted, are small businesses struggling to survive in a very challenging market, a difficult environment in which to be creative, innovative, make investments, maintain jobs, and earn a living. Therefore, we believe that the modernization of Canada's copyright regime is crucial not only to our sector but to the broader economy as well.

While we support this bill, Bill C-11 has the potential to either be critically important or it could in some ways make an already challenging climate that much more difficult for our independent music sector to survive in, let alone grow and thrive. We shall explain this shortly.

CIMA and its members, while generally supportive of the bill, believe it needs a few amendments, some technical, some more than technical, in order for it to truly reflect the government's stated desire for it to help create jobs, promote innovation, and attract new investment. Most importantly in our view, it must also give creators and copyright owners the tools to protect and be compensated for their work. This last point cannot be understated. If we pull away all of the rhetoric, grandstanding, misinformation, and misunderstanding of what copyright protection really is, it should be self-evident what the real reasons are to have strong legislation in place and how important Bill C-11 really is.

The bottom line is that music is commerce. Music is a commodity. It can be characterized as art in its final form. It can be used to define and contribute to our culture, but first and foremost it is a commodity. Governed by the rules of business, it relies on supply chains, domestic and international trade. It can be bought, sold, licensed, for various uses. It is a business that employs many thousands of people, directly and indirectly.

But somewhere along the way, when music was digitized into a series of ones and zeros, it somehow became okay in some circles to steal it, share it, pass it around, all without consideration as to what harm that is doing to the individuals who invested their time, money, and creative energies into that product, not to mention all of those along the supply chain who contributed to that product being brought to market. They are the artists, their labels, their manager, producers, sound engineers, manufacturers, distributors, retailers, and the list goes on. Fair compensation for a product enjoyed by consumers is required to pay all of those good folks in that supply chain. It really is no different from any other service such as professional services, the IT industry, the auto sector, and mining.

● (1535)

We have rules and law in society that tell us that stealing a car, for example, for personal use or resale is wrong. The same people who illegally download and share a track or album would in all likelihood not be the same people who would go into HMV and walk out of the store with a handful of unpaid CDs. It just doesn't happen. Yet in a virtual sense, that is what is happening on a grand scale around the world and in Canada in particular. This theft of music is being facilitated by certain private sector interests like Canada-based isoHunt, the Sweden-based The Pirate Bay, and New Zealand-based Megaupload, thereby depriving my industry the compensation it deserves, while at the same time they are financially benefiting from this illegal practice.

At the beginning of this year, four of the world's top five BitTorrent sites were connected in whole or in part with Canada. isoHunt yesterday filed claims in a Canadian court that their operations are completely legal, claiming Canadian law makes it completely legal. This flies in the face of the intent of Bill C-11. Canada unfortunately is seen as a haven for these types of digital parasites. According to court documents, even the aforementioned Megaupload considered moving its servers to Canada at one time in order to avoid prosecution.

This is not piracy. That's too fanciful a word, and brings a connotation of Hollywood romanticism. What we are talking about is straight out theft. We need tough rules in place to prevent these so-called wealth destroyers from engaging in and enabling theft. We need a new copyright bill.

My colleague Robert D'Eith will continue with the rest of our presentation.

Mr. Robert D'Eith (Secretary, Board of Directors, Canadian Independent Music Association): Thank you.

There are a few particular sections. The first is in regard to the non-commercial user, which is the section 22 clause. We understand the government is trying to allow innocent consumers to use the Internet without undue restrictions. This section opens a door that is unprecedented in the world. The non-commercial user language is vague, and could potentially lead to the devaluation of musical copyrights. Notwithstanding the sections that try to balance this, we feel that not having a clear enforcement mechanism that will deal with this will lead to devaluing of copyrights and the abuse of creators' moral rights.

Another very troubling section is the notice and notice provisions in section 41. The independent music sector is built on individual entrepreneurs and small businesses. The section as drafted places an unreasonable burden on the copyright holders to enforce their copyrights. It's impractical to expect copyright owners to go to court every time there is an infringement notice. The copyright infringer will continue to infringe with impunity, knowing there is very little chance that the copyright owner will have the resources to come after such infringement. We strongly urge the government to reconsider this section and create a fair, robust, and equitable provision that provides protection for ISPs while still allowing for notice and takedown of illegally posted intellectual property.

As for statutory damages, capping statutory damages at $5,000 will make damages the cost of doing business on the Internet. Individuals and small-business copyright owners will look at the cost of litigation versus damages and decide that litigation is impractical. Further, even if there is a judgment, it's far too small to have any real impact on infringers. Again, copyright infringers will infringe with impunity. In fact, the provisions of this section will create a vehicle of licensing for infringement.

Another section that is very important to us is ephemeral rights. Revenues in the music industry have steadily declined over the past ten years, leading to a crisis in the business. At a time when the music industry needs support, the bill further erodes revenue in this business. The removal of the requirement to pay a broadcast mechanical licence will lead to a reduction of nearly $21.2 million of revenue.

The royalty exemption presently in section 68 of the Copyright Act creates $1.2 million in exemptions for the first advertising revenues of commercial radio stations to pay neighbouring rights royalties. We feel this provision was put in at a time when there was supposed to be a transition to neighbouring rights. At this point, we feel it should be removed. It would create another $8 million of additional revenue to the music industry.

We would also like to request that the length of copyright in all areas be increased from 50 years to 70 years in order to maintain parity with all other jurisdictions.

I guess I am out of time.

● (1540)

The Chair: Yes, you're out of time. I was just going to say to wrap it up if you could, because you're now out of time.

Mr. Robert D'Eith: Yes. I have one paragraph. Is that all right?

The Chair: If you can do it in 30 seconds or less.

Mr. Robert D'Eith: Yes.

While CIMA's formal written presentation also deals with a number of other suggested changes to the bill, we wish to make sure that the Government of Canada understands the need of the independent music sector. We're struggling at a time of uncertainty in the law and need clear, enforceable copyright laws in order to continue to provide Canada and the world the best quality of music, songs, and musicians. In order to thrive, the owners need fair compensation for their products and services. We urge the Government of Canada to continue to take a leadership role in creating a law that puts Canada ahead of the curve and creates an environment where creators can thrive.

Thank you very much.

The Chair: Thank you, Mr. D'Eith and Mr. Johnston.

Now we go to Ms. Seline.

Ms. Janice Seline (Executive Director, Canadian Artists Representation Copyright Collective Inc.): Good afternoon.

I thank you for this opportunity to speak as a member of the visual arts sector. I'm accompanied by Adrian Göllner, who's the past chair of my organization and a practising visual artist himself. We agree that copyright reform in Canada is long overdue.

I work for a collecting society, Canadian Artists Representation Copyright Collective Incorporated, CARCC, representing about 850 visual artists in matters of copyright. In 2010-11 we distributed over $200,000 in royalties to our affiliates, and we have had years when the total distribution has surpassed $500,000. Our affiliates are grateful recipients of royalty income. CARCC operates on money it earns from licensing.

I believe that as we work to reform our Copyright Act we need to remember our principles. Copyright is very ancient, surely older than the Greek playwright who felt hard done by when his plays were presented without his being paid. That copyright is old simply means that it is integral to creation. Artists must have copyright, and copyright must work for them.

Normand Tamaro, a lawyer, has said that the purpose of copyright laws is to provide a fair and civilized environment for the exploitation of creators' works, and artists must be allowed to negotiate compensation on favourable terms for uses of their works. Copyright laws include moral protections for a creator's reputation. Lately the young artist K'naan, invoked his moral rights when he told the Mitt Romney campaign to stop using his song *Wavin' Flag*. He did not want to be associated in any way with that campaign and he put a stop to it in a public way. His indignation came from that very old place, his *droit d'auteur*, his author's right.

CARCC is a member of CISAC, the International Confederation of Societies of Authors and Composers, the multidisciplinary association of copyright collecting societies, and its subgroup, CIAGP, the International Council of Creators of Graphic, Plastic, and Photographic Arts. Both these organizations have expressed dismay by letter to Canadian officials at the threats to artists' incomes posed by Bill C-32, and by extension the identical Bill C-11. They are concerned that Canada will lag further behind in its international obligations to harmonize its laws with those of other countries.

A recent report from CISAC summarized the global revenues for collective licensing—this is worldwide—from 2010 at over 7.5 billion euros. This is a lot. Canadian artists must partake of this vital economy.

Here are our specific concerns with Bill C-11, which I will summarize first in case I run out of time. The first one is that while we are pleased that photographers' rights are improved in Bill C-11, we feel that photographers will continue to be disadvantaged by the exception that allows clients to commission photographs to use for private and non-commercial purposes. The second is we would like to see the exhibition right extended to cover the term of copyright, dropping the June 1988 limitation. Third, we would really like to see an artist's resale right included. I think everybody's very enthused about that. We would support levies on digital hardware to cover private copying, and we do not support fair dealing exceptions for education, satire and parody, or mash-ups. Licensing activity in the education sector should be encouraged.

Here's the reasoning behind our concerns. Photography is a form of visual art, and we are thankful that Bill C-11 extends the rights of photographers. However, an exception specifically naming photography, clause 38, has been added, whereby the person who commissions a photograph is allowed to copy for private or non-commercial purposes. The photographer would earn from such copies, and the exception would deprive him or her of income as well as control of the quality of a copied image. We recommend that photographers be treated equally with other visual artists.

Second, Canada's Copyright Act includes an exhibition right that allows artists to require payment for the exhibition of their works if the purpose of the exhibition is not the sale or hire of the works exhibited. The exhibition right was enacted in 1988 and applies to works created after that date of enactment. We would like to see the 1988 date dropped and the exhibition right extended to include all works subject to copyright—that is, life plus 50 years. This would end discrimination against senior artists and the estates of deceased artists, which are often presently excluded. This could easily be put into effect in Bill C-11, and we strongly recommend this action.

● (1545)

Third, Bill C-11 could be vastly improved by the addition of the long overdue artist's resale right, the *droit de suite*, to the Copyright Act. Resale royalties are percentages of sales of works resold on the secondary market, such as auction sales. They are usually managed collectively. Resale rights benefit artists who have sold their works, often at a low price, only to see them fetch much greater sums later on or in foreign markets. Aboriginal artists and senior artists are the most affected. Some 59 countries around the world have this right included in their legislation. Without the resale right in Canadian legislation, there can be no reciprocity with countries such as France or Britain, and Canadian artists cannot benefit from secondary sales abroad.

The resale right deserves consideration here and now in Bill C-11. Existing collecting societies such as CARCC are ready and willing to take on the administration of the artist's resale right, and there is worldwide evidence that the resale right has little to no effect on art markets.

Fourth, the fair dealing exception for education—as well as all of the exceptions for education, and in particular those pertaining to the Internet—that are detailed in Bill C-11 generally weaken creators' capacity to earn from the reproduction of their works. Creators, including publishers, benefit from the many uses that this enormous sector makes of their works. Creators are the content providers for Canadian culture. Rights holders are paid at the time of publication as well as through collective licensing of reprography, which is used by photocopy.

We believe that collective management has a strong role to play when copies of works are used. Users can use at will as long as they pay for a licence and creators are paid. Reprography must be extended to digital uses and to the Internet. Licensing must be allowed to develop and flourish in this education sector. The education sector should count on paying those who provide its content, as they do those who teach and all the other workers. If they don't, the content will wither and die. Copyright supports culture and national identity.

To add education to fair dealing provisions is to invite litigation and to force creators to defend themselves against claims of fairness on the part of users. Many activities can be called educational. To expect creators and collecting societies to contest every fair dealing claim that comes from a museum or a business, not to mention schools and universities, is to place a very heavy burden upon those who would benefit from copyright. It takes years of unnecessary and expensive litigation to clarify a fair dealing exception, and the judges may well decide that non-payment of rights is indeed unfair to creators. Education really should be removed from fair dealing.

Sixth, the Internet is not the future; it is the present. It's a form of publication that's becoming increasingly important, indeed replacing ways in which copies were made and distributed in the past. It presents huge opportunities. Creators must be allowed to benefit, when their works are used privately, when they're copied from device to device.

A levy on digital hardware similar to that already in place on recordable media would be a fair solution to the problem of payment for private use. The levy is fair payment for something that people actually use—content—without which their shiny devices aren't fun at all.

Besides the economic benefit to creators, there are benefits to users as well. A levy allows people to use with a certain freedom, with no threat to their privacy. It does not replace investigation of the truly criminal activity that is piracy. Law enforcement should take care of that, not the service providers.

Bill C-11 proposes fair dealing exceptions for parody and satire and mash-ups—that is, non-commercial user-generated content. The effect of these exceptions is on the one hand to weaken creators' moral rights, which protect their reputations, and to encourage a culture of entitlement on the other. Canadian satirists have flourished without an exception to copyright. There are still many norms that satirists must respect, even if an exception is instituted.

Visual artists who similarly practice appropriation, a practice often shoehorned into parody and satire, have managed well without an exception. Telling these artists that they are free to appropriate under copyright offers them no protection from other forms of prosecution, such as trademark protections or libel. In other countries, parody and satire exceptions have invited protracted, expensive, and inconclusive litigation. We think they should be dropped from Bill C-11.

● (1550)

The Chair: Ms. Seline, you've reached your time. Could you summarize for me, please?

Ms. Janice Seline: Okay.

My last thing is to not encourage the kids to infringe copyright and to respect artists' creations as they would want their own to be respected.

I thank you for the opportunity.

The Chair: Thank you. You'll have the opportunity to answer questions and get more of your thoughts and opinions out.

I'm now handing it over to the Canadian Consumer Initiative.

Mr. John Lawford (Counsel, Canadian Consumer Initiative): Mr. Chair, committee members, and Madam Clerk, my name is John Lawford, and with me is Janet Lo. We are counsel to the Public Interest Advocacy Centre, one of four major Canadian consumer groups who have banded together under the title of the Canadian Consumer Initiative, CCI. The other members of this coalition are the Consumers Council of Canada, Option consommateurs, and l'Union des consommateurs.

CCI wishes to bring to the committee our view of the consumer interest in copyright legislation. Consumers are one of three major stakeholder groups in this discussion, along with artists and rights holders. However, despite their huge importance, the voices of consumers have not been loud or clear in this debate.

Consumers buy copyrighted content. They enjoy copyrighted content. They directly and indirectly compensate artists and rights holders. They are an essential part of the equation in achieving a copyright law that fairly grows creative content and personal enjoyment of that content. You can't do it without consumers.

This bill makes strides towards recognizing this foundational role of consumers. We like the explicit recognition of consumer rights: of consumers' rights for all copyrighted content, clear backup rights, format-shifting rights, space- and time-shifting rights. We also applaud the efforts to recognize and validate user-generated content that is non-commercial, creative, and widespread among consumers. As written, that provision ensures non-commercial, non-threatening, non-destructive consumer creativity.

However, we have had to curb our enthusiasm for the expression of these consumer rights in the bill because of their potential override by digital locks or technical protection measures. We continue to believe that the power balance between rights holders and consumers has been tipped too far in favour of rights holders under this bill. Every consumer right under this bill can be taken away by a technical protection measure, and that can be done in two ways.

First, the general protection of technical protection measures in proposed section 41 prohibits consumers from backing up or time- or format-shifting content if a digital block is in place. Second, each of the individual consumer rights listed in proposed new sections 29.22 through 29.24 has a subsection that makes that right applicable only if the individual, ”in order to make the reproduction or record the program, did not circumvent...section 41”.

In effect, then, these sections declare that when a technical protection measure is present, none of the format-shifting, time-shifting, or backup rights even exist. This matters, because consumers will therefore never even be able to argue that they are exercising their consumer rights if they circumvent the technical protection measure. If this bill is passed as written, a consumer who breaks a digital lock for non-infringing purposes will be violating the Copyright Act. Although a consumer would not face statutory damages under the act for a circumvention done for private purposes, we are more concerned with the chilling effect of outlawing all tools that permit circumvention of TPMs, even when designed and used only to allow consumers to enjoy their consumer rights.

In short, no business or individual will write or distribute such software for fear of liability, and the vast majority of consumers will not be able to do this themselves. As a result, consumers will have their rights dictated to them by rights holders, who will likely use this power to deny these rights or to demand additional payments for content that can be backed up or time-, space-, or format-shifted.

Consumers will face a myriad of TPM restrictions on devices, media, and delivery mechanisms that are very likely to make some of the content they have bought unplayable and almost certainly will make that content vastly less secure and less usable. The market will not solve this dilemma. The commercial interests of artists and rights holders go the other way.

The Bill C-32 committee heard Ms. Milman come and explain that she would like to be paid twice, once when a consumer buys her CD and once when they put it on their iPod. The same committee heard Ms. Parr of the Entertainment Software Association of Canada claim that new business models with TPMs would create more choice for consumers, lower prices, and give more flexibility.

Consumers don't think so. They believe and act as the format-shifting, time- and space-shifting, and backing-up normal people that they are. They feel that they have done the right thing by buying content, paying for it once, and using it normally. They have a right to this expectation. It is for the industry to structure itself to be profitable in this environment and for that industry to fairly compensate artists, not for this Parliament to hand an act to rights holders and artists that protects top-heavy, unfair business models and is contrary to the public interest.

● (1555)

At a minimum, this bill should be amended to recognize these consumer expectations and actual use of copyrighted content in the real world. Therefore, we recommend that the committee consider striking out the language I quoted in each of the proposed new sections 29.22 through 29.24, and those are 29.22(1)(c), 29.23(1)(b), and 29.24(1)(c). These TPM restrictions expressed right in the text of the supposed consumer rights are at the very least redundant, and at the most a contradiction of the consumer rights that are supposedly granted in these sections.

As for the larger technical protection measures in proposed new section 41 and what that means for consumers and other public uses of copyrighted content, CCI understands the Canadian Library Association has written a proposed amendment to the committee of the definition of “circumvent” that will “ensure Canadians' ability to invoke their full rights as information users by allowing them to bypass digital locks for non-infringing purposes”. We support that amendment.

With regard to a positive in the bill, we welcome the amendments to the fair-dealing right, including specific listing of education, parody, and satire. However, again CCI is disappointed that the acknowledgement of rights like this that promote the public interest can be limited by digital locks.

Finally, CCI has a specific amendment to suggest to the committee. I have provided it to the clerk in both languages, and I do hope you have a copy before you.

We were very pleased that the bill creates a category of non-commercial infringement for statutory damages that is limited to $5,000 for all violations. This gives consumers some measure of comfort that they will not face unreasonable and unrealistic demands from copyright-based business models of suing consumers who do not profit from infringement.

However, the proposed new section 38.1 as written in the bill still allows suing consumers as a business model. This section gives rights holders an election to sue for actual damages or statutory damages. Although non-commercial statutory damages are capped at $5,000, the rights holder may threaten very large actual damages in the hope that a consumer faced with a lawsuit settlement letter will pay up. The amount demanded could be far in excess of the $5,000 for non-commercial infringement, even if the likelihood of the rights holder proving actual damages in this amount would be practically zero.

The key phrase is “may elect, at any time before final judgment”. This allows the rights holder or agent to threaten to proceed under actual damages and to send that settlement letter right up until final judgment. This power must be removed from rights holders. It has been abused in the United States under the Digital Millennium Copyright Act.

In Canada, we have several Hurt Locker cases against individual consumers waiting in the bullpen for this act to pass. The solution is to require rights holders to elect at the outset of proceedings under the Copyright Act whether to prove actual damages or rely upon statutory damages when alleging non-commercial infringement.

Our amendment will help to ensure what we believe was the original intent of the bill: to guide rights holders toward the capped statutory damages for most non-commercial consumer infringements.

We thank the committee for its attention, and we're prepared to answer your questions.

Thank you.

● (1600)

The Chair: Thank you, Mr. Lawford.

Now we will go to our first round of questioning, for five minutes. Up first is Mr. Moore.

Hon. Rob Moore (Fundy Royal, CPC): Thank you, Mr. Chair.

Thank you to our witnesses. Having listened to everyone as we went across the table, I think it illustrates the balancing act that's required as we try to craft future legislation for the country that balances the rights of creators with those of consumers.

I have a couple of questions. One issue that was raised by the Canadian Artists Representation Copyright Collective was the issue of moral rights. We hear about these from time to time; I usually hear about them in the context of political campaigns. I think it comes up once in a while.

You mentioned it in the context of a political campaign. Can you speak a bit more about that? As you know, those rights are enshrined in this piece of legislation. Why is it important, and what are some examples that would illustrate its importance?

Ms. Janice Seline: It's funny, because English law called copyright “copyright”, the right to copy. The French call it *droit d'auteur*, which is deeper; it's the artist's right. The inclusion of moral rights kind of makes it that. It's your right to be credited or to remain anonymous, your right of the integrity of the work. People can't mutilate or overprint or crop your work or print it badly or destroy it without your approval. There's the right that I mentioned that K'naan invoked, that you can refuse to have your work associated with causes you don't approve of, which might damage your reputation. These are protections for an artist's reputation.

Regarding the photography instance I brought up, I said that if you give control of your work away to someone else so they can make copies without your input, it goes to the moral right if you can't control the quality of your work. If a bad copy is circulating and there are many bad copies around, you look bad. Similarly, with the user-generated, non-commercial content business.... I've seen artists where somebody has taken works and done things to them and put them back up on the Internet, and the artist's name is attached to them still. Yes, they've credited that artist, but the artist looks ridiculous, and they're not happy about it.

These are instances of moral rights infringements. Some of them are enormous, and some of them are very small, but it has to do with the artist protecting their reputation.

Hon. Rob Moore: Thank you, Ms. Seline.

Mr. Johnston, we've heard the analogy before of the person who wouldn't walk into a CD store and steal a CD, but we hear about piracy, about artists and creators losing control over the material they've produced, and the impact that has. To what do you attribute that? I know there's been a lot of discussion about it, but why is it that some Canadians, some people, would be willing to engage in some acts that would take away that opportunity from artists but certainly not others, when in the end it amounts to the same hit?

● (1605)

Mr. Stuart Johnston: Quite frankly, that's a difficult question to answer. It's hard for me to put myself into the shoes of any individual Canadian. What we are seeing, though, are the enablers out there who are making it possible for people to download music illegally. I'm talking about the isoHunts and the Megauploads, and those of that ilk.

Really, what we're talking about when it comes to stealing copyrighted material is talking about those so-called commercial entities that are basing their business model on stealing copyrighted material. We're not, quite frankly, interested in the young man in his basement who is downloading. We want to get to the source of it. We're not concerned about that young man himself at all.

Hon. Rob Moore: Could you speak quickly to the impact on your members, the impact on individual artists, of piracy?

Mr. Stuart Johnston: Certainly. I'd like to pass that over to Bob, since he's in the trenches and he can answer it directly.

Mr. Robert D'Eith: Absolutely, we feel it every day. The entire industry has globally gone from $30 billion a year to $14 billion and smaller in terms of sound recording. That has all to do with free downloading. The fact is that there are some great services out there, like iTunes. For me, personally as an artist, I still sell on iTunes, but it's probably one-tenth of what the sales were when CDs were still viable. What we've seen—

The Chair: Sorry, we're well over the time. You might be able to get that part out in another question. Sorry.

Thank you, Mr. Moore and Mr. D'Eith.

Now to Mr. Angus for five minutes.

Mr. Charlie Angus: Thank you.

It's a very interesting discussion.

Mr. Johnston, what do you want to raise the statutory damages to?

Mr. Stuart Johnston: Quite frankly, we'd rather see no limit on statutory damages. But in the spirit of the act, we have not talked about a specific ceiling as an association. We were hoping to engage in more discussions on that with folks on your side of the table to talk about what is an appropriate level, if it is deemed that there should in fact be a level.

Mr. Charlie Angus: I guess my concern is.... You know, I come from the music business, but I've seen how it was done in the United States, where we had multi-million-dollar lawsuits against individuals. You're telling us you're not against a kid in the basement, but Jammie Thomas-Rasset was hit with a $1.5 million fine for downloading 24 songs. Joel Tenenbaum was fined just under $1 million for a bunch of songs when he was 17.

That puts a really bad taste in the mouth of Canadians. We want to make sure that people are not doing piracy, but how do we know, if we raise this to unlimited damages, that you're not going to be going after kids? Because that's what the companies have done in the past, and Canadians are concerned about that.

Mr. Stuart Johnston: Part of the language is so broad in the act that we really don't know what the definition of “individual” is versus “commercial” or “non-commercial”. That's part of the reason we approached this in the way we did: because we find that the definitions in the act are not specific enough to actually define who that kid in the basement is. Then we can sort of bypass that and go after the enablers.

Mr. Charlie Angus: Well, wouldn't you think it would be better to come to us and say let's define the act so that we're not going after the kids, as opposed to saying let's have unlimited damages? We want to make sure that the enablers are not getting a free ride here, but if you're saying “unlimited damages”, I'm hearing that could include kids. So if you're not sure who it is you're going after, I would suggest that if you could find some clarifying language, that would really help.

I am concerned about outlawing parody and satire. I've been a member of SOCAN for 30 years, and I've seen the industry change dramatically. Most of the bands—and I still hang out with bands now, although I'm getting a lot older and the bands are getting a lot younger, I have to admit that—talk about factor: they talk about touring support, and they talk about mechanical royalties, which is an excellent point that you raise, and the loss of the mechanical royalties. But I've never heard any band say they want to get rid of parody and satire, because bands do parody and satire. I've done parody and satire. Are you saying that should be against the law?

● (1610)

Mr. Stuart Johnston: Well, what we're saying is that if we have a clause in there that does permit the use of parody and satire, first, there is no definition of that. Where are the boundaries? What do we really mean by parody and satire? And I think my—

Mr. Charlie Angus: But can you do that with art? Are you telling us, as musicians or artists out there, that we're going to legislate what is parody and satire as art? I think that's pretty absurd.

Mr. Stuart Johnston: That's actually our point, so we—

Mr. Charlie Angus: But I've never heard a band say that. I've never heard a musician tell me that they want to outlaw parody and satire. God, poor Weird Al Yankovic would never have had a career if that were the case.

Mr. Stuart Johnston: We're not suggesting that it should be outlawed. My friend was talking about the moral rights.

Mr. Charlie Angus: Well, you're saying—

Mr. Stuart Johnston: If this legislation enshrines stronger moral rights, and then at the same time says that you're allowed to do parody and satire, that flies in the face of moral rights.

I'll tell you exactly how—

Mr. Charlie Angus: But are you saying that the moral right of one artist overrides the moral right of another artist to do satire? I mean, all music culture is based on satire. It's based on parody.

My concern is that.... We have mechanicals, and that's concrete stuff, that's bread-and-butter stuff. But to say to us that one artist doesn't like the fact that someone did his song and actually did probably a funnier version and people are listening to it and that we should somehow have a law against that.... How would you even sell that to your own members?

Mr. Stuart Johnston: Well, I would take a step back and look at the principle of the matter. Who owns that material? It's the right of the copyright owner to say “Yes, you may use my song” or “No, you cannot”.

I'll give you an example of how it works perfectly. On Sunday night at the Oscars, Billy Crystal opened up the Oscars with a montage of songs to celebrate the nine films that were up for best picture. It was great, funny. They changed the lyrics, they used the music, and it was wonderful. But he wanted to use several different songs for that montage, and the copyright holders of those songs at that point said “No, I don't want you to use it for that purpose”. Billy Crystal said that was fine, and he moved on to the next song, no harm, no foul, and the montage was brilliant.

But the point is, that system respects the copyright holder, and that's how it should work. But with Bill C-11, if you add the exception for parody and satire, that respect for that moral right or the making available right is gone.

Mr. Charlie Angus: And then we see that we're also looking at getting rid of the user-generated content. I guess I'm busted, because I've produced some user-generated content—and for my colleagues in the Conservative Party, I've done some against them. So I guess your guys might have a.... If we bring in this provision, my good friend Mr. Del Mastro will have a hand to come after me.

There is a difference with user-generated content between stuff that is interfering with the market, but kids are putting up stuff all the time—

The Chair: Mr. Angus, you're well over time.

Mr. Charlie Angus: —and are we saying that we're going to outlaw YouTube?

Thank you.

The Chair: Thank you, Mr. Angus.

We're now moving on to the next five minutes and to Mr. McColeman.

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

Thank you to all for being here.

First, to the CARCC organization and Ms. Seline, your comments would indicate that you take a strong position that there should be no exemptions for education. Now, prior witnesses to this committee—professors at universities, representatives of teachers and boards of education—from their testimony would indicate that they actually pay millions and millions of dollars to the creators for some of the materials they use. The materials they use without payment are photocopies of maybe one or two paragraphs, or one or two pages, out of a...but they're very sensitive. They also point out that those in academia are very sensitive on this issue and want to make sure they pay their fair share.

The bill sets out to indicate that fair dealing would be the model to determine this. I'm wondering why your organization has taken a black and white stance on this.

Ms. Janice Seline: Well, it's not as black and white as it looks. I think the act as it exists now has a huge section dealing with education and what education can and cannot do. It's well understood. Bill C-11 tries to add to that and clarify some things. Some of them I don't agree with, but some I do.

The fair-dealing exception simply muddies the waters. It creates a whole lot of questions. There are institutions such as museums that under the present act are not classified as educational. There's a good definition of what an educational institution is in the act. Museums do not fall into that. On the other hand, they engage in public education.

We've heard them say, in the Bill C-32 hearings, that they can't wait to declare themselves as educators under fair use—which will open up a whole lot of litigation, as far as we're concerned. If we have to fight with them every time they claim fair use, it will cost us a fortune. It will take years. It's better to leave it out of fair use and in the act the way it is now and continue to deal with it the way you do.

There are, of course, millions of dollars paid to the reprographic rights organizations for the privilege of copying. Our organization benefits from that. Our members do. However, in Bill C-11, the part we have a little problem with is that you're declaring that the Internet is not an option for licensing. We think there would be creative ways to do that, and to simply say “Internet” is way too broad. That's all.

● (1615)

Mr. Phil McColeman: Thank you.

To the consumers group, how do you expect consumers would use the proposed exemption for non-commercial user-generated content? How do you think consumers would use that?

Mr. John Lawford: The example that's often used is a YouTube video of your child with music playing in the background, or a slide show that you create with music in the background. If that is non-commercial and you're not making any money from it...and it's being done right now. It's within the ability of everybody who has a computer. It's being done. Consumers are used to it, and they are being creative and non-destructive.

As soon as it turns into a commercially successful remix, if you will, that gets sprung out of the act and you have to compensate.

Those are two fairly simple examples I can give you.

Mr. Phil McColeman: Thanks.

To the Independent Music Association, in the view of moving forward with a new copyright bill...and I think there's no argument; everyone who's come before the committee has said this is absolutely necessary. I think you said it. It's absolutely necessary. In fact, most groups would indicate that we need it sooner rather than later because the current legislation is so outdated.

But the integration of reliance on in fact everyone at the table today, and how it works today, is so obvious to any of the viewers of this issue. As you consider how the government would strike that balance, it seems to me that everyone's asking for the maximum protection—

The Chair: You're over time, Mr. McColeman, so could you wrap up and have—

Mr. Phil McColeman: Could you just react to my comments?

The Chair: —the individual do this as quickly as possible?

Mr. Phil McColeman: My comments would indicate.... I'll leave that for another questioner to maybe get the response to that—

The Chair: Great.

Mr. Phil McColeman: —but it's basically that interdependence, and striking the right balance in change.

The Chair: We're almost to six minutes, unfortunately, so I'll have to ask you if you can try to get those comments in at another time. If you can do it in ten seconds, I can give you ten seconds.

Mr. Robert D'Eith: That's okay.

The Chair: Fair enough. Thank you.

We're now moving on to Mr. Regan for five minutes—and five minutes only.

Hon. Geoff Regan (Halifax West, Lib.): Gee, that's a short time, Mr. Chairman. There are too many questions for five minutes.

Mr. Lawford, one of the concerns I've heard about technological protection measures—digital locks—is that if a mother is driving her kids to grandma's house, let's say, and if she format-shifts, if she takes a DVD and puts it on her iPod so the kids can watch it in the vehicle on the way there, she's in trouble and could be sued.

Is it your view that this kind of thing, these rules against circumvention, would lead to more lawsuits?

Mr. John Lawford: It might lead to more lawsuits, but more importantly, I think you'll never be able, as that mother, to take your DVD and transform it into another format for the car or whatever, because no one would ever create software that would allow you to do that. She probably, unless she's a computer engineer, would be incapable of doing it herself. That's more our concern, although there is a possibility of lawsuits if you did it yourself and it became known.

Hon. Geoff Regan: In the last couple of days here in this committee, my Conservative friends across the way have been trying to suggest that there's a link between digital locks and levies, such that if you allow the circumvention of digital locks, you're going to have levies. What's your reaction to this attempt at making a connection between those two things?

Mr. John Lawford: I see the conceptual link, if you will, but we just don't believe there's going to be the level of private use that will cut into sales such that a levy would be necessary. What we're talking about here is people being able to make a backup so that if their kid steps on their DVD they still can play it and not have to buy a new one—

● (1620)

Hon. Geoff Regan: So you don't feel that levies are going to inevitably follow if you're allowed to circumvent...?

Mr. John Lawford: No, we don't think that's the case.

Hon. Geoff Regan: Thank you.

What do you think of the comments we've seen from Conservative MPs who are telling their constituents not to worry about being sued for breaking digital locks, no one's going to come after you? Do you take comfort from that?

Mr. John Lawford: I think there's a fairly big effort in this bill, as I said, to try to steer—for the most part—non-commercial infringement towards the capped amount. That will generally dissuade lawsuits for unreasonable amounts against non-commercial uses. There's still, as we said—because of the amendment we put before you—a concern that it could be threatened and people might still pay up.

But generally the bill is trying to get there. There are just some parts where we're concerned that at the first stage of the litigation a demand letter could be sent, and that was what our amendment was aimed at.

Hon. Geoff Regan: Would I be right to understand that you don't make a distinction when it comes to digital locks about whether it's on a CD, a DVD, software, a gaming console, or any of those, and that you'd be the same in relation to all those things?

Mr. John Lawford: Yes, we're content-neutral, if you will.

Hon. Geoff Regan: Okay.

You talked about how suing should not be a business model. Let me get to one of the things we heard from somebody else here about notice and notice, or notice and takedown, which has been suggested, right? One of the difficulties here is that if you're saying that you're going to rely upon someone suing the person who has put up the item rather than having it taken down by the ISP—which I think is problematic anyway—isn't that encouraging suing as a response?

Isn't it encouraging suing if you say that the way you have to enforce this is by suing the individual who has put up the content, and then working out whether or not there's an infringement, rather than having some other mechanism? CIMA has talked about a made-in-Canada solution to this, and I see a problem with that. The problem with just saying that the ISP has to take it down is that then the ISP perhaps is the arbiter determining whether or not this has been an infringement, and there's not some third body, right?

But is there some other alternative to this that is reasonable for both?

Mr. John Lawford: I think the bill strikes the right balance. It says “notice”. For notice, most people who come into their house and ask their kids what they were downloading, that's going to stop it right there.... The second notice, even more effective, and the third, maybe there's a hardcore group...well, that's when maybe you have to break out your lawsuit. Again, if it's non-commercial, if no one's benefiting from it, then we think the $5,000 limit is enough to get most people's attention.

Hon. Geoff Regan: Mr. Johnston, there's a difference, of course, between an allegation and a proven breach, and that's the problem here, as I see it. How do you see resolving that?

Mr. Stuart Johnston: When it comes to “notice-and-notice”, I think by and large it would probably work in many cases. People keep bringing YouTube into the argument. YouTube would absolutely respect a notice-and-notice. They have proven they would do it. They are good business partners. We're not talking about the YouTubes of the world.

Notice-and-notice generally could work in many cases. The problem is—and again I'm going to go back to the Canada-based isoHunt BitTorrent servers.... They are not going to respect notice-and-notice. We need a stronger mechanism to get those guys, the enablers, truly off the grid. They are not going to keep respecting a notice-and-notice provision. In fact, they are going to rely on my friend Bob to not do anything, because Bob, as a small-business person—

The Chair: Thank you, Mr. Johnston. We're out of time.

Mr. Stuart Johnston: Thank you.

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

That ends our first round of five minutes of questioning. Unfortunately, it seems five minutes isn't a lot of time, but I'm trying to stick to the five minutes as well as we can.

Up first now is Mr. Braid, for five minutes.

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

Thank you to all of the witnesses for being here this afternoon.

Mr. Johnston, I want to pick up exactly where you left off with respect to the adverse impact of piracy on the music industry in Canada. You painted a bit of a gloomy picture of the state of affairs in Canada and the fact that Canada has become a haven for BitTorrent sites. Could you explain why that has taken place?

Mr. Stuart Johnston: The structure of the current law allows those BitTorrent sites—at least that's what they are claiming—to get away with posting copyrighted material without the fear of strong litigation or fines against them. The fact that isoHunt has just said in their defence claim in response to a lawsuit in Canada that the laws in Canada allow them to do this and that and therefore what they are doing is legal demonstrates how many holes our law has.

With regard to the copyright bill before us, without that take-down notice or something similar, a strong mechanism to actually tell them they need to take this offending material down or this material that is infringing on other people's rights down, they are going to keep using this business model.

The fact that Megaupload and these others are looking at bringing more piracy into Canada because of our weak laws is a problem, and it flies in the face of what Bill C-11 is trying to do.

Bob.

● (1625)

Mr. Robert D'Eith: I agree with that 100%. I think the biggest problem is small businesses are just not going to be able to afford to sue every time there's an infringement. It's not a business model for us. We can't afford to spend $5,000 in legal fees to go after $5,000 in damages. It doesn't make any sense. It's the same thing for notice and take-down. Any time there's an infringement now, we have to sue? You're absolutely right that the partners we have, the YouTubes of the world and the Facebooks and the people we work with every day, aren't the problem. We work with them. We have relationships with them.

Mr. Peter Braid: Sir, there are tools and mechanisms in Bill C-11 to deal with piracy theft, are there not?

Mr. Stuart Johnston: There is the attempt at tools. We believe those tools will enable isoHunts to get away with impunity and will force Bob to take them to court. And they know that Bob's not going to do it. He's a small-business guy. He does not have the means to do that every single time. So I think they can get away with their business model if Bill C-11 doesn't specifically target those enablers. As Bob says, it's not the YouTubes or the Facebooks of the world. They are great business partners.

Mr. Peter Braid: The intent of Bill C-11 is to target those enablers.

Mr. Stuart Johnston: That is the intent, yes.

Mr. Peter Braid: I'm going to now go to the consumers' association. I'm going to wade into this issue of digital locks as well, TPMs, technological protection measures

How many consumers do you represent, approximately?

Mr. John Lawford: Among all the groups there would be several thousand. In Quebec, l'Union des consommateurs has, I believe, 19 Fnacs, Fédération Nationale d'Achats des Cadres. The Consumers Council of Canada has several thousand members. PIAC, the Public Interest Advocacy Centre, is much smaller.

Mr. Peter Braid: Can you speak to how you know consumers are concerned about digital locks? What percentage of consumers are concerned about digital locks? I would suspect a lot of Canadians have no idea what a digital lock is, have never confronted one, have never needed to deal with one in their everyday enjoyment of music or movies, as the case may be.

Help me understand.

Mr. John Lawford: I think I'll say the opposite and say that consumers are up against TPMs every day. They use their iTunes and they realize that they can't put it on more than five devices because that's what iTunes says they can do with it. They are very familiar with the fact that you can't copy a DVD without breaking a lock, that it's difficult, that you have to go and hunt for software to do so. So I think they are familiar with them.

How do we know whether that's the consumer position? Well, we work in this field every day. We saw the submissions that were made in the consultation between Bill C-61 and Bill C-32. The consumer comments in that, which came straight from the public, we thought were very much in line with the position we've taken today. We haven't had the money to do a survey of consumers on this. We're small organizations with limited budgets.

Mr. Peter Braid: Is there a particular subset of consumers who are more concerned about this than others?

Mr. John Lawford: I would say that you'd find there is a subset of consumers who are younger and more Internet-savvy who have more problems with the restrictions than perhaps some of the older users.

Mr. Peter Braid: Okay.

The Chair: You have 30 seconds or less, please.

Mr. Peter Braid: Is there anything in Bill C-11 that creates a situation where a consumer pays for something more than once?

Mr. John Lawford: Yes; I think you could have that situation with the present time and format shifting. Some of the new services that are coming in will ask you to pay for a version that lets you keep it for a specific amount of time, or you can just stream it. For DVDs, again, it's one copy, effectively, so you're not going to get a backup, right? If you want to back it up, you have to buy two copies.

● (1630)

The Chair: Thank you, Mr. Lawford and Mr. Braid.

We will now move on to the next round of questions.

Mr. Benskin, you have five minutes.

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

Thank you to all for your presentations. There's a lot of interesting diversity at this table today that allows us to kind of debate within the confines, so that's great.

To CARCC, you brought up the subject of artist resale rights. That's something that's new, and I'd just like to get a sense of how the lack of that kind of protection or right in Bill C-11 affects your members.

Ms. Janice Seline: Resale right is actually very old. France had it in about 1920. It's in many countries around the world.

Let's say an artist I represent had a work resold in Britain. I have a reciprocal agreement with a collective in Britain that collects resale rights; because we have no reciprocity in our legislation, I can't collect the right from the collective in Britain. That's one of the problems.

If you look at the market for resale in Canada, it's rather large. Last November there were three auction sales that dealt with living artists' works. The sales were almost $2 million. If the resale right had been 5%, the artists would have received about $100,000 among them. There weren't a lot of artists. There were probably about 20 or so.

I mean, the market for contemporary art and the resale of contemporary art is becoming much bigger in Canada than it used to be. The artists, of course, are living longer, so people need to benefit from the resale of their works.

Mr. Tyrone Benskin: If I understand correctly, in addition to that, we are also basically not in compliance with international practice, in that, because those resale rights exist in other countries, and we are not able to collect for the artists on their behalf, artists in those countries are also losing out. Is that...?

Ms. Janice Seline: That is correct, yes. We are out of sync with the rest of the world, basically.

Mr. Tyrone Benskin: Thank you.

I'll go back to the TPMs and the diverging attitudes towards TPMs. The question has been brought up as to whether or not people pay twice for the same product.

In many cases, with software for computers, you buy a licence. If you want to take your Microsoft Office over to another computer, many times they ask you to pay for a new licence for that computer. We don't hear complaints about that. People accept it as, “Well, I'm putting it on a new computer.”

Why does that differ from the concept of paying for a new licence to put a piece of work on a different device?

Mr. John Lawford: I follow you, but for software in particular, you can make a backup right now under the Copyright Act. That was the balance that was struck at that time: you get to at least back up. You may have to get a licence for five users or three users or whatever, but at least you have that backup right.

Here what we're trying to do is get the backup rights worked into consumer rights, plus add a couple more—time and format shifting, which are largely to do with music and movies.

Although I see your point, I don't think it's a big issue. I don't think it's a big issue because consumers will be faced with exactly that same problem.

In intellectual terms, as to whether you are doing something hugely crazy with this bill, no, I don't think so. I think you're giving people a chance, if they get around that technological protection measure somehow, to just do what is being done right now with music and movies.

Mr. Tyrone Benskin: Go ahead, Mr. D'Eith.

Mr. Robert D'Eith: We're just wanting to get paid once: the first time. That's the biggest problem here. We're not getting paid—at all.

So yes, I appreciate your question about getting paid twice, but the fact is that when mobile devices have 90% non-paid-for material.... Even Steve Jobs said that. He was quite willing to say, in print, that 90% of iPods have non-paid-for material.

We just want to get paid.

● (1635)

The Chair: Thank you, Mr. D'Eith and Mr. Benskin.

We'll now move on to Mr. Armstrong for five minutes.

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

Thank you to all for your presentations. I'm going to start my questions with Mr. Lawford.

Representing that many consumers—you said thousands of consumers—what would their opinion be, and what's the opinion of your organization, on inputting some sort of levy or tariff on devices that record digitally off the Internet, or digital recorders, a levy used to pay creators of content?

Mr. John Lawford: We don't think there's a need for levies at all on these devices. It's innovation-braking: the market will grow if you let people use content. They will buy more of it. If it's inconvenient and they have what effectively amounts to a tax on their devices, that will retard the market for it. That's our view.

Mr. Scott Armstrong: We heard on Monday a discussion on TPMs and on things like iTunes. You can download movies; you can choose to rent the movie or you can choose to actually purchase it. If you purchase it, you're talking $20 to $25 usually. To rent it, you're talking between $5 and $7 or somewhere in there. It costs a lot less, but it erases itself after three days. That's a form of TPM.

To me, that sounds fairly reasonable. It allows people to download their content, watch it once—that's all they want to have it for—and it costs them much less. That's a form of TPM.

What is the position of your organization on that type of TPM?

Mr. John Lawford: Well, that type of TPM I think will come into the market whether you have the consumer rights—which we are asking for in the way that we want them to be expressed—or not. It's in the market now. It's more a factor of whether business sees a business model in Canada. We don't believe that business model will be completely destroyed by having the consumer rights.

Most consumers, as you say, won't bother to try to shift it and back it up. They'll just pay for their three-day download, watch it, and be done with it, as you say. Maybe a small subset will want to keep it or move it to a different time, but I believe that would be a smaller subset. I don't think it destroys the business model.

Mr. Scott Armstrong: How do the exceptions such as format-shifting and time-shifting respond to the changing nature of consumers and their consumption?

Mr. John Lawford: I think the simplest example is just grabbing your CD and wanting to take it on your iPod.

Content is increasingly, as our friends have pointed out here, being downloaded and being produced digitally. The ways in which it can move from device to device are so seamless now that you're really denying people the benefit of these wonderful new technological advances that make enjoying content easier, anyplace, any time. We're just trying to get people to have a value proposition for what they buy so that they can use it anyplace, any time, on any device.

Mr. Scott Armstrong: Great. Thank you.

To Ms. Seline, on the educational exception—my background is in education—is it your opinion that there should be no education exception, or should we try to limit the nature of that? Are we making it too broad? Is that what you're trying to tell us?

Ms. Janice Seline: I really dislike the fair-dealing exception for education. I think it makes things much too confusing for everyone. It opens it up to institutions that are not educators who can claim to be so.

As I said before, I think the act currently covers education extremely thoroughly. I think we're fine the way it is. Education is well defined in the act already. If you put it into fair dealing, it's anybody's game. And we cannot afford the litigation, quite frankly.

Mr. Scott Armstrong: We heard from the National School Boards Association yesterday. They said that things are not clear, that many teachers are confused, and that this legislation would actually clear up a lot of the confusion out there among their employees. So how do we reconcile that? What you're saying is that there's lots of clarity; they're saying there's rampant lack of clarity.

Ms. Janice Seline: I think the educators might want to educate themselves, first of all. Have a discussion about copyright in your schools, try to understand it, and clarify it for your people. It's not that difficult. I don't think fair dealing is going to help with that clarity at all, quite frankly. With fair dealing, you've got the six steps for it. It can go either way in the hands of a judge. You get these really strange judgments on fair dealing. The CCH case I still don't understand.

If you put it into litigation, you're going to wait years for a result, and it's going to make things very difficult for the ordinary creator.

● (1640)

Mr. Scott Armstrong: Thank you.

The Chair: Thank you, Mr. Armstrong.

Mr. Cash, you have five minutes.

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

I'm going to be very quick, and I would ask you to be concise, because I have a few questions.

On this side, we understand the need for technical protection measures, in some cases, to manage digital rights and ensure legal access. But what baffles us about this government's approach is that they appear unwilling to consider simply linking circumvention penalties to actual acts of infringement. Mr. Lawford, to us this is a reasonable compromise, which will on the one hand ensure protection of creative material, and on the other hand ensure that the law recognizes the full complexity and nuance of how Canadians use media in the 21st century. Would you agree that this kind of compromise represents an improvement over the present draft? Would you expand on that for two minutes, please?

Mr. John Lawford: Yes, that's partly why we supported the Canadian Library Association amendment, but I'll pass the question to Janet.

Ms. Janet Lo (Counsel, Canadian Consumer Initiative): We fully agree that if you're going to protect TPMs, then the protection should be tied to infringement of copyright. The whole point of the Copyright Act is that if somebody circumvents the TPM, there are other remedies under the contract—for example, the end-user licence agreement. So under the Copyright Act, the circumvention should be tied to infringement.

Mr. Andrew Cash: Thank you.

Now over to Mr. Johnston for a minute. On this side of the committee, we are committed to supporting small businesses. Musicians and artists are the ultimate small-business persons. I want you to comment on the impact of the loss of the broadcast mechanical tariff. What impact does this have on small businesses in the arts and culture sector?

Mr. Stuart Johnston: Simply put, that's almost $22 million of revenues that go into the industry at a time, as Bob indicated earlier, when revenues are dramatically shrinking. My members are very adept at stretching a penny into a dollar, but they can only do that so many times. They are literally struggling every day to survive. It amazes me that we do have an industry still intact, one that produces some incredible art, but the fact remains that our revenues are dropping. If we lose the broadcast mechanical, even in part, it is going to have a significant detrimental effect on our industry.

Mr. Andrew Cash: Do you have a sense of why this was removed from the bill?

Mr. Stuart Johnston: I don't think I'd want to speculate on that.

Mr. Andrew Cash: All right. That's okay.

Back to Mr. Lawford for a second, what kinds of immediate issues will consumers face under this digital lock and anti-circumvention regime in Bill C-11?

Mr. John Lawford: Potentially, the day after this bill passes, every new work will have some sort of lock on it, which will immediately give rights holders the ability to charge whatever they like for different, various uses. As I said, people at the moment are expecting, I think, to be able to take their CDs, as they do now, and put them on their iPod. If there's a technical protection measure on a CD, and that is no longer permitted, and it is protected under the act, you will be violating copyright to do that. You potentially face some action against you. That will create a chill, and it will either raise prices for consumers, because they'll have to pay more if they want to have those rights, or they will face potential lawsuits. Those are our two main concerns.

Mr. Andrew Cash: Thank you.

It is a little baffling to hear members on the other side say that consumers don't see technical protection measures every day. They see them on DVDs and iTunes every single day, so that's a little odd.

I wanted to get back to one thing that Mr. D'Eith said. Many of your members have benefited from the kind of communal file-sharing that goes on in the music community. I want to respectfully challenge your comment that all the woes of the Canadian music industry can be located around piracy. That's just not true.

Mr. Robert D'Eith: Well, we believe that yes, there may be some other considerations—

Mr. Andrew Cash: But that's not what you said.

Mr. Robert D'Eith: —but the primary consideration is the fact that people are taking music for free and not paying for it, and that has closed down....You have to look at the results: distributors going bankrupt—

● (1645)

Mr. Andrew Cash: No, I understand—

Mr. Robert D'Eith: —retail stores, Sam the Record Man going bankrupt.

Mr. Andrew Cash: Sir, I understand, but I wanted to just get some clarity.

Mr. Robert D'Eith: It happens. You can't deny that it's happened. It's happened, it's reality, and this is what the cause was.

Mr. Andrew Cash: Listen, sir, I've been in the music industry for 25 years. I understand there have been some serious issues, and I want to underline respect for the struggles that are happening in the industry—

The Chair: And thank you for that, Mr. Cash, because you're now out of time.

Mr. Andrew Cash: —but I just want you to be clear speaking about the problem—

The Chair: Thank you, Mr. Cash.

Thank you, Mr. D'Eith.

Now moving forward, Mr. Calandra.

Mr. Paul Calandra (Oak Ridges—Markham, CPC): Ms. Seline, are you supportive or against TPMs, technical protection measures?

Ms. Janice Seline: I've listened to some discussions of TPMs and I've heard that they're extremely ineffective. There are many different kinds. I think it's irrelevant, quite frankly, as a discussion. I would really like to see the levies, quite frankly, because that's concrete.

Mr. Paul Calandra: Okay. So you'd like to see levies on pretty much whatever we have, like BlackBerrys. There are a lot of people using computers.

Ms. Janice Seline: Yes.

Mr. Paul Calandra: What about if you remove TPMs and you remove levies? How do you think that would impact creators?

Ms. Janice Seline: I think, effectively, for TPMs, some exist, some don't—

Mr. Paul Calandra: I'm not asking about one; I'm asking about both. If there is no provision for either, how would that impact creators?

Ms. Janice Seline: Well, then there would be no control and there would be no remuneration.

Mr. Paul Calandra: That's probably a bad thing.

How do you feel about Liberal members of Parliament—and thankfully, there are not a lot of them—telling their constituents that they can remove technical protection measures, they don't have to put levies to protect artists, and the creators would still create and there would be no change in the circumstances of any creators and it would not be a big problem—that they could do both without impacting your creators or the artists? How do you think the people you represent would feel about that?

Ms. Janice Seline: I think we'd beg to differ.

Mr. Paul Calandra: Okay, let me just move on.

Mr. Lawford, you seem to suggest that the day after this bill is passed everybody is going to be putting on digital locks. Of course in the bill it allows the Governor in Council to remove technical protection measures if that's deemed important. And I'm assuming you're aware of that part of the bill. But how do you anticipate that the creators would be protected? And why should a creator not have the ability to decide whether they want their work protected or not?

Mr. John Lawford: They do have that ability. They have that ability right now to put a digital lock on if they wish. However, if I am making a copy for the purposes of time- or format-shifting or backing up, I'm using it in a private sphere and I've paid once to get it into my home or my private sphere. As far as we're concerned, that artist has been compensated, so there's no need to ask for further compensation. TPMs will allow further compensation requests and raise the price of digital goods and content for consumers.

Mr. Paul Calandra: You're suggesting, then, that the artist or the creator does not have the right to decide how they're compensated. In this instance, because you're suggesting that we don't have a levy, you're suggesting that the artist doesn't have the right to decide how they're compensated for their work, that only the consumer should have that right, and still the market wouldn't change?

I could be wrong on this, and maybe there are examples, but I don't know of a lot of music CDs that actually have locks on them right now. I don't know of any. I'm sure maybe one or two exist, but overall I don't know of many that actually have them. So why must we assume that as soon as this bill is passed, there are going to be technical protection measures over everything, and that the Governor in Council or the government would simply allow that to happen and allow consumers to be shafted in the way you're suggesting?

Mr. John Lawford: Well, because the economic incentives are to create more and more levels, if you will, of compensation for what consumers want to use it for. So I can very well see locks going onto CDs that will not let you copy to an iPod unless you pay extra to do that.

Now, some business models will come about and consumers will be happy to pay for them, but—

● (1650)

Mr. Paul Calandra: Sorry, I have to stop you, because I have only 30 seconds.

Mr. John Lawford: Sure.

Mr. Paul Calandra: This is more of a comment from my friends in the music industry. Are you really suggesting that the loss of $22 million is going to collapse the Canadian music industry, that there will be no more artists creating music, and that this will be the end of Canadian music? That's what you seemed to be suggesting.

Mr. Stuart Johnston: No, I did not mean to suggest that we will collapse as an industry. What I was suggesting is that $22 million is a significant amount of money for my industry. And $20,000 for one of my labels is a significant amount of money. It could mean the difference between signing a Canadian act and not signing a Canadian act—$20,000. So $22 million is a significant revenue stream for our members, who will indeed feel the loss if it does go.

FACTOR, as an example, contributes—

The Chair: Thank you, Mr. Johnston. I'm sorry, I can't let you finish. We are so close for time. Thank you.

Mr. Dionne Labelle.

[*Translation*]

Mr. Pierre Dionne Labelle (Rivière-du-Nord, NDP): Good afternoon, everyone. Thank you for being here today.

I would like to ask Mr. Johnston a quick question.

Could you please tell me about the members you represent? What is their economic situation? What is their reality? What impact would this loss of $20 million have on your members? Could you please say more about this?

[*English*]

Mr. Stuart Johnston: I can illustrate in broad terms, and maybe Bob can add a little bit more.

The majority of my members are struggling; they are definitely within the definition of “small businesses”. They make annual revenues of $200,000, $100,000 in some cases. Some might make $500,000, and a few might be over $1 million, very few.

I was going to say that FACTOR contributed last year $16 million to the industry, public-private partnerships through FACTOR. That $16 million was a significant investment and it was much needed. To remove $22 million in an era when our revenues are dramatically shrinking would be a significant loss. We used to have a revenue stream that was $28 million. It's now $8 million and in a few years it'll be zero. It is changing the face of the industry.

Digitally, our partners in iTunes and streaming services are paying cents where the revenue stream used to be dollars. So our small businesses are trying to stretch that penny into a dollar as often as they can. They're good at it but they can only do it for so long. They are struggling as an industry, but they are doing relatively well given the challenges they're facing.

Mr. Robert D'Eith: I think the main thing to understand is that the music industry is a combination of different revenue streams—it doesn't rely on only one. There is SOCAN, there is AVLA, and there are all these different revenue streams that come in. So we rely on the accumulation of revenues to make a living.

We're already losing the blank-tape levy. People keep talking about CDs. CDs are going the way of the dinosaur, let's face it. We keep talking about CDs, but that's yesterday's news. People just aren't bothering to press CDs as much as they used to.

The point is that every penny counts in the music industry. It's a business of pennies, and every penny counts.

[*Translation*]

Mr. Pierre Dionne Labelle: Yesterday, we heard from the owner of a small radio station. He said that if he bought the licence for a work once, he could keep it indefinitely. Does that situation have any repercussions on you?

We also heard about a practice that is common in radio stations: before the licence expires, the songs are copied again to avoid paying for the licence a second time. Are you aware of that practice? Does that type of thing harm your members?

[*English*]

Mr. Stuart Johnston: We are aware of that practice, and that's why we have the amendments before you. We recognize that the broadcasters need a certain window to convert the music into a broadcast format, a 30-day window, and that's perfectly fine. It's part of the business. What we are concerned about is the potential for that 30-day window to be ad infinitum. We are concerned that it will continue to roll over copies of copies of copies. That's really circumventing the principle of the royalty associated with that practice.

We will encourage that 30-day window as long as it means 30 days. That's why we have the amendment before you that we do.

● (1655)

[*Translation*]

Mr. Pierre Dionne Labelle: Thank you.

Ms. Seline, could you please explain to me what you would like the bill to contain regarding retail rights? How would that benefit your members?

Ms. Janice Seline: Do you mind if I answer in English?

[*English*]

The resale right is great for people who have a secondary market. Artists who've reached a certain level in their practice whereby their prices are higher have built their market. There are also aboriginal artists who might sell to buyers in the north at a very low price, and then the work is taken to some market in Germany where people pay crazy prices for things. The artists in Canada don't benefit from that kind of activity.

Take the auction sales, for example. A lot of the artists whose works were sold in November are senior artists: Daphne Odjig, Joe Fafard, Michael Snow. These are artists whose markets have increased dramatically. In the auction market those works go for a lot of money, and the artists need to benefit from that.

The Chair: Thank you, Ms. Seline and Monsieur Dionne Labelle.

Now we're going to Mr. Lake for five minutes.

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

Thank you to the witnesses.

I'm going to focus my comments and questions on CIMA and CARCC, if I could. You both seem to suggest in your opening statements and throughout your testimony that you don't want to have to rely on litigation of any kind. I would argue that the only way to create a world like that is to have completely one-sided legislation. That would be nice, I guess, as long as you're on that one side of the legislation.

For example, with fair dealing for education, Ms. Seline, we've had students' groups, public schools, universities, colleges, school boards, and many other people come before us and say they need this, this is critically important, it's very important to balance the law. Why should we simply ignore the rights of those organizations and not have fair dealing for education? Why should you never have to litigate anything at the expense of what all these organizations would suggest is balanced?

Ms. Janice Seline: There's plenty of litigation around, it's just that I don't want to have to deal with fair-dealing litigation if I don't have to.

Mr. Mike Lake: Right. Lots of people don't like to have to deal with things, but we do because—

Ms. Janice Seline: We do deal with it, but—

Mr. Mike Lake: —we have fair rules, right?

Ms. Janice Seline: —it's just that will make our life so much more difficult.

Mr. Mike Lake: Right, it's tough. But you mentioned in here that you would have to contest every fair-dealing claim. I would argue that you don't have to contest every fair-dealing claim because most of them would be fair. The ones that aren't fair you would contest and presumably would win.

You also talk about how confusing it is. You talk about years of unnecessary and expensive litigation to clarify a fair-dealing exception for education. I would argue that the law is pretty clear on fair dealing. There are pretty clear categories. There's a pretty clear definition of fair dealing as defined by the Supreme Court. You're arguing otherwise. I'm confused by that. It seems pretty clear when I read it. What's unclear about it?

Ms. Janice Seline: You have to go through the six-step test and—

Mr. Mike Lake: There are six factors. Which of the six factors are unclear?

Ms. Janice Seline: It's not that they're unclear, it's that you have to argue them. Cases are complicated.

Mr. Mike Lake: Yes, they are, but that doesn't mean that's not the right process. Due process is important in this country.

Ms. Janice Seline: But why go there in the first place? Education is dealt with effectively in the law already.

Mr. Mike Lake: Some would say it's not, and we go there to try to create balance in the law. I think that's what this is about.

Ms. Janice Seline: I do not want to deal with museums that say they don't have to pay us because they're so-called educators. Up to now, they have not been classified as such.

● (1700)

Mr. Mike Lake: But again, the six factors to consider are pretty clear. One of the factors is very clear. Will copying the work affect the market of the original work? I'm not sure what's unclear about that.

Ms. Janice Seline: You have to prove it.

Mr. Mike Lake: Yes, right, and that's the world we live in. If you're going to claim something's illegal, you have to prove it.

And to that point, I want to quickly talk about CIMA and their argument about illegally posted Internet activity, and the need to have notice and take-down so we can address illegally posted Internet activity. We all want to address illegally posted Internet activity, but what about legally posted Internet activity? Notice and take-down require people who post things legally to take them down as well.

Mr. Robert D'Eith: Sir, I'm not quite sure I understand your question.

Mr. Mike Lake: With a notice and take-down, someone can basically say that what you're posting up there is illegally posted. There's no due process, it's just automically taken down.

Mr. Robert D'Eith: Don't get us wrong there. We believe that there should be some due process. What we don't believe is that it's practical to expect it.

There are literally millions of infringements every day on the Internet—millions. Are we going to have to start millions of lawsuits because of the notice-and-notice provision? Or are we going to have a fair due process, in between, that doesn't have to be the ISP deciding, and that could be some fair process? Can all these great minds put together come up with a Canadian version that actually balances these issues? Because now it's balanced right on the other side, and it's going to create a haven for pirates in this country.

Mr. Mike Lake: I'd say that's exactly what the legislation here is designed to address, taken on its whole. But on that one particular issue, there are a lot of people out there who would say it's completely unfair for someone to force a family who has posted a family video of their child performing something—

The Chair: We're out of time, so please wrap up, Mr. Lake.

Mr. Mike Lake: It's completely unfair for someone to be able to force that family to take down this clip of their child doing something without having actually proven that it's illegal. It could be completely legal, but they have to take it down anyway, under your proposal.

The Chair: Very quickly, Mr. D'Eith.

Mr. Robert D'Eith: We aren't saying that at all. Respectfully, we're not saying that.

Mr. Mike Lake: But you are. You're advocating for notice and take-down. That's exactly what you're advocating for.

Mr. Robert D'Eith: You're saying that. We're not saying that.

The Chair: Great. Thank you very much.

We have now reached five o'clock.

I want to thank all of the witnesses for coming today and for presenting your perspective and your ideas. It truly is appreciated.

With that, I'll ask members of the committee to be back here by 5:05 at the latest. That's when I am starting. We have three minutes, because the next group is up, and we know that we have bells coming up.

We'll suspend for three minutes.

●

____________________ (Pause) ____________________

●

● (1705)

The Chair: If everyone can take their seats, please, we'll start momentarily.

Good afternoon, everyone. Thank you for coming to the second part of the fifth meeting of the Legislative Committee on Bill C-11.

We are very short for time for the second part because of votes that will be happening later on tonight. We will be going until 5:30, when we will have bells, and we will be asking for unanimous consent from all parties to carry on for about 15 minutes afterwards.

What we have asked the witnesses and guests to do is to shorten their opening statements to five minutes, which allows us to get through at least the first round of questioning, in which a lot of the information that you want to share comes out.

We also have hard copies of your opening statements, so thank you. I encourage all of the members around the committee table to read those opening statements in full.

We have, from Audio Ciné Films Inc., Jean-François Cormier and Bertrand-Olivier Desmarteau. From Criterion Pictures we have John Fisher and Suzanne Hitchon. From Société des auteurs de radio, télévision et cinéma we have Yves Légaré and Sylvie Lussier.

We will start off the presentations, for five minutes, with Audio Ciné FIlms Inc.

Mr. Jean-François Cormier (President and General Manager, Audio Ciné Films Inc.): Good afternoon, and thank you, Mr. Chair and Bill C-11 committee members, for allowing us to appear today to speak on behalf of our industry regarding what we sincerely hope are unintended consequences of Bill C-11.

My name is Jean-François Cormier, and I am the general manager for Audio Ciné Films, which is based in Montreal. Accompanying me is Monsieur Desmarteau, our communications manager.

Audio Ciné Films is a rights representative and distributor for thousands of films in use in educational institutions across Canada. Our main offices are in Montreal, but we deal with organizations and institutions from every single part of Canada, in both French and English. We are among hundreds of Canadian companies that are involved in the production and distribution of content to the educational sector. We provide content, rights, and services at fair market prices to thousands of schools, colleges, and universities across the country.

A good example of what we do is the movie *Monsieur Lazhar*, which was Canada's submission for best foreign language film at the Academy Awards last Sunday. Educational organizations can easily present this film, along with thousands of other titles, such as *Charlotte's Web* and *Twelve Angry Men*, that are covered with their licence from Audio Ciné Films.

Audio Ciné Films is but one organization in an industry that represents over 500 companies, employs in excess of 8,000 people, and generates approximately $30 million to $50 million in revenues per year.

Specifically speaking for Audio Ciné Films, we typically invest hundreds of thousands of dollars per year to publicize and market the products we represent and maintain a website, which contains information on all the film rights we represent. Our website also allows schools to do film searches based on specific subjects, such as Canadian history, literature, and social issues. It also offers free access to hundreds of film study guides.

As our industry moves toward streaming and digital formats, we foresee having to invest substantial additional resources to keep up with technology and demand from the educational sector. Both ACF and Criterion VEC, who you will also be hearing from today, are privately owned companies and have never received any government assistance or subsidies. We sell our products and services at competitive market rates.

Our market is one of the rare sectors in the film industry that operates without the support of public funds. Yet it remains highly vulnerable to the changes proposed in Bill C-11. Although we certainly understand and support the need for updated copyright regulations, several new clauses in Bill C-11 will have what we believe are unintended consequences that will cause serious financial damage to our business and our industry as a whole.

In particular, a proposed change to section 29.5 of the Copyright Act, on performances, eliminates the requirement for educational institutions to obtain and pay for licences currently needed for the presentation of cinematographic works in an educational context. It further places a new reverse onus and monitoring responsibility on our industry for violations, reduces or eliminates previous penalties, and eliminates requirements for record-keeping.

We have submitted our proposed amendment in our brief. We believe it can easily be added to section 29.5 of the Copyright Act.

Our industry as a whole almost entirely depends on the educational sector for its livelihood. The production, rights representation, and distribution of cinematographic works to schools, colleges, and universities, and the licensing revenue this generates, are critical to our industry. Without some minor technical modifications, Bill C-11 will lead to the overall loss of jobs and investments, and it will lead to a decline of content available to Canadian schools as financial incentives are removed.

We are appealing to committee members today to recognize the harm that will be caused to our industry and the jobs that will be lost if the proposed amendments to section 29.5 are passed as written.

Small businesses such as ours are at the core of Canadian economic success. Nothing demonstrates this better than our industry, which is made up of mostly small unsubsidized privately owned companies, staffed by hard-working and innovative people.

Thank you.

● (1710)

The Chair: Thank you very much for that presentation.

Now to Criterion Pictures, for five minutes.

Ms. Suzanne Hitchon (President and General Manager, Head Office, Criterion Pictures): Good afternoon. Thank you, Mr. Chair and committee members, for allowing us to appear today and to speak to you on behalf of both our company and our industry.

My name is Suzanne Hitchon, and I'm here with John Fisher. Together we are representing Criterion Pictures, a division of Visual Education Centre, one of the largest distributors of audiovisual materials in Canada. Our company focuses on the distribution of curriculum-based materials for in-classroom educational purposes. We have been in business since the 1960s.

Our industry provides a vast array of audiovisual content that covers all grade levels and all subject matters in both of Canada's official languages. We are here today on behalf of an entire industry that may very well cease to exist should Bill C-11 pass into law.

We operate independently of government subsidies, and our industry as a whole employs more than 8,000 Canadians.

For more than 50 years, our industry has been providing a highly valued service at fair market prices to educational institutions, while at the same time contributing $30 million to $50 million in annual revenue to the Canadian economy. Like many private industries and small businesses in Canada, we have certainly faced our fair share of challenges. We've had to adapt to change and take financial risks, adjusting to new technologies and budgetary constraints while at the same time meeting the needs of our customers as they have demanded increased services at lower prices. This is the reality of the private sector.

In recent years our company alone has invested millions of dollars of our own money to build a K-to-12 digital delivery platform comprising more than 25,000 audiovisual curriculum-based programs to meet the needs of our customers. Through all this change, we have survived and grown without government support or financial assistance. However, since the inception of this industry sector, nothing has posed a greater threat to its continued existence, to our very livelihood and our lifelong investment, than the passing of this new legislation in its current form. Should Bill C-11 pass in its current state, it will have catastrophic consequences for both our business and that of our industry.

As currently written, Bill C-11 will eliminate requirements for educational institutions to pay for copies of materials they currently license from us, representing a direct loss of millions of dollars in revenue and effectively putting us out of business. The current legislation places a new reverse onus on our industry to monitor more than 15,000 schools throughout Canada for violations—an impossible task. Additionally, it subsequently reduces penalties for damages and eliminates all requirements for record-keeping.

These new conditions in Bill C-11 will lead to an overall loss of jobs and investment and a decline of Canadian content, as most financial incentives for private investment are now removed. As a result, students and teachers will become more dependent on U.S.-produced cinemagraphic works, as Canadian product will be difficult to find.

The government will ultimately need to fill the gap by providing more taxpayer funding to organizations such as the National Film Board of Canada and/or the CBC, if it feels Canadian programs have any value.

The passing of Bill C-11 in its current form is of benefit to neither the non-theatrical industry like us nor the Canadian educational community. There is no winner. Educators are not asking to be exempt from the current copyright provisions, but that is what this bill prescribes. This was clearly outlined during the testimony of the Council of Ministers of Education during the previous Bill C-32 committee hearings, when the chair of the CMEC, the Minister of Education for Nova Scotia, stated and I quote:

> We are not asking for anything for free. The education system, the sector, pays for licences and copyright, and will continue to do so. What we are asking for with these amendments is to have things clarified.

Ms. Rosalind Penfound, deputy minister of the CMEC, testified:

> Our assessment is that each year across Canada there's likely more than a billion dollars spent by the education sector to pay creators for their books, movies, art, etc....
>
> We would not anticipate that this bill would in any way reduce the amount of money the education sector would be putting into these efforts.

Finally, this is from Ms. Cynthia Andrew, from yesterday's testimony, from the Canadian School Boards Association:

> ...it has been suggested that the education community does not want to pay for education materials, and this is incorrect. Education institutions currently pay for content and for copying of these materials....
>
> CSBA is not suggesting, nor have we ever proposed, that school boards should not pay for intellectual property.

● (1715)

That's the end of the quote.

The Chair: Thank you, Ms. Hitchon.

Unfortunately, your five minutes are up. I'm very sorry, but we are moving forward. You will have an opportunity to answer questions and bring that stuff forward there.

We're moving forward now to the Société des auteurs de radio, télévision et cinéma.

[*Translation*]

Ms. Sylvie Lussier (President, Société des auteurs de radio, télévision et cinéma): Good afternoon and thank you, Mr. Chair and committee members.

The Société des auteurs de radio, télévision et cinéma is a craft union representing nearly 1,400 authors working in the audiovisual sector.

I'd like to start by making it clear that we are not in favour of the adoption of the bill in its current form. Even though the bill contains a few interesting elements, we believe that the measures intended to strengthen copyright are much less numerous than those limiting or restricting it.

Every update to the Copyright Act brings with it a whole new set of exceptions, which have an impact on creators' incomes, cause problems when interpreting the act and can lead to more litigation in the dealings between copyright owners and users. Bill C-11 unfortunately follows in that vein.

At the present time, the private copying regime applies only to sound recordings. With the introduction of digital formats that make it easier to access and copy contents, we think it would be beneficial for the private copying regime to be extended to books, films, etc. in order to protect the economic value of all types of works. However, over the long term, Bill C-11 will put an end to the private copying regime since compensation will be limited to blank audio media…

The Chair: Excuse me. You're speaking too quickly for the interpreter.

Ms. Sylvie Lussier: It's because I have only five minutes.

The Chair: Yes.

Thank you.

Ms. Sylvie Lussier: I'm sorry.

So I was saying that Bill C-11, over the long term, will put an end to the private copying regime since compensation will be limited to blank audio media rather than extended to other media and devices now in common use. By also creating new exceptions, such as those allowing reproduction for private purposes, the government has put up a roadblock to any subsequent extension of the private copying regime to the audiovisual field and other sectors.

Making copies for private purposes is a widespread practice that cannot realistically be eliminated or criminalized. The private copying regime essentially makes the practice legal by compensating authors. At a time when content is circulating more than ever on a variety of platforms, the extension of the private copying regime would in fact be a potential solution to the problem of controlling the use of works.

The bill permits the use of legitimately acquired material in user generated content … created for non-commercial purposes. However, this applies only to creations that do not affect the market for the original material, such as creating home videos or mash-ups of video clips. The justifications given for this exception are that more and more, Canadians are using content in ways that contribute to the cultural fabric of our society and it is important for Canadians to be able to fully participate in the digital economy.

It's hard to fully participate in the digital economy if commercial purposes are to be avoided. There is no doubt that certain uses are fairly harmless but the application of this exception could be much broader and difficult to interpret. Using one work to create another also means that the author's moral rights in the integrity of the author's work are ignored. On what basis can the government allow the author's creative output to be appropriated by others? This new exception opens the door to a variety of uses that will be impossible to control.

We have nothing against parody and satire. Our authors are actually the creators of some of it. But as much as we defend their right to produce that type of content, we also refuse to allow works to be appropriated solely to profit from their success and fame.

Many authors have produced parody and satire without being sued. Why does the government find it useful to make this change by including parody and satire in fair dealing? Is there not a risk of unnecessarily extending the scope of that exception, opening the door to a more lax interpretation, and fostering new court cases?

In general, the exceptions are supposedly motivated by a desire for balance between copyright owners and users. The exceptions in Bill C-11 cover the audiovisual sector, but go beyond that to encompass other sectors. Nowhere is it demonstrated that free access to content helps achieve greater balance between the two sides.

And yet, in recent years, thanks to digitization, it is becoming easier and easier to access and copy works but more complicated to provide compensation. The imbalance indeed exists but it is clearly tipped in favour of users over copyright owners.

The current act contains all the parameters needed to ensure a balance between copyright owners and users. For example, copyright licensing agencies help make content easier to access while the Copyright Board can intervene to set pricing if the parties involved are not able to reach a negotiated agreement.

Before adding new copyright exceptions, the government could also have considered that copyright is recognized in the Universal Declaration of Human Rights and that international treaties such as the Berne Convention specify that exceptions should, as a rule, be special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

● (1720)

The Chair: Ms. Lussier, your five minutes are up.

Ms. Sylvie Lussier: Okay, but I would just like to tell you that we are tabling a petition today signed by Culture équitable, a group of 27 agencies. As of February 23, it had gotten the support of 14,118 citizens. This petition was sent to the committee in November, and we are giving it to you again today.

The Chair: Thank you.

[*English*]

Mr. Mike Lake: Each of the witnesses came thinking they were going to get ten minutes, and they got five. Can we just make sure each of them submits their full statement so that we have those for the record?

The Chair: We have them all. We're just making sure about the translations, Mr. Lake. Everyone will have that opportunity.

I do apologize again for having to cut you down to five minutes, but we want to make the best use of having you here today. That gives the members the opportunity to ask you questions as well. We now have that opportunity.

We're going to the first round of questioning for five minutes. It will be five minutes maximum, members.

We will start with you, Mr. Armstrong.

● (1725)

Mr. Scott Armstrong: I'm going to try to be very quick.

Mr. Cormier, I'll start with you. Can you briefly describe what exactly it is you do and what service you provide to schools? I'm a former principal, so I'm aware. Could you do that very quickly and concisely?

Mr. Jean-François Cormier: Basically, we are a rights representative for thousands of films—documentaries, etc. Under current copyright laws, educational institutions have to purchase a licence from us to be able to show our products legally. This is what we do with most school boards, schools, and post-secondary institutions across Canada. We issue licences. We provide support materials and after-purchase service, if you will, with almost every institution across Canada. We sell blanket licences, which are mostly for school boards, schools, etc. Usually the fees we charge represent a thousandth of a percent of their overall budgets.

Mr. Scott Armstrong: I want to be clear that you do more than just license films and send them out to schools. You provide educational resources. You develop resources. These are valuable resources, which teachers are asking for. They are curriculum-driven. I just want to be clear on that.

Mr. Jean-François Cormier: Yes. We provide film guides, etc.

Mr. Scott Armstrong: What are you hearing from the education sector? Have they requested that you will no longer have to license? Is that coming from the education sector? What have you heard from your clients?

Mr. Jean-François Cormier: What we've heard so far in almost all testimony from various parts of the educational sector is that they haven't asked to be exempt from paying. They have been paying for licences for decades. They have no problem with continuing to pay. Nothing forces these organizations to purchase licences from us if they don't use our products. Our prices have to be accepted by the market. It's something they have indicated they are more than willing to continue to pay for.

Mr. Scott Armstrong: I'm going to move on to Mr. Fisher.

Mr. Fisher, you provide similar services. You create curriculum-driven materials teachers are asking for. Then you send them out and schools purchase them, and you provide the licensing. What would happen to our sector in education if the industry didn't exist to support teachers? What do you think the impact would be on educators and teachers?

Mr. John Fisher (Chief Executive Officer, Head Office, Criterion Pictures): I think I have to speculate as to what would happen. Congress in the United States recommended the elimination of public performance for schools in the United States a number of years ago. That was eventually incorporated into their Copyright Act. As a consequence, most of the major providers and creators of audiovisual material for the classroom—organizations such as Encyclopedia Britannica, American Education Corporation, McGraw-Hill Films, and Learning Corporation of America, which were all companies generating $50 million or $60 million worth of business per year—went out of business. They no longer exist. So they would disappear. All of the jobs would disappear. Of course, there are very few corporations left that produce material specifically for the classroom.

Mr. Scott Armstrong: Great. Thank you.

I'm going to jump to Ms. Hitchon. You briefly touched on the changes you have made to adapt to new technology. Many schools across the country have a wealth of technology that school boards and provinces have invested in to try to meet the needs of today's student and tomorrow's student. What types of changes have you made in your industry to try to supply resources to teachers using this new technology?

Ms. Suzanne Hitchon: We recently spent millions of dollars creating a K-to-12 digital delivery platform to meet those needs. They no longer wanted hard copy. We took all of these programs and correlated them to the curriculum for all provinces. We clipped them. We also added software onto our platform that enabled them to take this content and build lesson plans around it, create tests, and provide students with access at home. So if there is a program they need to view for homework, they could also have a username and password. It's all done over the Internet.

We've recently done the same thing with feature films. We've taken literary adaptations and correlated them to the provincial curriculum standards. We've provided learning guides and teaching resources for those.

That was all to meet the need the educational community presented to us, which they had to have answered in order to go into the next century.

The Chair: You have 30 seconds.

Mr. Scott Armstrong: By developing all these digital resources this is saving the school boards money, I would assume?

Ms. Suzanne Hitchon: Absolutely.

Mr. Scott Armstrong: Can you talk about the savings?

Ms. Suzanne Hitchon: A 16-millimetre print back in the day was $1,500. Now they have access to these 25,000 audiovisual clips for $795 a school per year, unlimited access.

Mr. Scott Armstrong: Thank you.

Ms. Suzanne Hitchon: We source all that for them.

● (1730)

Mr. Scott Armstrong: Thank you.

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

I'm now moving to Mr. Benskin, for five minutes.

Mr. Tyrone Benskin: Thank you.

I guess this is to these two businesses here. You've made it quite clear that the bill in its present form is a threat to your business, to your existence. What kind of amendment would you be looking at to stave that off as far as this bill is concerned?

Mr. John Fisher: We think there's a simple solution.

The Chair: Sorry, Mr. Fisher, I have to ask for unanimous consent. It seems that the bells have started, so that's our Pavlovian theory for us to get to the House of Commons and vote.

Can I have unanimous consent from the committee members to continue on for 15 minutes into the bells? Do I have that?

Some hon. members: Agreed.

The Chair: Sorry, Mr. Fisher. Sorry to interrupt. Feel free to answer.

Mr. John Fisher: Could you repeat the question quickly?

Mr. Tyrone Benskin: What kind of amendment are you looking at?

Mr. John Fisher: We think there's a simple amendment that will save our industry. It's not that we don't have other problems with some aspects of the copyright bill, but it would be by simply indicating that if the material is commercially available there is not an exemption to section 29.5.

Mr. Tyrone Benskin: Okay.

Mr. John Fisher: It's a simple thing. We've run it past both the departments, Heritage and Industry. Copies of it are provided to you in English and French in our brief. I think it's fairly simple.

Mr. Tyrone Benskin: Thank you.

Ms. Suzanne Hitchon: I just want to say that our understanding is that the educators just want to be able to access the rich resources that are on the Internet without fear of infringement. They are not wanting to avoid paying people for the copyright material they have created.

The amendment we proposed in section 29.5 simply provides them with the access they want to materials on which there isn't a collective society collecting copyright, but also protects our businesses by enabling us to collect the fees on the intellectual property we represent. It strikes the balance educators are looking for and our industry is looking for.

Mr. Tyrone Benskin: Thank you.

How much time do I have?

The Chair: You have lots of time. You have about three minutes.

Mr. Tyrone Benskin: Get away—really?

The Chair: You're wasting it, though.

Mr. Tyrone Benskin: I know.

I'll turn to SARTEC. You basically voiced something that's come up a number of times in terms of extending the private copying levy to digital formats. As I understand it, it was basically suggested that the levy was to go to simply devices that were advertised specifically for playing music and audiovisual, as opposed to computers and external hard drives and things of this nature.

We're looking at losing that, because right now it stipulates cassettes and CDs. What kind of impact on the people you represent would the loss of that have?

Ms. Sylvie Lussier: Since it's not existing, that application of the—

[*Translation*]

Mr. Tyrone Benskin: You may speak in French if you like.

Ms. Sylvie Lussier: Okay. Thank you.

Since private copying in audiovisual formats doesn't exist at this time, doesn't exist yet, there is no loss of revenue. But since it is now technically possible, we would hope that private copying would also extend to these formats that are used solely to play content. You don't buy an MP3 player because it's beautiful; you buy it for the content it will play. That is the value of these things. So we wanted the same kind of contribution as cable broadcasters, for example.

Mr. Tyrone Benskin: What is your opinion on that, Mr. Légaré?

Mr. Yves Légaré (Director General, Société des auteurs de radio, télévision et cinéma): We are also concerned about the fact that works are circulating more and more, particularly audiovisual works. Although it isn't perfect, private copying is one way to partially control use, if not compensate it. With the decrease in private copying, there will be no private audiovisual copying. The number of uses will multiply, but it will become increasingly difficult to obtain compensation.

The Chair: You have 30 seconds left.

Mr. Pierre Nantel (Longueuil—Pierre-Boucher, NDP): In your opinion, what source of funding would make it possible to obtain a collective levy for the private copying of audiovisual works?

Mr. Yves Légaré: To date, the source has been the buyer, so, the user, and the Copyright Board was in a position to set an appropriate levy.

If we're talking about balance in the act, there are licensing bodies and a Copyright Board. Here, in fact, there is an unequal power relationship. It's surprising, given that few people have been able to demonstrate that there was an unequal power relationship in favour of the authors. Regardless, if there is an unequal power relationship, the Copyright Board is able to deal with the issue and determine the terms of the levy.

● (1735)

The Chair: Thank you. Your time is up.

[*English*]

Up next is Mr. Braid.

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

I'll start with Ms. Hitchon, please. I want to understand why you feel that Bill C-11 threatens your business model, and I'd like to hear some examples.

Ms. Suzanne Hitchon: Let's take a program that we distribute on the Canadian prairies. We charge a public performance fee for it, and a good chunk of what we charge goes back to the producer. So let's say about 50% goes back to the producer.

Mr. Peter Braid: What format is this in? What type of product are we talking about?

Ms. Suzanne Hitchon: It can be in any format. We distribute it on DVD. We offer streaming, and we offer duplication rights for school districts. We also put it on a digital platform that can go on the Internet. So there isn't a format we do not cover.

We will no longer be able to charge those fees to the school districts for the public performance, because they'll be exempt from it.

Mr. Peter Braid: You mean the licensing fees.

Ms. Suzanne Hitchon: Yes. So our argument here is that if we're only able to charge $9.99, who is going to produce Canadian content? How are producers going to create anything on the Canadian prairies or the maritimes? Who is going to create it in both official languages?

Mr. Peter Braid: So when a school buys something today, are they paying for the product plus a licensing fee?

Ms. Suzanne Hitchon: Yes. And we charge different prices. If they just want the public performance rights because it is commercially available, it would be a different fee from what it would be if we were actually supplying a hard copy to them.

Mr. Peter Braid: So under Bill C-11 the schools will still be buying your products.

Ms. Suzanne Hitchon: No, they would be exempt from copyright from our products.

Mr. Peter Braid: So how is that different from today? You said that today they're buying your product and paying a licensing fee.

Ms. Suzanne Hitchon: Yes.

Mr. Peter Braid: Okay. Under Bill C-11 they'll still be buying the product; they just won't be paying the licensing fee.

Ms. Suzanne Hitchon: I'm going to defer to John, because I'm not sure I understand.

Mr. John Fisher: The public performance provision is extremely important to us because it helps provide price stability and distinguishes us from the home video marketplace. In the home video marketplace you buy a video or a DVD. You can get it for a very small fee based on the supply the producer has. If it's a Disney program, they will produce 20 million copies of it.

In the Canadian educational market you're lucky if you sell 150 copies, so we charge more for the public performance provision than Disney would charge for a private showing in your home. That's what provides stability to our prices when we sell hard copy. Many of our products are also available in the home video market, and through our licensing we have enabled the schools and teachers to have access to the millions of copies that are in the local community, and publicly perform them.

Mr. Peter Braid: I want you to quantify the financial or economic impact. Give me some numbers to help me understand this.

Ms. Suzanne Hitchon: Essentially I think we'd be quickly out of business even if we could adapt a new business model over two or three years. I don't think we would survive in the interim.

Mr. Peter Braid: What percentage of your revenue is affected?

Ms. Suzanne Hitchon: For us, 60% of our business is sold to the educational sector in public performance rights.

I also want to add to what John said. Bill C-11 also allows them to duplicate. So right now a school district would pay us $5,000 to duplicate 1,000 copies of a title. Now they will be able to buy it once for $49, or whatever the fee is, and duplicate it as many times as they want. They could stick it on a digital platform, make it available to all their teachers, and not pay any additional fees for that.

● (1740)

Mr. Peter Braid: Okay. And does the advent of digitizing your products provide a more risk-free business model for you? Are you fully taking advantage of digital platforms today?

Ms. Suzanne Hitchon: Yes, we are. It's an expensive proposition, as you can imagine, and we've invested millions of dollars in it. Even in digitizing any feature films, we correlate everything to the provincial curriculum standards. It's very, very expensive.

The Chair: Thank you very much. That's the five minutes.

We're moving on to Mr. Regan for five minutes.

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

Thanks to all of you for coming today. I'm sorry the time is so brief.

We've heard from witnesses today that consumers wind up paying more under this bill. We have heard the music industry will be hurt to the tune of $22 million in losses from this. Now we're hearing that Bill C-11, in your view, will lead to job losses.

[*Translation*]

Mr. Cormier, could you please let us know how many job losses you are forecasting and how we should amend the bill to avoid that situation?

[*English*]

Mr. Jean-François Cormier: Similar to Criterion, about 70% of our revenues come from the educational sector and public performance, so very few companies can survive any length of time with a 70% reduction in their revenues.

Our company would close quite immediately. We've been in business since 1966. We have ten employees. But it's more the industry as a whole: not every single company that is in this industry can appear before the committee. We're among the largest, and we sort of represent the industry as a whole, informally. There are thousands of jobs related to what we do. There are millions of dollars that are generated for local economies through our licences.

So it's a very drastic thing for us. If we cannot charge for public performance, which is what we do mainly, then there's very little else for us to do.

Hon. Geoff Regan: Okay. Let me ask you, and then Mr. Fisher, this question. We've heard from Mr. Fisher or Ms. Hitchon—I forget which—that they're proposing an amendment that would say if it's commercially available it's not an exemption—

Mr. Jean-François Cormier: Well—

Hon. Geoff Regan: We've heard from other witnesses who are suggesting, perhaps with different parts for different sectors, that there should be an amendment to say basically that the six-step test put forward by the Supreme Court of Canada in the CCH case should be inserted into the bill. What's your view of those two possibilities?

Mr. Jean-François Cormier: For us, proposed section 29.5 specifically mentions “cinematographic” works. That specifically targets our industry.

What we're asking for in the amendment is that schools and school boards may be exempt from copyright in regard to film, but only if those rights are not available from a collective such as us. If the product already exists, and if the service already exists in the market, as it has for 20 years, then, as the school boards have said, they're willing to continue paying for this. We think a lot of the direction of that section concerns products that aren't easily available or that schools can't find and that we don't distribute—mostly stuff on the Internet.

Hon. Geoff Regan: Mr. Fisher or Ms. Hitchon, would you like to comment on that?

Mr. John Fisher: First of all, I have to say that we were surprised, because we're in touch with the education community on a daily basis in our business, and in their testimony before this committee and on Bill C-32 they said they didn't want not to pay.

When we met with the representatives of the two departments, Industry and Heritage, they could not provide us with an explanation as to why that provision had been inserted. Also, no economic study has been done to determine what the consequences and the outcome would be if that provision were included.

So we're mystified as to why it's there. We think it serves no one's purpose whatsoever.

Hon. Geoff Regan: Can you help me get my head around this idea of “if it's commercially available, it's not an exemption”? I'm trying to figure out what video clips—or whatever—that are on the Internet would not also, somewhere, be commercially available.

Mr. Jean-François Cormier: Well, I think what he meant before was available from a collective agency.

The Chair: You have less than a minute.

Hon. Geoff Regan: Okay. That's what you're saying.

Is that correct, Mr. Fisher?

Mr. John Fisher: Yes, that's correct.

Hon. Geoff Regan: So you're not saying generally...?

Ms. Suzanne Hitchon: There are trainers out there who do programs and put their stuff up on the Internet. They do it on YouTube, and teachers want to be able to access that resource, but they're afraid they can't, because they don't know if they're violating the copyright law.

I think the point is to free it up so they have access to this rich resource, but not to punish us in the interim, and not to punish the educational community as a whole, because in ten years they're not going to find these resources. It's just about striking the balance between what they want and what it is that we do.

● (1745)

Hon. Geoff Regan: Thank you.

The Chair: Thank you, Mr. Regan.

Of the full 15 minutes the committee agreed to, Mr. Lake, you'll have about three minutes.

Mr. Mike Lake: That's fine, no worries.

I'm going to direct my questions to SARTEC, if I could, and it will be pretty straightforward. In your submission you suggested that for private copying the levies should not be limited to blank audio media but rather should be extended to other media and devices that are now in common use. What media and devices are you talking about?

[*Translation*]

Mr. Yves Légaré: I'm talking about MP3 players and any kind of digital reader, in fact.

[*English*]

Mr. Mike Lake: An iPod or an iPad would count. What about a computer, a laptop?

[*Translation*]

Mr. Yves Légaré: If they are used for the same purpose as an iPad or an iPod, then the answer is yes.

[*English*]

Mr. Mike Lake: Of course most people nowadays, if they have a Mac, for example, would use it to store music and stuff. So you'd say that yes, there should be a levy. How much should those levies be?

Ms. Sylvie Lussier: We don't know how much. It would have to be determined by *la Commission du droit d'auteur du Canada*, which would set a fair price for that.

Mr. Mike Lake: What would be fair, though? What would you consider fair?

Ms. Sylvie Lussier: I don't know. I have no idea.

Mr. Mike Lake: When the Copyright Board looked at it before, I can't remember.... I believe it was the private copying collective that suggested $75 for a device with over 30 gigabytes, such as an iPod—

Ms. Sylvie Lussier: No, we've never suggested—

Mr. Pierre Nantel: Point of order. This is misinformation.

The Chair: No, that's debate, unfortunately.

Please finish your question.

Mr. Mike Lake: I believe that was the amount that was part of the discussion at the time. I think you can go to the *Canada Gazette* and see it.

[*Translation*]

Mr. Yves Légaré: This is not at all the amount we had in mind, and I would say that our position is more general. The works are property. If they are used, people must be compensated, and the compensation must, of course, be reasonable. There is an organization that can decide what reasonable is. However, according to the proposal on the table, compensation will no longer be given for these works because we are moving from the current formats—CDs—to digital formats. That's where the most transactions are going to occur.

If authors aren't going to be compensated when their works are constantly reproduced, when will they be?

[*English*]

Mr. Mike Lake: Again, just to clarify, what you're suggesting is that if I purchase a piece of music, such as a CD or an album of some sort, even through iTunes, and I have an iPad and an iPod and a computer, and it's on all three, I should pay for that four times—the original time plus the extra three times—just for the one copy I would use.

The Chair: I'll let you answer, and then after that we'll need to adjourn.

[*Translation*]

Mr. Yves Légaré: People in the music industry might be able to give you more clarification on this, but I can tell you that, right now, when you buy music legally, you are allowed to copy it to various formats, to your iPad, for example. Sometimes you are allowed up to three, four or five uses. But it's a different story if you get it, loan it to someone else or have it copied by another person.

Right now, the legal offer allows you to copy it to more than one device. That's not what we are hoping for. We just want there to be a levy on readers to compensate for reproduction, for example when people copy works that they didn't necessarily buy and are copying their CDs to their iPod.

[*English*]

The Chair: Thank you.

Let me once again apologize to our witnesses, especially for me for being so strong on the time, but we do have to get to votes.

Mr. Mike Lake: Point of order, Mr. Chair. I have to clarify, because they might—

The Chair: This is more of a debate, and we do need to wrap up.

Mr. Mike Lake: Okay, but it does come from the Copyright Board.

The Chair: Thank you, Mr. Lake.

I just wanted to apologize again to our witnesses. Thank you for coming. Your testimony is very important to this committee.

We meet tomorrow at 9 a.m. in Room 253-D.

This meeting is now adjourned.

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