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Chair

Mr. Glenn Thibeault

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● (1545)

[*English*]

The Chair (Mr. Glenn Thibeault (Sudbury, NDP)): I call the meeting to order.

Good afternoon, everyone—witnesses and guests and members—to the seventh meeting of the Legislative Committee on Bill C-11. I want to welcome you all.

We did have two votes this afternoon. Unfortunately, this delayed us from getting here to start at 3:30, so of course we'll have to adjust the time during questioning.

Welcome, and I'll introduce each of you: from the Society for Reproduction Rights for Authors, Composers and Publishers in Canada, Alain Lauzon and Martin Lavallée; from Tucows Inc., Elliot Noss; and from Shaw Communications, Jean Brazeau, Cynthia Rathwell, and Jay Kerr-Wilson.

I believe you've all been briefed by the clerk that each organization, not each individual, will have 10 minutes, and 10 minutes only, to present. I will, unfortunately, step in after 10 minutes if you haven't wrapped up at that time.

We'll start off with the Society for Reproduction Rights for Authors, Composers and Publishers in Canada.

You have the floor for 10 minutes.

Mr. Alain Lauzon (General Manager, Society for Reproduction Rights of Authors, Composers and Publishers in Canada): Thank you, Mr. Chairman.

[*Translation*]

Good afternoon.

I would like to thank the members of the legislative committee for allowing us to give testimony before you today. My name is Alain Lauzon and I am the general manager of SODRAC. Joining me is Martin Lavallée, Director, Licensing and Legal Affairs.

SODRAC has been around for 25 years. In music, we manage reproduction rights, and in visual arts and crafts, we manage all the copyrights of the repertoire we represent.

As a collecting society, we play an important economic role for the thousands of authors, composers and publishers that we represent in Quebec, Canada and abroad. Actually, copyright is sometimes the only compensation creators get.

The members I represent are active in three sectors: musical works in songwriting, audiovisual musical works—television, film, video games—and artistic works in visual arts and crafts.

The Copyright Act is the essential foundation granting creators ownership rights for the work they create. The reproduction right, which is separate from the performance right, is a fundamental right recognized in the Copyright Act, as well as in international treaties and the Berne Convention, to which Canada is a signatory.

The Internet has brought about changes in technology that have transformed the way works are distributed, disseminated and used. That is why the act must be modernized. The question is at what price. Producers say that the measures proposed in Bill C-11 are sufficient, but that is not the case for creators.

In the music industry, Bill C-11 will have a significant impact on our rights holders. Introducing and changing exceptions for broadcasters, not extending the private copying regime to include digital audio recorders, and extending fair dealing to education are all provisions that affect existing royalty sources. The bill also creates new exceptions for users and consumers, without any compensation for rights holders.

That adds up to more than 40% in royalty losses for the authors, not to mention the weakening of financial instruments that authors and collecting societies use. Also, this bill does not provide any legal or financial solutions to the problem of illegal file sharing and the responsibility of Internet service providers.

Music has never been played, listened to and copied to the extent that it is now. The Copyright Act should continue to provide us with the legal framework necessary to exercise the ownership right with respect to the works of the authors, composers and publishers we represent and to enable us to play our role as a collecting society and compensate them properly.

In terms of artistic works, we believe that Canada should introduce resale rights, just like over 50 other countries, including those in the European Union. Resale rights would enable creators and their rights holders to receive a portion of the resale price.

Creators must be able to participate fully in culture and in the new digital economy through the Copyright Act. We are in favour of the legal protection measures for digital locks, although some platforms used for the distribution of works do not have them yet. Digital locks can be effective in some sectors, such as film and video games, although they are currently more beneficial for producers than creators.

Furthermore, rather than creating exceptions without compensation, we believe that it would be better to favour the licensing system by collecting societies in order to allow access to works. Collective management has demonstrated to be quite effective for both users and rights holders, whose compensation it guarantees.

The technical amendments that we are proposing in our brief represent a minimum threshold in order to avoid an irreversible imbalance between those who create the content and those who use and consume it.

Mr. Martin Lavallée (Director, Licensing and Legal Affairs, Society for Reproduction Rights of Authors, Composers and Publishers in Canada): So in order to restore this balance, SODRAC has 13 specific recommendations, with new wording. You have received a copy this afternoon. We feel that these recommendations are in keeping with the government's wishes while avoiding any unnecessary disruptions to the business relationship between creators and users.

We are really talking about a business relationship between authors and those who use their works. And who can claim responsibility for the effects of a piece of legislation on the Copyright Act? It is not up to the Internet provider, broadcasters, professors or even rights holders, it seems.

The Copyright Act protects the economic life of a work, by ensuring maximum exposure, in exchange for reasonable compensation.

When we talk about economic value, we are not talking about taxes or double payment. We are talking about payment for the value of music use by those who, in most cases, make music a major component of their business model.

But Bill C-11 in its current form interferes with this private business relationship, by creating numerous exceptions that are sometimes expressed in terms that go beyond the government's clear intentions, or that result in unintended consequences.

Let me illustrate this by focusing on two of our recommendations. The first one pertains to the new section 30.71 that deals with the so-called temporary reproductions for technological processes. The government has specified that this section has no copyright implications because it covers technical and temporary reproductions made as part of a process that is technical in itself, such as cached transmission over the Internet, or cache.

However, the wording of the section deals only with facilitating a technological process, which is so broad and vague that it could be misinterpreted as encompassing numerous digital reproductions whose value has already been established in a free market.

It is therefore necessary to clarify that those reproductions, as intended by the government, are technical and have no real value. If the use of those temporary and separate reproductions and—that is not the final solution, but the reproduction that is separate from the temporary reproduction—leads to a quantifiable benefit for the user, the exception should not apply.

In addition, the title of the section refers to a temporary reproduction, but the word "temporary" does not appear anywhere else in the wording of the section. Instead, reference is made to the duration of the technological process, which is extremely vague. The current meaning of the word "temporary" is "momentary" and "limited in time". We therefore recommend that this notion be reflected by specifying that the reproduction is temporary or transitory.

Our second recommendation addresses the exception for ephemeral recordings. We talked about that a lot last week. Of course, SODRAC is not sure why there is a need to withdraw the requirement to obtain a license from a collecting society for this type of reproduction, when we can see that the use of all reproduction rights by commercial radio stations accounted for barely 1.4% of their annual revenues in 2009, compared to using—which is still true to this day—80% of the music in their programming. So we would prefer that subsection 30.9(6) of the current remain unchanged.

But the government still wants rights holders to be duly compensated for copies of works kept for more than 30 days. We just want to point out that it is possible today to create automated systems for recopying and destroying recordings, which would make it possible to do indirectly what the legislation prohibits from being done directly—for example, destroying the recording on the 29th day only to recopy it two days later, resetting the clock over and over again every 30 days.

Let me remind you that a recording kept for more than 30 days can barely be described as ephemeral. It is not a simple transfer. It is a multi-purpose reproduction. SODRAC has been seeing this since 1992, for over 20 years. The radio industry has not collapsed during that period, quite the contrary. Its profit margin has increased from 1% to 21% during the same period.

SODRAC recommends incorporating the proposed minor modifications to subsection 34(2) of the bill, as you can see in our brief, in order to eliminate the possibility that this provision might be bypassed contrary to the government's intent.

I would like to thank the committee members for their attention and I encourage them to read the other proposed technical modifications in our brief that are meant to reflect more specifically the government's intentions.

● (1550)

Mr. Alain Lauzon: To conclude, I would like to point out that SODRAC plays an active role in the work and recommendations of the following groups: the Coalition des ayants droit musicaux sur Internet, DAMIC or Droit d'auteur Multimédia-Internet Copyright, and the coalition of cultural organizations under the Canadian Arts Coalition.

On SODRAC's behalf, I would like to thank the committee members for listening to us. Thank you.

● (1555)

The Chair: Thank you for your presentation.

[*English*]

Now we will go to Mr. Noss for 10 minutes.

Mr. Elliot Noss (President and Chief Executive Officer, Tucows Inc.): Thank you.

My name is Elliot Noss. I'm the CEO and president of Tucows Inc. I'd like to thank you all for giving me the opportunity to appear here today.

I'd like to start by thanking the totality of you. Perhaps it is third time lucky, but it appears that on the third pass we have copyright reform or are at least close to it, and it looks as though it will present a fair balance for all involved. I think you all deserve a lot of credit and a lot of recognition for that.

I certainly have views up and down the elements of the legislation, but I want to contain my remarks today to a couple of key areas where we at Tucows have a specific window on the world, and I want to share some parts of our existence with you.

Tucows is a company that's been around since the dawn of the Internet. The website started in 1993. We've been partnering with service providers around the world as a Canadian company since 1995, since the dawn of the Internet. We invented wholesale domain registration. Today we are by far the largest domain name registrar in Canada, with over 1.7 million domain names registered to Canadians and, importantly, over 2,300 Canadian customers.

I'm going to spend some time describing for you who our customers are and why they matter in this discussion.

Our customers are best known as web hosting companies, ISPs, telcos, and cablecos, but there is a huge swath of that 2,300 that isn't often enough talked about or understood, and those are smaller web hosting companies, web designers, VARs, and integrators who across their businesses employ tens of thousands of Canadians.

We have about 12,000 service provider partners, but I'm just talking now about the 2,300 in Canada. These are the companies that essentially put small businesses, users, artists, and creators online and enable them to actually take advantage of all the great benefits that the Internet brings.

Sometimes, sadly, my customers are called by another insidious term: “enablers”. It is extremely important to understand the characteristics of the bulk of small business today, the bulk of users today. We all know that there is a transition in the economy to self-employment; when I'm talking about “users” now, I'm talking about people who have a daytime job and are starting a home business, people who are creators or aspiring creators themselves. They need help getting online and they need help using the tools to take best advantage of being online, whether it's registering a domain name, building and launching a website, having a Facebook page to promote what they're doing, or having a Twitter account, etc. A typical customer of ours might help 50 or 100 small businesses and end-users, and when we talk about enabler provisions, those are the people who are just simply not understood.

I love the fact that large telcos and ISPs can be well represented in the policy field and in the legal field. Tucows is a fairly small company, with $100 million in revenue. We're not very big, but we can handle what we get in terms of incoming issues around intellectual property and copyright complaints; those small businesses that I'm talking about, the ones that are the backbone of getting small business online, simply can't, which means that any enabler legislation that is too broadly drafted.... Frankly, the enabler legislation that we're seeing in front of us is the first I've seen that's narrow enough to actually give the bulk, the backbone, of that supply side for business a chance.

● (1600)

That was the first part that I'm going to talk about that we have intimate knowledge of, and I'm not talking about the most intimate knowledge just in Canada, but in the world. Tucows is the world leader in wholesale Internet services. We are known throughout the world as the best and biggest partner for service providers in the Internet economy, so I'm giving you a Canadian view, through a Canadian company, of a global position.

We have nearly 10% of the domain names in the generic domain names base. That also means that we see another element uniquely, which is the day-to-day practices by which intellectual property rights holders and their legal departments employ their tactics.

I'm going to give you a little window into our world.

In 2011 Tucows had over 300 complaints about intellectual property abuse. Exactly zero of them came to anything.

I want to make sure you don't think that means there is nothing wrong going on in our namespace. We have 10% of the problems if we have 10% of the registrations. We are regularly working with law enforcement and rights holders around things like phishing, child pornography, drugs, etc., but what we see as the typical practice for intellectual property rights holders, sadly, is to yell and threaten first and to do everything they can to intimidate.

I have to deal in the ICANN context, which is the global domain name regulator, so I deal with intellectual property representatives from around the world—WIPO, etc. When I raise this issue with them, they don't deny it and they don't question it; they describe it as good practice. They say, “We are simply representing our clients' interests, as we should be.”

I don't question that, but when you all are looking at the enabler legislation that you're going to put into this bill, you need to remember that those are sharp knives. Those small businesses—the five-man or 10-man web hosting shop, or the two-man web design shop—are not going to be able to do anything but fold like a cheap tent when they're confronted with demands.

I want to circle around to the top and thank you all again. I want to note for you that the Internet is the greatest agent of positive change that the world has ever seen—greater than the printing press, and certainly greater than television or the telephone. It is a platform for the future. Balanced public policy here won't be felt in three months or in a year; it'll be felt in five years and 10 years.

Canada, right now, has a rich creative landscape. I'm going to give you all a free tip. You're obviously interested in this subject matter. If any of you have teenage daughters, I'm going to kill two birds with one stone for you: take your daughter to see the Justin Bieber movie *Never Say Never*. There are two reasons: one, she will love you for it; two, you will see what is acknowledged by Guy Kawasaki, a Silicon Valley legend, as the greatest movie on social media made to date. Canada's biggest recording star didn't get there because of labels; he got there because of user-generated content and a free and open Internet and the platform that all of that creates.

I know that I'll be the only person speaking about the tens of thousands of employees of those thousands of small businesses who represent millions of Canadian users in saying, "You've got a balance now; please keep it".

Thank you.

● (1605)

The Chair: Thank you, Mr. Noss.

I guess I'm renting *Never Say Never* this weekend for my daughters and me to watch.

Mr. Elliot Noss: It's in the theatres.

The Chair: With that, I will now go to Shaw Communications for ten minutes.

Mr. Jean Brazeau (Senior Vice-President, Regulatory Affairs, Shaw Communications Inc.): Mr. Chair, members of the committee, my name is Jean Brazeau. I am the senior vice-president of regulatory affairs and government relations at Shaw Communications. With me today, to my left, is Cynthia Rathwell, vice-president of regulatory affairs. To my far left is Jay Kerr-Wilson of Fasken Martineau.

Thank you very much for giving us the opportunity to present our views on Bill C-11.

Shaw Communications is a diversified company that offers a broad range of communications services, including cable and satellite television, high-speed Internet access, home phone, and broadcasting.

Through its various undertakings, Shaw creates, acquires, distributes, and transmits copyright-protected content to Canadians. As such, Shaw understands the importance of effective copyright legislation to Canadians and understands that any copyright rules must be carefully balanced to protect consumers' interests and to support both creativity and innovation.

In our view, copyright should support and encourage the development of legitimate markets and products and services. It should give rights holders adequate protection against infringement and the freedom to negotiate fair compensation for the use of their works. Copyright laws should not, however, erect barriers to innovation. They should support and not hinder the development of new services and new business models. They should foster partnerships among creators, distributors, and consumers.

We are pleased to see that the government has taken a balanced, consumer-friendly approach to copyright reform in Bill C-11. In particular, we fully support the minister's statement that this legislation is intended to legalize everyday consumer activities, including time shifting television programs, using cloud computing and remote storage services such as network personal video recorders, creating and sharing user-generated content, and moving content purchased to the devices and into the format of their choice.

We support the government's desire to achieve balance in the legislation, and we believe that Bill C-11 has largely succeeded in achieving that balance.

We would like to bring to the committee's attention three specific provisions of the legislation that we believe fall short of achieving the government's policy, provisions that could be remedied with a few minor and, for the most part, technical amendments.

To ensure that Canada's new notice and notice regime, which we strongly endorse, functions well and becomes an effective partnership between rights holders and ISPs and to ensure that ISPs are not made responsible for any infringements by their customers, a few small technical amendments to Bill C-11 are needed. The details are set out in our written brief.

In general, however, Shaw strongly believes that ISPs' obligation to deliver notices and retain data must come into effect at the same time as regulations that standardize the required notice format and set maximum fees for the provision of notices. The new automated notice system that ISPs must design to comply with the new regime can only be effective if rights holders' notices contain consistent information and formatting. As such, it is appropriate that new notice requirements come into effect pursuant to the regulations that ensure that notice systems can be built and operated efficiently.

Second, the legislation provides for a specific exemption that permits consumers to record, or time shift, television programs for viewing at a later time. The minister has stated that this exemption and the hosting exception are intended to work together to permit network personal video recorder services—PVRs—to operate without incurring copyright liability.

Shaw fully supports the government's objective to permit network PVR services. We are concerned, however, that the hosting provision as currently drafted is not as clear as it could be in expressing the government's intention to enable cable and satellite companies to offer consumers NPVR service.

To put it simply, a network PVR has to perform two separate functions to operate: it has to make a copy of the television program that the consumer wants to record and it has to transmit that program to the consumer when the consumer wants to see it. The bill, as drafted, provides a clear exception to copyright for the recording of the television program by the network PVR service, but is silent as to the transmission of that same program.

We submit, with respect, that the bill would benefit from additional clarity in exempting the network PVR provider from liability when the program is transmitted to the consumer for viewing.

● (1610)

The current lack of clarity could lead to vexatious litigation and stand as a barrier in the provision of network PVR services to Canadian consumers. We believe that a minor technical amendment to the existing provision will make it clear that a network PVR provider does not incur copyright liability for either hosting or transmitting television programs that have been recorded at the request of the consumer. We have provided the clerk with the specific technical amendment recommended to accomplish that very end.

Our final concern is with the provisions that apply to the sale of content online, and specifically the language of the "making available" right.

As drafted, the legislation could treat every transmission over the Internet as a broadcast to the public. This means that if someone bought a copy of a song from a service such as iTunes, that transaction would be treated the same as if the song had been played on the radio. We think it's far more appropriate to treat an online sale of a song, movie, or game the same as if that song, movie, or game was purchased in a store.

As a result of the approach taken in the legislation, online transactions involving music in Canada will not be freely negotiated between parties, but will require the intervention of the Copyright Board of Canada to set the prices to be paid for music. This will produce what we believe to be unintended results. Under the approach taken by Bill C-11, negotiating with the composer for a fair price to sell the game on the Internet is not even an option. The same problem will apply to the online sale of movies, television programs, and other forms of multimedia entertainment.

Given the government's desire to encourage Canadians to be innovative leaders in the digital economy, we do not believe that copyright legislation should prevent parties from freely negotiating licensing agreements and instead impose input pricing set by the administrative tribunal. In our respectful view, it would be far more reasonable and consumer-friendly to apply the same rules to the sale of products in the online world as apply to the sale of products in the retail world.

Mr. Chairman, members of the committee, we believe that Bill C-11 is an important measure to modernize Canada's copyright laws. We support the pro-consumer exceptions and the enhanced protection against piracy. Subject to our suggested amendments to better reflect government policy, Shaw thinks that Canada and Canadians will be well served by this bill.

We would be pleased to answer any of your questions.

Thank you.

The Chair: Thank you, Mr. Brazeau.

We will now go to the first round of questions for five minutes. Starting us off is Mr. Braid.

Mr. Peter Braid (Kitchener—Waterloo, CPC): Thank you, Mr. Chair. Thank you to all of the witnesses for being here this afternoon.

Mr. Brazeau, I want to start with a couple of questions for you. Could you comment on the merits of the notice and notice approach, as opposed to notice and takedown?

Mr. Jean Brazeau: We certainly think that notice and notice is a far less intrusive means to ensure that the government achieves its policy objective. We would be very concerned if we started taking down service to our customers. The response by the customers to those measures would be significantly negative. I think the measure is somewhat too draconian. We can achieve the same objective with notice and notice.

Mr. Peter Braid: Some ISPs today are voluntarily notifying copyright infringers on the Internet. Is that the case with your company?

Mr. Jean Brazeau: We are currently doing that, yes.

Mr. Peter Braid: Okay, great.

It's fair to describe your company as an Internet intermediary, if you will. Do you feel that Bill C-11 has the right measures, recognition, and provisions with respect to your company's role as an intermediary, notwithstanding the technical amendments that you've spoken to? I appreciate those.

Mr. Jean Brazeau: Notwithstanding the technical amendments, we are very supportive of the legislation.

Mr. Peter Braid: Okay.

Could you speak to the importance of the safe harbour provisions in the legislation?

Mr. Jean Brazeau: I'm going to let Jay deal with that issue.

● (1615)

Mr. Jay Kerr-Wilson (Legal Counsel, Fasken Martineau, Shaw Communications Inc.): Certainly every jurisdiction in the world that has looked at implementing the WIPO treaties has understood that providing safe harbours for intermediaries is essential. To echo the testimony you had by Jacob Glick from Google, the investment community has also recognized that providing clarity with respect to intermediary liability and having clear and effective safe harbours is critical to having an environment where investors feel safe in supporting innovative new products and services.

Mr. Peter Braid: Do you feel that Bill C-11 provides that?

Mr. Jay Kerr-Wilson: Yes, it does, again subject to the technical amendments that Shaw has put forward. By recognizing the specific roles for hosting and providing Internet access and by exempting liability for those functions, Bill C-11 takes the right approach.

Mr. Peter Braid: Mr. Noss, do you think it's important that Canada respects and ratifies and adheres to the WIPO treaties, finally?

Mr. Elliot Noss: It's important for Canada to respect them, yes, but necessarily to ratify them, not so much.

There is a very interesting trend going on, in that when goals can't be achieved in domestic politics, attempts are made to achieve them through international politics. That's very worrisome.

I'll tell you something that happened just in the last couple of weeks that simply has never happened before. I received three separate phone calls from large U.S. service providers coming out of the SOPA-PIPA goings-on in the U.S., asking me—

Mr. Peter Braid: Were these robo-calls?

Some hon. members: Oh, oh!

Mr. Elliot Noss: No, they weren't.

Hon. Geoff Regan (Halifax West, Lib.): I'm glad you asked.

Mr. Elliot Noss: They were asking about the climate in Canada around some of these issues and were pursuing, on behalf of their clients, locating significant stores of data and moving them—American companies and American clients—to Canada because the climate might be healthier.

These were not illegitimate companies; these were very large companies that would all be familiar to you. There is a fear of overreach out there.

If Canada can be a world leader in that regard, then that to me is much more important not only to our economy but also to a healthy, open Internet, which is what I care about for my children.

Mr. Peter Braid: There isn't overreach in Bill C-11, is there?

Mr. Elliot Noss: Bill C-11 feels comfortable to me.

Mr. Peter Braid: Thank you.

The Chair: You have 30 seconds.

Mr. Peter Braid: I think that's a great place to end.

The Chair: Perfect. Thank you, Mr. Braid.

We're now moving to Mr. Angus for five minutes.

Mr. Charlie Angus (Timmins—James Bay, NDP): Thank you. It's a very interesting discussion all the way around.

I want to follow up on a question from my colleague in the last round.

Mr. Noss, you said that you liked the balance, but you talked about your concern about the enabling language. I see that you're a member of the Business Coalition for Balanced Copyright.

Mr. Elliot Noss: That's right.

Mr. Charlie Angus: There are some pretty heavy-duty players in that.

Given the experience with SOPA and the huge backlash that burned many U.S. politicians' fingers on that issue, do you see language that can work in terms of dealing with...?

We all have a common interest in going after people who should be shut down—

Mr. Elliot Noss: That's right.

Mr. Charlie Angus: We also share a common interest in ensuring that we don't destroy the platform that is still emerging. Have you seen language that can actually focus in on this? Is this the time? What is your recommendation?

Mr. Elliot Noss: I will tell you that when I dug into Bill C-11 as it currently stands, I was pleasantly surprised. That would be right way to put it. There is the appropriate expansion of exceptions for fair dealing, as well as the notice and notice provisions and the statutory damages. Three or four things in there are world-leading and give Canada an opportunity to set a model for the rest of the world.

The interesting thing about that is that there are countries over the world—again, I meet with representatives in the ICANN context—that are looking for an alternative to some of the heavy-handedness going on in a couple of jurisdictions, and the U.S. in particular, sadly. I think there's a fantastic opportunity and a uniquely Canadian opportunity here.

Mr. Charlie Angus: Thank you.

Mr. Lauzon, we've talked many times over the years. I was interested in how you define copyright. Perhaps it's simplistic, but at its root you said that copyright is a payment, a fundamental right that is at the heart of what we're talking about. It's who gets paid and when they get paid.

I've been noticing at our committee hearings that my colleagues in the Conservative Party call copyright a tax. They use "tax" all the time. They say that it's not fair to business, yet when we're talking about the ephemeral exemption that's being created, it seems that on something that has been adjudicated by the Copyright Board, which has defined the right to be paid as the $20 million that musicians, artists, and publishers receive, they want to use an exemption to deny people who have been adjudicated at the Copyright Board the right to be paid.

Do you believe it's the role of government to intervene at the Copyright Board and say that not only will you not get the $20 million, but while we're at it, we'll be taking the $30 million you received for the digital levy? They'll be taking $50 million and will intervene in your business model and say that it's fair. What is the feeling of the members of SODRAC?

● (1620)

Mr. Alain Lauzon: The Copyright Board is recognized worldwide as a place that establishes the value of the right. Participants are using it, especially in the right of reproduction, for which, under law, we can negotiate with our partner. We can do it as arbitration or we can go for a tariff.

The Copyright Board establishes the tariff and looks at the practices. You members of the committee have to establish the rules under which the copyright owners, who are the creators, are going to be paid, are going to be remunerated. I mentioned in my text that sometimes, especially in music, copyright is the only remuneration they receive.

Every three months, when I pay my 2,500 members who are songwriters, composers, and publishers, copyright is the only money they receive. They receive money from us, which is the reproduction right, and they receive money from SOCAN, which is the performing right, so they receive different types of rights, but these rights are all recognized.

That's why, in this new digital economy, you have to bring forward rules in the legislation to protect the creation of the work for the creators we have—

The Chair: Thank you, Mr. Lauzon and Mr. Angus. You're out of time.

We're now moving on to Mr. McColeman for five minutes.

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

I thank all of you for being here and providing your thoughts and ideas on helping us determine what that balance is.

I might just comment on the comments of my colleague who just finished. I don't think anyone at this table is looking to not strike the right balance and to not make sure the creators, the people who create the work, the artists of the world, don't get compensated properly. Perhaps the structure of that is what we are considering in terms of how we strike the right balance to make sure they are treated fairly.

I hear comments—the comments of Mr. Noss and the comments from the Shaw representatives—in terms of seeing this as what I would call a huge moment of opportunity for our country. I heard the Google representative, Mr. Glick, talk about his vision for what Canada could be in a digital environment if we get this right. This is hugely important to us.

Mr. Noss, my question is to you. You talked about your customers and their customers. I appreciated the way you addressed us in terms of describing that structure in order for everyday Canadians to be able to understand it. Can you take it from the small business person out there who is dealing with maybe the two-person operation that you said would be lost if we don't get this right? Could you talk a little more about that and how important it is to local economies, such as the one in my community?

Mr. Elliot Noss: Sure. From its inception, from the launch of dial-up, the Internet has really been a local business. It has been millions and millions of local businesses. In the early days, every single city in Canada had local ISPs as the first- or second- or third-biggest provider. It was only with broadband and big infrastructure that this changed. In web hosting, it is a local business. In web design, it's a local business.

What happens on occasion is that you have what I would call chilling effects. If the provisions are too broad, then they will be used, and they will be used to intimidate and to discourage. It's the smaller folks on the supply side who get hurt most by that.

We're dealing on behalf of our customers all the time—and when I say “all the time”, I mean weekly—with what is just a lament: “I don't know what to do. I've had this threat brought to me. I've had this demand brought to me.” It's equal parts, by the way: a legal practice that's unsophisticated about Internet matters, just as a lot of us are, and an overreaching. You get equal parts of both, but the outcome is the same.

Again, that's why I like that phrase “sharp knives”, because what you provide in the legislation.... As Mr. Angus said, we all want the bad guys stopped, and service providers probably work harder at that than anybody else in the Internet community, but boy, those sharp knives fall hardest on the smallest.

● (1625)

Mr. Phil McColeman: Right. We also heard this from those who are distributing works through, specifically, small radio outlets, people who are employing maybe up to 50 employees in their operations. We heard some of the challenges they face in terms of making sure they do pay their fair share, but that they don't pay too much because someone in this equation has a sense of their own interests, which leads to them wanting more of the equation than the equation can handle, or else it all collapses because everybody's so interdependent.

I'd like the Shaw people to comment on this, if you would. Wouldn't it be advantageous to all the players if the balance were struck the right way and we had that incredible opportunity as a country to expand our digital commerce? Wouldn't it be of great benefit to the creators, to the people creating the works, because of what would open up to them?

Mr. Jean Brazeau: I totally agree with that statement.

I was listening Mr. Noss's comment; the more restrictions you put on the service providers, the ISPs, the more costs we incur. The more costs we incur, the more expensive it becomes to build out these networks.

We have some of the best networks in the world. We are a leader in the world when it comes to broadband. If you start nickel-and-diming, with a little cut here and a little cut there, then all of a sudden the incentives to build out this network and to remain in the forefront and continue to be world leaders in broadband just evaporate. I think the unintended consequences of some of these proposals are very significant. That's why we believe this balance is—

The Chair: Thank you, Mr. Brazeau and Mr. McColeman.

Mr. Regan has the last five minutes of the first round.

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

Let me start with you, Mr. Brazeau; we might as well keep going a bit more. I'd like to talk about something a bit different—namely, what time will it require for ISPs to comply with the notice and notice provisions? What kind of complications are there in that, and what problems do you see?

Mr. Jean Brazeau: We are probably handling several thousand of these requests per month, so the volume is fairly significant. We want to make sure that there is a consistency in the industry on how we deal with them. We think it would probably need a period of about 12 months for the industry to establish the right guidelines, the right framework, in order for all of us to deal with these notice and notice requests in a structured way.

Hon. Geoff Regan: When we deal with this question of notice and notice, we have two fundamental problems.

On the one hand, an ISP has a difficulty being an arbiter and deciding when there's infringement and when there's not. That's the problem with notice and takedown, obviously: they're asking the ISP to be the arbiter.

The other problem, of course, is that for a creator, particularly a small artist, to enforce with a lawsuit every single infringement of their copyright is obviously impractical and impossible. The problem, then, is how to reduce the amount of copyright fraud—infringement—and at the same time ensure that artists get compensated? One witness suggested that we need to have some kind of made-in-Canada solution that overcomes that, particularly for smaller players.

Do you have anything in mind that might work?

● (1630)

Mr. Jean Brazeau: We think that notice and notice would work effectively.

Hon. Geoff Regan: Tell me how that would work for the small creator who can't afford to pursue every individual case of infringement, let alone one case, sometimes.

Mr. Jean Brazeau: Jay, do you have anything to add?

Mr. Jay Kerr-Wilson: I would say that even small creators need the opportunity to reach their market. Certainly the Internet, as Google testified, gives unprecedented ability for the small creators to reach and find their audiences and to sell. We need to have the tools in place that promote legitimate markets and restrict infringing behaviour. I think this committee and the Bill C-32 committee heard lots of testimony that notice and notice does provide a significant deterrent to infringing behaviour and will give the tools for the legitimate market.

Therefore, you drive people away from the infringing behaviour and towards legitimate services and legitimate service providers. The small creator has unprecedented ability to now access that marketplace, to find their audience, to find their consumers, and to engage in very small transactions that will be profitable.

Hon. Geoff Regan: Mr. Noss, I have the impression that you're on the edge of your seat in wanting to answer this question.

Mr. Elliot Noss: Well, I'll briefly say that small creators who appreciate that sharing is the way to become big creators are the ones who have the best chance of getting there. Small creators who try to restrict sharing of their content tend not to get there.

Hon. Geoff Regan: Then what are the models you see that are going to result in creators being compensated?

Mr. Elliot Noss: I think what we're seeing now is really twofold. We see that innovative creators get themselves out there massively through sharing and we see that now the most innovative models and the ones that are capitalizing most effectively are the ones doing it through concerts and merchandising, etc. There still is a fantastic opportunity to get paid straight around music consumption if it only wasn't so complicated.

Hon. Geoff Regan: You suggested that ISPs work harder than anybody—

Mr. Elliot Noss: I said service providers—

Hon. Geoff Regan: I'm sorry; it's service providers.

Mr. Elliot Noss: —because that's a broader category.

Hon. Geoff Regan: Sure it is. Pardon me. I'll drop the "I" for a moment.

They work harder at stopping the bad guys, as you put it.

Mr. Elliot Noss: That's right.

Hon. Geoff Regan: Does notice and notice remove some of that responsibility? Also, what do the service providers do to stop the bad guys?

Mr. Elliot Noss: There are two things there. One is that notice and notice refines the responsibility appropriately.

No service provider wants bad guys on their network. The interesting thing is that so often there are innocent transgressions that notice and notice solves without the classic "record label taking grandma to court" story. Most people, when they hear about problems, simply go away.

It's the real offenders, the massive bad guys, who you are not going to get with notice and notice, or notice and takedown. There is where you need the big stick. When I'm talking about service providers helping, I think they really are the ones who, at the front lines, are doing a lot of that enforcement, because it's way easier to be smart about it up front and to have a straight game.

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

I know that your five minutes go by quickly, as they do for everyone else, but we will now start the second round of five minutes of questioning.

We'll be starting with Mr. Armstrong.

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

I want to thank all the witnesses today.

I'm going to start with Mr. Noss.

I was very interested in your comments that the legislation we have before us is going to give Canada the opportunity to really expand the business we're going to be doing in this country and to create a bigger pie for everyone to engage in, particularly smaller operators. Could you expand on how this legislation is going to enable us to do that?

Mr. Elliot Noss: Most importantly, you have a growing, thriving industry of small service providers. They're not asking for incentives. They're not asking for financial support. They're simply asking to be allowed to grow and to take advantage of what they can do without having inbound disruption or discouragement, so simply removing those threats, which some previous forms of the legislation could have provided, is huge.

What they need is that chance, and what I think this does for Canada is that Canada becomes an attractive destination around creativity and the open Internet. That does not mean, in any way, safe harbour for pirates, and cue the scary music; instead, it will get creative innovators who simply want to be in an environment where they can do what they do best without having to worry about the noise that might attend some overreaching legislation.

● (1635)

Mr. Scott Armstrong: Thank you.

I'm going to move on to Shaw and Mr. Brazeau.

You talked about time and format shifting. You said that the top end of the legislation deals with it very well—I'm talking about the recording and moving the recording around—but you said that the back end of that, which is the rebroadcast or the transmission of that data after it's been reformatted or time shifted, needs a little work. You said that the way it is worded now might lead to some sort of "vexatious" legal actions. Can you expand on that and discuss what you're talking about there?

Mr. Jean Brazeau: Yes, and in a minute, I'll let Jay, who is the lawyer here, chirp in.

Our big concern is that while there is certainly an explicit provision on the recording, there's silence on the transmission. We think you can't have one without the other, and the problem is that we've certainly been involved with other issues for which there was not an explicit exemption, and it could be challenged. That's what we're concerned with.

Jay, I don't know if you want to add to that.

Mr. Jay Kerr-Wilson: The concern is on the hosting exception. In hosting, you make the storage and you store the copy into the host. The existing language talks about the act of providing digital memory not being an infringement of copyright; the concern is that if someone were to think of the copying and then the transmission out as two separate acts, it could lead to someone's asking a court to say the copy was covered but the transmission is not; that act alone is a second act.

All Shaw has proposed is to tweak it so that explicitly making the copy and transmitting the copy back to the person would all be covered under the same exception. It's not an expansion; it's just clarifying the intent.

Mr. Scott Armstrong: Thank you for that.

Mr. Brazeau, in some of your comments about the sale of content online you discussed how, as we move into the future, more and more people are doing all kinds of shopping online, and not just for digital media. You said that we should treat this more as we do retail, when we actually go into a shop. The same rules and regulations should apply.

Could you give us some specific examples of how we could do that with this legislation?

Mr. Jean Brazeau: Jay, I'm not sure if we recommended anything specifically.

Mr. Jay Kerr-Wilson: The issue is in proposed subsection 2.4 (1.1) of the existing bill, which would treat any transmission over the Internet as a communication to the public by telecommunication, which is generally the right that's applied to broadcasting activities. What Shaw has suggested is that you can have broadcasting activities over the Internet, in which case the communication right should apply and the rights should be paid, but that when you're selling a copy to a consumer, which is replacing the sale that would be made if I walked into Best Buy, then the reproduction should apply.

Rights holders still get paid. It would be a negotiated agreement with the rights holders for the sale of that copy. You just wouldn't then also treat it as a broadcast because it's been transmitted over the Internet.

Mr. Scott Armstrong: All right.

Mr. Noss, I'm from a small rural community. We don't expect Google to move in any time soon, or Tucows, for that matter, but we do have several mom-and-pop organizations. Actually, in one family there are five members working in this area. How is this legislation going to help them grow their business or help other people establish businesses in the rural parts of the country?

Mr. Elliot Noss: I think one of the marvels of the Internet is that you become locationless. You'd be amazed at the small towns that huge hosting companies grow out of. In fact, most often they are not located in larger urban centres, because their customers are all over the world and their cost base is better in a smaller community.

There are two things. The first thing is to remove the threats, which I've talked about a few times. I can't overstate how important that is, because that burden falls on the small, which become the medium-sized and the big.

The second thing is that it just cultivates that open Internet. The Internet is, at its heart—

● (1640)

The Chair: We are well over time, Mr. Noss, so could you wrap up very quickly, please?

Mr. Elliot Noss: —a communications medium, a sharing and collaboration medium. That means the more people to share with, the better off it is.

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

[*Translation*]

You have five minutes, Mr. Nantel.

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

First of all, I would like to thank you all for being here today. I would like to address my comments to the representatives from SODRAC and see if they have been noticing the same thing as me. The problems experienced by people in the music industry are also going to be experienced by people in the video world. It is just a matter of time. It is about data and things are adding up.

The music industry experienced the same issues 20 years ago. Today, the music industry is in a tough spot. Video people are perhaps less sensitive to this downward spiral, but it is going to catch up with them as well.

We all know that, on average, 90% of what people have on iPods is illegal. The bill we have before us does nothing to protect artists against their materials being stolen through the Internet.

I would like to know how you explain having the nerve to take away once again more than $20 million in mechanical royalties at artists' expense. That right was granted, it was there. From everyone around the table, the people who are most affected are the creators, of course, because they have lost more than $20 million in mechanical royalties. What do you think about that?

Mr. Alain Lauzon: If I may, I am going to answer part of your question and Martin will add to my answer afterwards.

You are comparing the video industry to the music industry in terms of facing the same problems. It is all related to bandwidth. Music is instant. But downloading a video takes more time. There is piracy and illegal copies of videos. I think the bill is trying to eliminate piracy on a large scale. On the one hand, it does not target foreign sites and, on the other hand, the bill will bring about technological protection measures.

In music, the problem is that there are no technological protection measures, because interoperability has been favoured. Historically, it has been open.

When I hear people in this room talk about an open Internet, I don't get it. Rights holders want to be compensated. I see no business plan in all that. The only people doing business are those using the copyright. It is quite unbelievable.

Mr. Martin Lavallée: I am going to add to my colleague's answer. People say they want an open Internet with massive sharing and maybe there will be dollar signs under all that. I am talking about artists' works. They also want to have a chance to grow.

Meanwhile, there is talk about chilling effects, intimidation, threats and costly litigation.

Where is the value of rights in all that, where is the value in that for creators, songwriters or publishers in music, and where is the technological neutrality? The Copyright Act is supposed to be neutral. That means that a right that was there before, in the old economy, must continue to exist in the new one.

In our brief, we have included the measures affecting consumers and non-commercial practices. But when we look at the commercial realm, we see an imbalance between the value for artists and the value, in terms of profit, for commercial industries that make money at the expense of the underlying copyright, as Mr. Lauzon said.

Mr. Pierre Nantel: Thank you.

On the same topic, I would like to hear from the representatives from Shaw Communications Inc. about how they keep a record of the people who infringe on copyright.

Mr. Noss, you said that you know all your clients. Since you are hosting the site *knowmulcair.ca*, could you tell me who is behind that? You won't tell me.

● (1645)

[*English*]

Don't even bother to answer.

Voices: Oh, oh!

Mr. Elliot Noss: With apologies—the translation went out there—who was the client behind...?

Mr. Pierre Nantel: Behind knowmulcair.ca; it's supposedly a Tucows domain name.

Mr. Elliot Noss: Oh. I'd have to look.

Mr. Pierre Nantel: Okay....

Mr. Elliot Noss: In fact, if—

The Chair: Thank you for the discussion on the leadership.

You have a few minutes left, or actually a few seconds.

Mr. Pierre Nantel: To Ms. Rathwell or Mr. Brazeau or Mr. Kerr-Wilson, can you tell me more about the *répertoire*, the registering of the notice and notice? How do you manage to keep the data, potentially, if it's needed?

Ms. Cynthia Rathwell (Vice-President, Regulatory Affairs, Shaw Communications Inc.): Thank you.

Currently notice and notice is a voluntary undertaking. We receive, as Monsieur Brazeau was saying, over 100,000 notices per month. At this point we do not have an automated system with which we can issue notices, and therefore it becomes very important going forward with the introduction of regulations in this bill to ensure that the regulations introduce a standardized format with very clear criteria for what a notice should contain.

Then, as required by the bill, we will maintain the subscriber data for a six-month period, but without a thoroughly standardized approach with regulation, it's very prohibitive.

The Chair: Thank you, Ms. Rathwell and Monsieur Nantel.

Mr. Lake, you have five minutes.

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

Thank you to all the witnesses for coming today.

To Mr. Lauzon, when you're advocating, as you are, for increased levies, I'd like to know what specific technologies you'd be advocating for those levies to apply to.

Mr. Alain Lauzon: We're talking about private copying. We're talking about monetization, about ISPs. We're talking about the fact that for a copyright owner there is a value to the work that is used by the consumer or by the ISPs that are using those works.

Mr. Mike Lake: I wasn't asking so much for a rationalization, because I think you've given that already, but for specific technologies you'd be talking about that levies should apply to.

Mr. Alain Lauzon: I don't know. You have to look around the world. There are multiple technologies that you can have—

Mr. Mike Lake: You must have some idea of them. I'm sure you've given it some thought.

Mr. Alain Lauzon: Yes, well, if you look at some countries, they use the three-step test, the three-strike—

Mr. Mike Lake: Should it apply to an iPod?

Mr. Alain Lauzon: Sure. Why not?

Mr. Mike Lake: An iPad?

Mr. Alain Lauzon: Sure. Why not?

Mr. Mike Lake: A laptop?

Mr. Alain Lauzon: Sure. Why not?

Mr. Mike Lake: The Internet?

Mr. Alain Lauzon: It's another way of monetizing the value of the right.

Mr. Mike Lake: So—

Mr. Alain Lauzon: There's a value—

Mr. Mike Lake: You say a laptop, sure, so I'm going to use that example. You say a laptop, yes; okay, you referred to a business model. You said that it's not a tax, that it's a business model. How can you justify the business model as it relates to someone who might buy a laptop and not use it for music at all, or for any other creative use?

Mr. Alain Lauzon: When we are in front of the Copyright Board, the Copyright Board does not give any royalties based on what we ask. What they do is they ask.... Let's say it's CPCC. They are well informed of it there and they do some surveys of what it has done. When we receive the private copying levy out of the board, that decision has been done by surveys and by studies and all of that.

It's not the creators who went in front of the Copyright Board to say that they want to have that level of money; it's becoming a kind of value agreement in front of the Copyright Board—

Mr. Mike Lake: But you argued that it was a business model. Again, how do you set up a business model that collects money for you from someone who doesn't even use your product? That's a dream business model, I would suggest.

Mr. Alain Lauzon: There is a way by which you will have to remunerate the value of the songs that are created and pay for the songs. That's for sure.

Mr. Mike Lake: Many have come before the committee and have said that we are doing that. They've said that's exactly what Bill C-11 does. It actually creates value for creators because it takes away the ability for people to pirate creative works and creates an environment whereby creators can be paid for what they create, so a better quality of product will be compensated for more.

● (1650)

Mr. Alain Lauzon: We don't see that the law creates value for the creators. You create value for part of the *ayants droit*—

Mr. Mike Lake: Okay, yes—

Mr. Alain Lauzon: —but it's mainly producers, and you don't create—

Mr. Mike Lake: I would—

Mr. Alain Lauzon: We don't see that. What we see is that we have rights that are in the law. We have them in the law, but they are not getting paid. Broadcast mechanical and private copying are not extended to DAR, to reproduction.

Mr. Mike Lake: I want to transition, if I could, to the broadcast mechanical.

If you add the $21 million for the reproduction right that you talk about and the money from the performance right that radio stations pay, is it fair to say that more money is paid today than was paid 10 years ago?

Mr. Alain Lauzon: Obviously. The—

Mr. Mike Lake: Is it fair to say that if you take away the $21 million for the reproduction right, substantially more money is paid today just for the performance right alone than was paid 10 years ago?

Mr. Alain Lauzon: I'm not in the business of the performing right, but as legislators, you decided in 1997 to bring in other rights, which were the rights to the performing artist and the record companies, or what we call neighbouring rights. Up to a certain point it was in the law. It has an effect; for sure, that will increase.

The second thing—

Mr. Mike Lake: There have been many, though, that—

Mr. Alain Lauzon: The second thing is SOCAN. They had an increase in the rate in the last five or six years. They have had that rate for the last 20 years, and the reproduction right at SODRAC is obviously another right.

We're having this discussion in Canada, but all around the world and in Europe, there is no discussion about that. They are paying the neighbouring rights, they are paying the reproduction rights, and they are paying the performing rights. They are all paying that. It's only here that we're having this discussion.

Mr. Mike Lake: Do I have time?

The Chair: Thank you, Mr. Lauzon and Mr. Lake. Unfortunately, we're well over the five minutes.

That will conclude our second round of questioning.

With that, I'd like to thank our witnesses for coming today. Your perspective and thoughtful input to this committee are much appreciated.

To the committee members, we will now break for four and a half minutes. We will start at five o'clock on the dot to ensure we can get through the entire second round in the next session.

With that, we will suspend.

● (1650)

(Pause)

● (1655)

The Chair: Ladies and gentlemen, members, and witnesses, welcome to the second half of the seventh meeting of the Legislative Committee on Bill C-11.

I'd like to welcome all of our witnesses: from Epitome Pictures Inc., Mr. Stephen Stohn; from the Directors Guild of Canada, Mr. Gerry Barr and Mr. Tim Southam; and from the Writers' Union of Canada, Mr. Greg Hollingshead and Ms. Marian Hebb. Welcome, everyone.

I know you've briefed by the clerk that each organization will have 10 minutes to present, so we will give you that 10 minutes.

We will start with you, Mr. Stohn.

Mr. Stephen Stohn (President, Executive Producer, Degrassi: The Next Generation, Epitome Pictures Inc.): Thank you very much.

Epitome Pictures Inc. is a small business. We're a mom-and-pop shop: I'm the president, and my wife is the CEO. She's more important than I am, as it should be.

We have been in business for nearly a third of a century. We're a television production company. The one that you would know the most is the *Degrassi* series that we produce.

I'm also the chair of Orange Lounge Recordings, which is a record company that does the things that a record company does on the Internet, including using all the facilities available—the Topspins and the iTunes and every conceivable form of exploitation of digital rights.

We also do an innovative co-venture with Sympatico in which we produce video concerts of artists who come into Toronto. We bring them into the studio and do live sessions with them, which are then broadcast on the Internet. They're called *Live at the Orange Lounge*. Dozens of Canadian acts have done this. Some are well known, like Nelly Furtado and Avril Lavigne, while others are not as well known. There are many famous international acts, and I include Katy Perry, Amy Winehouse, the Pussycat Dolls, and OneRepublic. That's just to say I'm immersed in the digital world.

Coming back to the television production side, our *Liberty Street* series, which started in 1995, was the first series in the world to launch simultaneously on air and with a website. Our *Riverdale* series, which we started in 1997 and which starred some very famous and talented Canadians—including, most notably, Tyrone Benskin—was the first series in the world to launch a companion web video series. It was a weekly series and, in effect, a behind-the-scenes soap opera. The new version of *Degrassi*, starting in 2001, launched a groundbreaking website, at a cost of more than $1.5 million, to enroll fans in the Degrassi school and engage them in interactions with our fictional characters. In effect, it was a proprietary Myspace long before Myspace was ever invented.

Degrassi was the first series in the world to produce video webisodes presenting ongoing stories that featured our main sets, main cast, and main writers, and being shot with our main crew. *Degrassi* was also the first series to make full episodes legally available in Canada both for download and streaming. We've experimented with various alternatives since then, including making episodes available on the Internet prior to broadcast. Then we tried a week prior. We tried 24 hours prior; we tried 24 hours after; now we simply go simultaneous on iTunes and on the web. An entire season of *Degrassi*, which is now 45 episodes, is available in Canada on the MuchMusic website for free. There's advertising, but an entire season is available for the fans.

If you search “Degrassi” on Google, you'll get over 11 million hits. We have over three million “likes” fans on Facebook. Interestingly, if you search “Degrassi mashup” on Google, you'll get more than a million hits.

The list goes on. We have very active Twitter accounts where our writers provide Twitter feeds for our characters. We do vlogs and blogs. We have a Degrassi game already in the iTunes App Store. We have another co-viewing app coming out this summer. We're doing everything digital we can think of.

I'll note that our new series, *The L.A. Complex*, which launches next month in the United States, will launch simultaneously on The CW, which is an over-the-air network, and on iTunes, Amazon, all the download services, and also on Hulu, which is a Netflix type of service.

I mention all of this not to pat ourselves on the back, but rather to make it clear that while we are grateful for the legacy modes of distribution—we love our television broadcasters, and they are a linchpin—that is not where we are fixated at all. We are and intend to always be on the absolute forefront of the new media. I am not a university professor who has well-intentioned but perhaps ultimately misguided theories about what might or might not work on the Internet; I am part of a passionate, active, and engaged team that is immersed day in and day out in the practicalities of the digital world.

I have two key take-away messages that I would like to put to you today.

● (1700)

First, we producers are devastated by the torrents and the cyberlockers who take the shows that take us so much time and effort to produce, make money from them, and return nothing to us. More and more every day we rely on return of our investment from digital rights—from legal, authorized streaming from broadcaster websites, from Netflix- or Hulu-type services, from legal, authorized downloads from iTunes or Amazon-type services, and from dozens of other legally authorized digital services that make *Degrassi* available today; therefore, the first key take-away from us is to please pass Bill C-11 as a matter of extreme urgency.

The second key message is also a plea: please make all the technical changes necessary for the intent of Bill C-11 to actually be carried into effect.

I am not here today to discuss commas here and reasonables there. I leave that to the experts, such as my brilliant friend Barry Sookman, and to our CMPA producers' organization, and to others such as Music Canada and the Motion Picture Association - Canada. It is my understanding that if implemented today as currently drafted, Bill C-11 would have the perverse effect of inadvertently sheltering the very websites, services, and illicit activities that the government was intending to eliminate, so please give us absolute clarity that the BitTorrent sites like isoHunt and the cyberlockers like Megavideo will be put out of business in Canada.

Finally, I'd like to discuss mashups. We love mashups. As noted before, there are myriad *Degrassi* mashups available throughout the web; to us, they are a confirmation of our fans' loyalty and engagement, and that is something we embrace and applaud vigorously.

What we don't love is drafting in Bill C-11 that we are told may permit all, or substantially all, of an episode to be downloaded or streamed under a wraparound loophole in the mashup language. We also don't love anyone making money from these mashups, including through placing advertising around or adjacent to the mashups, without our being mandated to share in that revenue. We need revenues from our digital endeavours to continue producing our shows. We can't compete with material that is free and we don't want others making money from our hard work and investment without being allowed to share in the return.

In summary, our plea is to pass Bill C-11 urgently, but to please include the technical amendments necessary to clearly eliminate torrents and cyberlockers and to ensure that the mashup exception truly applies only to what the government and all of us really mean by a mashup, not to wraparounds and other loopholes.

Thank you very much for your invitation to make these comments.

● (1705)

The Chair: Thank you, Mr. Stohn.

Now we will go to the Directors Guild of Canada for 10 minutes.

Mr. Gerry Barr (National Executive Director and Chief Executive Officer, Directors Guild of Canada): Thank you.

Members of the committee, my name is Gerry Barr. I'm the national executive director and CEO of the Directors Guild of Canada. With me today is Tim Southam, a director of both television and feature film on both sides of the border and chair of the Directors Guild national directors division. To anchor him for you, for those of you who watch *House*, his most recent work was in evidence in last week's episode, so if you're a fan of that show and want any backstory, he's the guy to go to.

This is, of course, a series that has more than 50 million viewers around the world, and it's a classic example of what the Canadian audiovisual industry can do in terms of both level of quality and dramatic series.

DGC is a member of Mr. Stohn's “day in, day out” crowd. As a national membership-based labour organization, it represents over 3,400 key creative and logistical personnel in the film and television and digital media industry, and we're pleased that after more than a decade and numerous attempts, copyright legislation in Canada will be updated with the passage of this bill.

Bill C-11 brings our copyright regime into compliance with WIPO treaties. It takes steps to protect creators from content theft, it rightly classes parody and satire as new categories for fair dealing, and it attempts to modernize Canadian copyright laws for a new digital age. All of this is very welcome.

The preamble to the bill sets out the importance of “clear, predictable and fair rules” to support creativity and innovation as well as the importance of legislation that “provides rights holders with recognition, remuneration and the ability to assert their rights”.

Naturally, we strongly support those principles, but we're here to say that Bill C-11 still needs some help to live up to those important goals.

As an organization with members who both create and use copyrighted works, we know that copyright reform is a balancing act, and we're here today to ask for technical change to ensure that Bill C-11 contains the clear rules that are called for in that preamble.

Clarity is at the heart of effective copyright legislation. Creators and copyright holders need to know where they stand and what limitations are in place to benefit users' access to the works they create. The absence of clarity leads inevitably to having courts decide these matters. Costly time-consuming litigation benefits no one—not creators, not users, not others in the production chain—and should never be seen as preferable to clear and predictable legislative rules.

Technical amendments can protect rights holders' revenues and their ability to control how and where their work is disseminated, as well as protect users from unintentionally infringing on those rights. To that end, the DGC is one of 68 arts groups supporting the package of amendments submitted to this committee by the Canadian Conference of the Arts.

I'd like to turn to Mr. Southam for a few words.

● (1710)

Mr. Tim Southam (Chair, National Directors Division, Directors Guild of Canada): Thanks, Gerry.

If anyone is looking for *House*, it's *House M.D.* and it was last Monday. The series continues until its season—and, in fact, series—finale sometime in April. It is not a homegrown series, but we do have *Flashpoint* and *Rookie Blue* and, of course, *Degrassi*, which is the great pioneer in Canadian-made homegrown TV series that have completely won over the world in the last decade and a half.

Today we'd like to discuss an issue that is not covered by the CCA submission, yet is of huge importance to the DGC. This committee review creates the opportunity to provide clarity with respect to issues of authorship of audiovisual works. For most works in which copyright subsists under the act, the author is self-evident. For example, the writer of a novel, the sculptor of a sculpture, the painter of a painting, or the composer of a musical score is, in each case, clearly the author of that work.

We haven't the same clarity with audiovisual works. The rights of the works' creators are not acknowledged under the Copyright Act with the same clarity. It's time that this gap in the act was closed. The DGC believes the technical amendment very narrowly framed to define the authors of an audiovisual work as the work's credited director and writer will do just that.

The director and screenwriter, of course, create the audiovisual work. The writer begins with a blank page, and characters, dialogue, and story elements emerge. The director imparts a three-dimensional vision to the work. Casting, selecting location, staging, editing, sound design, scoring, visual effects, colour correction—all aspects of committing the work to the screen—fall to the director.

Defining the authors of the audiovisual work is key to giving full effect to some of the amendments included in Bill C-11 regarding the recognition of moral rights and the use of digital rights management systems. It's important also to say that statutory recognition of authorship brings codification and clarity to the already existing rights of directors and writers as recognized in legal precedent and industry practice.

Mr. Gerry Barr: One of the important examples in legal precedent would be in Films Rachel Inc. v. Druker & Associés Inc. et al, in the Superior Court of Quebec. In a dispute between the creator and the producer, the holding was that the writer and director of the film under consideration was the author, and therefore the first holder of copyright.

The federal Status of the Artist Act equates directors responsible for the overall direction of audiovisual works with authors of artistic, dramatic, literary, or musical works, all of whom are authors under the current act. An amendment to recognize writers and directors as authors will bring the Copyright Act into line with other federal legislation that also recognizes the authorial nature of the director's role, so there is some judicial and also legislative recognition of this core idea of authorship for directors and writers in film.

The Canadian film industry also operates on the basic working assumption that directors and screenwriters have authors' rights. The DGC negotiates collective agreements that provides payment for directors for uses made of their works. The transfer of exploitation rights to producers through these contracts recognizes that directors are the first owners of copyright—in other words, the authors of the work. Screenwriters' contracts also recognize their copyright ownership of audiovisual work, including profit-sharing provisions allowing for the collection of residual payments.

A technical amendment for Bill C-11 on this question creates no new rights, but it brings important clarity to the question of authorship. The amendment we're suggesting would end up in subclause 2(2), with a definitional reference that defines “author” as follows:

> “author”, in the case of a cinematographic work in which the arrangement or acting form or any combination of incidents represented give the work a dramatic character, means the writer and director of such cinematographic work.

As we noted earlier, such an amendment is necessary to give full effect to some of the changes in the government's proposals in Bill C-11. For example, the bill aims to clarify what constitutes an infringement of moral rights, but moral rights attach only to authors and performers, and without a definition of “author” for audiovisual works, directors and screenwriters are unable to assert moral rights for their work.

Bill C-11 introduces a number of provisions regarding digital rights management information. DRM information is akin to a kind of digital watermark, providing information about the work and an ability to track it, and one of the important pieces of information is the author of the work. The provisions in Bill C-11 that prohibit the removal or altering of rights management information are of value to directors and writers who wish to protect their rights and royalties collected in other jurisdictions, so we need to be identified in the act as authors.

Audiovisual creators should be dealt into all of these protections that authors of other works enjoy under the act. It's particularly important in a digital age, in which content can be sent around the world with new-found ease and at a time when piracy and worldwide distribution are but a mouse-click away. Clarity on the issue of authorship is vital to protect Canadian creators, including directors and screenwriters.

Thank you, Mr. Chairman. I hope there will be some questions on this general area.

● (1715)

The Chair: Thank you, Mr. Barr.

We will go now to the Writers' Union of Canada for 10 minutes.

Mr. Greg Hollingshead (Chair, Writers' Union of Canada): Members of the committee, hello, *bonjour*. I'm Greg Hollingshead, chair of the Writers' Union of Canada, which represents approximately 2,000 Canadian book authors. I'm a writer myself, and for 30 years, until I retired, I was an English professor at the University of Alberta. With me today is Marian Hebb, our legal counsel.

Thank you for inviting me to talk to you. I know you've been hearing a lot about the expansion of fair dealing to include education and I know you're tired of the subject, but I hope that as a teacher, writer, consumer, and creator I can cast some light on how and why this broad exception is likely to launch an unintended assault on the intellectual property of Canadian writers.

When Bill C-11 was introduced, the Honourable James Moore, Minister of Canadian Heritage, stated that when laws are clear, consumers know what the boundaries are. He also said that it is wrong to not allow people to protect what they have invested in. He was talking about digital locks, but he inadvertently put his finger on exactly what the Writers' Union believes this new education exception fails to do: give students and teachers sufficient guidance concerning what is lawful and what is not when it comes to copyright. By so failing, it fails to respect the property of creators.

A few years ago a short of story of mine appeared in a print anthology for colleges and universities. For the rights to my story I had been paid for its appearance in successive editions, but in recent years fewer instructors have been using print textbooks in courses. Instead, the instructor creates a course pack—like this one from my own university, for consultation later if anyone's interested—which is a compilation of photocopied texts for distribution to students taking a particular course. This one provides sections or chapters of books, plus one essay from a journal.

In 2010 Canadian universities and colleges copied over 100 million pages from close to 120,000 unique titles for paper course packs alone; however, increasingly these days, instead of offering a course pack, an instructor will post in digital form the text she wants to teach and discuss on a website devoted to the course, a website accessible only to those teaching or taking the course.

This same short story of mine is now available through a licensing agency representing authors and publishers for any teacher in the world who chooses to include it on a course site. For this digital use my publisher and I are paid a fee, just as I was paid a fee for the use of my work in a traditionally published text, and just as I was paid by our national licensing agency, Access Copyright, which issued a licence to the university or college so that its instructors could make use of my work in a course pack or for distribution of multiple copies in the classroom.

This is all good. Whether in a course pack, for distribution of multiple copies to the class, or on a dedicated website, texts for a particular course are now provided much more efficiently and at a lower cost to the student. The student gets easy and cheaper access to professional Canadian texts. The writer and publisher get paid for their work, for their product. The institution doesn't need to do the work of securing the rights to individual works or worry about its staff or students violating copyright. The problem arises because Bill C-11 fails to make clear what sort of reproduction for educational use constitutes fair dealing and what sort does not.

As an educator myself, I know that teachers are not the enemies of creators. The working teacher believes that creators should be compensated for their work. She understands that this means schools paying for a blanket licence to copy.

● (1720)

Teachers want to pay, and they have said as much to this committee and to the Bill C-32 committee. The question is what they need to pay for, and that is what Bill C-11 does not as yet define. The Writers' Union of Canada believes that it needs to do so and that it is for Parliament, not the courts, to decide what the education sector needs to pay for.

The larger context here is that we're all living in a culture of free digital information and entertainment. In this digital climate, human behaviour can't be counted on any more than digital locks can be counted on in the realm of books, when you can buy a printer with a scanner for under $100.

I can assure you from first-hand experience that if Bill C-11 passes unamended in this respect, the result will be a perfect storm of unauthorized copying in the schools. It's no secret that the noisiest opposition to Bill C-11 has been from people who have come to assume that free access to everything digital is their right. It's no secret that students today have grown up in a culture that has encouraged them to expect free use of everything they can download.

It's also no secret that over 50 colleges and universities, by refusing to pay collective licensing fees, have been doing another kind of downloading: downloading onto the working teacher the responsibility, the time, the extra labour, and the liability for clearing the rights to the works she teaches.

However, how many teachers are going to the trouble to clear those rights when the institution they work for has rejected collective licensing, when the website for any particular course is next to impossible to police, and when, to all appearances and by all reports, Bill C-11 is on the way to loosening up restrictions around copyright in education in ways that nobody can perfectly predict?

Just last week this committee was addressed by educators who talked about the copying, for classroom use, of a few pages here and a few there as a trivial matter that should be considered fair dealing, but you have to look at the aggregate. Multiply this practice by the number of classrooms in this country, where nearly 250 million pages of books are copied annually in Canadian schools, and there alone you have lost revenues to writers and publishers in the tens of millions of dollars annually.

A few pages here and a few pages there is not about ease of access to materials; it's about payment for copying. The educators are asking you to excuse them from paying for what they are already licensed to do.

In its CCH ruling, the Supreme Court named damage to the market as only one of six or more factors to be considered when deciding if a dealing is fair, and not as necessarily the most important factor. A dealing may be considered fair that does damage to the market, and a few pages here and a few there in the classroom would be dealing that would do major damage to the market. The potential for damage to the market and the uncertainty of continuing investment in Canadian publishing that will result from unclear legislation are too great for Parliament to leave to the courts.

We ask you, the members of this committee, to clarify the legislation to make it evident that uses being paid for today will continue to be paid for tomorrow. Otherwise, the money the schools will save will come directly from the pockets of those who can least afford it—in this case, Canadian writers, who earn, on average, less than $20,000 a year from their writing.

The Writers' Union of Canada has taken an active role in the creation of and, along with 67 other Canadian arts organizations, is a signatory to a document sent to you in January, which has been referred to by other members of this panel. It contains proposed amendments that address our concerns.

● (1725)

The Writers' Union has also submitted to you a brief today to address this and other issues in Bill C-11, including user-generated content and digital delivery by libraries.

The Chair: Mr. Hollingshead, you're out of time. You're past the 10 minutes. Hopefully, if you have any remaining comments, you can put them in during the question period as well.

Thank you to the witnesses. I'm wondering what Joey Jeremiah would say if he knew that he had been mentioned so much by people sitting on this committee, but we'll move forward now to Mr. Moore for the first round of five minutes.

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

Thank you to our witnesses. We've had very interesting presentations so far.

Mr. Stohn, you said that you love mashups, but then you drew a distinction between ones that you love and ones that you don't love. Can you talk to the committee about how you define mashups, why you love them, and why there are some that cause concerns?

Mr. Stephen Stohn: The ones that we love—and they're all over the Internet—tend to be about three minutes long. We have a couple that the fans are very enamoured with, so they'll go back. The fans do incredible work, and it takes a lot of time. They take copies of the show, and they may go over 20 or 50 different episodes, taking little moments from them and putting them together in a three-minute video that glorifies this particular relationship or this particular couple. They'll put a Faith Hill song underneath it, and these were all patent infringements of copyright in the old days. We love it because a fan who is willing to take that amount of time is valuable and has invested in the characters on our show. That kind of activity is enormously positive to us.

What would not be enormously positive is a 10-hour mashup in which somebody says, “Oh, now here are my 10 favourite episodes of *Degrassi*”. They put them up, and every once in a while they pop up and say, “Okay, now here's episode two; you're really going to like this one, because Joey does this”, and then they go on.

That's really what we're talking about. I think we all clearly know the ends that we want to achieve. I'm not sure of the exact wording and I leave that to experts, but I think if we can eliminate that side, we can go for the real mashup.

● (1730)

Hon. Rob Moore: Obviously, since *Degrassi* first came out—and I'm talking about the first one—there have been a lot of changes. You mentioned being on the forefront of new media, and how, while working in the traditional sense, you're also, from the sound of it, exploring every opportunity to promote through new media.

Can you talk about some of the copyright infringements you've dealt with, say, on your shows in the past, and the impact of those infringements on business?

Mr. Stephen Stohn: We are a small company, so we ourselves don't issue cease and desist letters, except to services like YouTube, which, in the United States, has a content ID regime. You can give them a notice, and then they'll follow up and provide some consistent application of what should or should not be on the service. We don't go after the Megauploads or the isoHunts.

In the United States, our broadcaster is one of the Viacom companies. We understand that the Viacom lawyers may do some of these activities on our behalf and on behalf of many other shows, but we don't get involved in that.

It is not the case that even 100,000 infringing uploads have the direct impact of stealing 100,000 videos from BestBuy. I have to acknowledge that there's something different when we've got a marginal cost of zero, in terms of producing an episode, and they take that episode. Yes, we've lost an opportunity, but would those 100,000 people have bought the episode or not? Is there some value in the fact that it's going forward?

I know I'm talking heretically, because we all say it's absolutely horrible. Sure, when the show becomes even better known, there is some value, but in the end there are sites that over a 24-hour period have 600,000 illegal files being uploaded. These kinds of enormous numbers create an entire alternate universe of "free". We try to make our content available all around the world legally, but we just can't compete with free.

The Chair: You have 10 seconds, unfortunately.

Hon. Rob Moore: I will take those 10 seconds to thank you for your answer.

The Chair: Thank you, Mr. Moore and Mr. Stohn.

Mr. Benskin is next.

Mr. Tyrone Benskin (Jeanne-Le Ber, NDP): It's a bit like old home week here. I also did a film with Tim Southam, which was called *Island of the Dead*, for those of you—

Voices: Oh, oh!

Mr. Tim Southam: Check it out.

Mr. Tyrone Benskin: It's still available on Amazon.

There seems to be a climate in which artists, creators, and rights holders asking for remuneration within the business model are thought to be a bit of an irritant. From my perspective, the business model exists because there is content, and vice versa. If there is no content, there is no reason for people, radio stations, or whatever to exist.

If we go back to the old days of television, it really was about the advertising. There were shows in between the advertising. Soap operas are called soap operas because Procter and Gamble and other soap manufacturers sponsored them. The leads would come out and say they used such and such.

In any case, the content is a very important part of the business model. Do you agree or disagree?

● (1735)

Mr. Tim Southam: I agree. It's interesting to be talking so much about the Internet when in fact we don't yet have a fungible business model across the entire spectrum of that platform. People are anticipating it, but there is no question that there is content circulating on it.

I think the answer is a little more complex. Given that there is content circulating on this platform, how is it going to become fungible? How do we control the use or the consumption of that content on a medium that's become expert at evading traditional controls?

The real answer is that content creators don't exist without remuneration, and the remuneration is broken down into two components: their labour, for which they're paid on the spot, and their authorship, which constitutes an ongoing economic relationship with that work long after it's disseminated into the marketplace.

What we're seeing with the Internet and with new media generally is a radical foreshortening of that ongoing economic relationship with the work once it's disseminated. That has huge implications for creators sitting at home trying to get their next work made and for creators going out into the labour force looking for a proper fee for their work. Producers who can't recover that money in the marketplace will turn around and offer less for the labour and for the authorship. The Directors Guild thinks the dollar number attached to the authorship should continue to be a reality in legal terms and in economic terms as we go forward into this new Wild West we're dealing with.

Mr. Tyrone Benskin: Mr. Stohn, you mentioned in your presentation that the cyberlockers and torrent sites needed to be more controlled, because those sites are potential dollars lost.

Would you care to expand on that a bit?

Mr. Stephen Stohn: I won't expand on the technical aspects; I'll leave that to our association. Mr. Noss made it clear that he wasn't disagreeing that we want to get rid of the big guys, the bad guys, the cyberlockers, but he wanted to make sure that the enabling legislation doesn't hurt the small people.

We're not interested in hurting the small people. My understanding is that the legislation really doesn't quite cover the big guys, and that in trying to achieve a balance to help the little guys, we may have accidentally provided a safe harbour for the cyberlockers.

Mr. Tyrone Benskin: Mr. Hollingshead, could you tell us a bit more about teachers who already have a regime in which they have access to copyright material through licensing, and how the fair dealing process will actually take money out of the pockets of artists?

Mr. Greg Hollingshead: The system in place now, collective licensing, really covers what they're doing in the classroom. When educators want to be excused from copying a few pages here and there in the class, called fair dealing, the value of the licence goes down. They're already paying for that and they don't want to pay for it anymore. The result is that the artists have diminished income from copyright.

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

Now, for another five minutes of questions, we'll go to Mr. Armstrong.

Mr. Scott Armstrong: Thank you, Mr. Chair.

I want to thank you for your presentations today.

Mr. Barr, I'm going to start with you. I'm interested in some of the concerns you had over clarity. You were talking about clarity in the legislation in relation to the writer, the director, and the producer.

Can you explain to me how authorship is defined under the current legislation, and how it works in the industry?

● (1740)

Mr. Gerry Barr: I'll do both things. I think you're asking how authorship is defined in legislation.

Mr. Scott Armstrong: Right.

Mr. Gerry Barr: What brings us here and drives the presentation we're giving today is that when it comes to audiovisual works, there is a gap in Bill C-11 that's easily corrected—a very narrow set of words that doesn't encroach on any of the other issues that dog this package of amendments, so I think you're in and out very quickly and simply.

However, I think it's very important to notice that the industry has taken account of the kind of clarity around authorship that we're seeking. In our standard agreement with Canada's independent producers there's a plain acknowledgement of the authorial rights of directors. Those rights and the ability of producers to repeat broadcasts is sold as a part of the compensation for directors. Screenwriters also have a similar contract arrangement with producers. The industry currently takes account of these rights.

Mr. Scott Armstrong: You're saying that there's nothing in the current legislation that defines this; it's taken care of within the industry itself. Then why is there such a need to put it into the legislation if it has already been worked out within the industry?

Mr. Gerry Barr: There are two reasons. One is that when you negotiate it, it is taken account of by the industry, but that doesn't cover the whole terrain; as a result, you will end up with examples of the kind I cited of Films Rachel, which was a dispute between a producer and an author. This was an unsigned film. It wasn't something that was taken account of by any collective agreement or contract arrangements.

Second, clarity in the law lies at the heart of a sustainable revenue stream when it comes to creators. This is a terrific opportunity to ensure that there is clarity. It doesn't add complications, but it helps enormously going forward.

Mr. Scott Armstrong: I have a question for Steve.

I'm sure that, given your background, you probably knew Neil Hope quite well.

Mr. Stephen Stohn: Yes.

Mr. Scott Armstrong: I'd like to give my condolences. I know it was a long time ago, but your whole *Degrassi* family must have been quite upset last year.

Mr. Stephen Stohn: When I was trying to tell my wife—and I'm tearing up even now—I was so choked up I couldn't even get the words out.

Mr. Scott Armstrong: I offer my condolences on that.

That show was truly groundbreaking and has had tremendous international success, both the original series and the other series. Am I right in saying that?

Mr. Stephen Stohn: Yes. Between the two of them, they're in well over 100 countries around the world.

Mr. Scott Armstrong: When you do that, you must have to deal with copyright legislation internationally.

Mr. Stephen Stohn: Indeed.

Mr. Scott Armstrong: With regard to the new legislation coming through in Bill C-11, have you faced problems and hurdles in having a show that's broadcast in so many different countries? I don't mean technical details; that's not your area.

Mr. Stephen Stohn: Copyright is territorial, so when we're dealing in the United States, we're dealing with the U.S. copyright act, and when we're dealing in France, we're dealing with the French copyright act. It really hasn't been that much of an issue. There are relatively standard terms and conditions that apply.

The only thing that happens—and it's anecdotal—is the perception internationally that Canada is a bit of a haven for piracy. That's upsetting to all of us who are Canadians and think of ourselves as being exactly the opposite of that.

Mr. Scott Armstrong: One of the reasons you've encouraged us to pass the legislation as soon as possible is so that we can take some steps to limit this ability to pirate international materials as well as domestic materials. Is that accurate?

Mr. Stephen Stohn: It really will bring Canada into line with the rest of the world.

Mr. Scott Armstrong: I have a couple of more questions.

When your original series of *Degrassi* broke in the United States, it was copied almost immediately. It was set in Beverly Hills as *Beverly Hills 90210*. It really was a copy of the whole theme of your show, but placed among Corvettes and mansions. Did you have a problem with that?

Mr. Stephen Stohn: Actually, no.

We talk about format rights or rights and ideas. They were doing something very different. The core difference between the two series is that in *Degrassi*, there are two tenets. One is that you are not alone. You may think you are going through something horrible, but you are not alone. The second is that you have choice, but every choice has a consequence. You are empowered, but every choice has a consequence. That was never a part of *Beverly Hills 90210*.

Voices: Oh, oh!

● (1745)

The Chair: Thank you, Mr. Stohn and Mr. Armstrong.

Degrassi was much better than *Beverly Hills 90210*. We don't even need to go around that debate.

Going on to the next five minutes, we will have Mr. Regan.

Hon. Geoff Regan: Thank you, Mr. Chairman, and I second that emotion.

I will first turn to Mr. Hollingshead.

You mentioned the Supreme Court of Canada decision in the CCH case. Is it your view that incorporating in the bill the six-step test enumerated by the Supreme Court of Canada would provide sufficient clarity, or at least some clarity?

Mr. Greg Hollingshead: I don't think that is enough, because it talks about six factors, and market impact is not the primary one. I think what the bill needs to do is what the backgrounder says it is going to do but doesn't, at this point; that is, it should take into consideration the legitimate interests of the copyright owner and not harm the market for a work, provided that the fair dealing use is fair. I think the market impact has to be primary, and I don't think CCH does that.

Hon. Geoff Regan: Thank you very much.

Mr. Barr, in terms of extending copyright to directors, do you see any reason to distinguish between moral rights and economic rights in this regard?

Mr. Gerry Barr: Well, both moral rights and economic rights are helped by directors, certainly. Typically, what happens is that in the remuneration package directors in Canada sign, they waive the moral rights and sell the use of copyright, if I can put it that way, for purposes of rebroadcast.

Any moral rights have to do with how you allow your work to be portrayed and the way it can be rebroadcast. It aims at ensuring that the integrity of the work is maintained, and that's referred to, of course, in the legislation.

The problem we have with the legislation, as I pointed out earlier, is that it applies only to authors. If Bill C-11 doesn't identify the directors and screenwriters of audiovisual works as authors, then in that respect, the waters are muddied with respect to their moral right.

It's not that they don't have the right. This would not be an amendment that creates any right—

Hon. Geoff Regan: I think you've made the distinction in the sense that the economic right is often signed away, but the moral right ought not to be.

Mr. Gerry Barr: It's held until waived, but it's not waived for money.

Hon. Geoff Regan: Mr. Stohn, what's your view on this, and what do you think would be the view of most production companies?

Mr. Stephen Stohn: Unfortunately, it is the exact opposite.

Hon. Geoff Regan: That's why I want to hear it.

Mr. Stephen Stohn: In the United States the production company or the producer is effectively the author and owns all rights. They're our largest partner. The CMPA and I, personally, over the years have lobbied for a clarification that the producer be identified as the author. I thought it was a very astute question to ask if there is a difference between the economic rights and the moral rights, and indeed there may well be. That could be a useful compromise in the end.

To me, this is not a technical amendment. I want to make it clear that the directors perform an absolutely valuable service and a vital service in the creation of an audiovisual work, as do the writers, as does the director of photography—the camera work is essential—as do the editors, as do the sound editors, as does the music score, as do the actors. In a typical *Degrassi*, we use about 150 different people, all of whose contributions and talents are vital to the success of the show.

There's one person who gathers those people together. There's one person who decides that this is the right mix so that the team spirit is there, and that this is the approach for it to be appropriate for The CW as opposed to being appropriate for HBO. One person raises the money to do all that. That person is the author, and that person is the producer.

Mr. Gerry Barr: Could I have a hot-pursuit answer on that?

Voices: Oh, oh!

Hon. Geoff Regan: Why not?

The Chair: You have 30 seconds.

Mr. Gerry Barr: Well, in 30 seconds, then, all I'll say is this: certainly the producer's proprietorial interest in the product that is generated in the cultural industry is obviously terribly important, but it's important to notice also that Mr. Stohn is a member of an organization that negotiates regularly with the Directors Guild of Canada, and, in the context of the agreements made with the Directors Guild, there is an unambiguous acceptance of the author's rights that attach to the director's role.

● (1750)

The Chair: Thank you, Mr. Barr.

Hon. Geoff Regan: Can I just say that I'm glad I asked?

Voices: Oh, oh!

The Chair: You sure can.

That's the end of our first round of five minutes of questioning. We are now moving on to our second round of five minutes of questioning.

Mr. McColeman is first.

Mr. Phil McColeman: Thank you to all for being here.

I noticed Mr. Stohn shaking his head during the response from the Directors Guild. I'll carry on with Mr. Regan's line to get your response, because I noticed your head was shaking.

Mr. Stephen Stohn: I do not believe there is anything in the independent production agreement that acknowledges in any way that the director is an author, nor in the agreement with the writers' guild. Yes, there are royalty payments, as there are with the writers, as there are with actors, and as may be negotiated with others in the process, including other producers, but that, to me, doesn't.... Those kinds of economic relations, which also exist in the United States, where it's very clear that the producer is the author, are in no way an acknowledgement that the director is an author.

Mr. Phil McColeman: I'll move to another line of questioning, piracy, which was touched on earlier.

You had mentioned in your presentation, Mr. Stohn, how devastating it is to you currently. Has anyone looked at, from your business, the actual...? Is it possible to quantify what's going on right now, as it continues to grow and continues to steal?

I'd actually like a response from all the panellists, from each of the groups, as to what you think the impact of piracy is today on your businesses.

Mr. Stephen Stohn: I'll start.

I don't have those overall figures, although I know our associations do. Hopefully in their briefs those types of figures are available.

What I'll say very briefly, and then let the others carry on, is that over the past few years, the licence fees that television broadcasters can pay have lowered. They have lowered for two reasons. They started lowering when specialty and cable started to become a force, when there were only the four big networks in the United States. Actually, at the time there were only three. They commanded the audience and they could pay enormous licence fees. As the market became more fragmented and moved into specialty and cable, their audience also fragmented, and the amount of the fee they could pay per show lowered. That is happening again in a second generation, as there is fragmentation because of the Internet.

If you want the same type of quality, particularly for the big-budget dramas, and I'll include *Degrassi* in there, that those fees ideally will be replaced in some ways. We can lower costs to a certain extent, but if we want to keep the quality up in order to really engage the audiences, that money needs to be replaced—and it can be replaced, through digital revenues. Indeed, it can possibly be more than replaced.

Mr. Phil McColeman: Mr. Barr, would you comment?

Mr. Gerry Barr: I think piracy has a vampire effect on revenues for creators and producers of creative work.

Perhaps you'll allow me, Mr. McColeman, to make use of the opportunity to just respond a little to my colleague Mr. Stohn.

The section of the standard agreement called “Reservation of Rights” reads as follows:

> (a) Nothing in this Agreement or any Contract for Services to which this Agreement applies shall diminish any otherwise existing rights of the Director to collect any of the so-called “author's share” of secondary use payments in connection with any Motion Picture

So author's share is—I can say it—“author's share”, and that's a copyright acknowledgement.

Mr. Phil McColeman: I'll go over to you, Mr. Hollingshead, or...?

Mr. Greg Hollingshead: I'm going to let Marian Hebb field this one.

Ms. Marian Hebb (Legal Counsel, Writers' Union of Canada): I'd just like to say that the statutory damages provision is extremely important to the Writers' Union. There is a great deal of piracy on the Internet now. We hear about music a lot, but it's also happening with books and with articles and so on, so it's very important.

Statutory damage is something that's very easy for a creator to follow up with, because it doesn't cost very much to do, but the statutory damages provision has been weakened quite substantially by some things that I'm sure you don't think about. One of the things is that there is a distinction now between commercial and non-commercial infringers. It's left so that statutory damages are only with respect to non-commercial infringements, but there are huge non-commercial infringements done by big corporations. As well, there are big non-profit organizations that also do infringe copyrights, so that distinction is something we'd really like you to look at again and reconsider.

As well, it seems very unfair to writers if a whole lot of writers have had their works infringed but it's only the first guy who gets to the court and says, “Hey, we want to be able to elect to have statutory damages” who can get the damages. People who come along later against that particular infringer will get nothing, so—

● (1755)

The Chair: Thank you, Ms. Hebb.

Mr. McColeman, you're out of time, unfortunately.

Just as a reminder to the witnesses, we have a dynamic PV officer, so you do not need to touch your microphones. We'll make sure the mike's on for you. Is that okay? It's just a reminder.

We are now moving to Mr. Cash for five minutes.

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

Thank you all for being here.

I think it's important for this committee to hear in the real world how artists and writers and filmmakers and producers actually earn a living, because for every *Degrassi* out there, there are a lot of producers and directors and writers who are still struggling.

I'd like to start by congratulating all of you for your success and for the ability and capacity you've brought to your respective industries. I think it's really important. I know you're all active as mentors as well; that's important too.

I want to pick up on a couple of comments for some clarification, first of all with respect to mashups.

Mr. Stohn, your feeling is that in your world, at least in terms of *Degrassi*, mashups have been really helpful. It's in a sense the community conversation, if you will.

In your view, is this practice monetized? In other words, are people doing this for commercial uses?

Mr. Stephen Stohn: The kind of people I was describing are absolutely not. They don't end up making any money. YouTube, of course, may.

Mr. Andrew Cash: Sure. Okay.

I'm wondering, Mr. Barr and Mr. Southam, how you regard mashups. Do you share the same attitude as Mr. Stohn on mashups?

Mr. Gerry Barr: In a couple of quick words, yes. In the general sense, the issues are the revenues that attach to the sites that aggregate mashups, and then people go there. Of course they then become monetizable. Their participation is monetizable; ads appear, and that sort of thing.

The other thing is this digest idea that Mr. Stohn was talking about. It's certainly within the realm of possibility that digests would be published; that would represent a financial drain as well, so I would like to associate myself with what he said about that attempt.

Mr. Andrew Cash: Before you get into it, Tim, it's important to underline from our side that our position is that we want to see artists get paid. If some organization out there, an isoHunt or a Megaupload, is making money off the work of artists and producers, then that needs to be dealt with.

However, what you're talking about is a very different thing. I want to clarify that, because sometimes the distinction gets muddied; in fact, the distinction is muddied at a certain point, and one of the jobs we have here is to try to make that distinction.

I wanted to get into this issue of authorship for a second. What we're seeing in this bill is a right that musicians and content creators and owners of music have that's there, and no one's disputing that it's there. It's also a right that has been monetized, and no one's disputing that; however, this bill creates a loophole that users of the content, namely broadcasters, can walk through in order to not pay for that right, a right that has already been adjudicated by the Copyright Board.

What makes you think that codifying authorship of film or audiovisual works would ultimately be protected when actually what we're seeing in this bill is the reverse—that musicians are losing $21 million here at the stroke of a pen?

We think that is wrong. We think this is a bad direction to go, and not just for musicians. I mean, this isn't about paying twice for something—

● (1800)

The Chair: You have 20 seconds left.

Mr. Andrew Cash: Go ahead.

The Chair: I thought I would help you out.

Mr. Gerry Barr: That the right is codified will not guarantee that it is effectively used. The absence of codification of a right will certainly muddy the waters and make it much more difficult for those who legitimately have the right to assert it for both moral purposes and revenue purposes, and it's for that reason that we're asking for it. It's not that it would create a new right, but it would bring some very useful clarity to bear, not only in respect of the monetization of rights but also in respect of the amendments the government has advanced.

The Chair: Thank you, Mr. Barr. I'm sure as a director you can appreciate time.

We will move on to Mr. Braid for five minutes.

Mr. Peter Braid: Thank you, Mr. Chair. Thank you to all the witnesses for being here this afternoon.

Mr. Barr, I will start with you. It's good to see you again.

Mr. Gerry Barr: It's good to see you.

Mr. Peter Braid: On this issue of authorship for audiovisual works and the notion of authorship for writers and directors, is your concern primarily TV and movie, or is it—

Mr. Gerry Barr: It's for film on all platforms. It's audiovisual work, yes.

Mr. Peter Braid: Are there any other jurisdictions around the world where writers and directors are defined as authors in similar legislation? Could you speak to that?

Mr. Gerry Barr: Yes. The most obvious example would be the European community, where effectively and as a matter of policy all members of the community will identify. They may identify a number of creators who may claim authorship of an audiovisual work, but a director is identified in every case. This is in every case. In some cases, screenwriters are identified, although not in all cases. In Great Britain, producers and directors are identified. That's where Mr. Stone and I come together, as it were.

In the United States, there's a fundamentally different system. Royalties are channeled to producers in the United States, but are split by producers with writers and directors. There is an array of designation around, but I could fairly say that you will never find it the case that directors are not included, except here. This is consequential.

Mr. Peter Braid: Okay. Is it a compensation issue, though? It sounds as though the compensation framework, in the vast majority of situations today, is negotiated. In that case, why is this so important?

Mr. Gerry Barr: It is negotiated. The industry takes account of authors' rights. We do negotiate routinely. It may mean more than 100% of the original fee for a director in Canada to sell the use of this copyright. In the United States, it could be up to 300% of the original fee, so it's a very significant piece of the story. However, where it is not negotiated—and there are many examples—it all falls on the floor.

Our collecting society in Canada, the Directors Rights Collective of Canada, regularly receives remittances from European collecting societies for compensation and royalties based on directors' rights, so we receive, but we can't give: we have no ability to collect in Canada for directors. That creates an asymmetry that really undermines the copyright system globally, because reciprocity is at the heart of this working system. National collecting societies collect for all, and then assign those revenues. We get revenues from Europe, but we give none back. Zero.

● (1805)

Mr. Peter Braid: I want to go to Mr. Stone now. If we define the author of an audiovisual work to include the director and the writer, what impact do you think that will have? Everyone around this table knows that what we're trying to do with this legislation is to balance the interests of not only creators and consumers but all stakeholder groups. Will we continue to have balance?

Mr. Stephen Stohn: It could fundamentally change. I'll give you one right in particular: the retransmission right. In Canada, there are tens of millions of dollars at stake, and it's the copyright owners of the underlying work who are entitled to this remuneration.

If the directors were named the authors and, therefore, the first owners of copyright, what would happen? Does that suddenly mean that the producers who have raised all this money to produce these shows would *ab initio* not be entitled to that money? Would it mean that an industry-wide negotiation would have to take place and that effectively, in order to hire a director, they would need to assign all of those economic rights?

This comes back to the comment earlier about a difference between economic rights and moral rights. Certainly in the United States economic rights very clearly flow primarily to the producer and can be shared under negotiated industry-wide agreement. That may be one regime; the moral rights may be a separate one.

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

We're now moving to Mr. Dionne Labelle *pour cinq minutes*.

[*Translation*]

Mr. Pierre Dionne Labelle (Rivière-du-Nord, NDP): Thank you, Mr. Chair.

In the testimony given by the various groups that have appeared before the committee since the beginning, we have often heard about the need to have a balanced bill. That is the term that kept coming up in all the presentations.

I think the people from SODRAC, the members from this group representing Canadian writers, don't feel that this bill is balanced. If major providers and producers are happy to fight against piracy, which is a good thing, I get the feeling that Mr. Hollingshead could see his work pirated because of the exceptions that are currently in the legislation.

On the one hand, we are fighting against industrial piracy; on the other hand, we are legalizing a type of piracy against artists' works. Is that correct?

[*English*]

Mr. Greg Hollingshead: Are you describing what the educators want to do as piracy? Well, yes, because what they would like to do is have professionally produced Canadian materials available without paying anything for them.

[*Translation*]

Mr. Pierre Dionne Labelle: That type of piracy is basically not any different from industrial piracy. We are talking about modernizing the Copyright Act. But I see that the authors, the creators, are losing out in this modernization.

Do you get the feeling that this modernization is being done at the expense of creators, of writers?

[*English*]

Mr. Greg Hollingshead: I think that if the bill passes unamended, yes, absolutely, it will be at the cost of creators. I don't think it would take very much to....

As you all know, this is a tremendously complex matter, and the whole business of balancing interests is extremely difficult. I'm not the first to say that the government has to be congratulated for taking it this far. We're just asking for that clarity. I think Mr. Barr asked for it earlier as well.

That's what we're asking for to defend the creator: just clarity. It's like a technical amendment, which we have suggested, brought forward, and submitted. That's all.

● (1810)

Ms. Marian Hebb: We have about eight amendments that affect particularly the writing and publishing community and that we would really like you to look at very carefully. We've given them to the clerk.

[*Translation*]

Mr. Pierre Dionne Labelle: The summary of the bill talks about "updating the rights and protections of copyright owners... so as to be in line with international standards"; it does not say anything about taking away their rights.

Would your texts be better protected outside or inside Canada, given the current international standards?

[*English*]

Ms. Marian Hebb: The fair dealing provision as it's now presented in Bill C-11 is going to open the door so broadly that we are extremely worried about the position of writers.

We're also very worried about the user-generated content provision that has been talked about, because that, as worded, would actually allow course packs such as my colleague has here. The wording is very, very broad.

A number of amendments really do worry us. We don't think they're intended to do what we think they in fact will do, and what they will do is completely unpredictable, so we are very keen on getting something in about the harm to the market.

[*Translation*]

Mr. Pierre Dionne Labelle: Would you like to add to that? Take it away.

[*English*]

Mr. Greg Hollingshead: Yes, I entirely agree.

What we're asking the committee to do is to attempt to make good Minister Moore's commitment to having clear laws and protection of investment. That's what we're asking for. Otherwise, you're robbing from those who can't afford to pay.

[*Translation*]

Mr. Pierre Dionne Labelle: I would say that...

[*English*]

The Chair: Thank you, Mr. Hollingshead and Monsieur Dionne Labelle.

[*Translation*]

Your five minutes are up.

[*English*]

Now we will go to Mr. Lake for five minutes.

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

I was going to go in a different direction, but to start I think I'll follow up on that.

We've heard a lot of testimony from people who say they're concerned about the bill being overly broad. They use language similar to what you've used. I prefer to go to the text of the bill and take a look at what the bill actually says.

For example, user-generated content has been a concern that's been brought up here. Ms. Hebb, you just brought it up. The bill says basically that user-generated content is not an infringement of copyright and then goes on and lists some clarifications. One of those is if

> the use of, or the authorization to disseminate, the new work or other subject-matter does not have a substantial adverse effect, financial or otherwise, on the exploitation or potential exploitation of the existing work or other subject-matter — or copy of it — or on an existing or potential market for it, including that the new work or other subject-matter is not a substitute for the existing one.

When you hear that language, what part of that seems broad or unclear to you?

Ms. Marian Hebb: One of the things about the substantial adverse effect is that you won't be able to tell until after it's happened. It doesn't allow you to complain in advance, so by the time—

Mr. Mike Lake: Yes, but it's pretty hard to claim that anything or anybody has ever broken the law in advance.

Ms. Marian Hebb: One of the things is that these are very small infringements, in a way, and they're done by a lot of people. If one of these works, these mashups, starts circulating around the Internet, one of the things that could happen is that the cumulative effect of all these small infringements, or one infringement that goes viral on the Internet, in fact has a disastrous effect on a particular thing.

What if somebody writes a sequel to my novel? Maybe I think that's fine as fan fiction, but maybe it's not. Maybe they've picked up the clues I had in my earlier novel and have written the sequel I was going to write. Then it's copied on the Internet and people think I've copied my fan.

Mr. Mike Lake: I'll go back to the thing you said about a whole bunch of small infractions. I know this may not be applicable to literature, but if I wanted hear a song, it's probably unrealistic that I would watch seven different YouTube clips to capture the whole song. I would lose the context of the song. Similarly, it would be unlikely that I would go online and find eight or nine different sources to capture the completeness of Mr. Hollingshead's short story. It would seem kind of unrealistic to—

● (1815)

Ms. Marian Hebb: But you could use the whole sound. I think Stephen Stohn said there were wraparounds.

Mr. Mike Lake: Again, to clarify, the law is very clear that you can't do that. It says you can't do anything that would have "a substantial adverse effect...on the exploitation or potential exploitation of the existing work or other subject-matter...or on an existing or potential market for it".

It's very clear that you can't do that.

Ms. Marian Hebb: You can—

Mr. Mike Lake: I think it's important to get that clarification. Coming back to what the bill actually says, it's quite clear that you can't do that.

Ms. Marian Hebb: Well, you shouldn't, but you don't know what will happen if you do.

Mr. Mike Lake: I'm going to go to Mr. Stohn on this, because I did want to get his feedback.

When you look at the wording there.... You used the example of someone running 10 episodes of *Degrassi* back to back as one solid YouTube clip.

Mr. Stephen Stohn: Yes.

Mr. Mike Lake: It seems to me it is pretty clear that this would absolutely not be allowed.

Mr. Stephen Stohn: I think there's a very clear question there, and obviously you're interpreting it one way. Another person might say that the single infringement, the one act of uploading it onto YouTube, does not in and of itself cause a substantial deleterious impact on the market for *Degrassi*.

If it's uploaded to Megaupload and then downloaded several other times, or even if it's uploaded to YouTube and is then viewed a number of times, at some point it will start to have that deleterious impact, but the initial person didn't do anything except one single tiny little infringement, or non-infringement, under the provision now.

Mr. Mike Lake: I don't know. I can only read it so many times, but if somebody put a full 10 episodes of your show on YouTube, which was your example, it would be pretty easy to argue before the courts that this had a substantial adverse effect on your potential exploitation of the existing work. I think it's pretty clear in the bill that this would not be allowed.

Mr. Stephen Stohn: We simply agree to disagree. To me it's not clear that....

I think it could be argued the other way. You may be right; I hope you are.

Mr. Mike Lake: The nice thing about this process is that many lawyers will be watching and paying attention to what you and I are saying right now—

Mr. Gerry Barr: That's right.

Mr. Mike Lake: —and if there's a problem, we'll get submissions from them.

Voices: Oh, oh!

The Chair: Thank you, Mr. Lake and Mr. Stohn.

Mr. Benskin, you have five minutres.

Mr. Tyrone Benskin: I wanted to return to the mashup and monetization, and the link between them.

In the early days of television, advertisers drove the financing of shows, and that's still the case. The licensing agreements and the licence fees at television stations are derived from advertisers, who put their money where the hottest shows are. We all have heard the wild amounts of money that advertisers will pay for 30 seconds in the Super Bowl.

When we go to advertising on the Internet and look at YouTube and those user-generated sites, which have banners and advertising, we see that YouTube is making money off that. I would assume that they're going to charge more for pieces with a higher number of hits, just as a good business practice.

With respect to monetization of the infringed or unlicensed works that are being used, would it be possible to derive an agreement under which money would be paid from the advertising pot that would be created?

Mr. Stephen Stohn: Absolutely, and I think that is a good thing. I don't care *ab initio* about receiving money from those mashups because they serve a wonderful purpose without receiving money. However, if somebody who has no relation to creating the mashup—either the fan who spent hours compiling it or those who produced the underlying work being mashed up—is making some money, I'd like to share in it. It only seems fair.

Mr. Tim Southam: The Directors Guild of Canada represents directors of dramas and documentaries alike. We have an interesting internal debate. Documentary directors are copyleft. They want to use materials in the world, in all forms, in order to assemble film-based arguments in their own voice. They want the building blocks to create new films. They would like access to those original materials so that they can make new films at a reasonable cost.

On the other hand, the drama directors say they can't have their materials at any cost, other than the one that they negotiate. That's the market. They can't use part of a feature film for their purposes without paying for it. On top of that, there is a moral rights issue surrounding the purpose for which the film is being used.

I've had this experience. I made a film called *One Dead Indian*, and an actress in the film made a fantastic documentary portraying the Ipperwash crisis. She reportrayed it, using large chunks of my film. My only discomfort in all this is that it seemed as if my film represented the truth in her documentary, whereas in my film it was just one point of view, so the entire debate about the use or reuse of materials is a fascinating one within our organization.

As for the economic impact, I didn't need her to pay me, but if she had made a whole lot of money on it, I think I would have wanted her to pay, and my producers would have too. They would have flowed that money to me.

● (1820)

Mr. Tyrone Benskin: The issue of reciprocity has come up before with WIPO compliance. I think it was you, Gerry, who said that there's money collected on behalf of Canadians in Europe, but there's no reciprocity within the copyright agreement, so work done by European artists here in Canada cannot be collected on their behalf and sent to them.

What would be your suggestion be?

Mr. Gerry Barr: You've stated it exactly correctly, and this has been true for some time.

I happen to know, because I've certainly been copied on the correspondence, that it's one of the reasons that the collecting societies in Europe have been complaining rather bitterly to the chief negotiator in the Canada-Europe trade talks: directors in Europe are disadvantaged by the fact that in Canada there is not sufficient clarity around directors' copyright claims to enable the directors' rights collective in Canada to collect—

Mr. Tyrone Benskin: I'm running out of time—

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

Mr. Lake has the last five minutes.

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

Mr. Hollingshead, I think I'll start this one with a point on which we agree.

I would think that everybody around the table would agree with the statement that creators should be paid for their work. I think that's something we all agree on. What we're debating right now is what that looks like.

Really, that's what this bill is all about: creating an environment where creators can get paid for their work.

Are you currently an English professor at the University of Alberta?

Mr. Greg Hollingshead: I'm retired.

Mr. Mike Lake: You are; okay. Do you remember what anthology you were using or what reading materials you were using when you did your last class?

Mr. Greg Hollingshead: In my last class, I was teaching creative writing, so I wasn't using that. When I was teaching the 18th century, it was Tillotson et al.

Mr. Mike Lake: You mentioned—

Mr. Greg Hollingshead: It cost a fortune. It was over $100 even then.

Mr. Mike Lake: That's the point I was going to make. As a student at the University of Alberta, which is where I went, I remember having to purchase a hardcover anthology. I can't remember what it was. It was very expensive and it meant many of hours of work for me.

Mr. Greg Hollingshead: Was it a big fat Norton's?

Mr. Mike Lake: Yes. I read about three short stories from it, because that's what was assigned, but I paid for the rest of them. There isn't really a question coming out of that. It's just a comment on the problems that would face some of the student groups who have come before us.

I want to get to, if we could, your comments on fair dealing. You said that it fails to give students and teachers clarity on what is allowed. I think you referred to the six factors the Supreme Court said should be used to gauge fairness of the dealing. You said, I believe—and correct me if I'm wrong—that you thought the effect of the dealing on the work should be the number one factor. You said you would rank factors, or intimated it—

Mr. Greg Hollingshead: The market would be number one, I think.

Mr. Mike Lake: That is the effect of the dealing on the market. Would you rank the other ones as well? Do you think the purpose of the dealing is not something that's important or that the character of the dealing is not something that's important? That would be, for example, whether a single copy or multiple copies were made. Do you not consider the amount of the dealing to be important at all, or do you consider it to be significantly less important?

● (1825)

Mr. Greg Hollingshead: I'd rather not get into ranking in importance the factors in CCH. I was really using it to make the point that so far, what the courts are going to do with this is very uncertain. Clearly the appeals court and the Copyright Board had a certain view of what copying would be about, and they saw the aggregate view. They saw what a lot of copying would do to the market.

The educators have appealed more than once. Currently they're in appeal to the Supreme Court on this matter. My point was that it's not for the courts to decide; it's for Parliament. It's just too significant. The potential for uncertainty in the market and loss of income to the publishers and to the writers is simply too great. This bill is going to pass before anything is heard from the Supreme Court—

Mr. Mike Lake: But the six factors exist already.

Mr. Greg Hollingshead: They do.

Mr. Mike Lake: We know that when we pass this bill, the six factors will apply to fair dealing.

Mr. Greg Hollingshead: They do. My point is simply that they don't make market impact primary, but it is the primary consideration.

If you're talking about a few pages here and there—

Mr. Mike Lake: My understanding is that some of your associates don't feel the same way you do, that some would say it needs to be flexible. In fact, I believe Access Copyright, if I'm not mistaken, said there was a need for flexibility in what the court would consider among those six factors.

I just don't understand. When I'm looking at the facts, when I'm looking at what the Supreme Court says here, I don't share your sentiment that there is a lack of clarity. I think these six factors are very clear.

Mr. Greg Hollingshead: My sense is—Marian Hebb, you go ahead.

Ms. Marian Hebb: We don't really want the six factors to be written into the act.

The court is going to apply the six factors no matter what. That's what the Supreme Court looks at and how it analyzes it; it has done that for a long time, and recently, in the CCH case, it codified it. We are concerned about its treatment of those six factors because it doesn't take the market factor very seriously.

We want you to write into the act some sort of language that makes the market primary, or at least a major factor. We would be happy if you would do only that. The court will continue to use the six factors—

Mr. Mike Lake: It's interesting—

The Chair: Thank you—

Mr. Mike Lake: —that you use that argument here but not in—

The Chair: Mr. Lake, we are—

Mr. Mike Lake: —the UGC provision where it is written.

Ms. Marian Hebb: I'm sorry; I can't hear you.

The Chair: We are out of time, unfortunately. We are well over the five minutes. I appreciate Mr. Lake's tenacity in trying to get that last question in.

I want to thank the witnesses for coming today. We appreciate your testimony and your input.

I also want to remind the committee that we are the hardest-working committee on the Hill, so in fourteen and a half hours we will be back at it again. We meet tomorrow morning in room 253-D in Centre Block.

Until tomorrow, this meeting is adjourned.