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Chair

Mr. Glenn Thibeault

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● (1530)

[*English*]

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

Today is going to be an interesting meeting. Bells are expected in a few minutes, so we'll need to have a quick interlude while we go to vote and then come back.

The clerk has briefed you all that we've changed the opening statements to five minutes. If you haven't had that opportunity I will give you a little bit of leeway, but we are trying to save time so that members can ask more questions to get the answers we are trying to look for with this committee.

We have four witnesses today. From the Recording Artists' Collecting Society, we have Ferne Downey and Warren Sheffer. From Artists' Legal Outreach, we have Martha Rans. From Microsoft Canada, we have Michael Eisen. From Business Software Alliance, we have Jesse Feder.

Thank you for being here today.

I will stop speaking and get right to opening remarks. We will start with the Recording Artists' Collecting Society.

Ms. Ferne Downey (National President, Alliance of Canadian Cinema, Television and Radio Artists, Recording Artists' Collecting Society): Thank you, Mr. Chair and committee members.

My name is Ferne Downey. I'm a professional actor, and the president of ACTRA and the Recording Artists' Collecting Society, also known as RACS. With me is Warren Sheffer, a lawyer with Hebb and Sheffer, who specializes in copyright law.

Created in 1997, RACS is a non-profit organization whose sole purpose is to distribute equitable remuneration and private copying moneys under the Copyright Act. We represent more than 4,000 Canadian recording artists and several thousand more international artists through our reciprocal agreements with collectives around the whole world.

For thousands of Canadians, making music and other creative pursuits isn't a hobby; it's a job. It's how we cover our bills, feed our families, and pay our taxes. Professional recording artists are entrepreneurs who contribute to Canada's $85 billion cultural industry.

Unlike most Canadians, professional artists don't live on one paycheque from a single employer. Rather, we rely on small cheques from many streams of revenue, which add up to allow us to pay the rent or live or invest in our new projects. Don't forget that each new recording project means creating jobs—booking studio space, or hiring an engineer, session musicians, and even a designer to create your digital album art. That's why the private copying levy has been so vital.

For nearly 15 years, our copyright laws recognized that copies have value. Millions of dollars have gone to creators to compensate them when private copies have been made of their work. Unfortunately, Bill C-11 doesn't extend the levy to the new technology being used to copy music. As a result, there will just be less money flowing to these artists, who already struggle to piece together the income to create the music we love.

Now, we've heard you. We know the government's position on this and we're not going to harp on it, but we do need you to understand that letting the levy wither away means lost revenue for these small business people. In a very real sense, the Copyright Act establishes a business model for professional artists and allows them to create a market. We know that in many cases, recording artists' greatest assets are works they have recorded in the past. They can make a living if that intellectual property is protected. Good copyright legislation must therefore do more than punish those who violate the law, it must protect the right of those who own the copyright to control and license their work.

Unfortunately, in many respects, Bill C-11 does not meet this test. There are just too many new exceptions. We at RACS support the 20 amendments put forward by the Canadian Conference of the Arts on behalf of 68 cultural organizations. Today we'd like to speak briefly to a couple of these, which are of particular interest to the recording artists we represent.

First is the user-generated content exception. One of the best things about Bill C-11 is that it finally puts the 1996 WIPO Internet treaties into Canadian law, giving performers moral rights in their oral performances and a “making available” right. However, a few pages later, moral rights are then threatened by the UGC provision that allows people to mash up creative works at whim. We understand the government's intent, but this YouTube or mash-up exception is too permissive and threatens to trample on creators' economic and moral rights. By adopting the UGC exception, you will take away the opportunity for Canadian artists and makers, such as studios and record labels, to license their products.

In other countries, collectives are entering into licence agreements with businesses like YouTube. Canadian creators need to have the same right to control and license our work. We urge you to either remove the UGC provision from Bill C-11 or amend the bill to protect creators' moral and economic rights.

Second are statutory damages. Statutory damages are an important tool in deterring copyright infringement. We believe that damages should be proportionate to the infringement, and so far in Canada they have been. Therefore, we don't see any reason to create a new distinction between commercial and non-commercial infringement. Drawing this distinction reinforces the message that it is okay for me not to pay for music or movies, as long as I'm not selling my illegal copies to anyone else.

When you combine the drastic reduction in statutory damages with the legal costs, it also sends a clear message to creators that they might as well not pursue remedies for these infringements in court.

Bill C-11 also gives illegal file-sharing sites a licence to keep enabling illegal activity by exempting them from statutory damages. Now we don't think this was intended, and we urge you to fix that technical error.

I'll turn to Warren, who will talk very briefly about a third vital area.

● (1535)

The Chair: Mr. Sheffer, we are at five minutes, so if you could give us a one-minute summary, it would be much appreciated. I'm sorry to do this to you.

Thank you.

Mr. Warren Sheffer (Lawyer, Hebb & Sheffer, Recording Artists' Collecting Society): That's fine. I'll be very quick.

The third amendment RACS is seeking has to do with bringing interpretive scope to the numerous exceptions that are proposed by the bill. We are specifically proposing that the language of the Berne three-step test be added into part III of the act as an interpretive provision.

Making such a technical amendment won't change the substance of the exceptions proposed by the bill. It also won't detract from the government's desire to have a made-in-Canada piece of legislation. What it will do is make clear that Canadian courts are to restrict their interpretation of exceptions to certain special cases that do not conflict with the normal exploitation of the work or other subject matter, and do not unreasonably prejudice the legitimate interests of the author, performer, or maker.

Many of our trading partners have this interpretive language in their own copyright legislation. It provides users and creators with greater clarity according to an internationally accepted benchmark. By including the Berne three-step test as an interpretive provision in the Copyright Act, we'll move closer to harmonizing our copyright laws with many of our trading partners', while avoiding unintended damage to creators.

To quote the preamble of the bill:

> ...copyright protection is enhanced when countries adopt coordinated approaches, based on internationally recognized norms....

The Chair: Mr. Sheffer, again, I do apologize that we have to do this. I want to try to give everyone the opportunity to present. Hopefully you can get more of that information in during the questioning.

Mr. Warren Sheffer: Okay, thank you.

The Chair: Now we'll go to you, Ms. Rans.

Ms. Martha Rans (Legal Director, Artists' Legal Outreach): Thank you.

My name is Martha Rans. I'm the legal director of the Artists' Legal Outreach. I've been a lawyer for 18 years, advising artists in all disciplines.

The ALO provides advice and information to thousands of B.C. creators every other week in the province. As a copyright educator, I lecture before hundreds of students of art and design, who are the future of the creative sector in this country.

Creativity flourishes irrespective of the law. It always has and always will. However, it does not exist in isolation from where artists work, present, speak, perform, build, and think. It requires some level of support. For many artists, copyright has supplanted arts funding as the mechanism through which we in society recognize and implicitly value their creativity.

I'm not here to talk about products and innovation, information and data, or a religion, for that matter. I'm not a legislative expert, an academic, or part of an industry. I'm here to share with you some of the experiences I've had with artists—whether they're in Temiskaming or Vancouver—around copyright.

Bill C-11 as it stands is too complicated for most digital producers to be able to interpret, and the fear of litigation harms individual artists and the cultural sectors they too comprise. This is particularly the case where we have limited access to legal advice, education, and information. This doesn't mean that we need more lawyers. It means that we need a framework built on solid principles and clear policy that are well understood by the public and creator alike, and that will enable artists to negotiate for themselves.

Bill C-11 as currently drafted fails to provide a copyright framework that is clear, predictable, or fair. The user-generated content provision is an example of this.

Here, you're proposing to legislate in an area where I would suggest it's quite unnecessary. Our sons and daughters will continue to create and upload videos of themselves dancing to Justin Bieber, whether we like it or not and whether or not there's a law. That has always been the case.

As a result in part of YouTube's algorithms intended to automate to identify potential third-party content, other sites have emerged without those algorithms—Vimeo, Blip, and others—which suggests to me that an exception is not required to enable any of us to find outlets for our self-made creations, and we don't need a law to do that.

Josh Hite, a Vancouver media artist, made a video called *Chug Chug Chug*, based on clips he found on YouTube. The exception as drafted makes it no easier for him to show it, even at a festival. Even a non-profit festival in Brazil has turned him down.

We are, however, seeing best practices emerge that respect original creators and do not penalize users. It seems to me to be worthwhile to avoid unnecessary legislative intervention that could slow the process. Getty Images recently announced a mishmash competition. It seems to me that copyright holders like Getty have adapted to the new digital landscape.

A new copyright regime that enables artists to create transformative works is what we need, one that respects how art is actually made. At the Vancouver Art Gallery right now, Sonny Assu and Jackson 2bears have work in their show that arguably infringes copyright, and Bill C-11 does absolutely nothing to change that fact.

To the extent that amending fair dealing could enable an acceptance of transformative use, then perhaps we could make use of those amendments. I'm not convinced, however, in light of the fact that this will undoubtedly foretell a significant amount of litigation.

Adding education to fair dealing will not solve the funding crisis that educational institutions and other publicly funded institutions such as libraries, museums, and galleries have. The result of the opting out of the AC tariff by various post-secondary institutions in 2011 is evidence of that. I doubt very much that adding education to fair dealing—though I personally support doing so on philosophical grounds—will change that. There's a continuing widespread misperception about the impact of that change.

In the absence of statutory licence provisions that mandate specific uses that will enable our copyright collectives and will address digital reproduction rights to artists, I don't see this taking us further forward. There are now communities of folks seeking to make it possible for widespread sharing of resources across many platforms in legislative environments—

● (1540)

The Chair: Unfortunately, I have to interrupt you. You still are under time, but we have bells. That's what the flashing means. The flashing lights mean that many of the MPs here—

Ms. Martha Rans: You mean it isn't that you agree with me...?

Voices: Oh, oh!

The Chair: Fantastic, all in favour?

Unfortunately, we'll now have to suspend to go to vote. I am expecting that we will continue this meeting after the votes. It looks like the next round of voting will be some time between 5:30 and 6:00 when there will be bells. I would expect everyone to come back, and we will do as much as we can in terms of getting the presentations and questioning in until the next round of bells.

Until then, we are suspended.

● (1540)

(Pause)

● (1720)

The Chair: Again, our apologies for the delay with the votes. I'd like to welcome back the members and the witnesses.

We will move right to the presentations because possibly there are going to be more bells coming.

I'm going to start with Microsoft, for 10 minutes.

You will be able to start afterwards.

Mr. Michael Eisen (Chief Legal Officer, Microsoft Canada Co.): Thank you.

Good evening.

In my role as Microsoft Canada's chief legal officer, I'm committed to working with government and other interested parties to help fashion the best legal and policy frameworks possible to build a productive, healthy, and safe Canada.

It goes without saying that copyright reform in Canada has been long in the making. Bill C-11 is the fourth attempt to amend the Copyright Act since 2005.

It also goes without saying that copyright law reform is critical to bringing Canada's laws into the 21st century. In addition to implementing the rights and protections of the World Intellectual Property Organization Internet treaties, we need a new framework that allows businesses to compete and Canadians to realize their potential.

Bill C-11 provides this framework. In Microsoft's view, it will provide appropriate protections to artists, creators, and other innovators. It will facilitate the emergence of new products, services, and distribution models, and it will promote the interests of educators and consumers. In short, the bill will modernize Canadian copyright law in a fair manner that deters those who would disregard the rights of creators, while striking a careful balance with the interests of users.

As the copyright reform process has demonstrated, balancing the rights of creators with the interests of users is a difficult exercise. I suspect that almost all stakeholders, including Microsoft, could identify elements of Bill C-11 that they do not like.

However, the time has come to move forward. As a result, in the interests of seeing copyright reform in Canada come to fruition, I will limit my detailed comments to the TPM provisions and a small number of technical fixes necessary, I believe, to achieve the legislative intent behind the bill.

Microsoft is of the view that Bill C-11's approach to technical protection measures—that is, a general rule against circumvention of access controls, subject to exceptions—is appropriate.

To begin with, it is most important to recognize that Bill C-11 does not prohibit circumvention of copy controls. Once a consumer lawfully obtains a copy, subject to any limitations imposed by contract, the consumer is entitled to do anything that is permitted by the fair dealing provisions or another exception.

Rather, the prohibition on access controls ensures that people who want to take advantage of a fair dealing exception lawfully acquire, through purchase or licence, a copy of the work. This ensures some measure of compensation for creators in much the same way the fair dealing provisions operate today in respect of non-digital works.

Second, the multiple exceptions to the general rule against circumvention of access controls reflect a careful balancing between the rights of creators and the interests of users. Trying to accommodate all potential legitimate uses in the legislation would create large loopholes for pirates and other bad actors to avoid liability. The same concern about loopholes justifies creating a relatively strict ban on devices. To allow trafficking in circumvention devices would make it too easy for bad actors to create and sell devices that are used for illegitimate purposes.

Third, if a legitimate concern about TPM overreach arises at some time in the future, the broad regulation-making authority found in Bill C-11 will enable the government to create new exceptions to the general rules against circumvention of access controls and use of circumvention devices.

The exception process provides government with flexibility to address, among other things, the use of TPMs to improperly restrict competition in the aftermarket sector, or to adversely affect fair dealings for news reporting, commentary, parody, teaching, or research.

The government also retains the power by regulation to require owners of copyright-protected work to make their work accessible to people who are entitled to the benefit of an exception. In short, the TPM provisions ensure that there will be an appropriate balance between the needs of creators and users, both now and in the future, if unintended consequences are identified or as new technologies emerge.

Moving now to technical fixes, Microsoft's view is that Bill C-11 requires limited revisions. In particular, the wording of the new “exceptions to infringement” provisions should be revised to avoid what we expect are potential unintended consequences. Most significantly, the exceptions are not bound by a requirement that the dealing with the work be fair.

● (1725)

The exceptions of most concern to Microsoft are interoperability of computer programs, proposed section 30.61; encryption research, proposed section 30.62; and security, proposed section 30.63. In each case, a simple technical fix is available.

Specifically, the exceptions could be made subject to a requirement that the applicable activity be fair. The factors to be used to assess what is fair would be the same factors identified by the Supreme Court of Canada in the CCH decision in connection with fair dealing: the purpose of the dealing, the character of the dealing, the amount of the dealing, alternatives to the dealing, the nature of the work, and the effect of the dealing on the work.

Finally, I would like to conclude by thanking the committee for providing Microsoft with an opportunity to make these remarks.

I look forward to any questions, if we have that opportunity.

The Chair: Thank you, sir.

Now we go to Mr. Feder. The floor is yours for 10 minutes.

Mr. Jesse Feder (Director, International Trade and Intellectual Property, Business Software Alliance): Thank you.

Mr. Chairman and members of the committee, my name is Jesse Feder. Thank you for inviting the Business Software Alliance to appear today.

BSA is a non-profit trade association created to advance the goals of the software and information technology industries. BSA is active in more than 80 countries, including, of course, Canada. Our global mission is to provide a legal environment in which the industry can prosper.

As technology companies, BSA members are strong proponents of the freedom to innovate. They are also strong proponents of a vibrant Internet. Not only do our companies provide much of the technology that makes the Internet work, but our industry has staked a great deal on the future of cloud computing, which requires a functioning Internet.

The software industry also happens to be the world's largest copyright industry. We are critically dependent on copyright protection and enforcement to safeguard huge investments in new creative products. Combatting software piracy is a big part of what BSA does. With more than $58 billion a year in software theft around the globe, there is plenty for us to do.

Because of our dual interests in promoting innovation and fighting piracy, we know how important it is to strike the right balance between technology and copyright interests. We do not view these interests as irreconcilable.

As we see it, Bill C-11, broadly speaking, has three principal objectives: modernizing Canada's copyright law by implementing the WIPO treaties; addressing online infringement; and revisiting the balance of rights and exceptions in existing law. BSA strongly supports these goals.

When we examine the bill in light of these objectives, we find it to be a good starting place. Nevertheless, there are elements that we believe could be clarified or improved upon, which I will describe further in my testimony.

BSA commends the drafters of Bill C-11 for doing a thorough job of implementing the WIPO treaties. Two elements of WIPO implementation of particular importance for our industry are the right of “making available” that covers the posting of works on the Internet, and the protection of access and copy-control measures from acts of circumvention and trafficking in circumvention tools, which Mr. Eisen already spoke to. These are critical legal tools in the Internet age, and we look forward eagerly to their enactment.

Going beyond WIPO treaty implementation, Bill C-11 includes additional provisions to address online piracy. Although unlicensed software used by businesses is by far our industry's biggest piracy problem, online piracy is a serious and growing problem as well.

At the same time, we recognize that the Internet is used overwhelmingly for legitimate purposes. Enforcement tools need to be crafted in a way that does not harm the Internet or infringe on legitimate conduct.

BSA believes that fighting online infringement works most effectively when it is a cooperative effort by right holders, intermediaries, and end users. Unfortunately, we don't believe that the bill will quite get there.

The bill creates a new cause of action against those who provide services on the Internet that are designed to enable acts of infringement. At the same time, it creates blanket immunities for ISPs, requires ISPs to forward notices of claimed infringement to subscribers, and limits remedies against direct infringers if the infringements are for non-commercial purposes. In effect, the weight of enforcement falls largely on a narrow category of technology providers whose offerings enable infringement; enforcement against direct infringers is made more difficult and uncertain; and ISPs are largely relegated to the role of bystanders.

BSA agrees that those who, by their conduct, induce, encourage, and assist others to infringe, or who build their businesses on others' infringement, should be liable as infringers. We believe that is the kind of conduct the bill has in its sights. Unfortunately, the new cause of action is undercut by the unavailability of statutory damages.

Our biggest concern with the bill is the role it envisions for ISPs. We readily agree that ISPs should not bear the burden of policing the Internet, nor should they face liability for damages for simply operating a network. They should, however, cooperate with right holders by taking action to curtail infringing conduct when it is brought to their attention, or is so blatant and obvious that it cannot escape their notice.

● (1730)

In this context, it's important to draw a distinction between hosted infringement and peer-to-peer infringement.

For hosted content, ISPs should be required to remove files expeditiously, when they receive a notice of claimed infringement, or become aware of facts or circumstances from which infringing activity is apparent. Subscribers should have the right to dispute such a notice, and have the content restored unless the right holder commences a lawsuit. This is the approach taken in many jurisdictions around the world. Experience has shown it to be effective and minimally intrusive.

Content on peer-to-peer networks presents a bigger challenge, since the remedies in that space are far more intrusive. For content that is not hosted on an ISP system or network, notice-forwarding, as proposed in the bill, is a good first step. Beyond that, BSA supports voluntary arrangements between ISPs and content owners to use ISPs' terms of service agreements to sanction repeat infringers. If sanctions are to be imposed on subscribers under colour of law, subscribers must be given a fair hearing before an impartial third party prior to imposing any sanctions.

To create an incentive for cooperation by ISPs, the liability limitations ought to be conditioned on ISPs taking the steps I just described. In addition, right holders should be permitted to obtain an injunction against an ISP to halt infringing activity.

Finally, the provision on immunity for hosting should not apply to liability under the proposed enablement provision. It would not make sense to grant immunity to an entity that, by definition, is a bad actor.

With regard to statutory damages, we are concerned that Bill C-11 would limit their availability against non-commercial infringers. This would have a detrimental effect on the deterrent value of copyright protection. It also would put an unfair burden on right holders in the context of online infringement, where it's often difficult or impossible to quantify damages. Whether or not an infringement is carried out for commercial purposes, it can have a significant commercial impact. We see no justification for holding non-commercial infringers any less accountable for their behaviour.

Time does not permit detailed discussion of the many new limitations and exceptions proposed in the bill, but I would like to make three brief points.

First, computer programs are already subject to exceptions under section 30.6. A number of the proposed exceptions would overlap these existing exceptions. We believe the more specific exceptions of section 30.6, rather than the new general exceptions, are what should apply to computer programs.

Second, the proposed amendment of section 30.6 to override contracts should be stricken. Nearly all software is licensed to users. The licence model has been employed by the software industry since its inception, and has been critical to the industry's success. Licences allow software creators to grant a clear bundle of rights to their customers, including rights more extensive than those in section 30.6. We are not aware of any real-world problems under the existing provision, and urge that it be left alone.

Third, the bill proposes a new interoperability exception inspired by article 6 of the EU's 1991 computer programs directive. The directive contained a number of safeguards to ensure that the exception would not be used inappropriately. Those safeguards ought to be included in proposed section 30.61.

Thank you again for the opportunity to testify today. I'd be happy to answer any questions if the opportunity presents itself.

● (1735)

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

I'll now go back to RACS, if you have anything else you would like to add, for about four minutes. That would give you the full ten minutes.

Ms. Ferne Downey: I'll even take slightly less.

The Chair: Okay. No problem.

Ms. Ferne Downey: Thank you so much, Mr. Chair.

If I might, I would love to have our lawyer, please, give you an illustrative example.

The Chair: Great.

Ms. Ferne Downey: Thank you.

Mr. Warren Sheffer: When Ferne was addressing the committee before we broke, she indicated in her presentation the concerns that RACS has with the UGC provision and the proposed distinction in the statutory damage provision between non-commercial and commercial infringement. I'd like to lay out an illustrative example that will help demonstrate some of the concerns we have with those two provisions.

If you will bear with me, I'll run down some facts for you. Here is our facts scenario.

Imagine on the one hand that you have a thrash metal indie band of young performers. They are just beginning to get a significant following of fans on the local scene, and have a website where they make half a dozen of their recordings available to the public for free digital download. They want to get their sound out there, and they would never think to attach a digital lock to their recordings.

On the other hand, you have an anti-Semitic, neo-Nazi organization that's headed up by one individual. This individual loves thrash metal and thinks it would be clever to mash up the band's six songs and mix in some of his own lyrics. The lyrics don't qualify as hate speech, per se, but they are objectionable to the band. He uses the mash-up as the soundtrack of the organization's own website, and it's heard all around the world online. His purpose is solely non-commercial.

Let's go through some analysis, first with the UGC. If the UGC provision becomes law, he'll be able to assert the UGC provision as a defence to the band's claim of infringement because, one, his purpose is non-commercial; two, he credited the band as author and performer of the songs in the mash-up; three, he had reasonable grounds to believe the songs he downloaded with the consent of the band didn't, and don't, infringe copyright; and four, he similarly didn't think the mash-up had any adverse effect on the band's songs.

It would be up to the band to demonstrate that the mash-up does have an adverse effect on the band's songs, and if they wish to challenge the organization's mashed up use of their songs, they would need to go to court. The band's case would be put at a disadvantage because the UGC provision does not make express reference to the band's moral rights in their songs and the performance of those songs, particularly their right to prevent prejudicial associations with objectionable causes like this one.

Now on the statutory damages provision, if the revised statutory damage provisions become law, the band would be confronted with the fact that they can only seek a maximum of $5,000 against the individual for all violations of all six songs. When you consider that it would cost the band thousands of dollars to pursue the claim in small claims court with a lawyer, query whether they'll be able to afford to do that under the law proposed by the bill.

At RACS, we think the government doesn't intend the foregoing consequences, of either the proposed introduction of the UGC provision or the proposed reduction of the statutory damages provision.

As we mentioned before, RACS supports the book of amendments that the Canadian Conference of the Arts has submitted to this committee. There are two amendments that address squarely the statutory damage provision and the UGC provision.

Those are our comments. Thank you.

● (1740)

The Chair: Great. Thank you very much.

We're now going to Ms. Rans, for five minutes and 30 seconds.

Ms. Martha Rans: Having had the opportunity to hear Warren's fact situation, I would absolutely say that I deal with those situations all the time. They happen every day. There are a lot of situations in which artists find themselves, where they are not in a position to litigate. They can barely access legal advice.

There are now six clinics across the country. All of us are struggling. We are all operated by volunteers.

I would encourage you all to think carefully about what will happen after this piece of legislation is passed, in whatever form it is, and to fully fund in whatever ways are possible those of us who are actively engaged in making sure that everybody understands the implications of this bill, not just the creators and not just users, but all of us, all the public, everyone—creators or users.

Every single one of us in this room has a stake in what comes out of this room. This week is Open Education Week, a celebration of our access and willingness to share our collective knowledge—knowledge that has been nurtured and sustained by creators. Artists are creators, all of us.

This growing sector has adopted innovative licensing models for the development of educational resources. Licences allow creators to decide how their work can be used. It is a system that creates alternative distribution models, and at the same time recognizes the need to remunerate creators. The widespread adoption of creative commons licences in this area, though limited in others, suggests that people are looking for different ways to interact with copyright.

There are new communities of folks seeking to make it possible for widespread sharing of resources across many platforms and legislative environments. My concern is that our emphasis on enforcement, on behalf of certain industrial models and practices, distracts us from what we should actually be doing, which is ensuring that each of the new models provides direct remuneration to the very creators who are so often left out of the equation, as they are in this bill.

Those in the open education sector, including technologists, librarians, archivists, and educators, have said to me time and again that they want to do this, but the existing models are preventing them from doing so. I can't ignore what they tell me, particularly since so many young and emerging artists and designers tell me the same thing.

Enforcement is not the answer to the challenges that digital technology brings. I am not exactly sure what is. Based on what I've heard and read, it appears to me that many creators and creators' groups, like the CCA's submission before this committee, are indicating that the level and support for TPM and anti-circumvention provisions may be limited. At a minimum, it appears we agree they need to take into account the existing exceptions in the act before you pass this bill.

Creators, as users, should not have to litigate to have access to what they need to create new work. Whether you're a documentary filmmaker, musician, painter, photographer, or anything else, you shouldn't have to litigate to enable access.

● (1745)

The Chair: Ms. Rans, I have to interrupt you for one second.

Ms. Rans still has about three minutes. I'm going to ask for unanimous consent of the committee to let Ms. Rans complete her statement, and we'll go from there.

Do I have unanimous consent?

Some hon. members: Yes.

The Chair: Please continue.

Ms. Martha Rans: Thank you.

What artists want is to communicate with those who want to enjoy and use their work.

As proposed, Bill C-11 invites litigation in many areas. The burdens of litigation bring fear, confusion, and unintended costs—costs this government and the people of this country will bear. They could create problems where none need to exist and could delay the progress that has been made in best practices.

Will Bill C-11 enable transformative works and alternative distribution networks, as well as provide streams of remuneration through digital reproduction in collective societies? You need to answer that question.

The norms that underlie copyright should be the ones that enable Canadian culture to flourish, help artists make a reasonable living and reach an audience at the same time—not as an either/or proposition—allow for less restrictive personal and educational reuses, and maybe, take a step away from intellectual property solely as commodity exchange and towards meaningful cultural conversations.

Thank you.

The Chair: Thank you, Ms. Rans.

Thank you to all of the guests and witnesses for being here today. I do apologize for not having time for questions, but we at least got to hear your presentations and testimony, which will be considered by the committee.

Again, thank you.

The least we can do is to offer for you, and everyone here, to have some food on us. Please, eat the meals that are at the back.

To the committee members very quickly, at Monday's meeting we're starting clause by clause, from 3:30 to 6:30. The notice will go out as to where the meeting is.

Also, the amendments to Bill C-11 should be submitted to the clerk 24 hours prior to clause-by-clause consideration and distributed to members in both official languages, so that's Friday by 5 p.m., to the clerk.

Hon. Geoff Regan (Halifax West, Lib.): We start on Monday, do we? Sorry, I missed—

The Chair: We start clause by clause on Monday. The time of the meeting is 3:30 on Monday.

Again, thank you to the witnesses. I hope you enjoy the sandwiches.

This meeting is now adjourned.

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