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Chair

Mr. David Sweet

Standing Committee on Industry, Science and Technology

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● (1100)

[*English*]

The Chair (Mr. David Sweet (Ancaster—Dundas—Flamborough—Westdale, CPC)): Ladies and gentlemen, *bonjour à tous.* Welcome to the 42nd meeting of the Standing Committee on Industry, Science and Technology.

We have two witnesses before us right now. One is Diane Lank, who is from Desire2Learn Incorporated. From the Entertainment Software Association of Canada, we have Jason Kee, who is a director.

Madame LeBlanc, you had something to say before the witnesses start.

[*Translation*]

Ms. Hélène LeBlanc (LaSalle—Émard, NDP): Good morning, Mr. Chair.

I wanted to point out that representatives of the manufacturing sector are here on Parliament Hill. I had the pleasure of meeting them. Since we were talking about future committee business, I would like to remind committee members that we passed a motion to study various sectors, including the manufacturing sector, in the context of innovation. We could consider that motion for further study.

Thank you very much, Mr. Chair.

[*English*]

The Chair: I'm sorry, I missed the first portion. Which motion are you talking about, Madame LeBlanc?

[*Translation*]

Ms. Hélène LeBlanc: It was a motion that we passed and that is already on our to-do list. It was about taking a look at industry in Canada, of which the manufacturing sector is part, in the context of job creation and innovation. With manufacturing sector representatives present, I wanted to take the opportunity to remind my distinguished colleagues that we have passed the motion and that we could study it in the near future.

It is just a reminder.

[*English*]

The Chair: Okay, we'll discuss it at the next business meeting.

[*Translation*]

Ms. Hélène LeBlanc: Of course. I just wanted to point that out, given that the representatives are here.

The Chair: Fine.

Ms. Hélène LeBlanc: Thank you.

[*English*]

The Chair: I have introduced our two witnesses, and we'll begin. We'll use the order that is on our agenda, beginning with Diane Lank.

I believe the clerk mentioned to you that you would have six to seven minutes, but we only have two witnesses today, so I will give you some latitude if you go over a bit. I think all the members will be fine with that.

Please go ahead with your opening remarks, Madam Lank.

Ms. Diane Lank (General Counsel, Desire2Learn Incorporated): I appreciate that. I won`t have to speed read.

Good morning, Mr. Chair, and esteemed members of this important committee.

My company is honoured that its views are being solicited on this important topic of IP in Canada. I am personally honoured to be appearing before you. Thank you for the opportunity.

My name is Diane Lank and I serve as general counsel for Desire2Learn Incorporated, based in Kitchener-Waterloo.

Our company is a remarkable success story, not only by Kitchener-Waterloo standards but by any measurable standard. Our success, however, has not been without its bumps. We were founded by John Baker in 1999, when he was a student in systems design engineering at the University of Waterloo. He incorporated the fledgling company a year later and John continues to serve as our president and CEO.

Our company provides e-learning. Today we help over eight million people in their learning endeavours. It is our goal to break down barriers and to engage, inspire, and enable people worldwide to achieve their potential.

We count among our first clients the University of Guelph, and the University of Wisconsin, both of which remain clients to this day. Now, however, we touch more than higher education. Our clients include various K-12 districts, corporations, and associations. We're still based in Kitchener-Waterloo—in fact, across the street from our original office—but we now have subsidiaries in the United States, the United Kingdom, Australia, Singapore, and the newest member of our Desire2Learn family, D2L Brazil.

I joined the company in 2005, when we had about 50 employees. At that point, John and I agreed that I'd start part-time to see how it would go. Within a month I was more than full-time. Then the fun began.

A few months after I started, we got news that our major and much larger competitor, Washington, D.C. based Blackboard Inc., had sued us for patent infringement in the U.S. District Court for the Eastern District of Texas. The news arrived on a Wednesday afternoon before our users' conference, slated to begin the following weekend in Guelph. Because our clients were largely academic institutions that valued transparency, we immediately decided to be as transparent as possible. We advised our staff on Friday and announced to our users at the beginning of the conference on Sunday that we had been sued.

Initial estimates, which later proved to be significantly underestimated, suggested that during the next two years we would be incurring legal fees of about $2 million in U.S. funds—and that was well before parity—to fight the suit. The underestimate did not include the significant non-legal costs associated with U.S. litigation: costs of video recording and transcribing dozens of depositions, oral examinations, in Canadian parlance, producing literally millions of pages of documents, having those documents reviewed so that we knew what we were providing to our main competitor.

Then there's the review of the millions of pages that Blackboard produced: motions, experts on damages and technology; travel to hearings, depositions, and meetings; legal fees and costs associated with the re-examination that we filed with the United States Patent and Trademark Office. The list goes on and on. The out-of-pocket and legal fees and related expenses don't begin to address the distraction of litigation within the company, or the dampening effect on our sales.

In February 2008, after millions of dollars had been spent, and a two-week trial in lovely Lufkin, Texas, we lost. The Lufkin jury determined that the Blackboard patents were valid and that we had infringed them. We were subject nearly immediately to an injunction preventing us from selling the version our software had been found to have been infringing.

I'll never forget the trip back from Texas after the loss. Desire2Learn's major brains trust was on the plane. As soon as the seat belt sign was turned off, John and the other leadership of the company began aisle discussions on workarounds to make sure we could quickly release a product that we believed would not infringe. By the time we landed, they had a plan. Within 30 days we had a new product that we believed avoided the patent. Remarkably, all of our U.S. clients agreed to be upgraded in the short three-month timeframe the court permitted. And, throughout the litigation, we lost not a single client.

In July 2009, nearly three years to the day after the litigation began, the court adopted our view at the U.S. Federal Court. It was a complete victory.

● (1105)

In the meantime, our competitor had filed additional actions against us: one in Texas, over a new patent that was issued; one in the United States International Trade Commission—which is a very interesting topic for another day—a quasi-judicial body in the U.S.; and one in the Canadian Federal Court, over a patent that the Canadian Intellectual Property Office had granted. As a result of the new suits, the overwhelming U.S. appellate win, and the undeniably smeared reputation that Blackboard had received in the marketplace, all of the litigation was favourably settled in December 2009.

Since that time, Desire2Learn has grown exponentially. Today we boast nearly 600 employees worldwide, with approximately 90% of our staff located here in Canada.

What could Canada have done to help us avoid the issues? As a practical matter, probably very little. If a competitor wants you out of business, suing you, especially in a U.S. court, is a pretty good bet.

Addressing the Canadian IP regime in a vacuum serves no useful purpose. We must accept the realities and be prepared to play under the U.S. rules. Few Canadian companies have the luxury of being exclusively Canadian. Upwards of 70% to 80% of our business is U.S.-based; even though we're expanding globally, the U.S. is still our largest market.

We've now adopted the if-you-can't-beat-them-join-them mentality; we're filing for patents. Although we use Canadian patent counsel, all of our applications are initially filed in the U.S. While we do seek Canadian protection for both trademarks and patents, protection solely in Canada would not be helpful, either offensively or defensively.

As a government initiative, it might be worthwhile to invest in educating start-ups about the importance of protecting their IP and providing some guidance about how to prepare to defend themselves if challenged. These educational initiatives may take the form of classes about IP in engineering or through organizations such as our local Communitech or, perhaps, even through a really good e-learning company I know about.

You may also wish to look at Canadian patent fees. In some areas they're quite costly. For example, Canadian patent fee maintenance may be prohibitive to new companies. The maintenance fee regime differs from the U.S, where maintenance fees do not begin until a patent is issued. Assistance in funding patent applications may also be useful. In our experience, it costs between $8,000 and $12,000, excluding filing fees and significant internal costs, to file a utility patent on either side of the border.

Educational institutions can also be of some help. Institutions of higher learning can and should, under appropriate NDAs, reach out to companies where they believe the educationally created technology might come into the best use. We're going through that right now with a U.S.-based client who sought us out.

I know this is a heady challenge, but we encourage Canada to seek more cross-border cooperation with the U.S. patent system, both the U.S. Patent and Trademark Office and the judicial system. Less than one month after we lost our jury trial in Texas, the patent office in the United States found the patent at issue to be invalid as a result of the re-examination we had requested more than two years earlier. The court refused to suspend the litigation while the PTO was engaging in its re-exam, but had the litigation been suspended during the re-exam, we would have saved millions of dollars in fees and costs. If somehow the U.S. judicial system were encouraged to work with the Patent and Trademark Office, rather than at odds with it, it would make for a more efficient system.

We'd also like the U.S. system to be more cognizant of damages that should be actually awarded in patent cases. Although the patent over which we were sued had very little relation to our overall product, the initial request by Blackboard was for a licensing fee of 45% of all of our revenue.

● (1110)

There must be some relationship between the value of the patented technology and the product as a whole. At some point, it would perhaps be very useful to have a discussion, especially with the United States, about the wisdom of offering patent protection for software. We believe it would be a sounder approach with copyright, like a book. Why should software or business methods be patentable? In some jurisdictions, particularly the European Union, they are not. In reality, the patent regime, at least in the U.S.A., is more related to business wars than to IP protection. In our case, our competitor simply wanted to buy us. They had tried numerous times before. We refused, and they sued.

Finally, all but the largest players are naive and ignorant about lawsuits, unless, like us, the company has had the misfortune of experiencing one. At the end of the day, Canada can't really influence litigation trends, good or bad. Education can help, but just to be aware of the risks. Canada can arm our businesses to be aware of the situation and try to mitigate risks where possible and feasible. In a perfect world, the U.S.A. would understand that qualified judges would be better prepared to hear patent cases, as is the procedure in Canada, but Canada is not going to disturb the U.S. jury system. Maybe Canada could play a role it has so successfully played in other areas: the lead in bringing various parties to the table to consider seriously the issues of intellectual property, what should be entitled to protection, and how.

I come with more questions than answers, and perhaps a good story, but more challenges than solutions, and few firm recommendations. The IP regime in Canada, if properly approached, may help others avoid our situation. Given our history, one is left to wonder what would have happened to our company had it not faced three and a half years of brutal, exceedingly costly, and time-draining litigation.

Thank you for your attention.

● (1115)

The Chair: Thank you, Madam Lank.

Now on to Mr. Kee.

Mr. Jason Kee (Director, Policy and Legal Affairs, Entertainment Software Association of Canada): Thank you, Mr. Chair.

My name is Jason Kee. I am the director of policy and legal affairs with the Entertainment Software Association of Canada. ESAC is the industry association representing companies in Canada that make, market, and distribute games for video game consoles, handheld and mobile devices, personal computers, and the Internet.

Video games are the fastest growing entertainment medium in the world, with some blockbuster titles rivalling Hollywood movies in terms of sales and excitement. In 2011, Canadian retail sales of entertainment software and hardware grew by 3% to reach $2.5 billion. Sales are currently projected to continue growing and obtain revenues of $3 billion by 2016.

Canada has established itself as a world leader in the development of video games. Canadian game publishers and developers create some of the most successful titles. Canada is now the third most successful producer of video games in the world, second only to the United States and Japan. We are first on a per capita basis. The Canadian entertainment software industry has expanded at a phenomenal rate, and is projected to grow at 17% over the next two years despite a challenging economic climate.

The Chair: Just a moment, Mr. Kee.

Mr. Lake.

Hon. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC): If you wouldn't mind slowing down just a touch, that would be great. We only have two witnesses today. It seems that you are talking pretty quickly. I am trying to jot down some notes. We're willing to give you a little extra time in terms of the opening statement as the Chair had mentioned.

Mr. Dan Harris (Scarborough Southwest, NDP): It's easier for the translators.

Mr. Jason Kee: Thanks. The industry employs almost 16,000 people in a variety of highly skilled and high-paying jobs at nearly 350 companies across the country. Entry-level workers in the industry earn almost twice as much as the average recent college graduate. The average salary across all Canadian provinces is just under $75,000 per year, which is twice the Canadian median. The industry directly contributes $1.7 billion to the Canadian economy and billions more indirectly. Furthermore, game companies drive research and innovation, with 55% of all game companies developing proprietary technology and devoting 25% or more of their overall production budgets to research and development.

Canadian game developers and publishers are clearly world leaders in innovation and creativity, and they contribute significantly to the Canadian knowledge economy. These companies are in the business of creating, financing, and commercializing IP and of developing, marketing, and selling an array of entertainment software products and services to a wide range of customers. Consequently, intellectual property is the cornerstone of our industry, and strong protection and enforcement of IP rights are crucial to the continued growth and success of our sector.

In today's market, developing and publishing a best-selling video game title is a high-risk endeavour often requiring massive investment. A high-end title will typically cost $15 million to $40 million to make, with teams of 100 to 200 people working together for at least two to three years to complete it. It is expected that these development costs will simply continue as we introduce new gaming devices.

The vast majority of revenue in the games industry is earned from upfront sales earned immediately after a game is released in the market but, due to the highly competitive nature of our marketplace, there is a considerable risk that a game will not be able to sell enough units to recoup these million dollar investments. Consequently, game companies must use the revenues from successful titles to offset development costs for the less successful games. In this type of market, piracy of video game software is devastating because it siphons the revenue required to recover the enormous investments necessary to develop successful game products and, left unchecked, leads to studio closures and lost jobs.

By providing rights holders with the tools they need to protect their rights and pursue those who facilitate piracy, a robust IP regime enables creators and companies to choose for themselves the best way to make their products available to the marketplace. This encourages investment in the development of new products, services, and distribution methods, and supports a diverse range of new and innovative business models, which in turn fosters legitimate competition, more consumer choice, and ultimately, lower prices for consumers.

One example of this in the recently passed Bill C-11, the Copyright Modernization Act, are the new provisions aimed at preventing circumvention of technological protection measures, or TPMs, that are used to protect copyrighted works. These are critical to the video game industry because our industry makes extensive use of sophisticated TPMs to protect our products, but in the absence of a legal prohibition circumventing this form of copy protection, a robust and lucrative but illegitimate market for devices and services specifically designed to break our copy protection and facilitate widespread piracy has developed. Indeed, in Canada, commercial operations selling these devices and services that enable piracy of our games operate openly and, consequently, Canada has had the unfortunate reputation of becoming a major transshipment hub for these devices.

Moreover, we are in the midst of a fundamental change in the way we consume our content. Creators increasingly use online platforms and other new and innovative distribution methods to obtain their content. Strong anti-circumvention measures such as those contained in the bill are essential, not only to prevent piracy and allow creators to determine how their works will be used, but also to ensure that the new platforms are secure and maintain the integrity of the nascent and developing digital marketplace. The bill provides urgently needed measures to pursue those who facilitate piracy by trafficking in these devices and services, and we eagerly await the coming into force of these new provisions.

We also strongly recommend the strengthening of civil and criminal remedies for commercial-scale copyright infringements, as well as the introduction of new border measures, such as empowering customs officials to make ex officio seizures of counterfeit and pirate products and circumvention devices at the border without a court order, which they're not presently entitled to do.

Similar measures have actually been introduced in the anti-counterfeiting trade agreement that is also currently under discussion.

Finally, law enforcement and prosecutors should be directed to give a higher priority to IP enforcement as part of their operations and to seek deterring penalties against those who are convicted of IP crime.

Thank you very much, and I look forward to your questions.

● (1120)

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

We'll now move on to questions. We'll go to Mr. Lake for seven minutes.

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

Thank you to both witnesses for giving us something to think about today.

I'll start with Ms. Lank. I had the opportunity to visit Desire2Learn about a month ago. As I was mentioning to you earlier, I was blown away by the operation. I had no idea how big the organization was. From what I understand, it is growing substantially as well. Maybe you could speak to that.

How many employees are there? It sounds like it's going to grow. To what extent is it growing, and why?

Ms. Diane Lank: First I'll do a little advertising. If anybody is looking for a job, we have about 170 postings on our career site right now. We're about 600 employees worldwide. About 90% of those are in Canada, the vast majority in Kitchener-Waterloo. We're soon going to be starting a small operation in St. John's, Newfoundland, but most everybody is in K-W. As a matter of fact, the only official office we have at this point, at least for this week, is in K-W.

The growth really has been phenomenal. If you say that in 2005 we were 50 and now we're 600, that was not a steady growth. When the patent litigation ended in December 2009, we were about 150 employees. Much of the growth has been in the past three years.

I don't think anyone in our company recognized the pent-up demand the patent litigation caused on both sides, both from our competitor and from us. There were a lot of prospects that had taken a wait-and-see attitude, and since then it has been phenomenal.

We're very excited by it. We have moved to new space, which is old space in K-W, and now we're looking for more space. We cannot keep up with hiring. I used to know all three people in the sales department and now it really is overwhelming. We love our Canadian base and we have no intentions of giving that up.

Some people may be aware that we just accepted our first round of financing ever, which is pretty remarkable for a company our size. We have an $80-million investment, and that investment was cross-border. Almost a half of it came from OMERS, the Ontario Municipal Employees Retirement System, and the other half came from a U.S. investment outfit called NEA.

We're really excited about that turn of events.

● (1125)

Hon. Mike Lake: It's pretty exciting to see what's going on in Kitchener-Waterloo. I'm sure that Mr. Braid would share that excitement, but it was a real eye-opener for me to see that rejuvenation of the centre of the city too, in that historic area you're in. I believe you share with Google and many other companies that are doing pretty well.

It is interesting that you talk about this litigation process. In a case that you won—

Ms. Diane Lank: Eventually....

Hon. Mike Lake: —it suffocated your growth. It really held back the incredible growth that probably could have happened earlier, probably at a time when the economy in that area could have used it too.

What would the company have done differently from the start? Knowing what you know now, what would you have done differently?

Ms. Diane Lank: That's a question we discuss internally to some degree.

Looking back on it, I think we would have been wiser in estimating the fees and costs. I don't know how you would do that, and I'm a lawyer and I'm used to doing stuff like that. Personally, I would have had more serious talks with John and others in leadership about the long slog U.S. litigation can provoke.

Hon. Mike Lake: If you don't mind, I'm going to break in. I meant even earlier than that, though, the way your IP was set up, whatever it was that led to the litigation in the first place.

Ms. Diane Lank: John, by the way, sends his regrets. I know he would have loved to be here today.

He and I talked about that yesterday. I asked him what we could have done differently. I think the only possible difference would have been if we had had some patents in our defensive portfolio. That's a pretty common strategy by a lot of companies these days. It's kind of like mutually assured destruction in the old arms race: you have two patents, but we have three, and if you come after us we're going to get you. He was not encouraged to do that when he started the business. Indeed, he says he was told that what he thought were great ideas were not patentable in Canada. Remember, back in the early days he was pretty Canada-centric.

That would have been probably the only thing, short of selling out to our competitor or settling. Had we had some patents in our pockets, it might have made a difference. Remember that we were sued in 2006 over a patent that was filed in the U.S. in 1999, so there is this whole thing with prior date. Even if we had filed for a patent in 2000, the 1999 date would trump the 2000 date. It's a very difficult question to answer, other than by saying to educate, educate, educate. The young entrepreneurs, the young start-ups, have to know the risks. I know $8,000, $10,000, $12,000 to file a utility patent sounds like a lot of money, but it is peanuts compared with the millions that we spent, and that was sucked out of the economy. The vast majority of that went south, literally.

The Chair: Thank you very much. That's the limit on the time.

Thank you very much, Ms. Lank and Mr. Lake.

Now we're moving on to Madam LeBlanc.

[*Translation*]

Ms. Hélène LeBlanc: Thank you, Mr. Chair.

My thanks to the witnesses for their presentations.

Ms. Lank, it is my turn to ask you questions now. In your brief, you said:

[*English*]

it is not helpful offensively or defensively, but I missed the first part.

[*Translation*]

Could you tell us a little more about that statement?

[*English*]

Ms. Diane Lank: When one talks about patents, one talks about offensive use and defensive use. It gets back to this issue of mutual destruction. If we have a patent, we can say to a competitor that if he continues doing something, we're going to sue him or make him pay us licence fees. That's an offensive use. If, however, they come after us and say that they're going to sue us, we can say that if they sue us, we're going to sue them back, because they're infringing. Had we had Canadian patents, it would not have been helpful because we were sued in the U.S.

Could we have gone back and sued our competitor in Canada? Yes, we could have. What would that have meant? Probably not much. It wouldn't have hurt them in the pocketbook. It wouldn't have hurt them much in the marketplace. The difference in patent litigation costs on both sides of the border is astronomical. It's unbelievable. We were given an estimate when we were sued in Canada that, from the time of filing through all the discovery and everything we had to produce, it probably would be about $500,000. I think our costs in the U.S. ended up exceeding $10 million.

● (1130)

[*Translation*]

Ms. Hélène LeBlanc: That is really interesting, because…

[*English*]

Mr. Dan Harris: Sorry, what was that number?

Ms. Diane Lank: In Canada, the estimate would have been about $500,000, and in the U.S. I think we ended up spending a little over $10 million.

[*Translation*]

Ms. Hélène LeBlanc: You are showing us that there really is a cultural difference between Americans and Canadians.

You also spoke about the importance for companies to be well informed before they confront that type of situation. What do you think should be the role of the federal government? The government has material dealing with intellectual property, patents, and so on. In your opinion, what should the role of the federal government be, and how could it be improved?

[*English*]

Ms. Diane Lank: That is a very difficult question to answer. Again, John and I were talking about this yesterday. He was speculating that perhaps the government could fund initial patent applications for start-ups as a concrete example. That is one way. Education, education, education. We have to make sure that young entrepreneurs, and older entrepreneurs for that matter, are aware of what can happen. We have to make them aware of the differences of geography, that if you are going to go south you have to play with the big guys and risks can increase as well as rewards. As a practical matter, it's a very difficult question to answer.

[*Translation*]

Ms. Hélène LeBlanc: I have one last question.

A witness who appeared before the committee mentioned that it might be good to have an intellectual property consultant in the government. The consultant would have an office set up to help companies with intellectual property matters.

[*English*]

Ms. Diane Lank: When the litigation started, some of the people in the company said that we should get the Canadian government to help us. We quickly learned that we were on our own. There was no such person in the Canadian system we could identify who could give us some help. I think that may be a good suggestion, to have somebody to call to ask what we do now. We do that when we're looking at putting our business in other jurisdictions. The Canadian embassy in Colombia has recently been very helpful to us. In Brazil they have been helpful to us. This is one area where there really wasn't anybody in the Canadian government to turn to. That might have been helpful.

[*Translation*]

Ms. Hélène LeBlanc: Our study is also about innovation. How do you see patents on intellectual property? Does that help innovation or hinder it?

[*English*]

Ms. Diane Lank: The company's position is that software business method patents don't help innovation. They are used more in business wars than to truly protect something that is unique and novel.

One of my favourite things about Canada is the Robertson screw. A software patent is not a Robertson screw that should be entitled to protection by the government. However, I don't think there are any Canadian software suppliers who would take the position that, because of that, we're never going to file for a patent. This gets back to if you can't beat them, join them. That's why as much as we are not fond of software patents, of business method patents, we are filing for them. This gets back to the defensive use.

I'm never going to say that we would never sue anybody, but we want to use our arsenal far more defensively than offensively.

● (1135)

[*Translation*]

Ms. Hélène LeBlanc: Thank you very much.

[*English*]

The Chair: Thank you very much. That's all the time for that round.

Now we go on to Mr. Braid for seven minutes.

Mr. Peter Braid (Kitchener—Waterloo, CPC): Thank you very much, Mr. Chair. Thank you to both of our witnesses for being here this morning.

Thank you very much, Ms. Lank, for coming up from Kitchener-Waterloo today and sharing the experience and expertise from Desire2Learn Incorporated. It is greatly appreciated.

I have a question about Blackboard Inc. to start. Is Blackboard Inc. still in business in the U.S.?

Ms. Diane Lank: Blackboard Inc. is still in business. Interestingly, within the last several months, they have had a layoff of about 200 people. They had been publicly traded. They went private about eight months ago, I think. Yes, they are still in business.

Mr. Peter Braid: How does your market share in the U.S. compare to theirs?

Ms. Diane Lank: Our market share has increased. Their market share, we believe, has decreased. We used to be able to get a lot more information when they were public, of course. Now they're in the same position that we are; we're not public.

Our market share has increased against Blackboard's. We're facing other competition now in the marketplace. We're also getting into areas we had not been in historically, so we're running up against other competitors. Right now we're really focusing on corporate, associations, and those sorts of industries, those sorts of verticals. We're finding different players in the market.

Blackboard suffered greatly from the litigation. We ended up with the white hats in the marketplace because of the litigation. We were very public with it. We had a patent log where we posted every filing in the court system, which Blackboard didn't like very much. We posted it whether it was good or bad. It was simply up there. It was a unique approach that I don't think we would have taken if we were in a business to business scenario, but our clients were educators. They were public servants. They wanted to know what was going on. I think we won the PR war, as well as ultimately winning the litigation after a very long slog.

Mr. Peter Braid: To use a Texas metaphor, you had an Alamo and you won, but it was a little bloody and messy and time consuming.

Ms. Diane Lank: Yes, and it was distracting for the organization. The U.S. judicial system is so dependent on depositions, documents and so forth. We had to produce all of our senior leadership at one time or another for one or more depositions. Every deposition takes time to prepare. There was document reviewing as well. It really and truly is distracting.

Mr. Peter Braid: Regarding the objective of filing patents in the U.S., we've heard testimony from other company representatives who have been here. Some argue that they file in the U.S. because that's their largest market. In terms of Desire2Learn, are you filing in the U.S. because that's your largest market, or are you filing because this is an important defensive mechanism, or is it a bit of both?

Ms. Diane Lank: Yes.

Mr. Peter Braid: Could you speak to that?

Ms. Diane Lank: It would definitely be both.

Let me be clear. We do not ignore the Canadian patent system or the trademark system. With trademarks, for example, it is our standard practice to file both in the U.S. and Canada at the same time, always. We want trademark protection in both places.

Patents are a lot more expensive to file than trademarks. We're a bit more selective. We're a bit more careful on the timing. But I do not believe our company would ever secure only a U.S. patent. We would always want protection in Canada and in other countries as well.

● (1140)

Mr. Peter Braid: Absolutely.

With respect to the U.S. process, are you using the provisional patent system in the U.S.? Do you have any thoughts or perspective on that process? We don't have a provisional system in Canada. We've been hearing about this at our committee hearings as well. Some people are speaking to the provisional system as a best practice.

Could you share your perspective?

Ms. Diane Lank: We have not filed for provisional patents. I'm not sure we would have a position on it one way or the other. We know they're out there. They can be a place holder.

For those of you who don't know about provisional patents, you can file a paper saying you have a great idea and if you're clear enough with the specification, a year later you can file the actual claims of a patent and you would get the priority date on which the provisional patent was filed.

When we have ideas, we want to get them filed these days, so we go straight to the claims and avoid the other step.

Mr. Peter Braid: A major theme that we've heard from your presentation today is the importance of education, particularly for start-up companies. Is there, perhaps, a role for the Canadian Intellectual Property Office, and indirectly a role for government in assisting, supporting or advancing that educational process?

Ms. Diane Lank: In a perfect world, if we didn't have that 800-pound gorilla to the south, I would suggest there would be a huge role. It would be wonderful if the Canadian Intellectual Property Office could have a simplified filing approach, if maybe they could hold the hand of a start-up and tell them how to do it.

The problem is that would not coalesce very nicely with the U.S. system. You want to have some parity between the two systems, which exists right now. The claim system is pretty much the same.

For companies, to the extent they exist if they just want to file in Canada, I think the Canadian Intellectual Property Office could probably simplify the approach greatly that way, but if they're going to file in the U.S., too, I'm not sure that would be useful.

The Chair: Thank you very much, Madam Lank and Mr. Braid.

We'll go to Mr. Regan for seven minutes.

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

Thanks to both witnesses for being here today.

Based on your experience, what can the Government of Canada do to make Canadian businesses more innovative?

It's a small question.

Ms. Diane Lank: It could be doing more than what it's doing now. For example, I know our company takes advantage of SR and ED as much as we can. We heard the other night on some U.S. debate how attractive our Canadian corporate tax rate is.

I think universities can play a large role in encouraging innovation. It's phenomenal. We're in this building called The Tannery and we share it in part with Communitech, which is our local tech hub. It is filled with start-ups and the excitement they can provide is absolutely remarkable. I don't know but I suspect that the government has something to do with funding organizations like Communitech.

I can tell you that Communitech spawns a lot of innovation. I'm not sure that the government itself can spawn innovation, but I think it can encourage innovation through organizations and associations, and assistance through tax credits or whatever to companies that are part of innovation.

I don't have any other specific examples.

● (1145)

Hon. Geoff Regan: Before I go to Mr. Kee, when you say tax credits or other—

Ms. Diane Lank: I mean some sort of financial incentive.

Hon. Geoff Regan: There has been a debate since the Jenkins report about whether it should be tax credits or directed grants. Do you have a thought? The concern obviously is if it's directed grants, then it's the government picking winners, as opposed to letting the business community make its own decisions about when to do research or not and to get tax credits accordingly.

Ms. Diane Lank: Can I say both?

Hon. Geoff Regan: You can say what you want.

Ms. Diane Lank: It's interesting. At the company I'm with now, we will go after grants. We are utilizing a grant in Ontario right now, the next generation job fund, which has been exceedingly helpful to us. We are using a grant in Newfoundland to start up our shop there. I think very much there's a place for grants.

The issue with grants is that you have to be pretty savvy to know where to go and how to file. Some of the paperwork for grants is daunting. I think grants have their place, but financial incentives like SR and ED do as well.

Hon. Geoff Regan: Mr. Kee, there are two questions on the table so far.

Mr. Jason Kee: On the latter one that we were discussing, I would actually agree in terms of them both. I think there's a role for both.

I think the issue and process involved in applying for direct funding can be complex, but the issue and process involved in applying for a tax credit, particularly a SR and ED, is equally if not more complex.

I'm sure this committee has also heard a challenge with respect to the professional cottage industry of consultants that exists to facilitate that, who then take 25% off the top. That's money that's going to consultants and not to the industry.

Hon. Geoff Regan: Let me ask you about that. If you required instead that a company that was starting to do R and D on something would have to give notice that it would later intend to file, to seek that credit, would that diminish or remove some of that cottage industry, so to speak?

Mr. Jason Kee: I wouldn't be in a position to comment on the specific initiatives at this moment. There are plenty of opportunities to streamline operations to make them more efficient, both from a sense of administrating from the government standpoint and also from the perspective of the companies attempting to access the money.

Tax credits as a policy option are preferable in some respects simply because they are agnostic. If you're eligible, you can apply, and that's it. Regardless of whether you're a small company or a big company, it's equally accessible to you. Much of the significant R and D that's often done is done by some of the larger entities.

On the other hand, however, the small guys tend to prefer, or it's more beneficial to have, a direct funding model. The principal reason is they lack the capital to survive before they file their taxes and get that money back, and they aren't going to be able to survive long enough on that. In some industries but not for all, we've developed sufficient financial measures, particularly with the financial sector, to help provide bridge financing for that, especially for the SR and ED credits and for some of the other credits. The financial sector is not as mature when it comes to leveraging those kinds of credits, so I think the best system is a combination of both those options because you're responding to different elements and different sizes of companies that have different kinds of needs.

Certainly, our industry, from the small guys to the big guys, leverage different kinds of financing, both in terms of tax credits and direct financing.

The broader innovation question is a very large question. Intellectual property, in my view, plays a key role in that, but it is only one piece of a much larger puzzle. Also it depends on what we mean when we talk about intellectual property. With Ms. Lank's presentation we're talking about the patent regime. We're also talking about the patent regime from the perspective of almost a business-to-business issue. Certainly while many of my member companies don't engage in much by way of patents, they do things in terms of copyright and trademark, and companies engage in litigation with each other all the time.

The thrust of my own presentation was not about that. The concern we are having from an IP enforcement or an IP crime standpoint is one of enforcing against criminals, those who are engaged in widespread commercial-scale counterfeiting and piracy. It is a wholly different problem that we're talking about. It's an issue of making sure proper resources are given to law enforcement to pursue that as well as make sure that the measures are in place to help us respond to those issues. It's very distinct and should be considered as a very distinct challenge.

You also need to have a combination of both. IP crime is clearly a domestic issue. It's an issue of what's going on in Canada and what we can do as Canadians and as the Canadian government to respond to that challenge. I agree entirely with Ms. Lank's point about when it comes to business to business, we all operate in a global environment now. Therefore, even looking at the Canadian regime, we must recognize that Canada can control its own regime and perhaps influence the regimes of others, but the patent regime and patent litigation are going to trend to the United States, not the least of which is because it's where the big damages are. We don't have that kind of challenge up here. That is important to bear in mind.

● (1150)

The Chair: Thank you, Mr. Kee.

We're well over time. Thank you, Mr. Regan.

We're on to the next round. These are five-minute rounds, and we'll lead off with Mr. Carmichael.

Mr. John Carmichael (Don Valley West, CPC): Thank you, Chair.

We'll have shorter and tighter questions, I guess.

To continue on the piracy issue, let me start with Mr. Kee. We obviously have a copyright and trademark protection regime established here. You addressed some of it in your opening remarks. Are we doing enough in Canada at this point?

Also, when we hear about situations in the U.S., such as what Ms. Lank referred to, what are they doing to combat similar types of challenges?

Mr. Jason Kee: The principal challenge we're finding with respect to the piracy and counterfeiting issues, which is in copyright and trademark, is that in terms of the trademark issues, there are still a lot of gaps that need to be filled. The Copyright Modernization Act went a long way toward addressing some of the challenges. We all had different perspectives on that bill. It included some things we wanted and some things we didn't want. It brought us a step forward in dealing with some of the main challenges. It was very important to us because of this issue of the technological protection measures and how important they are to our sector.

On the trademark side, there are still a lot of gaps. There are a lot of issues with respect to how the Trade-mark Act operates in terms of criminal provisions and anti-counterfeiting. There are things you can do in copyright that you can't do in trademark because of law enforcement, which has been a challenge for the industry.

The biggest challenge is the issue of actual enforcement and of devoting proper resources. We have some fairly robust provisions on the books with respect to issues of anti-counterfeiting. Even when you have someone who is clearly a bad actor, is clearly a criminal actor, who has fallen within those provisions, sometimes law enforcement doesn't necessarily pursue those cases, or if they do pursue those cases, and they've actually become much better in recent years at taking IP crime seriously, the prosecutors don't take it forward.

There's a real challenge with education in terms of the crown prosecutors. We don't have dedicated IP crime prosecutors in Canada, for example. They do have some in the United States. As a result, they don't take the cases forward. Even though you have people who have literally a warehouse full of counterfeit products, the crown slaps them with a $5,000 fine, pleads them out, and then they're gone and moving on to the next one. That doesn't necessarily act as a deterrent. This is a minimal cost of doing business. When people realize they can make as much money from counterfeit goods, especially drugs like counterfeit Viagra, for example, than they can from the actual drug trade, and they get a $5,000 fine as a consequence, you're going to find movement into that area, because there's a lot less risk.

It's really a matter of allocating our resources to address the problem, and frankly, educating internally within law enforcement, educating the crown, and making sure that we have key point people in the law enforcement community who are responding to these issues.

Mr. John Carmichael: Depending on how broad that market is, it sounds as though it could be an e-learning opportunity.

Mr. Jason Kee: Indeed.

Mr. John Carmichael: What about in the U.S.? Are they aggressive from an enforcement perspective? Is it an education issue, or is it strictly enforcement?

Mr. Jason Kee: It's probably all of the above. It's understandable that in terms of the realm and spectrum of issues law enforcement has to respond to, IP crime isn't necessarily number one. The issue is making sure they take it seriously, or more seriously than they have historically. Law enforcement, particularly the RCMP, has gotten much better at that. It's more on the crown prosecutor side that there are some challenges.

Certainly in the United States they have done a lot on the education side. One of the initiatives was to introduce what's called the IP Enforcement Coordinator, which is a new office under the White House. It reaches out to the disparate departments that each have their piece of the IP puzzle to make sure they are all communicating with each other and looking at ways to do better enforcement using the resources that are available. First there is an educational element. They are also making sure they are allocating the resources to pursue IP crime, which they've done much more aggressively and much more robustly than we have in Canada.

● (1155)

Mr. John Carmichael: Okay, thank you.

I have one quick question for Ms. Lank on offensive and defensive patent positioning. When you go into a big market like the U .S. from Canada, can you afford not to have patents established on all creative products and all innovation?

Ms. Diane Lank: We did.

Mr. John Carmichael: When you start talking about cost and exposure and playing in the big leagues, isn't it a world where you simply cannot afford to go in without taking that step first?

Ms. Diane Lank: In a perfect world, yes, but remember that when we first went into the U.S., we had probably six employees.

Mr. John Carmichael: It is the start-up issue and the cost.

Ms. Diane Lank: It is the last thing on your mind. You look at trying to sell.

I think that's probably true whether you're a gaming creator or an e-learning creator. If you're a small company, the last thing you're going to think about is looking at patents to see if you're going to get sued. It just wasn't considered.

The Chair: Thank you, Madam Lank. I'm sorry, but the time is up for that period.

We'll go to Mr. Harris for five minutes.

Mr. Dan Harris: Thank you, Mr. Chair. There's just never enough time for all these wonderful questions.

I like what I've been hearing recently about both grants and tax credits. We have to try to strike the right balance to foster innovation and research and development through a balanced approach.

I know, Ms. Lank and Mr. Kee, that there's perhaps a difference in approach with respect to the ability to patent software in business practices. Of course, in the United States it is allowed, and in Europe it isn't.

We're currently negotiating the Canada-Europe trade agreement. I'm wondering if each of you might have an opinion on whether during those negotiations Canada should be trying to bring Europe more in line with the United States on that issue or if we should be aligning more with Europe on that issue.

Mr. Jason Kee: On that issue, the video game industry customarily makes use of patents, particularly outside of the hardware. I'm sure Microsoft, Nintendo, and Sony have patents on their consoles, as they do on all their consumer electronics. There's nothing unusual about that. It doesn't get into the controversial and challenging elements of software patents and business method patents, which we've been talking about here.

We don't have a strong view on this. I've never heard any concerns being raised about the current state of play in Canada, because the current Canadian environment is different from the U.S. environment. We're not as aggressive with respect to patenting, and I haven't heard anything to suggest that this would be changed.

Ms. Diane Lank: I'm speaking for myself now, not for the company. I would be inclined to be more aligned with the European view. That being said, we still have to deal with the U.S. I don't think it means Canada should be in line with the U.S., but even if Canada took the EU position completely, I'm not sure that would affect our business quite as much.

Our being in Canada is also a huge help to our patents with respect to the EU, particularly in the area of privacy and data protection. As soon as we say that our hosting is in Canada, that opens a lot of doors for us.

Mr. Dan Harris: One of the questions being posed is that there is a productivity issue in Canada. The ability of businesses to adopt best practices could be affected by whether software is patentable or business practices are in place.

Having gone to school in computer programming, I know how fast that industry moves. That's why it's completely understandable, especially in entertainment software, that you're not making great use of patents.

I want to ask about piracy and counterfeiting. I'm a gamer myself. I notice on your website the average age of Canadian gamers is 33, and I happen to be 33. More and more games are moving to always having to be online to play. Many of them are going through other engines like Steam, and recently EA released Origin, where you have to be connected in order to play the games. That's a new approach that's being taken to fight counterfeiting and piracy.

Mr. Kee, what kind of an impact is this having on piracy and counterfeiting? Is it slowing it down for those games or not?

● (1200)

Mr. Jason Kee: Quantitatively, it's difficult to assess. The actual scale and scope is always difficult to assess because the activity tends to be underground. As the market is migrating, the notion of piracy itself is also evolving.

You're right that there has been a migration to these digitally delivered platforms like Origin or Steam on the PC. Also, people can now use their consoles, such as the Xbox and the PlayStation, to download the game entirely and just play it. They don't go to the store and pick up a disc and a package anymore. They do it all online. That's driven by a number of considerations. The positive and salutary impact on piracy in Canada, would be one. However, it's also driven by how it's more easily accessible to the consumer. It is easy for them to get. It's cheaper for us because we don't deliver with physical transit anymore. There are a lot of market forces that are pushing us in that direction.

Basically, what you're seeing is piracy evolving. The volume of piracy online has had a negative impact on our legitimate industry, but it's also had a negative impact on the old guys who used to sell copies of the games on disc at flea markets. They're being put out of business, just like we're being adversely affected.

The Chair: Thank you, Mr. Kee. Sorry, the time's up, but I'm glad to hear the bad guys are getting it back now and we're actually making it difficult for them.

Madam Gallant for five minutes.

Mrs. Cheryl Gallant (Renfrew—Nipissing—Pembroke, CPC): Mr. Kee, how would a border guard recognize a counterfeit of one of your products?

Mr. Jason Kee: We engage in extensive training with law enforcement, actually, to permit them to recognize the counterfeit version versus a legitimate version. In the case of our product specifically, for the reasons I just alluded to, we're finding that the volume of games on physical media and in physical packages that are counterfeit—where it looks like a fake version of the real thing—is diminishing, because people are moving to online distribution. It's a lot easier for them to download the game for free than it is to try to get it and sell a counterfeit version.

What we do see happening at an increasing rate is the issue of the circumvention devices that I mentioned. They're little chips called modchips that can be installed in an Xbox or a PlayStation to play pirated games. The consoles have technology built in so that if you download a game from the Internet, put it onto a disk, and put that disk in the machine, it will recognize that it isn't a legitimate version and won't play it. To bypass that protection, you open up your device and solder a chip inside it. That will bypass that process. The device will not go through that process, and it will recognize the illegal version as legitimate.

You still have to go through that process and you need a physical chip to do it. The physical chip is one of the items that is not being stopped at the border, so it's also about training law enforcement to recognize those devices as well.

Mrs. Cheryl Gallant: Okay.

When patents are filed for technology and pharmaceuticals in Canada, they require a certain degree of disclosure. Does the same hold true for the type of patent protection you would like to see Canadian start-ups in software?

Ms. Diane Lank: I'm not sure I understand the question.

Mrs. Cheryl Gallant: Is there any disclosure that is required on the part of a software developer when they apply for a patent?

Ms. Diane Lank: Yes. The whole theory of a patent is that someone reasonably skilled in the art can build or develop whatever you're proposing to be patented, so yes, there is disclosure.

I'm not a patent counsel, but I believe that in Canada the publication of the application occurs earlier than it does in the U.S. In the U.S. it is 18 months; it used to be that you didn't know anything about a patent that was filed in the U.S. until pretty close to the patent being issued. There is a difference, but yes, there is disclosure.

● (1205)

Mrs. Cheryl Gallant: Does that play into your weighing whether or not you're going to apply for a patent?

Ms. Diane Lank: If you mean in terms of giving up the company's secrets, no, because if you're going for protection for your idea, you're disclosing something in return for at least theoretically a period of time when your use of that is entirely up to you. You can license it, use it yourself, or refuse to let anybody else use it. That's the theoretical give and take in the patent system. By the time something is disclosed, chances are that everybody has got wind of it. We like to tell our clients what's coming down the pike.

Mrs. Cheryl Gallant: With regard to the dispute in the United States, was that on the actual content, or was it a computer code that was being disputed?

Ms. Diane Lank: It was code. We don't produce content. We just produce code in what is kind of the back office of e-learning. It was all about roles. Blackboard said that they invented having the roles of teacher, student, and administrator in a computer system. We were saying that teachers, students, and administrators had been around for a long time before Blackboard started.

The U.S. Court of Appeals for the Federal Circuit basically agreed that this was obvious and that of course you're going to have roles in an e-learning system.

Mrs. Cheryl Gallant: Okay. Observers noted that the U.S. seemed to be, in this case, granting an overly broad patent. Are you aware of any trade agreement we have with the U.S. that includes patents? An overly broad granting of a patent is a form of protectionism. Are there any rules in terms of trade where that could be argued?

The Chair: Very briefly, please.

Ms. Diane Lank: I'm not sure. One of my favourite sayings is to never attribute to maliciousness what can be attributed to stupidity.

Voices: Oh, oh!

Ms. Diane Lank: I don't think the U.S. scheme of having overbroad patents has anything to do with protectionism. I think it has to do with the fact that the patent examiners in the U.S. are timed. They have to produce so many patents and they have to review so many files, and stuff gets through very, very easily.

The Chair: Thank you, Madam Lank. Thank you for your testimony and thank you for the great quote too.

[*Translation*]

Mr. Blanchette, you have five minutes.

Mr. Denis Blanchette (Louis-Hébert, NDP): Thank you very much, Mr. Chair.

My thanks to our guests. What we are learning this morning is very interesting.

Ms. Lank, thank you for your testimony. It may perhaps encourage the government to better prepare companies to start exporting in a climate of innovation.

Mr. Kee, the video game business has developed a lot in recent years. We moved quite quickly from computers to game consoles, which provide more robust environments. You said the piracy is done using chips. Does your association feel that piracy has significantly decreased since video games have moved from computers to consoles?

[*English*]

Mr. Jason Kee: No, unfortunately not. It's partly that the nature of the piracy has just evolved. It went from a hard goods piracy, where people would buy on discs, to where people download games now. Year over year we see the number of infringements that we detect online increasing as it becomes more popular. Also the means by which individuals can bypass the copy protection is also evolving to become more sophisticated. Our methods become more sophisticated, and their ways of breaking it become more sophisticated. We're also seeing an increase in terms of that.

I would say certainly in Canada we now detect more infringements on an annual basis than we have historically. Typically it varies but we see an increase of at least 25% to 50% year over year.

[*Translation*]

Mr. Denis Blanchette: So actually, generations of consoles are practically at the end of their useful life and manufacturers are soon going to put new generations of better equipment onto the market. In the first years, we will see a drastic drop. But as you say, the war on piracy is a war that never ends.

Since we are talking about intellectual property, I would like to know, given that we are dealing with closed environments, whether intellectual property can be arranged in such a way as to encourage innovation among your members. Perhaps it is an entirely different issue and it is just a business reality. Now that competitors are working in closed environments, they first sell the console, then they sell the games. Whatever the case, the environments are definitely closed. In those conditions, does the intellectual property game have any impact on your members in terms of innovation?

● (1210)

[*English*]

Mr. Jason Kee: I agree. You're right that the games industry tends to operate in what you might called closed environments, assuming it's a console. Whether or not it's a closed environment versus a more open environment—and there's a lot of what the word ”open” might happen to mean as an impact to innovation—I think it depends. I think there's a good place for different types of models.

You also wanted an example of a closed environment. I call it Apple. Apple has a very closed ecosystem with respect to how it operates, but it's extremely innovative. It's constantly iterating its products. Every year it releases a new updated smart phone. It has an entire marketplace of well over half a million apps that are available, many of which are games. It has been an entirely new market for us to explore.

Because Apple provides a closed ecosystem, it's made it very attractive to the games industry. We've done extremely well on that platform. You contrast that with the Android platform, which is operated by Google, and probably has more activations per day than Apple has. It has a wider imprint, but because it is open it's more challenging to earn revenue on the distribution of games to that platform.

Conventional wisdom is that most people tend to release on Apple as opposed to Android, or do both.

I think these are ecosystems that operate in competition with each other. In fact, Apple is compelled to release new products, as are my own members, in terms of Microsoft and Sony, and so forth, because they have to compete with other ecosystems, like the PC and Android, in order to keep up.

[*Translation*]

Mr. Denis Blanchette: Games are very expensive when they are put on the market. Have you looked at when a price is low enough to circumvent piracy and make a profit at the same time?

[*English*]

The Chair: Very, very briefly.

Mr. Jason Kee: It's a good question. I don't have an answer, mostly because games, specifically console games, actually remain at a fairly consistent price.

The Chair: Thank you very much, Mr. Kee and Mr. Blanchette.

We'll move on to Mr. Wallace for five minutes.

Mr. Mike Wallace (Burlington, CPC): Thank you, Mr. Chair. Thank you to our guests for coming today.

Mr. Kee, your clients aren't going to like me because I've never owned a console and have never allowed one in my house. We have no games at my house. I have never played any games, or maybe I have at somebody else's house.

Mr. Jason Kee: Okay. We'll change that eventually.

Mr. Mike Wallace: It's just not my thing. My game is in 3-D at the House of Commons. It's a different kind of game.

I'm interested in your comments. Copyright is important to you. Trademarks are important to you, but patents, not so much.

In terms of your industry, who are the thieves, the people who are doing the stealing? It's stealing when somebody takes a copyright and doesn't pay you for it, and reproduces something. They're stealing it from your organization. Who are the thieves? Are they in this country? Are they in other countries? I don't understand the industry, so I'd like to know.

Mr. Jason Kee: It's all of the above in terms of where they are. The core groups that stand to gain from widespread piracy of video games, and also of music, movies, and so forth—we're all in the same boat here—and some regular software as well, tend to be, in our case, those who offer, often for money, ways of breaking the copy protection. They actually charge for that because it's a service they offer.

If you want to open up your console and solder in a chip, that takes a level of technical sophistication that most people don't have. You'll pay someone to do it for you. They'll charge you $100 and another $80 for the chip. They've earned a nice little tidy profit and suddenly your console is open to the world for playing pirated games. Those guys tend to be more local. We have a lot of them in Canada because we don't have a prohibition, legally, against this activity until the bill actually comes into force. That would be one class.

The other would be the people who are offering the games available online. As I said, the number of local guys who used to offer the games at the Pacific Mall or flea markets and so forth is diminishing, as everyone is moving to online methods. Websites or hosting sites are springing up online. Megaupload and The Pirate Bay are notorious ones. They basically offer games and other forms of content and they earn advertising revenue. They want to attract a number of users. The more users they have on their sites, the more advertising revenue they get. Therefore, they want us to offer other people's content for free because it actually makes them money.

They operate in multitudes of jurisdictions, including in Canada. This was another aspect about the copyright bill's new enabling infringement provision that will enable rights holders to take action against these kinds of guys, which is something we were seeking in the past.

● (1215)

Mr. Mike Wallace: Ms. Lank, I'm from Burlington, not too far from Kitchener-Waterloo. There's a company I've visited a number of times, a manufacturer. They're privately held, but they're not in the software business. They actually make a bearing for large ships. They refuse to have their bearing patented because they don't want anybody to see how they do it. Even for a politician like me going through their plant, they put up a curtain around where the Ph.D.s are doing their work. The formula that makes the bearings and the materials the bearings are made from are important to them.

Tell me if I'm wrong, but your advice to them is they should be patenting that as a protection against others trying to steal it. Their view is that as soon as they patent it, the formula will be public, and somebody will tinker with it enough to get around the patent and be a competitor head-on and will produce virtually the same product. Are they right or are they wrong? What's your view?

Ms. Diane Lank: Mr. Wallace, I'm not going to tell you that you're right or wrong or that your constituent is right or wrong. Again, I am not a patent lawyer, but it's my understanding that if something is substantially similar, you still have a case.

I would encourage them to get advice from a very well-qualified patent lawyer. Many, many Canadian patent lawyers are also licensed in the U.S.A. There's a lot of cooperation from that standpoint.

My gut feeling would be they ought to look into that to see whether, even if someone tinkered with it a little, especially with a hardware piece—but it would seem to me it would be more likely to have good patent protection.

The Chair: Thank you, Madam.

Thank you, Mr. Wallace.

We'll go on to Mr. Harris again for five minutes.

Mr. Dan Harris: Excellent. Thank you very much.

There are many more things to follow up with.

The evolution of piracy is quite astounding. In some cases you don't even need that modchip, on a Nintendo Wii, for instance, because it can accept SD cards. You can download something from the Internet, put it on an SD card, throw it in the machine, and you're done. You don't even need technical expertise, and it doesn't require any illegal products. It doesn't require anything across the border.

Certainly with modchips and other counterfeited goods, they do have to come across the border. There's been a concern in the Canadian Chamber of Congress—rather, Commerce. Sorry.

Ms. Hélène LeBlanc: Canadian Chamber of Congress.

Voices: Oh, oh!

Mr. Dan Harris: It's because we're thinking about Canada and the U.S.

It has concerns and has requested that border guards have broader powers of search and seizure to stop counterfeit goods. It applies a little bit less to software, but there are certainly physical discs, whether you're talking about DVDs or Blu-ray, in counterfeit console games perhaps more so than PCs, because that is where the money is these days.

Do you think it would help to stem the tide if border officers had the ability to seize counterfeit goods and counterfeit-enabling goods, things such as the modchips themselves?

● (1220)

Mr. Jason Kee: Yes, absolutely. Actually, it's a fancy way of saying it, but when I say giving customs officers the ex officio power to seize, that's exactly what I mean.

Right now customs officials do not have the power to seize on their own power things they identify or suspect to be counterfeit or pirated. They can do so only if they have a court order in hand, which a rights holder like me has been able to get—which would mean that I magically understood that the goods were being smuggled across the border and knew when it was going to happen—or if they've received a request from the RCMP to detain. These are the only circumstances in which they can do these sorts of seizures, even if they know, even if they are able to identify it. It's actually customary in most other jurisdictions; they do have the power to seize. That, essentially, is what we're asking for.

To the point that was raised earlier, it's a temporary power. There is the issue that they can suspect, but IP enforcement is one of those areas where law enforcement and rights holders need to cooperate much more closely than do other sectors, because they're going to rely on rights holders to identify what's infringing and what's not.

You want to avoid the possibility of having customs officers seizing stuff that turns out to be legitimate. The issue is basically that they can seize and then they call the rights holder to say they've identified something they think is counterfeit and the rights holder has *x* amount of time to get down there to let them know whether or not it is counterfeit. If it isn't, then they'll release it into the stream of commerce. This is the kind of measure that has been set up in other jurisdictions, which is the kind of measure we're talking about here.

Mr. Dan Harris: Ms. Lank, you can answer this, as well.

Do you think better communication and working together would be facilitated if we had an IP office in Canada, a place that was responsible for IP that would be able to help law enforcement and the border work together? Do you think that would be of use?

Mr. Jason Kee: Absolutely. Actually one of the recommendations that a number of groups made is the notion of an IP crime task force, which would be representatives from rights holders, from private industry, from government, and from law enforcement who all stick together. There is an informal ad hoc working group of representatives from the RCMP, border services, and some rights holder groups which gets together once in a while, but it's very informal. It lacks any formal government authority. As a result, it's limited in what it is capable of doing.

Facilitating information sharing on a regular basis in a more formal way is critically important.

Mr. Dan Harris: Do you have anything to add?

Ms. Diane Lank: Not really. We were not faced with piracy or the issues Mr. Kee is faced with.

I think an IP office might be helpful in a variety of ways if it were given a broad mandate.

Mr. Dan Harris: Great.

One thing that was mentioned earlier was government funding of initial patent filing. How strongly do you feel about this? How much do you think this would actually help start-ups?

The education component you were talking about is certainly critical. Anybody going into business school or engineering who might be likely to start up a business or go to workshops should find out about that stuff.

Do you think that's the right role for government to play?

The Chair: Be as brief as possible, please.

Ms. Diane Lank: When our company was 5 or 10 people, there would not have been the $8,000, $10,000, or $12,000 sitting around to file for a patent. It's a tough question because I know we like free enterprise, but some way of encouraging the start-ups to file for the first patent might be very useful.

The Chair: Thank you very much, Madam Lank and Mr. Harris.

Now we go on to Mr. Norlock for five minutes.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Thank you, Mr. Chair, and through you to our witnesses, thank you for appearing today.

My background is not in anything to do with IT. My seven-year-old grandchildren, who got an iPad for Christmas, can beat me at most games because I don't play them, but law enforcement is my background, so I'd like to talk about piracy and what the government can do about it.

I'm on the public safety and national security committee. We found that extension cords, and all those similar things that you can get at the flea market really cheap, and in some cases even have the CSA mark on them, are actually counterfeit. We further learned from expert witnesses that it's actually organized crime behind most of that.

Would that be a safe assumption to make in your business, sir, or is this sort of entrepreneurial from the pirate side of things?

● (1225)

Mr. Jason Kee: I think it's both. Certainly there is an organized crime element to it, especially when it comes down to the modchips or the physical components, where the organization of a business that's operating in illegal trade is, by definition, organized crime. The online elements tend to be less organized crime and more entrepreneurial. It's basically the hackers who also obtain the first copy, maybe even a pre-release copy of the game, which they'll distribute online. They're actually distributing it for credibility within their own hacker community as opposed to doing it with the commercial gain in mind. Organized crime typically isn't that interested in that element of things, so it tends to be more of an enthusiast that may start the ball rolling.

Organized crime comes into play when they find a way of exploiting that circumstance to commercialize it, to make money for themselves. That's when you tend to see organized crime step in.

Mr. Rick Norlock: Would a reasonable enforcement regime, from an anti-piracy perspective, and I think that's included in this bill, be advantageous for your industry?

Mr. Jason Kee: Absolutely.

Mr. Rick Norlock: Ms. Lank, I'm surprised a lawyer would be surprised at the litigious attitude of the United States. From my background in law enforcement, it doesn't matter how good the law is; you can always hire somebody who, if they're good enough and smart enough in the legal industry, can get you off. I don't think anyone should be surprised if they do business in the United States, whether it's in agriculture or softwood lumber, that they're going to be taking you to court, because it's from a business perspective. They hire a pantheon and the bigger the company, the larger the legal department. They hire these guys to put little guys like you out of business. The good thing is that we have good guys like you to help stop that.

When I look at legislation, I always look at it from a regulatory perspective. I wrote down a note down as you were talking: regulation versus strangulation. At what point do we make enough rules that they actually stifle innovation? Are we anywhere near that? Does the proposed legislation stand a chance of strangulation? You never want to create a regulatory regime that actually doesn't allow people with good, new ideas. I'm thinking of patents and those other things. Most lawyers I know in the criminal field say patent lawyers are the rich guys on the block. At what point do we really stifle innovation with regulation?

Ms. Diane Lank: With that, I want to emphasize that I'm not a patent lawyer, so I'm not one of the rich guys on the block.

We have not faced any stifling at this point with any regulatory regime that I can think of offhand in Canada, be it IP related or not, and we have not found that in the IP area in the U.S. There are some other tweaks that we sometimes struggle with. It's a very fine line. It's important when regulations are issued that they are clear and easy to understand. You shouldn't have to go out and hire an outside law firm to tell you what they say. I think that clarity is of utmost importance.

Mr. Rick Norlock: Great.

Mr. Kee, I just attended a graduation. It is usually held around Thanksgiving because all the recent grads are home. Some of them are actually going into the industry you're talking about. They're heading down to Kitchener-Waterloo and those places. We have a business incubator in my riding patterned after Kitchener-Waterloo but for an eclectic mix of businesses. From your perspective, regulation versus strangulation, are you there yet? From the young person who wants to get involved in creating that new game, I call it the *Slaughterhouse Five* game, does regulation enter into that at all?

The Chair: Mr. Kee, before you answer, I want to advise Mr. Norlock that he's into the next round of time, and Mr. Lake is giving him whatever time he needs, but the clock is running.

Mr. Rick Norlock: Okay.

The Chair: Go ahead.

Mr. Jason Kee: As with all things, I think a careful balance is important. I agree that in terms of the issue of clarity, it's critically important. It's also making sure that you have smart regulation. When there's a policy objective you're attempting to obtain, you're attempting to obtain it to be, again, as minimally invasive as possible.

In the specific elements of intellectual property, there are areas where different companies will have different points of view. I certainly see the patent area would be one. I can say that I know companies on both sides of the equation. When it comes to business method patents, it depends on what drives their business. From the small start-up perspective, which is really the kind of companies that you're talking about here, frankly any regulation is seen as invasive, anything that is seen as stopping them from doing what they want to do. Part of functioning in a civilized society is that you learn to adapt to that. In my view there are a couple of regulations specifically that are potentially challenging. I know the business community has had some challenges with the prospective anti-spam bill in terms of it being very wide in its scope. There may be some issues there, but the regulations are still being hammered out.

Generally speaking, though, we haven't reached the point where Canada has become unpopular as a destination to establish a business.

● (1230)

Mr. Rick Norlock: Thank you very much.

Mr. Wallace mentioned his business. I'm dealing with a local business. I'm not going to mention the particular product because it will identify this fellow who is inventing something totally different. He says there's no way he will get a patent because all that would do is tell his competitors where he's going. He told me that they always try to have a new product. They know they're going to be good for two years. By the time competitors figure out how they did it, they're on to a new product.

The reason I mention this is that I figure that is what the electronics industry has been doing all along. I grew up in an era of eight-track tapes, which came from reel-to-reel tapes, and look what we have today. I have a friend who says this is all a plan. What I'm trying to say is that I believe in both of your industries. As soon as you have the product that you want, do you not immediately—like Apple—know what's coming up next? From a governance perspective, you never want to stifle that by making the regime too strict, yet you want to protect those people who have spent a lot of research and development dollars to get where they are.

Canada is recognized as one of the countries that spends the most per capita on R and D, and yet as I tell high school students, using their vernacular, we suck at commercialization of that. That's what this government is trying to do so, from your perspective, how do we do that? Maybe you could take a minute each to say how we should use those research and development dollars that everybody wants to make sure we get the kind of commercialization that actually will drive our economy and give my grandchildren a place to work.

The Chair: How about 35 seconds each?

Ms. Diane Lank: My response would be very short: encourage universities to tech-transfer to companies like ours at a reasonable price.

Mr. Jason Kee: I agree, and I put an emphasis on any kind of funding, be it tax credits or direct funding, for the commercialization element of it, as opposed to pure research and development. Pure R and D is important, but it shouldn't necessarily have the lion's share of the funding.

Mr. Rick Norlock: Thank you very much.

The Chair: Thank you.

Now we move on to Madam LeBlanc for five minutes.

[*Translation*]

Ms. Hélène LeBlanc: Thank you, Mr. Chair.

I have just found out that Bill C-14 on interprovincial trade is included in the omnibus budget implementation bill.

Do you feel that the interprovincial trade bill should be studied separately?

I was also wondering whether your federal-provincial businesses are affected by interprovincial trade matters.

[*English*]

Ms. Diane Lank: I'm going to plead ignorance.

Mr. Jason Kee: While certainly there's an interprovincial component to our business, I'm just not sufficiently familiar with the legislation to be able to comment, unfortunately.

[*Translation*]

Ms. Hélène LeBlanc: Let us turn to research and development. We are talking about innovation, intellectual property, and research and development. There are going to be changes to federal research and development programs. Could you tell me what the impact of those changes will be on your industries?

[*English*]

Ms. Diane Lank: Again, I'm not sufficiently familiar with what changes you're talking about. Perhaps you could give some examples.

● (1235)

[*Translation*]

Ms. Hélène LeBlanc: For example, tax credits are going to go from 20% to 15%. They will also no longer consider your investments in capital, for example, in fixed asset costs. Could that have on impact on your kind of business?

[*English*]

Ms. Diane Lank: I'm not a tax accountant, either. I'm not a patent lawyer.

[*Translation*]

Ms. Hélène LeBlanc: Okay.

[*English*]

Ms. Diane Lank: I would think it may have an effect. I know that we rely on credits for helping our company grow.

Ms. Hélène LeBlanc: Yes, okay.

Mr. Jason Kee: Because the bulk of the changes were aimed at a form of R and D that doesn't really happen that much in the games industry—we're much more labour based; we're not capital intensive in the same kind of way—the changes don't have that significant an impact. We're a little concerned about it. Again, it's an issue of balancing the proper combination of a tax credit regime on one hand, and the funding on the other hand. This was a reallocation of some money from one to the other, and I think there's a logical policy rationale.

We're a little concerned that it may be weighting it one way over another one, but we're still working with similar fellow associations and trying to assess the impact.

[*Translation*]

Ms. Hélène LeBlanc: Thank you very much.

I did not want to put you on the spot. You are actually confirming that, in your area, the consequences may not be the same as in the manufacturing sector, or other industrial sectors.

But we are in a global environment now. We have touched on our relationships with the United States, Europe and so on. Do you feel that the Canadian intellectual property regime should be harmonized with a more global system? That is, should it be more like the one in the United States or Europe? Or do you think that is unnecessary?

[*English*]

Ms. Diane Lank: In a perfect world, the United States and all the countries would have a more harmonized system. It is expensive for a company like ours to try to stay abreast of the differences between Brazil, the United States, Europe, India, Australia, New Zealand. It's very costly. There aren't any easy answers to that.

Should it be harmonized? Yes, but with what system, I don't know. Canada, given its size, is in that position where, for our company at least, if we want to operate in both Europe and the United States, we have to deal with both. Preferably, Canada wouldn't be a third way. They would be harmonized with one or the other, and we do a lot more business in the U.S.

[*Translation*]

Ms. Hélène LeBlanc: Thank you.

[*English*]

The Chair: Time is up.

Mr. Kee, if you want to answer that quickly, I'm certain that we'd give you that latitude.

Mr. Jason Kee: Thanks.

We should be trying to harmonize to the extent possible simply because it's a cost issue. It's very difficult to operate in different jurisdictions out of different regimes.

[*Translation*]

Ms. Hélène LeBlanc: Thank you very much.

[*English*]

The Chair: Thank you very much.

Now we'll move on to Mr. Carmichael for five minutes.

Mr. John Carmichael: I'd like to just start with Ms. Lank. Earlier in your testimony you talked about—I hope I have the reference accurate—the cottage industry that we've created in patent development with lawyers and those who can lead the way in helping to create the right patent path for small business. You talked about a six-person start-up and it wasn't on your radar in those days. Probably today it more likely is on the radar just because it's got such a profile.

When you talked about the cottage industry and if you'd had someone to show you the way, is that an industry-related issue or is that more a government-related issue? You mentioned going to Brazil. You had the Canadian embassy there to help show you the right path. Was it similar with our Canadian embassy in the U.S.? Was it not there or did you just not think to take advantage of it at the time?

Ms. Diane Lank: I think there are sufficient similarities between the U.S. and Canada in that you don't have, for example, the language issues that you have with Brazil or Colombia.

To the best of my knowledge, we never sought the assistance of the Canadian embassy in the U.S. We will, from time to time, primarily on immigration and visa issues, write to them to see if they can help, but typically we have not dealt with the Canadian embassy in the U.S.

● (1240)

Mr. John Carmichael: Extending on that, you talked about product being sold to you at tech-competitive prices, as a new technology. When we look at universities today, I get the impression from the testimony we've had from a number of universities that are actively engaged in helping to create these clusters of development and innovation that they are trying to provide that path to development, creativity, and ultimately to some form of commercialization, whether it's selling it to another entity or whatever.

Are we seeing enough leadership in the academic world in building that type of cluster, in either of your spheres?

Mr. Jason Kee: In terms of the games industry, certainly the games industry has been explosive in its growth over the past few years. We have at least 260 institutions across the country offering games-related programs at varying levels. Some are more advanced than others.

The challenge has been not so much the leadership as the direction of that leadership, in some cases. Sometimes the collaboration with industry is not as strong as it should be. Frankly, industry wears that as much as academia does. Sometimes the graduates who are being produced aren't that qualified to work in the industry, because they've been taking courses that aren't as relevant as the schools think.

Certainly in the deployment of advanced research that's happening at the universities, it's research that's very interesting to the researchers, but it doesn't necessarily have either commercial viability or commercial viability that's useful to the industry. We've had a real challenge there.

Partly it's also very different cultures. In the tech sector generally, we're very fast-paced, very entrepreneurial, very dynamic. This is not how I would normally describe an academic environment. Culturally there can be some real challenges.

I do think there is a tremendous opportunity. Part of that issue of us not talking with each other as well as we should be is part of the challenge that some of the institutions have been facing with commercializing their R and D.

Ms. Diane Lank: I would agree with Mr. Kee on that.

We work closely with some of our local institutions. We have the University of Waterloo, Wilfrid Laurier, and the University of Guelph. There have been discussions, but as I said, the first IP purchase that we're undergoing is with a U.S. client, not with any of those, which I think is interesting. And they came to us.

Mr. John Carmichael: They came to you because of your experience, your distribution.

Ms. Diane Lank: Yes. They were a client, and they really liked what we were doing. They said that they had developed this idea and how would we like to commercialize it for them.

Mr. John Carmichael: Good. Thank you.

How much time do I have left?

The Chair: About 30 seconds.

Mr. John Carmichael: I'm done.

Thank you.

The Chair: Mr. Regan now, for five minutes.

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

Ms. Lank, you talked about the challenge you have with 170 openings at the moment. In what kinds of skills, or in what areas—the big ones—do you see shortages?

Ms. Diane Lank: Software development is probably the single biggest one, and project management. It's along those lines. We have openings from executive assistants to senior marketing people, but I would say that software development is the biggest one.

Hon. Geoff Regan: What do you see as the prospects for development that will lead to having more people in these areas? I don't think you're the only company looking for software developers.

Ms. Diane Lank: Well, there's quite a bit of pressure in the K-W area because it is so tech heavy. We really like hiring new graduates, so we go to the local universities to try to get new folks.

Communitech has an initiative to try to bring back people from Silicon Valley and other places. We're part of those approaches, too, but it's difficult.

When there is a shortage, I think we ought to be thankful that there is a shortage. In a perverse kind of way, it shows that our industry is doing well. It shows that Canada is doing well in this industry.

It's a matter of cranking out more students, and—

● (1245)

Hon. Geoff Regan: To what degree can this shortage become a restraint on the growth of the industry? I'm thinking of lots of industries that have this challenge. I was talking this morning to some people in the manufacturing industry who are very concerned about the lack of mechanical engineers, for example. Do you have any thoughts on where this is going?

Ms. Diane Lank: We are looking at other geographies, such as Newfoundland, for example. One of the reasons we're going there is to try to help on the software side. It absolutely can be a challenge. I don't know what the answer is.

Canada used to have an immigration program called the pilot project for software professionals or something like that, and it no longer has that. That might be helpful to go back to, to see if we could get more immigrants in those areas.

Hon. Geoff Regan: Mr. Kee, I'm going to offer you the chance to answer the same question, but I also want to ask you how you feel about this idea. We've heard about an intellectual property crime task force. What kinds of benefits do you think that would bring?

Mr. Jason Kee: Certainly on the talent development piece, I'd agree with everything that Ms. Lank has said. This is a huge issue for our industry. We have a major shortage of talent particularly in the intermediate and senior levels. We also hire a lot of junior graduates. I think 77% of our companies anticipate hiring graduates in the next two years. Filling the junior positions isn't a challenge. It's filling the intermediate and senior ones. In the short term we look abroad to try to bring people in through the temporary foreign workers program. I think the program you were referring to may have been the IT workers program.

Hon. Geoff Regan: It seems kind of counterintuitive in the sense that you have so many young people, whether they're 33 or younger, who are playing games, doing online gaming, etc., who love your industry, so to speak, but who aren't going to become software developers. Am I wrong to think there's no connection between the two?

Mr. Jason Kee: There can be, and this actually comes down to an important point, and it also dovetails with digital literacy. There's a big difference between knowing how to use a computer and knowing how to program.

Hon. Geoff Regan: Sure.

Mr. Jason Kee: There's a big difference between knowing how to play a game and knowing how to program a game.

Hon. Geoff Regan: You'd think that the use of the technology would spark more interest in developing it and learning how to do that, right? It doesn't seem to do that.

Mr. Jason Kee: In terms of what you said, at the junior level, certainly we've seen the volume of graduates being produced. In fact, one of the things we're trying to work on with some other associations in the IT field is to also use the games industry as a gateway. It's a good way of luring people in. Everyone constantly complains about STEM jobs and the lack of STEM jobs. In engineering we don't have them. That's because to a lot of young people the stuff is very staid and dry and boring, but video games are cool. If you actually make them understand that video games are STEM jobs, suddenly it becomes more attractive. We're working to try to build that some more.

Certainly, as I think you said, a lot of effort needs to be put into doing that, and into making sure we have long-term sustainable development of our graduates to ensure that the jobs at the senior levels are being filled in five years' time by people who are from here as opposed to from abroad.

The Chair: Thank you very much, Mr. Kee and Mr. Regan.

We have the luxury of having a few minutes left, so I'm going to give the opportunity to Ms. Lank and Mr. Kee to make any closing remarks or to say all the things that you maybe didn't have enough time to expand upon. Madam Lank, you began the opening remarks, so I'll go to Mr. Kee for three minutes for some closing remarks if he'd like to wrap up and make any other points.

Mr. Jason Kee: Thank you very much.

I think I've largely addressed everything that came up.

Just to follow up on Mr. Regan's second question, in terms of an IP crime task force, that is something we feel would be extremely helpful. As I said, there's an informal working group right now in which we do informal information exchanges with law enforcement. Having something that's more formal, that's more organized, that actually has a broader range of participation from various government departments would be extremely helpful, as would developing educational strategies.

Right now we have the Canadian Intellectual Property Office. It is mandated to educate the Canadian population about IP. It does have some programs in place, but the issue is whether or not those programs are sufficiently robust. Are they actually educating the population and small enterprises in the way they should be? How does that link with IP crime? When people think of patents and wonder if, as a start-up, they should patent something, they're not thinking about the IP crime element. It all interlinks. You can't separate them. To ensure that we're properly educating people about those and about the way all of these issues connect together is critically important.

● (1250)

The Chair: Is that it?

Mr. Jason Kee: Yes.

The Chair: You have two more minutes for anything else.

Mr. Jason Kee: No, I think that's about it. Thanks.

The Chair: Okay, great.

Go ahead, Madam Lank.

Ms. Diane Lank: I would first like to thank you very much for the opportunity to be here. I've never done anything like this before, and I was pretty excited about doing it. Thank you for the invitation, and I thank my company for having designated me as the pinch-hitter for John Baker.

I don't know how you folks do this, but I think the one message is we've got to communicate with our trading partners. We have to communicate with the EU and the United States. For the person who asked me about the Canadian embassy in the U.S., this is something that maybe I should be calling the Canadian embassy and asking what is being done about the U.S. Patent and Trademark Office re-exams and the judicial system. It is not that the Canadian embassy is going to change the U.S. judicial system, but communication is absolutely critical in our case for both the EU and the United States.

The rest of the world is going to become more critically important. We're beginning to scratch the surface in China, and Brazil is a daunting place to do business. We've not yet scratched the surface of the IP regime in Brazil. We're just starting that. All this is very costly. Any help the Canadian embassies in these remote jurisdictions could give would be exceedingly helpful. As I've said, we had a wonderful experience with the Canadian embassy in Colombia. Communicate until we can take over the world up here.

The Chair: Thank you very much, Madam Lank. I want to assure you that when we have the opportunity to have people of your expertise as well as Mr. Kee's, we are the ones who feel very honoured and excited to be able to hear your answers to what are sometimes our very formidable questions. On behalf of the committee, thank you very much for taking the time to be here to testify before us.

We don't have any other business, but I would advise members that we do have well-established meetings for next week with a full slate of witnesses.

The meeting is adjourned.

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