HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Industry, Science and Technology

INDU • NUMBER 128 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Wednesday, September 26, 2018

Chair

Mr. Dan Ruimy

Standing Committee on Industry, Science and Technology

Wednesday, September 26, 2018

● (1530)

[*English*]

The Chair (Mr. Dan Ruimy (Pitt Meadows—Maple Ridge, Lib.)): Good afternoon, everybody. Welcome to another exciting meeting of the INDU committee while we continue our legislative review of the Copyright Act.

Today we have with us, from Teksavvy Solutions, Andy Kaplan-Myrth, vice-president, regulatory and carrier affairs; from BCE, Robert Malcolmson, senior vice-president, regulatory affairs, and Mark Graham, senior legal counsel; from Rogers Communications, David Watt, senior vice-president, regulatory, and Kristina Milbourn, director of copyright and broadband; and finally, from Shaw Communications, Cynthia Rathwell, vice-president, legislative and policy strategy, along with—he's not on our list—Jay Kerr-Wilson, legal counsel, Fasken.

Welcome.

Thank you, everybody, for coming today. Each group will have up to seven minutes to make their presentation and then we will get into our rounds of questioning.

We're going to get started right away with Teksavvy Solutions.

Mr. Kaplan-Myrth, you have up to seven minutes. Go ahead, please.

Mr. Andy Kaplan-Myrth (Vice-President, Regulatory and Carrier Affairs, TekSavvy Solutions Inc.): Good afternoon, Mr. Chair and committee members.

My name is Andy Kaplan-Myrth. I am VP, regulatory and carrier affairs at TekSavvy. I'd like to thank you for the opportunity to share our perspective and experience with the Copyright Act.

TekSavvy is an independent Canadian Internet and phone services provider based in southwestern Ontario and Gatineau. We've been serving customers for 20 years, and we now provide service to over 300,000 customers in every province. Over the years, we've consistently defended network neutrality and protected our customers' privacy rights, in the context of copyright and in other contexts.

TekSavvy is different from the other witnesses here today in two important ways, for the purposes of this review. First, while we take copyright infringement very seriously, we do not own media content that's broadcasted or distributed. We're appearing here as an Internet service provider and not as a content provider or rights holder.

Second, to provide services to most of our end-users, we build out our networks to a certain extent and then we use wholesale services that we buy from carriers to cover the last mile, to reach homes and businesses. Because of that wholesale services layer, things sometimes work very differently for us compared to for the incumbent ISPs.

I'm going to focus my comments today on two areas: First, notice and notice and our concerns with the way it currently works; and second, our opposition to proposals to block websites to enforce copyright.

I'll turn first to the notice and notice regime. When notice and notice first came into effect, TekSavvy expended significant resources to develop systems to receive and process notices. Maintaining those systems and hiring staff to process notices continues to be a challenge for a small ISP like TekSavvy. I'll get to our concerns, but I want to start by noting that, in principle at least, notice and notice is a reasonable policy approach to copyright infringement that balances the interests of both rights holders and end-users. At the same time, now that it's been in place for nearly four years, we can see that notice and notice needs some adjustments. We would recommend three tweaks to the current notice and notice regime.

First, a standard is needed to allow ISPs to process notices automatically in a way that's consistent with Canadian law. On average, we receive thousands of infringement notices per week. They come from dozens of companies and use scores of different templates, fewer than half of which can be processed automatically. In effect, notice forwarding is an expensive and difficult service that we provide to rights holders at no cost and for which we're expected to provide a 100% service level. That's not sustainable.

Infringement notices are emails that generally have a block of plain text followed by a block of code. Some senders use notices with a block of code that follows a Canadian standard, which contains all of the elements of the Copyright Act that allow us to forward those notices. If they have the code that follows the Canadian standard, those notices can be processed automatically, without the need for a human to actually open them and review the content.

However, many notices use code adapted from American copyright notices that don't include everything we require in the Canadian Copyright Act. Others are in plain text only; they have no code. When that happens, a human needs to actually read the text of the notice to confirm that it has the required content before it can be forwarded. Both of those notices have to be processed manually. That's work-intensive and slow—and realistically, it is not sustainable as volumes increase. If rights holders were required to use a Canadian notice standard, ISPs would be able to automatically process their notices and better handle a high volume of notices.

Second, a fee that ISPs could charge to process notices should be established. Currently there's essentially no cost for rights holders to send infringement notices. As long as they can send notices at no cost, then even if they get settlements from only a small number of end-users, there will be a business model for rights holders to send greater and greater volumes of notices. Rather, ISPs bear the cost for processing those notices and then answering the many customer questions they generate. Even a small fee would help to transfer the cost back to rights holders from ISPs and constrain the volume of notices. We already get thousands of notices per week. I expect larger ISPs get far more.

I'm not necessarily suggesting we need to reduce those numbers, but we need to create some economic pressure to prevent them from ballooning indefinitely. The Copyright Act already contemplates that a fee could be established, and we recommend that a fee be established to protect ISPs and end-users from being flooded with unlimited numbers of notices.

Third, infringement notices should not be able to contain extraneous content. Many infringement notices contain content that is intimidating to end-users or that can violate customer privacy. In some cases, they don't reference Canadian law at all.

Some notices include content that's more familiar from scams and spam: advertising for other services, settlement offers, or personalized links that secretly reveal information about the end-user to the sender. This puts ISPs in a difficult position, since we're required to forward notices to end-users, including whatever extraneous, misleading or harmful content may be included. This does not serve the purposes of the notice and notice regime, and we recommend that the content or form of notices be prescribed so they can contain only the elements they are required to contain.

Finally, turning briefly to site blocking, earlier this year a group of media companies proposed a new site-blocking regime to the CRTC aimed at policing copyright infringement. TekSavvy opposed that proposal at the CRTC, and we would oppose any similar proposal here. Simply put, such site blocking would be a violation of common carriage and network neutrality without being especially effective, all without any real urgent justification. TekSavvy strongly encourages you to oppose any such site-blocking proposals.

Thank you. I will be pleased to answer any questions.

● (1535)

The Chair: Excellent. Thank you very much.

We're going to move to BCE.

Mr. Malcolmson, you have up to seven minutes.

Mr. Robert Malcolmson (Senior Vice-President, Regulatory Affairs, BCE Inc.): Thank you, Mr. Chairman and honourable committee members.

My name is Robert Malcolmson, senior vice-president of regulatory affairs at BCE. With me today is my colleague Mark Graham, senior counsel, legal and regulatory at BCE. We appreciate your invitation to provide Bell's views on how to maximize the benefits to Canadians and our economy through the review of the Copyright Act.

Bell is Canada's largest communications company, employing 51,000 Canadians and investing $4 billion per year in advanced networks and media content. These investments allow us to provide advanced communications services that form the backbone of Canada's digital economy. We are also a key supporter of Canada's cultural and democratic system, investing approximately $900 million per year in Canadian content and operating the largest networks of both TV and local radio stations in the country.

I think we bring a unique and balanced perspective to the issues you are considering. As a content creator and major economic partner with Canada's creative community, we understand the importance of copyright and effective remedies to combat piracy. As an Internet intermediary, we also understand the need for balanced rules that do not unduly impede legitimate innovation. I look forward to sharing this perspective with you today.

I'll begin with piracy. There is an emerging consensus among creators, copyright owners, legitimate commercial users and intermediaries that large-scale and often commercially motivated piracy operations are a growing problem in Canada. Piracy sites now regularly reach up to 15.3% of Canadian households through widely available and easy-to-use illegal set-top boxes. This is up from effectively zero five years ago.

In addition, last year there were 2.5 billion visits to piracy sites to access stolen TV content. One in every three Canadians obtained music illegally in 2016. Each of these measures has grown significantly over time. According to recent research conducted for ISED and Canadian Heritage, 26% of Canadians self-report as accessing pirated content online. TV piracy in Canada has an estimated economic impact in the range of $500 million to $650 million annually.

In the light of these concerning trends, we believe the most urgent task facing the committee in this review is to modernize the act and related enforcement measures to meet the challenges posed by global Internet piracy without unduly burdening legal businesses. To be clear, this does not mean targeting individual Canadians who are accessing infringing material. Rather, it means addressing the operators of commercial-scale copyright-infringing services. It is these large infringing operations that harm the cultural industries that employ more than 600,000 Canadians, account for approximately 3% of our GDP, and tell the uniquely Canadian stories that contribute to our shared cultural identity.

With this in mind we have four recommendations.

First, we recommend modernizing the existing the criminal provisions in the act. Criminal penalties for organized copyright crime are an effective deterrent that do not impact individual users or interfere with legitimate innovation.

Section 42 of the Copyright Act already contains criminal provisions for content theft undertaken for commercial purposes, but they have grown outdated. They deal with illegal copying, while modern formats of content theft rely on streaming. These provisions should be made technologically neutral so that they apply equally to all forms of commercial-scale content theft.

Second, we recommend increasing public enforcement of copyright. In jurisdictions such as the U.K. and the United States, law enforcement and other public officials are actively involved in enforcement actions against the worst offenders. The committee should recommend that the government create and consider enshrining in the act an administrative enforcement office and that it direct the RCMP to prioritize digital piracy investigations.

Third, we recommend maintaining the existing exemptions from liability related to the provision of networks and services in the digital economy. These exemptions protect service innovation without diluting the value of copyright.

Fourth and finally, we recommend considering a new provision that specifically empowers courts to order intermediaries to contribute to remedying infringements. This would apply to intermediaries such as ISPs, web hosts, domain name registrars, search engines, payments processors, and advertising networks. In practice this would mean that a new section of the Copyright Act would allow a court to issue an order directly to, for example, a web host to take down an egregious piracy site, a search engine to delist it, a payment processor to stop collecting money for it, or a registrar to revoke its domain.

● (1540)

While financial liability for these intermediaries is not appropriate, they can and should be expected to take these reasonable steps to contribute to protecting the value of copyright, which is essential to a modern digital and creative economy.

Thank you for the opportunity to present our views. We look forward to your questions.

The Chair: Thank you very much.

We're going to move to Rogers Communications.

Mr. Watt, you have up to seven minutes.

Mr. David Watt (Senior Vice-President, Regulatory, Rogers Communications Inc.): Thank you, Mr. Chairman and members of the committee.

My name is David Watt and I am senior vice-president, regulatory, at Rogers Communications. I am here with Kristina Milbourn, director of copyright and broadband at Rogers. We appreciate the opportunity to share our views with you today.

Rogers is a diversified Canadian communications and media company offering wireless, high-speed Internet, cable television, and radio and television broadcasting. We support a copyright act that takes a balanced approach to the interests of rights holders, users and intermediaries, thereby optimizing the growth of digital services and investments in both innovation and content. As a member of both the Canadian Association of Broadcasters and the Business Coalition for Balanced Copyright, we support their comments in this review.

When we appeared before this committee five years ago, we defended the notice and notice regime as a useful deterrent to copyright infringement occurring through the downloading of movies using BitTorrent protocols. Since then, Canadians have fundamentally changed the way they obtain and view stolen content. A November 2017 survey commissioned by ISED and Canadian Heritage found that Canadians are increasingly using streaming to view stolen content online. Sandvine, a Canadian company that conducts network analytics, reported that in 2017 roughly 15% of Canadian households were streaming stolen content using preloaded set-top boxes. These boxes access an IP address that provides the stream. While illegal downloading remains a major problem for rights holders, illegal streaming has become the primary vehicle by which thieves make the stolen content available. We need new tools in the act to combat this new threat to the rights holders and to our Canadian broadcasting system.

We have watched the rise of streaming stolen content with deepening concern. We have taken action using the existing remedies under the act, but these remedies are insufficient. We need new tools in the act to combat this new streaming threat. We recommend two amendments to the act that will make a difference.

First, the act should make it a criminal violation for a commercial operation to profit from the theft and making available of exclusive and copyrighted content on streaming services. In our experience, the existing civil prohibitions are not strong enough to deter this type of content theft.

Second, the act should allow for injunctive relief against all of the intermediaries that form part of the online infrastructure distributing stolen content. An example is a blocking order against an ISP requiring an ISP to disable access to stolen content available on preloaded set-top boxes.

This would be similar to action taken in over 40 countries, including jurisdictions such as the U.K. and Australia. The FairPlay coalition, of which Rogers is a participant, asked for this in its application to the CRTC filed earlier this year. This injunctive relief would serve to support and supplement that application.

In addition to these amendments addressing illegal streaming, we also have recommendations for improving the notice and notice regime. These proposals would protect Canadians against settlement demands and copyright trolling.

First, we fully support the government's position that future copyright notices must exclude settlement demands. We recommend that notice and notice provisions be amended to prohibit rights holders from making settlement demands in notices. We also recommend that the government prescribe, by regulation, the form and content of legitimate notices that an ISP would have to process under the act. A prescribed web form would prevent improper information from being entered into the notice.

Second, this is with reference to the case recently determined by the Supreme Court of Canada regarding reasonable costs of an order to disclose information, or a Norwich order. This order is the subsequent step after a notice and notice form has been sent out for those people who wish to pursue further action. The minister should set a rate per lookup and attach it as a schedule to regulations made under the act. Based on Rogers' costs, a rate of $100 per IP address would be appropriate. This approach would provide transparency to all those involved in Norwich order requests.

● (1545)

These are our brief comments, and we'd be pleased to answer any questions you may have.

The Chair: Thank you very much.

Finally, we're going to go to Shaw Communications.

Ms. Rathwell.

Ms. Cynthia Rathwell (Vice-President, Legislative and Policy Strategy, Shaw Communications Inc.): Thank you.

Good afternoon Mr. Chairman and committee members.

My name is Cynthia Rathwell, vice-president, legislative and policy strategy at Shaw Communications. With me today is Jay Kerr-Wilson, a partner at Fasken, whose expertise is copyright law. We appreciate the opportunity to present Shaw's view on this review of the Copyright Act.

Shaw is a leading Canadian connectivity company that provides seven million Canadians with services that include cable and satellite television, high-speed Internet, home phone services and, through Freedom Mobile, wireless voice and data services.

Shaw expected to invest over $1.3 billion in fiscal 2018 to build powerful converged networks and bring leading-edge telecommunications and broadcasting distribution services to Canadians. Annually, as a content distributor, we pay tens of millions of dollars in royalties pursuant to Copyright Board-approved tariffs, over $95 million in regulated Canadian programming contributions, and approximately $800 million in programming affiliation payments, $675 million of which is paid to Canadian programming services with predominantly Canadian content.

Accordingly, Shaw understands and wishes to emphasize the importance of a copyright regime that balances the rights and interests of each component of the copyright ecosystem. This balance is central to Canada's interest in maintaining a vibrant digital economy.

Overall, our Copyright Act already strikes an effective balance, subject to a few provisions that would benefit from targeted amendments. Extensive changes are neither necessary nor in the public interest. They would upset Canada's carefully balanced regime, and jeopardize policy objectives of other acts of Parliament that coexist with copyright as part of a broader framework that includes the Broadcasting Act and the Telecommunications Act.

Proposals to increase the scope, and/or duration of existing rights, introduce new entitlements, or to narrow the scope of existing exceptions would increase the cost of digital products and services for Canadians; undermine investment, innovation and network efficiency; and impact Canadians' participation in the digital economy. Stakeholders who argue for new entitlements or limitations appear to seek a simplified response to global market developments that are impacting the production, distribution, consumption and valuation not only of copyrighted works but also of goods and services provided by many, if not most, industries. The responses of most businesses, including Shaw, to market disruptions have been to invest and innovate, diversify, and improve the quality of service and customer experience in order to compete. Fundamental changes in the digital marketplace cannot simply be offset by new legislative entitlements or protections.

Calls for new rights appear, in part, to be based on the suggestion that copyright is a tool for the promotion of cultural content. The Copyright Act is concerned with promoting efficient markets and supporting the creation of works but generally without regard to a creator's nationality or where the work was created. As a result, attempts to use copyright as a cultural policy instrument would undermine the achievement of domestic cultural policy objectives established by other statutes. A clear example of this is the Border Broadcasters, Inc.'s proposal for retransmission consent rights for broadcasters, which, it argues, would support the production of local programming. Shaw is strongly opposed to that proposal.

If adopted, it would disrupt carefully calibrated Canadian copyright and broadcasting policy. It would require Canadians to pay billions of dollars per year in new fees for the same services, a large part of which would flow to the U.S., while creating the potential for loss of access to programming, as well as service disruptions. These impacts would undermine the competitiveness of Canada's broadcasting industry, incenting subscribers to turn away from the Canadian broadcasting system, ultimately at the expense of the Broadcasting Act's objectives.

Canada's Copyright Act provides that services related to the operation of the Internet are exempt from copyright liability solely in connection with providing network services. It also provides that those furnishing digital storage space are exempt from liability in connection with hosted content.

As an Internet service provider, Shaw strongly submits that these exceptions should be maintained. ISPs benefiting from the network services exception are subject to obligations under the notice and notice regime, and protection is denied where a network is found to be enabling infringement. Furthermore, the hosting exception is not available with respect to materials that the host knows infringe copyright. That being the case, Canadian law strikes the correct balance between incenting investment in network services and ensuring that these services support the integrity of copyright.

Some stakeholders have also called for the narrowing or removal of existing exceptions, such as the technological processes exception, that enable end-users and service providers to employ innovative and efficient technologies to facilitate the authorized use of works. Shaw strongly believes that these exceptions represent a balanced approach that maximizes Canada's participation in the digital economy.

● (1550)

While Shaw believes that the Copyright Act overall is well balanced, minor changes should be made to the notice and notice framework to curtail abuses, such as regulations mandating that notices be transmitted to ISPs electronically and in a prescribed form. This has already been discussed in detail today.

As well, Shaw submits that new measures are needed to enable creators to enforce rights against commercial-level online piracy. This will help ensure that rights holders receive fair remuneration and that networks are protected from malicious malware frequently associated with piracy sites. We therefore support an amendment to the Copyright Act's civil remedies to clarify the Federal Court's authority to order ISPs to block access to websites found to be infringing.

In conclusion, Canada's Copyright Act achieves an appropriate and thoughtful balance between creator, user, and intermediary interests, subject to the minor amendments that we've recommended. The extensive changes requested by various stakeholders would disrupt the achievement of policy objectives pursuant to the overall legislative framework governing copyright, broadcasting and telecommunications.

Thanks very much. We look forward to your questions.

The Chair: Thank you very much.

We're going to move right into our line of questioning.

We will be starting with you, Mr. Graham. You have seven minutes.

Mr. David de Burgh Graham (Laurentides—Labelle, Lib.): I'll take them all. Thank you.

First off, Mr. Kaplan-Myrth, I'd like to ask if you could send us some of these notices you have received in the different formats so we can just get a taste of what kind of stuff comes in to you. It's a simple request. You can send those to the clerk in the future.

Mr. Andy Kaplan-Myrth: I'd be happy to send some version of them.

Mr. David de Burgh Graham: That's fine.

Mr. Andy Kaplan-Myrth: Of course, they contain the personal information of end-users. We would sort of clean out the content, if that would be okay with you, and show you the variety of different notices that we get.

Mr. David de Burgh Graham: I'd appreciate that.

For Bell and for Rogers, I'm just going to confirm for the record that you are members of FairPlay Canada. You support FairPlay Canada?

Mr. Robert Malcolmson: Yes, for Bell.

Mr. David Watt: Yes, for Rogers.

Mr. David de Burgh Graham: Could either of you explain to me why the website is registered in Panama and hosted in the U.S.?

Mr. Robert Malcolmson: The FairPlay website...?

Mr. David de Burgh Graham: Yes. It just seems like an odd thing for a Canadian lobbying group to be registered in Panama and hosted in the U.S. I just want to put that on the record.

In FairPlay's submissions to the CRTC, they stated that existing law can be used to order a site blocking. If that's the case, why is there a request for law reform?

Mr. Robert Malcolmson: There are existing legal remedies to combat piracy through potentially getting a blocking order from a court. We've found through experience that those are ineffective.

Some of the reasons why they're ineffective are, generally speaking, that piracy operators operate anonymously, operate online and operate outside of Canadian jurisdiction. Those factors combined make it very difficult to use traditional remedies to enforce a court order against a defendant that is essentially either unknown or not findable. That's number one.

Number two, under the Telecommunications Act, as you probably know, there's a specific provision—section 36—which states that in order for an Internet service provider, an ISP, to have a role in the dissemination of content that it carries, it needs authorization from the CRTC. In a world where Internet service providers are blocking egregious piracy sites, you need the permission of the CRTC.

From the FairPlay coalition's standpoint, we went to the CRTC with that application under a specific provision of the statute. We're all saying that there are ways to perhaps improve the judicial process under the Copyright Act to effect a similar result so that piracy can be combatted on both fronts.

● (1555)

Mr. David de Burgh Graham: Have Bell or Rogers attempted to get any of these orders to block sites?

Mr. Robert Malcolmson: We have certainly been to court trying to get injunctions against those who sell the set-top boxes that disseminate this content. My colleague may want to speak to how long and torturous that process is.

Even when you can actually find a defendant in Canada and get proof that the person is engaging in illegal conduct, it has taken us, I think, two years to shut down one particular defendant in Montreal. Imagine how difficult it is to tackle an offshore defendant.

Mr. David de Burgh Graham: Mr. Watt, do you have something to say?

Mr. David Watt: I was going to say that exactly that situation has received a fair amount of press coverage. There have been various appeals and legal wranglings. It is shut down currently. However, we're still looking probably out a year before we actually go to trial in that particular case.

The current situation is simply too slow and too cumbersome. You have to effectively go and prove the case, and you have to then ask for a remedy to the particular problem, which is the second step.

We are proposing, with the injunctive relief, to have that up front. You still have to make a prima facie case, and a strong one, that there is an issue with the content that's being distributed by this commercial entity. That is really the only way that this type of theft is going to be combatted in a timely fashion. It is a very significant issue today, and a growing issue, and it's going to have serious ramifications for content creators around the world and content creators within Canada.

Mr. Mark Graham (Senior Legal Counsel, BCE Inc.): I might add, just to put a couple of facts and figures around it, that I think these kinds of site blocking remedies are available through common law in other countries as well, like the U.K. However, they have still passed law reform to make injunctions directly available against the service providers.

I think the reason is that it's just not a practical solution for a rights holder to sue a website, successfully prosecute the entire case, try to enforce, fail to enforce, and then apply for a separate injunction only at that stage to get the site-blocking order. When you think about how easy it is for someone to then open a new website, that creates an imbalance in the legal remedies available.

I think the FairPlay coalition filed a legal opinion indicating that the timeline and cost were something in excess of two years and $300,000 for one order under the current system. What we're proposing is something that is a little more streamlined.

Mr. David de Burgh Graham: Correct me if I'm wrong, but the majority of countries that have these systems require a court order somewhere in the process. I don't believe the submissions from FairPlay requested a court order.

Mr. Robert Malcolmson: There are a variety of regimes around the world.

As Mark mentioned, I think there are 42 countries that have site blocking regimes of one form or another. Many of them do involve a court order; others are administrative regimes.

What we're proposing is an administrative regime through the CRTC under the Telecommunications Act, under an existing provision of that statute that would require us to go to them in any event. That's why we're there.

It is a quasi-judicial process in which an independent regulator, not an ISP, is making the determination as to which sites should or shouldn't be blocked. It is a process that has all of the usual checks and balances that one would expect through a judicial process.

Mr. David de Burgh Graham: I have time for one last question, which will be for all of you.

What efforts have been made to identify the reasons behind piracy in the first place? It's very well to go after the pirating sites, but there is a consumer demand for it. Have we looked, for example, at the availability of Canadian content? If you're looking at any media market in Canada, there is much less available here than in pretty much any western country. Is that perhaps part of the problem?

● (1600)

The Chair: I'm sorry but I'm going to have to jump in on that one. You don't have any more time left. We can maybe come back to that question.

We are going to move to Mr. Albas.

You have seven minutes.

Mr. Dan Albas (Central Okanagan—Similkameen—Nicola, CPC): Thank you, Mr. Chair.

I would like to thank all of the witnesses for coming in and sharing the views of their organization.

I'd like to start with TekSavvy.

Mr. Kaplan-Myrth, your presentation and that of the Canadian Network Operators Consortium, who came to this committee last week, made it very clear that smaller ISPs such as your own do not support the enhanced anti-piracy measures proposed by some of the other witnesses here. Why do you think there is such a divide between the two positions?

Mr. Andy Kaplan-Myrth: Well, as I said by way of introduction, we are not rights holders. We're not media companies; we are just the Internet service providers. I think that if Internet service providers were very concerned about illegal content on our networks, we likely would not start with copyright. There is probably other more pressing illegal content on our networks, which might concern us much more which we may be talking about blocking or addressing in some way.

The reason we're talking about copyright is that the large ISPs in this country are mostly vertically integrated media companies as well, and they have interests on the media side.

Mr. Dan Albas: Can you give us an example of the kinds of things you think we should be focused on, versus some of the other concerns?

Mr. Andy Kaplan-Myrth: Well, I don't think we should be focused on blocking other content, because now we're running up against network neutrality in our common carriage roles.

My point is that if we were going to look at illegal content, we would be talking about terrorism content. You know, there are bad things out there.

We carry the bits, and we do that because we're common carriers. We carry the bits without looking at them. Just as you can pick up the phone and speak to another person and say whatever you want on that phone line and that phone company won't cut off your call because of the words that you say, we will carry the bits.

I think the large ISPs are preoccupied with copyright in particular, and website blocking to enforce copyright, because of their interests on their media sides.

Mr. Dan Albas: I'll turn to Rogers, Bell or Shaw.

The Canadian Network Operators Consortium, of which TekSavvy is a member, in their testimony last week referred to large ISPs, like you, as being vertically integrated. Can you please describe what they meant by the term in relation to your business?

Mr. David Watt: Certainly. A vertically integrated company, in our context, is one that owns content, and then as you go up, it is vertically integrated because that content is then distributed through the distribution arm, whether it be the wireless company or the cable company. It's vertically integrated in that sense. It goes up the chain. It's not a horizontal integration of a different service. It is a service that you own, which is then distributed by an entity that you own as well.

I will say, though, that it is essentially a red herring, the vertical integration argument. We are here today as content owners, and we have every right to protect the content we own. The CRTC in Canada has very strict rules, as Andy has mentioned, in terms of common carriage and net neutrality. There is no confusion in the sense that we are able to favour our content on our distribution arm. That's not the case. It is treated equally with the content of people who do not have a distribution arm.

I don't really understand the argument. I can see that the economic argument, you're saying, is possibly that you want to protect your content. You don't want that stolen. You want to have compensation for it. At the same time, when people are able to access the stolen content, they have less incentive to subscribe to your distribution arm. That's absolutely true. In terms of content, we have to protect that, and we have a commercial interest in having people stay connected to our cable arms. But the country also has an interest in having them stay connected to our distribution arms.

Rogers, in the terms of our cable distribution plan, contributes roughly just a little less than $500 million a year to the creation of Canadian content. People have focused on the 5% contribution to the media fund and the copyright payments that we make, but we also pay $500 million a year to Canadian programmers in affiliation fees. These are Discovery, TSN, Sportsnet, MuchMusic, and HGTV. Of that $500 million, on average 44% of every dollar of revenue of those programmers is spent on Canadian programming, so there are significant ramifications.

● (1605)

Mr. Dan Albas: While I totally appreciate the observation, Mr. Watt, I think we're starting to move away, because Ms. Rathwell said very clearly that this is about copyright. There are other regimes, and I think we're starting to tread into some others.

You did raise net neutrality specifically. In previous applications that FairPlay has put forward, it has said that the proposed site-blocking plan would not violate net neutrality. However, don't the principles of net neutrality currently prevent companies like yours from removing or throttling the sites yourselves?

Mr. David Watt: Yes, they do, but the key point to remember is that net neutrality is the free flow of legal content. We're discussing illegal content here. In all legal content there's equal treatment of the bits, but with respect to illegal content over the web, that type of content is not accorded the same rights.

Mr. Dan Albas: Would not requesting a government body to have the power to instruct, let's say, an action to take something down be precluded under net neutrality and appear to be a backdoor violation, though?

Mr. Robert Malcolmson: I don't think in any way, shape or form that would be a violation of net neutrality under a reasonable interpretation of what net neutrality is. As Mr. Watts said—and I think Minister Bains has said it himself—the concept of net neutrality is the free flow of legal content over the Internet. If a government body, for example, ordered someone to take down terrorist content, would that be a violation of net neutrality? I don't think anyone around this table would say so.

Mr. Dan Albas: I would agree with you on that, but again—

Mr. Robert Malcolmson: Just let me finish.

If it can be proven that the content that's being disseminated on the Internet is illegal—i.e., stolen—I don't think it's unreasonable for a content provider, regardless of whether they are vertically integrated or not.... Quite frankly, this has nothing to do with vertical integration. It's about protecting Canada's cultural and content industries, which employ 630,000 Canadians and generate lots of legal revenue for the benefit of the country. I don't think in any way, shape, or form—

Mr. Dan Albas: But again—

The Chair: Thank you.

Sorry, but we're way over time. I'm sure we will be able to come back to that.

Mr. Masse, you have seven minutes.

Mr. Brian Masse (Windsor West, NDP): Thank you, Mr. Chair.

Thank you for being here.

Mr. Kaplan-Myrth, I appreciate your presentation. Having a consistent mechanism is obviously something that should be done. This doesn't have to wait for this committee process to review something, send it to the minister and get back. It's a regulatory change that can and should take place, and I can't understand why it's so difficult to deal with.

I do want to deal with an issue, though. Piracy has been brought to our attention again. I live in an area that has had, over the years, everything from ONTV, which came from the United States, to smaller direct TV boxes for which program cards used to be used.

Obviously, Canadians are motivated to go to online privacy. Bell, Rogers, and Shaw, why do you think your own customers, who you supply service to, are choosing piracy options even through your own feed streams versus using the other services you offer? There needs to be a connection or a discussion about that, especially with Bell. You have noted 15% in your submission here. You're claiming it's $500 million to $650 million in lost revenue. Why do you think it is that your own customers are not choosing your own services and are instead deciding to go to piracy?

● (1610)

Mr. Robert Malcolmson: I will start, and others may have comments.

I think some consumers have grown up in the age of the Internet where content is widely available for free online, and if they can access it, they don't give a second thought to whether they are accessing something that someone else owns a copyright on. It's available; they consume it.

Oftentimes critics of ours will say that if we made our Canadian content, for example, available at more reasonable prices, people would then consume it. They lay the problem at our doorstep.

I will give you a practical example. That's not the problem in our experience. There's a show called *Letterkenny*, which is an originally produced Canadian comedy that is very popular. It's available on our over-the-top platform CraveTV. I think all four seasons of it are available on Crave for a subscription price of $9.99 a month. If you want to consume *Letterkenny* legally, it costs you less than 30¢ an episode to get it.

We are making Canadian content available online the way people want to consume it and at reasonable prices, yet piracy continues to grow.

Mr. Brian Masse: Quickly, Shaw and Rogers.

Ms. Cynthia Rathwell: I would echo what Rob said. I think price is also a bit of a red herring. We offer various packages. We offer pick and pay. We've gone through a huge metamorphosis of our businesses over the last few years in terms of the way we address consumers, and we're making huge investments in networks and advanced platforms for the reception of advanced broadcasting services as well as world-class infrastructure for Internet.

There is the issue of a segment of the population who just want something for nothing. To go back to what we're producing, we're competing with a product that remains highly regulated, and notwithstanding that this is a copyright discussion, I echo the comments of all of the others at the table here, and it was in my opening remarks as well. What we do as a business is very intertwined with other policy objectives and it sustains the whole Canadian broadcasting system.

Mr. Brian Masse: I want to get Mr. Watt in on this.

Maybe you can start. I would like to have an answer on this in the remaining time.

How would you rank your companies with regard to the CRTC's decision on skinny packages? I take the points you're making here, but I would like to get you to comment on the public record as to how you think your companies have behaved with the introduction of the CRTC skinny package to consumers.

There is an emergence of an illegal market in piracy, as you have raised here today, and I think it's a dual relationship that's going on here, so I would like to hear how you would rank your rollout of the skinny package as well as the previous....

Mr. David Watt: For Rogers, I would rank our rollout of the skinny package as having been a success. We rolled it out on time, as required. It is now the foundational package of all of our cable TV packages.

We start with our starter package at $25. For Rogers, we include the “four plus one” U.S. signals in that $25 price point. It is the building block on which all of our packages with higher tiers are built. There is demand for it. People take the narrow package. The problem, though, even there, is that $25 is a bare-bones cost. It might recover the cost; it might not. It's on the edge. But you're having to compete, then, against IP streaming services. You'll see them out on street corners—$12.95 a month with 1,000 channels—and it's all content that has been stolen. Okay, it comes with a 20-second lag over the original feed, or the quality of it might be only 90% of ours, but that is very difficult to compete with. It is a price issue, and that's a problem we face.

Ms. Kristina Milbourn (Director, Copyright and Broadband, Rogers Communications Inc.): I think the bind for the consumer needs to be borne in mind as well. In many instances, these pirates are operating with such impunity that they have storefronts available in shopping centres or kiosks in malls. Many times, people don't even realize that they're not transacting with a legitimate BDU provider. I think that's part of the growing cultural adoption of this type of streaming service, where it's not clear at all, at times, in the mind of the consumer, that they're doing anything wrong.

● (1615)

Mr. Brian Masse: I think just as importantly, though, if we're using the documents that have been submitted here today and the percentages that are being talked about, is that those are your family members, your neighbours, your friends, your co-workers. There's a motivational element here.

I don't know how much time I have left. If I have two minutes left, maybe I can use it later on for Bell and for—

The Chair: You have no more time.

Mr. Brian Masse: Maybe they can at least get on the record, because that's what I'm looking for—the roots of this.

Thank you.

The Chair: Thank you.

We'll move to Mr. Sheehan for seven minutes.

Mr. Terry Sheehan (Sault Ste. Marie, Lib.): Before I begin, I want to say that I'll be sharing my time with both Mr. Lloyd and Mr. Lametti.

I have a very quick question for you, Andy. It's basically a yes-or-no answer. Should ISPs be involved in some sort of remuneration for the content creator, the artist? We've heard testimony suggesting that they should be. Do you believe ISPs should be involved in some kind of tariff process?

Mr. Andy Kaplan-Myrth: I wish this were as simple as a yes-or-no answer. If I have to say yes or no, I will say no. I agree that from a policy perspective, it's a complicated question about the movement of content that was formerly broadcast onto the Internet. There are really interesting issues to explore there.

From our perspective, we actually have a bit of a unique take on this particular issue as a wholesale-based provider. The general argument, I think, is that Internet service providers benefit from the increased number of users who come over to them and use their networks to get this content that might have been on TV before or that they might have gotten on TV before. That may be true for incumbents who build networks and have economies of scale as more users join their networks—providing service to those users gets less expensive. That's not true for wholesale providers. We pay a fixed amount in tariffs for each user who joins our network.

Mr. Terry Sheehan: I know you're unique. I just wanted to get that on the record right now—we'll probably explore it a little more—and share my time with the other two.

Mr. Andy Kaplan-Myrth: I understand.

Mr. Lloyd Longfield (Guelph, Lib.): I want to build on that from creator's point of view. We talk about balance, and yet the market isn't working for creators. We've had some solid testimony, and I've met with creators in my riding in Guelph. They say they're getting paid a fraction of what they used to be paid due to changes in technology. There are market changes for sure that are impacting.

During the testimony this afternoon, we heard about looking at the streaming services for pirated content. What about the streaming services for non-pirated content, streaming services from Netflix or YouTube? If there's some type of revenue opportunity through the ISP or through the vertical integration model, how could we look at this legislation to accommodate the new technologies around streaming services that would be fairer for the creators? I'm just putting it out there.

Andy, perhaps you could continue on, but let's also share the question with the larger integrated companies as well.

Mr. Andy Kaplan-Myrth: This is not really in TekSavvy's wheelhouse, as you know—

Mr. Lloyd Longfield: Okay.

Mr. Andy Kaplan-Myrth: —but I'll take a crack at it based on what I know about the area, briefly.

It's really a question, when you look at those legitimate sites, about the licensing fees that have been negotiated and what they ultimately pass on to artists, whom you hear from. It's also a question, when you talk about a site like YouTube, of the enforcement that's on that site to try to prevent illegal content from being on it.

YouTube is usually held up as having fairly robust systems to police that sort of thing, so maybe we would talk about some other site. What you're really seeing, when you look at those legal sites, I think is a change in the balance of what those companies take and what they pass on to the artists.

● (1620)

Mr. Lloyd Longfield: Right.

Mr. Andy Kaplan-Myrth: It's a bit of a different issue from pure piracy.

Mr. Lloyd Longfield: Thanks.

I noticed some body language around this. Maybe you could put some verbal language onto the table.

Mr. Robert Malcolmson: I was trying to think of an answer.

Mr. Lloyd Longfield: Okay.

Mr. Robert Malcolmson: I think you've hit the nail on the head. In this day and age, when our regulated, linear ecosystem, which has been around forever, is now being—some would say overtaken—certainly diluted by over-the-top providers, how do we find a way, without unduly constraining the availability of that over-the-top content, to bring that into the system to the benefit of artists, creators, producers and broadcasters?

Mr. Lloyd Longfield: Right.

Mr. Robert Malcolmson: That's certainly a live issue, I know.

The government has launched a legislative review of the Telecommunications Act and the Broadcasting Act, and that's actually one of the questions they've asked. They've asked, specifically, how we get non-Canadian online providers to contribute to our system

Mr. Lloyd Longfield: Right.

Mr. Robert Malcolmson: There are many ways to do that. They could, for example, be required to contribute a percentage of their Canadian revenue to Canadian production. If you think about Netflix, I think they have close to seven million subscribers in Canada. They don't pay sales tax in Canada. They don't have employees in Canada, but they're taking a lot of revenue out of Canada.

Mr. Lloyd Longfield: Right, yes.

Mr. Robert Malcolmson: Would it be wrong to ask them to somehow contribute to our system? That's—

Mr. Lloyd Longfield: I wonder whether the carriers can participate in some type of collection model.

Ms. Cynthia Rathwell: Yes.

I just wanted to clarify something Rob was saying. I think there are a lot of things to be explored about the role of over-the-top services per se within the system. I also agree with Andy that, to a large extent, in terms of pure copyright, it's a matter of the contractual relationships they're entering into.

I know that a lot of Canadian producers are very happy with their relationships with Netflix, and that's to the consternation of some of the Canadian media companies that are competing for rights. I want to clarify, just for the record, that Shaw isn't a vertically integrated company when it comes to having media holdings, so I say that quite objectively. We have an affiliated company that's a separate, public company, which is Corus. We are a connectivity company.

Getting back to your question about whether or not there's a role for the intermediaries in supporting the artists or—I don't want to veer too far away here—Canadian content, I think from Shaw's perspective, it's very important to look at the genesis of the current exemptions in the common carrier idea that underlay ISPs. That was established, originally, in the Railway Act. That should continue, because we're trying to build out advanced networks across this country. Saddling ISPs with those sorts of support mechanisms for artists, in the context of either copyright or broadcasting, is something that Shaw wouldn't support.

Mr. Lloyd Longfield: I missed the last three words—would support or would not support?

Ms. Cynthia Rathwell: Would not support.

The Chair: Thank you very much.

We're going to run out of time.

Mr. Lloyd, you have five minutes. Go ahead, please.

Mr. Dane Lloyd (Sturgeon River—Parkland, CPC): Thank you, Mr. Chair.

Thank you, everyone, for coming today.

My first question will be for you, Mr. Kaplan-Myrth. In Rogers' submission, they stated that, in the wake of the recent Supreme Court case, they think there should be a scheduled rate of $100 per IP address. I just want to get your comment on the sense of scale of that. What would that be to a smaller provider like TekSavvy? What would be the cost of the $100 scheduled lookup per IP address?

Mr. Andy Kaplan-Myrth: I don't know what went into deciding that particular rate for Rogers. That might be an appropriate rate for TekSavvy also. We may go back and look at it and see that it needs to be something else. We may be interested in exploring more the idea of a scheduled rate specifically for Norwich orders, which is what David was talking about, as opposed to passing on notice and notice.

Mr. Dane Lloyd: So you're saying that basically Rogers' recommendation of $100, which is the fee that they've estimated as their own personal fee for a Norwich order, is not something that you view as financially burdensome to a company like TekSavvy?

● (1625)

Mr. Andy Kaplan-Myrth: Sorry, I think that the proposal, if I'm not mistaken, is that service providers would be able to charge a $100 rate in order to respond to a Norwich order, in order to disclose the identity of an end-user when that end-user is being sued by a content provider.

Mr. Dane Lloyd: Okay, so it's just not costing—

Mr. Andy Kaplan-Myrth: We would be charging that rate, and the question would be whether it's an appropriate rate.

Mr. Dane Lloyd: So you're basically saying you don't think that rate is too low, that it would be financially burdensome to your company to do all those things for that rate.

Mr. Andy Kaplan-Myrth: We have not gone back and looked at what that would be. It strikes me as probably a reasonable rate, or in the right range.

Mr. Dane Lloyd: Thank you.

I'm also glad there seems to be a lot of unanimity on this committee about standardizing notice and notice. Is there anything that you think would be going too far if we were to go in that direction to recommend standardization? Is there something that would be too far, that you think we should not consider, in terms of these recommendations on standardization?

Mr. Andy Kaplan-Myrth: I'm not sure what you mean by going too far. I think the standard form that uses code that we can process automatically, and that includes the content that's required to be included, would satisfy all of the requirements.

Mr. Dane Lloyd: It seems as though there's agreement on that, which is something that we rarely get on this committee.

Mr. Robert Malcolmson: Sorry, can I add to that, if you don't mind?

Mr. Dane Lloyd: Of course.

Mr. Robert Malcolmson: You asked what might go too far. Certainly, we're a supporter of getting rid of settlement demands coming to consumers. That's not appropriate. It should be written out of notices. But if you find yourself in a situation where you're sending a notice to someone who is illegally consuming a piece of Canadian content, for example, I'm not sure it would be such a bad thing, from a public policy standpoint, for the notice to say, "(a) you're consuming this content illegally and (b) there's another source of legal consumption, and here it is."

Mr. Dane Lloyd: Okay.

Mr. Robert Malcolmson: That speaks to the questions you've been asking.

Mr. Dane Lloyd: Yes. I'm glad that you spoke, because my next question is for you, Mr. Malcolmson.

In your statement, you said that you would like a technologically neutral model to go after Copyright Act infringements. Would you say that the act as it's written right now is too specific and that's why we haven't been able to deal with the problem of streaming?

Mr. Robert Malcolmson: The short answer is yes. I think the current provision speaks to copying, and so—

Mr. Dane Lloyd: Right now they don't have the provision to deal with streaming.

Mr. Robert Malcolmson: —streaming is arguably not caught.

Mr. Dane Lloyd: Okay. So if we were to make it technologically neutral, you would recommend wording that makes it just cover everything?

Mr. Robert Malcolmson: Yes.

Mr. Dane Lloyd: Okay.

How much time do I have left?

The Chair: You have thirty seconds.

Mr. Dane Lloyd: When we're talking about a criminal violation, organized copyright theft, what sorts of examples can you provide? What would be an example of an organized copyright threat?

Mr. Mark Graham: I think the best examples are the illegal IPTV services, as they call them, that are sometimes being operated. Just to give you an example, these are people who set up 60 often fraudulently obtained TV receivers in basements across the country, upload all the channels to an illegal cable service, and then sell subscriptions to that service for $10 a month, composed entirely of stolen content, with not one dollar going to—

Mr. Dane Lloyd: Is it realistic for the government to catch these people? Is there realistic availability?

Mr. Mark Graham: It is, in fact. Lots of them are being identified all the time by rights holders in the system, but we don't have the remedies available now to address this.

Mr. Dane Lloyd: Thank you.

Mr. David Watt: If I could interject, that's exactly the intent of both the FairPlay application and the injunctive relief, that there would be an order to ISPs to block the IP address from which that stream is coming.

Mr. Dane Lloyd: I hoped I would get a follow-up, but—

The Chair: You'll have time to come back.

Mr. David Watt: That's the commercial entity that's doing it, not the end-user. It's the person who has the server with that IP address on it. It's to block that.

The Chair: We're going to move on to Ms. Caesar-Chavannes.

You have five minutes.

Mrs. Celina Caesar-Chavannes (Whitby, Lib.): Thank you.

Thank you to the witnesses who are here today.

Mr. Watt, you indicated that you've watched the rise in streaming of stolen content with deep concern. The remedies under the act, you mentioned, are insufficient. You provided some recommendations for amendments. My question is, in addition to amendments to the act, what new tools and technology are available to help with dispelling your concerns about streaming.

● (1630)

Mr. David Watt: In terms of the new tools and technologies, I think many of them exist today. The Sandvine analytics allow us to identify the high upstream loaders. As Mr. Graham mentioned, the question is, how do people obtain this content? They will literally set up 60 set-top boxes, tune one to each channel and then stream it 24 hours a day.

With the analytics, with the new technology, that is how we're able to identify those upstream streams that are sending traffic volumes, which really can only be when they're doing something of this nature.

Mrs. Celina Caesar-Chavannes: Is there anybody else—TekSavvy, Shaw?

Mr. Andy Kaplan-Myrth: I'm just thinking about those high-upload sorts of streams. Service providers could cut off those users if they wanted to by publishing Internet traffic management policies, for which there's a framework through the CRTC. They would have to establish those guidelines and then enforce them. They can already do that on their own networks, as far as I know. It's certainly not a copyright policy issue.

Mrs. Celina Caesar-Chavannes: Thank you.

I'm sorry, Mr. Chair. I'm going to split my time with Mr. Lametti.

One of the main arguments made by opponents to the safe harbours in the act is a challenge to the “dumb pipe” theory. Can you describe the extent to which ISPs can identify the content of data they transmit?

Mr. Andy Kaplan-Myrth: I can answer that for TekSavvy, but I would be very interested to hear about it, as well, from carriers.

For us it largely depends on the platform and on what equipment we have in place. We can see whatever information the carriers give us. We're wholesale providers and so we largely rely on the carriers for information about the actual connection that our end-users have. Where that information is available to us, we would know the volume, how many gigabytes a person has downloaded in a certain period of time.

We could put equipment in place that would look into that content and find out what it is. We do not do that, so we have no visibility into the content of any end-user traffic. It goes further than that. It's not just content; it's what protocol is on the Internet. We just don't watch that or keep track of it, but there is equipment available, and we would be able to use that if we were interested in tracking that kind of information about our users.

Mr. David Watt: Yes, there's the packet inspection equipment that is available to provide insight into what is buried in the packets, but effectively, we cannot use it to throttle or discriminate between the bits. It's really for informational purposes only.

The Chair: You have 30 seconds.

Mr. David Lametti (LaSalle—Émard—Verdun, Lib.): I've blanked as to whether Shaw is part of FairPlay. I just want to ask, generally, about FairPlay.

If, as you said, you are going after the big sites that are using disputable content, why do we need a separate body in order to adjudicate that? We have the Federal Court. Let's say we do something on injunctive relief, such that you could get an injunction. Why would we not use the Federal Court system, which has, I think, an impressive record on intellectual property and copyright, expertise on intellectual property, generally, and a strong record of fairness with respect to IP? Why would we create another body? Let me flip it around. We have notice and notice in Canada precisely to avoid the abuses of notice and takedown in the American system. Why would we want to potentially open up a system that's potentially open to abuse when we could use our Federal Court system?

● (1635)

The Chair: We're not going to have time to answer that, but we will be able to come back on the next round, so ponder your thoughts on that one.

We're going to move to Mr. Chong.

You have five minutes.

Hon. Michael Chong (Wellington—Halton Hills, CPC): Thank you, Mr. Chair.

Thank you to our witnesses for appearing.

It seems to me that this is a very similar problem to the one we have with all of these illegal phone calls purporting to come from CRA. Over the last number of years, tens of thousands of Canadians have been harassed by these calls. Over $10 million has been stolen from Canadians because of this, and there are really two ways to go about shutting this activity down. One is to block the phone numbers; the alternative is to shut down these call centres.

I don't think blocking the phone numbers is a realistic way of going about it, because anybody can get a burner cellphone and get a new phone number pretty quickly to restart the scam. Thus, shutting down these call centres is pretty important. Many of them are outside of the country, in places such as Mumbai, India. I think that's the solution to it.

Similarly, when we're looking at illegal set-top boxes or illegal streaming services, we can try to ban the sale of these illegal set-top boxes, but I don't think that's realistic. There's new technology, new hardware, new software coming along all the time. Open platforms such as Android allow people to produce these programs. I don't think that's the solution. Really, to me, it seems that the solution is to shut down the servers that are hosting this illegal streaming of content.

My first question is, where are most of these servers located, in Canada or outside of Canada?

I'll direct my questions to BCE.

Mr. Robert Malcolmson: Your analogy to call blocking and spam is apt.

Hon. Michael Chong: Where are these servers located?

Mr. Robert Malcolmson: As Dave said, some of the servers that are feeding illegal set-top boxes are located domestically. Where they have been located domestically, we've pursued a judicial remedy.

The larger-scale operations, something such as The Pirate Bay, which is a well-known pirate stream available all over the world, are located offshore.

Hon. Michael Chong: Where?

Mr. Robert Malcolmson: I don't know exactly. The Pirate Bay moves around. It has been in various jurisdictions.

Hon. Michael Chong: What are the top two or three countries? With the call centres, we know that India is a huge problem, and the RCMP has been working with India and law enforcement authorities to shut this down.

Where are these streaming servers located?

Mr. Robert Malcolmson: My colleague might have some specific information for you.

Hon. Michael Chong: Okay.

Mr. Robert Malcolmson: The point is that they are located offshore, and to Mr. Lametti's question, that makes it difficult to use traditional judicial remedies to find that defendant and enforce against them on an expedited basis and an effective basis.

Mr. Mark Graham: We should take that away and provide some information that's more precise about where we're seeing them commonly.

Hon. Michael Chong: Okay.

In your second recommendation, you're suggesting that we increase public enforcement of copyright, using domestic law enforcement agencies to actively pursue people infringing on copyright. The government announced some $116 million for a new national cybercrime unit run by the RCMP that will work with international law enforcement agencies to pursue these kinds of infractions. Are you suggesting that's not a good approach or that the government doesn't have them up and running yet or that another approach needs to be taken?

We're here to hear your suggestions on this.

Mr. Robert Malcolmson: It's a good initiative if it makes commercial copyright infringement a priority. That has always been the issue, that copyright infringement is lower down on the enforcement food chain. Given the scale it has grown to and given who's engaged in it, organized crime in some instances, if this initiative were to make it a priority, then it would be a useful tool and consistent with our recommendation.

Hon. Michael Chong: There was a report this week in the news that the RCMP has fallen behind on the pursuit of digital criminals. It doesn't give us, at least me, great confidence that this issue is going to be dealt with expeditiously. With 15% of all people now getting their stuff through these set-top boxes, these cloned Android or other clone set-top boxes, I'm not sure we're going to be able to catch up to this emerging trend. It's all very concerning.

● (1640)

Ms. Kristina Milbourn: To that, I just want to add that, in order to engage the RCMP and to engage federal agencies, there has to be a very clear basis in law. We have spoken with the CBSA and the RCMP about this problem in particular. What we hear back from them is that they're not always clear that the jurisdiction exists for them to engage in this particular type of problem, just on the mechanics involved and distribution and the like. I think increased involvement by federal law enforcement is great, but it has to be buttressed by that criminal prohibition in the Copyright Act or in an act that makes it clear that they have the jurisdiction to investigate and to prosecute these crimes because they're against the law.

The Chair: We're going to move to Mr. Jowhari.

You have five minutes.

Mr. Majid Jowhari (Richmond Hill, Lib.): Thank you, Mr. Chair.

Thanks to the witnesses.

I want to pick up where some of my colleagues went to the edge and left it there. It's about tracking the content or identifying the content. I understand there's some technology available that would enable you to determine what the content is and what type of content is being used.

I want to start by asking the following question. Are there any instances where the ISP providers are legally obliged to monitor their services for the type of content that's going through what you call your "pipes"?

Mr. Andy Kaplan-Myrth: No. There's no specific content that we're required to track or log.

Mr. Majid Jowhari: What's your view?

Mr. David Watt: It's the same answer.

Mr. Majid Jowhari: Shaw has the same answer too. Okay.

Given the fact that there is technology available, can you give me a sense of how that technology can be used to track, in the case of offshore providers of illegal content, and what it is that stops us from blocking them, or stops you or your organization from blocking them? They wouldn't fall under our jurisdiction. Or am I simplifying this too much?

Mr. Robert Malcolmson: I think you're identifying the problem that we're confronting. As an ISP, we act as a carrier or a pipeline, so for us to be able to do something about the content that rides along that pipe, we need some form of authorization. So in the case—

Mr. Majid Jowhari: Do you really need that authorization if they're offshore and they're not within our jurisdiction?

Mr. Robert Malcolmson: Under the Telecommunications Act we would still need that authorization from the CRTC to essentially block that content.

If a pirate stream is coming from Romania, for example, and we could identify it and we just took it upon ourselves to block it, we would arguably be in breach of our common carrier requirements. That's why we're in front of the CRTC saying we know how to stop this but we want to stop it with authorization and through a proper process in which we're not making the decision, because we're criticized—we don't want to be seen as censors, as some have painted the FairPlay application. Through proper authorization and an independent body, they would say the content owner has proven its case that this content is being pirated from Romania, for example, and that the ISP could go ahead and block it.

Mr. Majid Jowhari: Would that shorten the time and the cost you were talking about? You were talking about $300,000 and about two years to be able to get.... How much of that would get shortened with the suggestions that you have?

Can anybody answer?

Mr. Robert Malcolmson: I'll give you an example from our perspective. In our FairPlay application, we took a look at the costs of blocking through domain name servers, which is a common method of blocking, and it's infrastructure that is installed on every ISP system today. The estimated cost to do a block of one site is something in the range of $18 to $36, whereas we spend two years—

Mr. Majid Jowhari: We have a technology through which we can identify the content, and based on the existing technological infrastructure that's there, it's going to cost us a maximum of $20 to be able to block, if we have the jurisdictional authorization that you're talking about.

● (1645)

Mr. Robert Malcolmson: For that type of blocking, yes.

Mr. Majid Jowhari: That's for that type of blocking.

David.

Mr. David Watt: I was just going to add, as well, that the reason for the desire for an order from the CRTC for the blocking would be that the order would apply to all ISPs. For example, to go back to the very start of the question, if one of us felt we were authorized to do this.... We're not, but if we went rogue and blocked that IP address, people who wanted to consume it would just switch to a different ISP within Canada, so we do want it to be an actual order that would apply to all service providers.

Mr. Majid Jowhari: Andy, do you want to add something?

Mr. Andy Kaplan-Myrth: Yes. There are various technical issues here. Without taking too long and going too far into the weeds, I'll say that this is a great example of why people call this sort of regime a slippery slope. If we start down this road of requiring blocking, we're going to run into one problem after another for which this is ineffective.

DNS blocking is a way of basically taking a phone number out of the phone book; it's disassociating the IP address from the domain name. It does not block access to the website. It doesn't stop end-users from using alternative DNS providers, which are provided by major companies, including Google. Many users use them because those DNS providers are sometimes faster than their own ISPs.

If we block using DNS blocking and remove those, then we're going to be back here five years from now talking about why we need to implement deep packet inspection, and five years after that, we're going to be talking about why we need to block VPNs. After that, you can bet that users are going to find other ways to circumvent each of these ways of blocking them.

What we need to do is protect the regime that we've had all along, which is common carriage. We carry the bits. We don't look at them. We don't judge them. We don't decide what to block.

Mr. David Watt: Could I just make two points there? One, where this regime has been put in place, there's been a 70% to 90% reduction. We're not claiming that it's going to stop it all, but it has been effective in stopping the majority of the theft.

In terms of the slippery slope, we'd really like to deal with the issue today. That's all we can deal with. We need to deal with it first. If we come to a subsequent problem, we'll have to deal with it then, but there's no reason not to deal with the first problem because you think a second one may come along.

Mr. Majid Jowhari: Thank you.

Mr. Chair, I want to thank you. You've been quite liberal with my time.

The Chair: Are you calling me a Liberal? Thank you very much.

Mr. Masse, you have your two minutes.

Mr. Brian Masse: Thank you.

I want Shaw and BCE, Bell, to get a chance to respond to the skinny package thing. I'm trying to understand and appreciate what's happening out there and what's motivating people. There has to be a symbiotic relationship here of some sort.

What are the tools? You're suggesting that it may not be price-driven, but I do want to hear from you in terms of your rollout of the skinny package and where you rank yourself in there. I've heard Mr. Watt's perceptions on that, so I'd like to hear from Shaw and Bell on the same thing.

Ms. Cynthia Rathwell: Thanks.

I don't want to rank ourselves vis-à-vis our colleagues. I think we've done very well with the rollout of the skinny basic, and I think our customers have responded. It suits some of their needs. It's available, and it's the basis for all packages on which we build. Whether it goes to content packages or pick and pay from there, our subscribers are happy with it. We think the price is reasonable.

If we're talking about the attractiveness of “free”, I could turn for a second to an experience we had on the satellite side with the local television satellite service program. This was a benefit that we offered up to the CRTC to provide a package of free local signals to Canadians who had lost access to over-the-air transmission because of the digital transition. Their transmitters hadn't been converted to digital. We offered it to a maximum of 33,000 people, and 35,000 or more subscribed.

There was no way to scientifically monitor who was taking it. A lot of the people clearly were taking it from their cottage. A lot of them were taking it from areas where there were local signals available; they just wanted it for free. We continue to get calls that are beginning to express concern about the fact that this program is time-limited. It was for the duration of a licence. About seven years is what it's been offered for.

We're happy to have had that stopgap, but it was illustrative to us that free is very attractive. It's not matter of a failure of our skinny basic offering or our services.

● (1650)

Mr. Brian Masse: Thank you.

Mr. Malcolmson or Mr. Graham, do you want to add to that?

The Chair: You will have time. We'll come back to that.

Mr. Brian Masse: Okay.

The Chair: This takes us to the end of the first round. We will have a second round. We'll be mindful of potential votes. If we have to cut it short to go for the votes, we will.

We'll start our second round with you, Mr. Graham. It's fine if you want to give it to Mr. Lametti.

You have seven minutes, Mr. Lametti.

Mr. David Lametti: I want to pick up on that question again, though. I think you have to justify why we can't use the court system and why we need another body. If in fact you're going after, as you're saying, the really popular sites, why do we need to have a separate body when the court system, the Federal Court system in particular, could work in looking at injunctive relief?

You're not poor litigants. You have fairly good resources at your disposal. Why should we create another apparatus, which would then be open to abuse and open to influence, perhaps, by industry agencies like yours?

Mr. Mark Graham: I'll start.

I think you mentioned when you were asking the question that maybe we could do something on the injunction. What we've requested in our remarks today is that injunctive relief directly against intermediaries in the Federal Court would be a significant help on this issue.

There are a few reasons why we thought about the CRTC for the FairPlay application. One is that the CRTC is often seen as more accessible, for smaller litigants in particular, which might include creators and rights holders, who can't as easily pursue something through a lengthy Federal Court process and are familiar with the CRTC. I think it's also more accessible for small ISPs who often appear before the CRTC and have expertise in that area. That's one reason.

The other reason is section 36 of the Telecommunications Act, which says that CRTC approval is required for a service provider to disable access to a piracy site. In the CRTC's view, that applies even if a court has ordered you to disable access.

If the situation is that you go to court and then you have to have a duplicative proceeding at the CRTC anyways, and given that what we're talking about is the management of the country's telecommunications networks and we have a regulator that's tasked with managing the regulation of those networks, it seemed appropriate to be there.

Mr. Robert Malcolmson: Mark gave an example of our collective attempt to shut down a pirate operating in Montreal, and it has been a two-year saga. It's been lots of money in terms of legal fees, and it still isn't where it should be.

The site-blocking application creates an accessible channel for content owners of all stripes to go and protect their content. Imagine if you're a small content creator or owner and you have to go to the Federal Court, and you have to spend two years litigating. You could spend on legal fees the full amount of revenue you're ever going to get from your show.

As Mark said, the idea of putting it in the hands of the CRTC, when we're going to have to go there anyway under the Telecommunications Act, made a lot of sense, from an accessibility, cost, and efficiency standpoint.

Mr. David Lametti: Mr. Kaplan-Myrth, do you have any thoughts about that?

Mr. Andy Kaplan-Myrth: Taking a step back, I feel that there are a few different ways we've talked about to address that possibly illegal infringing content: going after the boxes themselves, or the people distributing the boxes, or identifying where that content is being captured from a legitimate source and then uploaded onto the Internet. FairPlay gets at one part of that. Really, it's blocking access to a site, so that would maybe choke off how end-users using those boxes would connect to the uploaded streams.

There are different ways of addressing this. I think that FairPlay creates an extremely powerful tool for a particular group adjacent to the CRTC, which would maintain this list that end-users of sites would then not have access to. I think there are probably much less blunt ways to find the content that's being uploaded and use Federal Court processes to stop that, or choking it off in other places, without creating such a powerful tool that, I think, is very ripe for misuse.

● (1655)

Mr. David Lametti: Thank you.

Mr. David de Burgh Graham: Thanks.

I have a whole lot of questions and about three minutes to get through them all.

The Chair: Two minutes.

Mr. David de Burgh Graham: What's that?

The Chair: You have two minutes.

Mr. David de Burgh Graham: Oh, I'll talk even faster. Jesus.

To Rogers, you said you're here as a content owner, and I believe Bell would be here primarily as a content owner as well.

Of the large companies, who is here to defend the users of the Internet, as opposed to the content rights holder? Is there not a conflict between the two for you as a vertically integrated company?

Ms. Kristina Milbourn: If I may, I think the second half of our request speaks to us being here as an ISP as well. Rogers was actually instrumental in driving forward the appeal, which was ultimately heard by the Supreme Court of Canada. It rendered a very favourable judgment, and I think TekSavvy would agree that it was quite consumer friendly.

From our perspective, we are a rights holder, of course, but we're also an ISP. I think based on our recent Supreme Court experience, we have a very, very balanced view of how to manage these intricate issues as they relate to piracy, not just from a rights holder perspective, but insofar as the ISP obligations are concerned, and moving down the line, the users.

Mr. Mark Graham: I think we're here in both capacities as well, and that's why you've seen our recommendations focus on the operators of the large commercial-scale infringing piracy sites and not on any sorts of remedies that would impact end-users. I think enforcement against the illegal sites actually helps end-users, because those sites are a leading distributor of malware. Also, when people pirate the content, it increases costs to Canadians who access content through legal means. So, we think it supports both constituencies.

Mr. David de Burgh Graham: Thank you.

Reports indicated that Bell met with CRTC officials and pressured universities and colleges to support the application with regard to FairPlay Canada. Is that something we should be concerned about?

Mr. Robert Malcolmson: I think dialogue with regulator staff before an application is filed is entirely appropriate. In fact, it should be encouraged because it creates open dialogue with a regulator—whether it's for telecom, milk or bread—so that both parties can be informed. There's nothing inappropriate about that.

Mr. David de Burgh Graham: For universities and colleges—?

Mr. Robert Malcolmson: I think you said maybe that Bell pressured universities and colleges. I would disagree with you entirely. Again, when someone's filing an application with the CRTC seeking support for those who think it's a good idea, it's perfectly appropriate to reach out to potential supporters and say, "Hey, do you think this is a good idea, and if you do, would you support this at the CRTC?" All constituencies do that. Again, I think it's entirely appropriate and, in fact, should be encouraged.

Mr. David de Burgh Graham: I have a bunch more on net neutrality but I think I'm out of time.

The Chair: You're out of time.

Mr. David de Burgh Graham: Thank you.

The Chair: Thank you for playing.

We're going to move to Mr. Albas.

You have seven minutes.

Mr. Dan Albas: I want to pick up on net neutrality for MP Graham.

I disagree with this, but I think it was very smart of many of you here today to lump your concerns in with the wider category of illegal activity. That may be categorically correct, but I think most people would hope, when an RCMP officer sees someone driving dangerously down the road, that he or she would immediately move to protect the public's interest. We would hope the officer would do this rather than stopping and saying that there is an illegally parked car to the side, and then going under a municipal bylaw while there is obviously a moving concern.

I think you're trying to protect the interests of your company, and that's totally noble. We need you to do that. However, again, you're protecting the rights of your companies versus the wider interests and rights of everyone when we talk about public safety and whatnot.

As far as net neutrality goes, I will tolerate child pornography, terrorism recruitment and those kinds of sites being taken down as a point, because it's practical and it must be done. On the flip side, I disagreed with the government of Quebec when it tried to shake down ISPs outside of its jurisdiction to basically force gaming sites to come under their umbrella, so they could collect more revenue. I think you can't equate the two.

You're asking for a quasi-judicial branch of the CRTC to basically streamline your applications because you believe it's illegal, yet when the RCMP or our security apparatus need to take something down, they have to go through a judicial process of approval, get warrants, etc., to have those things done. Why do you think your needs should be streamlined while those that are more subject to public concern, things like terrorism and child pornography, have to go through a series of checks and balances for which we know there is judicial review?

I'll start with Bell, because you guys had the last word on illegal.

● (1700)

Mr. Robert Malcolmson: The proposal we filed, first of all, does contain a series of checks and balances so that the party that is subject to the potential blocking order has an opportunity to make representations, the party seeking the block has an opportunity to make representations, and ultimately, an independent body makes a recommendation to the CRTC and the CRTC decides.

Second, as we've said a couple of times, for an ISP to engage in blocking, they need the authorization of the CRTC. It's a statutory requirement. That's why we're going there. We're going to end up there in any event. We could go to court and then to the CRTC and have two different processes, but that seems to us not entirely efficient, again, especially for smaller content owners and providers.

Mr. Dan Albas: The Shaw application to the CRTC specifically referenced that there's a lack of clarity as to what the Federal Court can rule on in this. Would that be an area we could look at as a way to have more oversight and clarity for your businesses, rather than going to a model whereby it goes to the front of the line in these kinds of cases, beyond those other cases of criminal activity?

Ms. Cynthia Rathwell: Yes, we discussed the need for clarification, and I will let Jay speak to the particulars of how that might happen.

To answer Mr. Lametti's question earlier, Shaw wasn't a member and isn't a member of the FairPlay coalition, but we did file a supporting brief. The reason, consistent with what Mr. Malcolmson just said, is that we believe it's a quasi-judicial body with a due process that's adequate to the task of dealing with this kind of content.

Jay can speak more to the particulars of the sort of amendment that would be in order to clarify the Federal Court jurisdiction.

Mr. Jay Kerr-Wilson (Legal Counsel, Fasken Martineau, Shaw Communications Inc.): There are two things that could be done to help speed up the process or make it more efficient using the Federal Court as a tool.

One is to clarify the court's powers to order the specific blocking of a URL or to de-index it from a search engine to avoid the jurisdictional fight of whether that's actually within the wide ambit of injunctive relief that the Federal Court can grant. So, make it explicit, specific and clear that it's within the Federal Court's powers, because the Federal Court is sometimes a little leery about granting injunctive relief, and you want to give it comfort that this is actually what Parliament intends.

The second thing, to the point that Bell raised, is that right now you have a regime in which even if the court orders all ISPs to block access to specific content, you then have to go to the CRTC to ask for permission to do what the court has told you to do, and there's no guarantee the CRTC is going to say yes. That could put carriers in a position where they're either in breach of the Telecommunications Act or in contempt of court. That can't be good public policy, no matter what you think of FairPlay or any other initiative. Surely the CRTC has to be told that it has to allow ISPs to satisfy an obligation pursuant to a court order. That just seems to be common sense.

Mr. Dan Albas: I appreciate that intervention. It at least fills out some of my interest in that.

I'd like to go to Teksavvy. Mr Kaplan-Myrth, do you believe that site blocking suggestions are technically feasible? As you said earlier, if there is eventually a clampdown, users will change behaviours—for example, encryption, such that there will not even be an ability for you to identify the information that flows through. Do you think that's technically feasible if those kinds of techniques get used, where an ISP will have no way of knowing what content is being transferred through its lines?

● (1705)

Mr. Andy Kaplan-Myrth: Look, I don't think it's necessarily technically feasible for every ISP right now to do the kind of blocking that is already proposed. There was no description in the FairPlay application of what site blocking is. We hear a fair amount about DNS blocking, so if that's what blocking is at this stage.... You know, DNS is fairly common for ISPs to provide, but it wouldn't necessarily be required. Presumably, an ISP might configure all of its users' systems to go to a DNS server and then not have to maintain a DNS server. There's no requirement to provide a DNS server, so presumably that ISP wouldn't be able to block it. If there were a requirement to block it, I guess that would require putting a DNS server in place, making their end-users use it—I'm not sure that's a possibility—and blocking it.

So, that's just sort of the simplest case.

The Chair: Thank you.

Mr. Dan Albas: I thought it was part of Mr. Lametti's time that was used, because she said she'd like to answer Mr. Lametti, so I would like an extra minute, Mr. Chair.

The Chair: You will have time to come back. Be very quick now, please, but you will have one more chance.

Mr. Dan Albas: Mr. Malcolmson, you also mentioned that, on the standardization of notice, you could say the content is a violation against a rights holder, but you would then direct someone to the appropriate content. To me, that sounds very self-interested, given the vertical integration of your company to be able to do that. Do you think that's really in the public interest, or should it just simply involve giving the person notice that the content is illegal?

Mr. Robert Malcolmson: I think it is in the public interest, whenever there's an opportunity, to let Canadians know there are legal sources of the same type of content that they're consuming illegally. Whether it's content from Bell, Rogers, BlueAnt or CBC, if I'm pirating *Anne of Green Gables*, it might be in the public interest for the consumer of *Anne of Green Gables* to know that it's also available on cbc.ca.

Mr. Dan Albas: I think it's more probable that it would be *Game of Thrones*.

The Chair: Thank you.

Can we move on now?

Mr. Dan Albas: Thank you.

The Chair: Great.

Mr. Masse, you have seven minutes.

Mr. Brian Masse: Thank you, Mr. Chair.

I saw the stuff on piracy that was presented, and it is really important for us to have the discussion here today. One of the reasons I was interested is that we have heard from artists and creators very explicitly that they're concerned about their future. I'm not sure that even resolving that is a silver bullet.

In the area I represent is a place called Sandwich Town. It's the oldest European settlement in Canada west of Montreal. It's where the War of 1812 was fought. It's where the Underground Railroad was. There were rum runners and a whole series of things. Today, though, it's challenged by economic poverty, the closure of schools, and pollution. It has one of the highest rates of poverty.

I tell you all of this because right next to Sandwich Town is the Ambassador Bridge. The Ambassador Bridge has about $1 billion of activity per day. About 35% of Canada's daily trade takes place in my riding. A private American citizen owns the Ambassador Bridge. It's right next to Sandwich Town. In fact, they actually bought up houses. They boarded them up and knocked them down. It's quite lucrative, though. Matty Moroun, who owns it, is in the top 40 billionaires in the United States, and a lot of economic activity takes place right next door.

Now we, on the other side of Sandwich Town, a new border crossing called the Gordie Howe bridge. You might have heard of it. I've spent 20 years of my life trying to get a new public crossing. It's about $4 billion to $6 billion. There is very little activity taking place in Sandwich Town from this. There are supposed to be community benefits, but we don't even know how much. Essentially, right now, it hasn't really done a whole lot for the area. We're still waiting.

In front of Sandwich Town is the Detroit River, and then we have what's called the Windsor Port Authority. The Windsor Port Authority is a multi-million dollar operation that's doing quite well on its own, but it also has this lucrative new border crossing that's going to be coming into place along with other extensive work. If the Ambassador Bridge gets to twin, which the government has provided them a permit to do, we'll receive a major economic benefit from them.

On the other side of Sandwich Town is a railway that goes to a Canadian salt mine and other operations. It's a multi-million dollar operation, but it's smaller than the others. It's not CP. It's not CN, but it's doing okay—the Essex Terminal Railway. In between all of this, what people have gotten from the multiple billions of dollars of activity around them is nothing. They have closed schools, closed businesses, and closed the post office, and they have the highest rates of poverty.

I have to say that this is what concerns me, and I feel the artists that we've heard from are in the same predicament.

Do you have any suggestions whatsoever, in the time remaining, for what you can do, other than just hoping royalties will roll in if you stop piracy, to help improve artists' compensation in Canada? Even if it's not within the jurisdiction of your own company, is there anything you can suggest to this committee?

I fail to see how ending piracy alone.... Is there something new or different? I'm open to suggestions. You may not want to answer—I don't know.

Mr. Chair, we heard about this when we did our travel, and I see that we're still going on about the same thing.

Is there anything that anybody here can offer for those individuals?

● (1710)

Mr. Robert Malcolmson: I actually used to go to school in Windsor and I lived under the Ambassador Bridge. I took my family there to see where I lived in college and, of course, it was gone. There's not much left there.

In terms of suggestions we would make, as I said at the beginning, cultural industries actually employ 630,000 Canadians and contribute 3% to our GDP. They are playing their role in the employment of Canadians. To the extent that piracy, if you agree with our perspective, is undermining that system, certainly stopping piracy, constraining piracy and limiting it will help the existing ecosystem that employs Canadians and creates jobs. If I'm an artist creating content, if I'm the producer of *Letterkenny*, I certainly want to know that the government is trying to stop the leakage of my intellectual property outside of Canada and that I'm being fairly remunerated for what I've created.

I think stopping piracy isn't all about trying to help the vertically-integrated companies. That's not it at all. It's about protecting those who create our content and making sure they're paid for it.

Mr. David Watt: I guess I would just echo a remark you made earlier—that is, that $900 million of Rogers' revenue was directed to Canadian content producers and creators.

Ms. Cynthia Rathwell: I think that's consistent with the comments of Shaw.

I think just speaking at a very high level, there are myriad commercial relationships between artists and the different enterprises for whom they are producing content. At one level, it appears very simple to advocate the introduction of a new right to add to artists' income. We had some discussions about the sound recording right, and soundtracks, and it seemed like a simple fix. It's not really a simple fix. It would unsettle the broadcast industry in Canada and it would have impacts on the broadcasting system to do that in terms of cost. There are also direct relationships between the artist, in that case, and the producers of the recordings they're making.

So at a high level, it seems as though there may be simple fixes in copyright by creating new rights, but when you drill down on it, as David said and as we said, there's a very complex framework at both the public policy level and the commercial level.

From our perspective as a regulated broadcast distributor, we believe we make incredibly important contributions to the broadcasting system. As a telecom provider, we believe we meet public policy objectives. All of this comes together to help Canadian artists. Unfortunately, copyright isn't a terrific mechanism, from a national perspective, in terms of executing domestic cultural policy.

● (1715)

Mr. Jay Kerr-Wilson: Mr. Masse, I can actually give you a concrete proposal that tomorrow would put money into the hands of artists. Right now under the Copyright Act, when radio stations play sound recordings or the recordings are played in stores and restaurants, royalties are paid. Parliament has deemed that under the Copyright Act, the money is split fifty-fifty between the record company and the performer. Give 75% to the performer and 25% to the record company and you've immediately improved the lot of every performer.

Mr. Brian Masse: Thank you very much for your testimony.

The Chair: Thank you.

We'll move to Mr. Longfield for five minutes.

Mr. Lloyd Longfield: Thank you for the time.

Thanks to all the presenters today. You're giving us very concrete suggestions for our study.

We haven't talked too much about the EU's recent copyright legislation, particularly around article 13. It was a controversy at the time and a controversy through the summer. It looks at the question of how we grab content on the way up onto your platforms—content from legal suppliers like YouTube and others—to make sure that copyright is being paid.

Have you reviewed that part of article 13? Is that something we need to be looking at in terms of our legislative review? We are competing against the EU.

Ms. Cynthia Rathwell: I'm not an expert on international copyright developments, but I think Jay has a lot of experience in this area. I'll defer to him.

Mr. Jay Kerr-Wilson: I'm not an expert on international copyright developments, but as I understand it, article 13 has not yet been implemented. There are still some negotiations that have to take place within the European structure. We don't know what the final version will look like. Basically, it puts the onus on platforms that have user-generated content uploaded to them—i.e., YouTube and Facebook. It's not on the ISP level. It's on the platform level. It says you need to have a system in place to try to prevent unauthorized uploads of content. YouTube already has a very robust system of content match.

Now, YouTube's problem, they say, is that right now, if they find unauthorized content, they let the rights holder either take it down or monetize it. They can say, “You can keep the money or we'll take it down.” Their complaint about EU's article 13 is that it looks as though it forces them to take it down, and it takes the monetization away.

Canada doesn't have the same framework. If YouTube is engaged in communication of public copyright-protected content for a commercial purpose, copyright in Canada applies. Royalties have to be paid or, if it's unauthorized, it has to be taken down.

It's not getting at the problem. This isn't going to put money in anyone else's hands. This is just a way of reducing the amount of unauthorized content available on the YouTube platform. YouTube already does that. So it's a bit of a solution in search of a problem, and it doesn't really translate to what we're—

Mr. Lloyd Longfield: If I may, my thinking on this is that the previous review, five years ago, tried to make this technology agnostic, and technology has changed. What hasn't changed is the flow of information. How it flows is.... You know, there will be different technology five years from now. But it seems to me that trying to capture the value stream and get the revenue out of that value stream is what article 13 does.

I'm not a lawyer, but some of you are. I know that you all have an interest in this. It would be going into your platforms, so it could affect your business model.

Mr. Andy Kaplan-Myrth: I'm not sure of the way the European model, as proposed right now, would go into an ISP's business model. It's targeted at platforms, not at hosting. We don't take the uploads and then host them somewhere in a way that we could take them down. Instead we're just kind of moving the bits from one place to another.

I would echo what Jay said. I don't think the Canadian framework needs an approach like that. Copyright applies to the content on those services that are doing business in Canada already.

Mr. Lloyd Longfield: I'll turn it over to Terry.

Thank you.

Mr. Terry Sheehan: Thank you very much. We've covered a lot today, and I thank you for that testimony on a variety of subjects.

There's a subject we haven't touched on, but we've heard it in different parts of the country when we travelled, and we've heard different testimony on it. It goes to what Robert said about pirating, which is that some people just don't think that what they're doing is wrong. They're not educated. There are a bunch of institutions and different groups that are educating people about the infringement of copyright through piracy.

Is your group, are your companies, able to do or doing educational programming about large companies with access to a lot of people.

Don't spam them. We went through a whole bunch of testimony on that. Seriously, you do have different ways of communicating to the people. The government has a role to play in that, but it's just like anything, whether it's seat belts, drinking and driving, or texting. A a certain amount of education needs to happen with the people.

I'll start with Robert.

● (1720)

Mr. Robert Malcolmson: I think you're right that education is a key component of making sure consumers understand the implications to the cultural industries of consuming illegal content. Certainly, I think we could collectively do a better job of educating Canadian consumers. I suggested that if in the notice and notice regime there were a copyright infringement notice sent to a Canadian who is consuming—perhaps unwittingly—copyright infringing content, a notice that made that Canadian citizen aware that there was another legal source to get that content that supports our domestic ecosystem, perhaps that could be a very personal and effective way of educating that particular consumer. That is one way it could be done.

The Chair: We're way over time.

Mr. Albas, you have five minutes.

Mr. Dan Albas: Thank you.

I actually would like to follow up on what Mr. Sheehan was asking, just in regard to the education side. I'd actually like to focus on whether or not your companies, respectively, on some of these new box technologies that are coming out, are spending time with the RCMP so that they understand what is illegal and what to look for, so that there can be national bulletins. Are you're working with different associations for police, so that they're advised that this is an issue?

Ms. Kristina Milbourn: Yes. We actually met early on with the RCMP and the CBSA. We've gone back to the RCMP. Where I think they do have a role to play is where we see the unlawful decryption of satellite signals, because there's a very clear prohibition in the Radiocommunication Act that says you cannot decrypt a satellite signal. To the extent that this type of activity is occurring to help fund and fuel this unlawful industry, yes, I think there's a role to play.

We also note that this is not the only means by which this content is being acquired. I think, in part, what you see before you in our submissions is that we're asking for modern provisions that address what is actually occurring. We heard a little bit about this sort of set-top box organized element, which is the large-scale redistribution of content, none of which is authorized.

That, I would submit, is not an area where the RCMP can be helpful, because there's no clear prohibition that we can point to in either the Criminal Code or the Copyright Act that would allow them to take jurisdiction to open an investigation, even if they wanted to.

Mr. Dan Albas: Okay.

Ms. Kristina Milbourn: I don't know if Mark or Rob has anything to add. We have met with the police, and we're still here.

Mr. Dan Albas: I think that's very helpful, because earlier Mr. Watt mentioned that the Criminal Code needing to be updated, so I want some specifics.

Mr. Malcolmson, do you want to jump in?

Mr. Robert Malcolmson: You asked what we've been doing in terms of educating enforcement agencies.

We've worked for the last year and a half with the CBSA to help them understand how many set-top boxes are being imported into Canada every day, because most of them are made outside of the country and are brought in over the border. We've pointed out to them that these imports are happening and that they might want to look at them and take enforcement action. It's an ongoing battle for us to get their attention, but hopefully we will.

Mr. Dan Albas: Okay.

Mr. Robert Malcolmson: We've talked to ISED about the boxes coming into the country and not being certified under the Radiocommunication Act, because there are spectrum issues around these boxes. We pointed out that they're not compliant with the Radiocommunication Act.

Again, we're continuing to fight that fight and to educate enforcement agencies that have the ability to do something.

● (1725)

Mr. Dan Albas: Mr. Kaplan-Myrth, you mentioned earlier that on the notice and notice regime, sometimes personal information will be sent, which may violate someone's privacy. You'd like to see those things replaced by a more standardized form that wouldn't allow that information to come to you in the first place. Is it because you're worried about liability if you put in notice and notice and inadvertently give information about someone to someone else? Is that the erroneous information you're talking about?

Mr. Andy Kaplan-Myrth: I'm sorry. There may have been some confusion about that. I was asked if I would provide samples of the notices that we receive, and I said that there is some personal information in those notices, so we may redact them before we provide them to the committee.

Mr. Dan Albas: Oh, no, I'm not talking about that. You said that sometimes you'll receive information, and when you forward it to someone on notice and notice and it is extraneous to the requirements—

Mr. Andy Kaplan-Myrth: That's right.

Mr. Dan Albas: —you could be liable for it. Is that what the concern is?

Mr. Andy Kaplan-Myrth: It's not that we're necessarily liable for it in any way, since we're required by law to pass it on. The sort of thing I'm talking about there is the personalized links that appear in those notices.

The notice we receive will tell the end-user to “click here to confirm that you have received this notice”, and then it will have a link. It's not just a link to a website; it's a link with variable tags that identify which notice it was. What it means is that when the end-user gets that notice and clicks the link, the sender now has the IP address and other information about the person's computer and browser that they can associate with that notice. They have information about the individual that they didn't have before.

By passing that on, we're making our end-users vulnerable in a way that doesn't feel like it serves the purposes of the notice-and-notice regime. The end-user, in turn, gets that message from TekSavvy or from the ISP, not from the rights holder. We write some information as sort of an envelope around the notice that explains to the user that it is not from us, that we are just passing it on, and that we're required to pass it on, and all that sort of information. But then we have to provide the notice as it's given to us, including advertising for a potential competitor of ours. That puts us in a difficult position, and it's completely extraneous information.

The Chair: Thank you very much.

For the last question, Mr. Graham, you have a hard two minutes. That's it.

Mr. David de Burgh Graham: It will be easy to manage. Thank you.

Mr. Kerr-Wilson, I want to follow up on a comment you made earlier that the CRTC may not be inclined to follow a court order. Can I ask you to confirm your position that the CRTC would not be inclined to follow a court order?

Mr. Jay Kerr-Wilson: Yes, of course. The CRTC actually issued a ruling. It was in the case that was referred to earlier in which the Quebec government had sought to require people to block access to gambling sites. The CRTC is very clear. It spelled out that even where there is a municipal order, a court order or some other judicial order, its approval is still required.

It said that in deciding whether it will approve, it will look at the telecom act objectives, which don't necessarily coincide with Copyright Act objectives or Criminal Code objectives. This is the CRTC that has said this; I'm not assuming that this is the case. The CRTC has been very explicit about this.

Mr. David de Burgh Graham: Thank you.

Mr. Andy Kaplan-Myrth: Could I just jump in there? Perhaps ironically, the CRTC made that finding partly at the behest of large ISPs that at the time did not want to block gambling sites in Quebec and asked the CRTC to step in to assert its jurisdiction in that situation.

The Chair: That's the two minutes.

Mr. David de Burgh Graham: That finishes it up?

Thank you, guys.

The Chair: On that note, I want to thank our guests for coming in today and for a lot of information. I don't envy our analysts. They have a lot of stuff to go through. That's why we have so many of them. We spared no expense.

Thanks very much to all of you for coming in today.

The meeting is adjourned.