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Chair

Mr. Dan Ruimy

Standing Committee on Industry, Science and Technology

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● (1630)

[*English*]

The Chair (Mr. Dan Ruimy (Pitt Meadows—Maple Ridge, Lib.)): We're going to get started. Thank you, everybody, for being here. Again, our apologies, but that's the way the House works. Votes take precedence over anything else, especially when they're confidence votes.

Welcome to meeting 134 as we continue our five-year statutory review of copyright.

We have with us today from the Canadian Anti-Counterfeiting Network, Lorne Lipkus, chair; from the Consumer Technology Association, Michael Petricone, senior vice-president, government affairs; from Creative Commons Canada, Kelsey Merkley, representative; and from OpenMedia, Laura Tribe, executive director and Marie Aspiazu, digital rights specialist.

Normally opening statements are seven minutes. You can have up to seven minutes, but the more time we have to ask questions, the better.

We'll begin with Mr. Lipkus.

Mr. Lorne Lipkus (Chair, Canadian Anti-Counterfeiting Network): Good afternoon.

[*Translation*]

Thank you for the opportunity to speak with you here today.

[*English*]

The Canadian Anti-Counterfeiting Network is made up of intellectual property owners, service providers, certification bodies, legal firms, industry associations and others dedicated to help prevent counterfeiting fraud and copyright piracy in Canada.

Almost every one of the members of CACN have their own day jobs. My own background is as a partner in a law firm, based in Toronto, covering intellectual property brand protection issues for over 80 brands across Canada. I've been doing so since 1985, and I've lived through the changes in trademark and copyright law during that time. Most recently, I have been intricately involved in the border enforcement request for assistance program in Canada.

I spend my days—and as my wife is fond of saying, many other times as well—trying to protect brand owners from the proliferation of illegal, dangerous, counterfeit, as well as pirated products that find their way into Canada and online.

While we can all agree that there's no single solution to address copyright infringement or the sale of counterfeit product, I hope we can also agree that it is in all of our best interests to provide rights holders with the tools that have been proven to be the most effective at reducing copyright infringement around the world, in order to address infringement in Canada.

Unfortunately, Canada has rarely been a leader around the world in these areas. Fortunately, we can now look to and learn from the experience of others in these areas.

I want to make it clear that I'm here to comment and speak about the products, sites and services that contain and sell intellectual properties, copyrights and trademarks. Any and every legitimate, authorized, authentic product, either is or can be counterfeited or pirated, and a look at what we've seen in Canada proves the point.

You've heard from several knowledgeable people during these hearings about the harm to our creative industries through illegally making available music and motion pictures.

The CACN supports the position taken by Bell, Rogers, the Canadian Media Producers Association, the Motion Picture Association - Canada and others on the need to allow rights holders to obtain injunctions, including site blocking and de-indexing orders, and against intermediaries whose services are used to infringe copyright.

However, the focus of CACN and my purpose here today is on what can be done to protect against products, physical goods, merchandise, items that everyday Canadians are making, importing, exporting, buying online, buying on Canadian streets, or buying from stores. These products bear copyright protected works. They also sometimes bear registered Canadian trademarks. Sometimes they contain both copyrights and trademarks.

I have seen counterfeit products, sites and services that make available to Canadians medications, food, contact lenses, electrical products, including extension cords and circuit breakers, some of which have been found in Canadian hospitals, automotive parts, batteries, smart phone chargers and chords, cellular devices, shampoos, makeup, tools, fertilizer, furniture, luxury goods and apparel. You name it; if it's being made, it's being counterfeited or copied.

At CACN, we therefore support needed amendments to the Copyright Act. I've mentioned the injunctive relief and the safe harbour provisions, but the third thing that we've been asking for is a simplified procedure to deal with the products that I've just mentioned.

We would like the introduction of a simplified procedure, under section 44, which relates to CBSA's request for assistance program, so that it is clear that border officers are authorized and mandated to not only detain these products coming into Canada but to seize them. Right now, they detain them. We're asking that they be allowed to seize them, as is the case around the world, and destroy them, without the need for a judicial proceeding which is the hallmark of the existing program.

● (1635)

Our organization also hopes that one day Canada will have a meaningful intellectual property rights coordination centre that can intake information obtained by law enforcement, by customs and related agencies, as well as members of the public and intellectual property rights holders under one roof to deal with the proper utilization of resources dedicated to dealing with this ever-increasing problem in Canada.

[*Translation*]

Thank you for your kind attention.

[*English*]

The Chair: Thank you very much.

We're going to move to the Consumer Technology Association. From Washington, D.C., we have Mr. Petricone.

Mr. Michael Petricone (Senior Vice-President, Government Affairs, Consumer Technology Association): Thank you very much.

On behalf of the Consumer Technology Association, I am pleased to participate in the committee's review of Canada's Copyright Act. I am also honoured to appear before you because as a child I lived in Oakville, Ontario, and I have many happy memories of growing up in your wonderful country.

CTA represents 321 billion Canadian and U.S. consumer technology industries, comprising more than 2,200 Canadian and U.S. companies, of which 80% are small businesses and start-ups. CTA also owns and produces CES, the international trade show for consumer technology.

In our written brief, CTA urged that this review's outcome should be one that makes Canadian and international works, services and technologies more accessible in Canada and abroad. We expressed concern over proposals to move in the opposite direction by imposing new constraints on technologies, devices and local and international service providers. These innovations have helped Canadians to lead the world economy. This review should enhance rather than limit Canada's contribution. Therefore, we have made the following recommendations:

One, maintain and enhance limitations on exceptions such as the doctrines of fair dealing and fair use. Two, avoid unique impositions on online service providers, or OSPs, that would hobble Canada's contribution to international discourse and result in a loss of service in Canada. Three, reject attempts to oversee the design of technology and devices or define classes of technology or devices to be subjected to some sort of levy.

Finally, with respect to copyright terms, we have argued against the extension of copyright terms, believing the focus should be on creating new works and directions. We see the USMCA's contrary results as unfortunate and hope the effect can be mitigated in your law through exceptions, limitations and more discretion with respect to fair dealing.

In terms of fair use, having accepted the U.S. provisions on copyright term and the U.S. policy on circumvention of technical measures, Canada should also balance these with appropriate limitations and exceptions of the sort that mitigate their impact on U.S. law. Canada took constructive steps in 2012 to recognize best practices and fair dealing. These practices promote research, study and criticism, and they recognize the value of satire, parody and user-generated content. While a full fair use regime would perhaps better serve the present dynamic environment, perhaps Canada's fair dealing regime could be made more flexible and more adaptable.

The strict application of a code-based regime such as fair dealing cannot account for new technologies and new uses. One step harmonious with U.S. law would be to add the words "such as", which appear in the U.S. code, section 107. This would allow Canada's courts to keep up with the reasonable and customary practices of businesses and users.

The fair use doctrine, developed by courts as an iteration of the U. S. First Amendment principles, has continued to adapt even after being codified. Its application by the Supreme Court in the 1984 Sony Betamax case opened the door to personal communications, commerce and the Internet. In our industry, we refer to this as the Magna Carta of the consumer technology industry. Fair use has also been the basis of informal codes and best practices, which I know exist in Canada as well in many areas.

Internationally, the ability to quote and criticize has been important for democracy and innovation. CTA believes the U.S., Canada and Europe should encourage these values both at home and abroad.

In terms of technical measures, Canada did follow the U.S. lead in making circumvention of technical measures illegal, but in this area as well has not provided corresponding limitations and exceptions. As the U.S. Register of Copyrights ruled last week in its DMCA section 1201 recommendations, lawful user exceptions are particularly necessary in the diagnosis, maintenance and repair of modern cars, farm equipment and other devices, because embedded software has replaced analog circuitry in mechanical parts. Under the new regulations, U.S. farmers will no longer have to worry about the legality of getting expert assistance to repair a tractor or harvester during a short northern growing season.

After exhaustive study and commentary from CTA and others, the registers found such exceptions can and should be implemented without putting creative expression at risk. This is a step forward that Canada should also consider. Even though fair use is not seen by U. S. courts as a defence to DMCA 1201, it is the metric used by the Register of Copyrights in evaluating exception petitions. Limitations based on such considerations would serve Canada well.

An issue on which Canada and the USMCA now lead together in a positive direction is the recognition of safe harbours for online service providers hosting user-generated content. As we noted in our brief, studies have shown that the impairment of safe harbour protections would have the greatest impact on small and local OSP entrants that don't have the resources to do mass filtering. We recognize, however, that no regime is perfect. In our brief, we urge the consideration of measures to address spamming activities under Canada's notice and notice regime. As in the case of technical measures, both the constraints and necessary relief from them are now moving targets that are best aimed in tandem.

● (1640)

In terms of site blocking, this is a measure long opposed by CTA, which has been raised again by participants in your review. When drafted in the U.S. as part of the proposed SOPA/PIPA legislation six years ago, such proposals collapsed under expert scrutiny and public outrage. In the Canadian context, such measures would have the additional drawback of depriving entrepreneurs and users of access to sites available in other portions of North America and beyond.

CTA also opposes recent proposals for new levies and design constraints on products and services. Such measures become distortive of technologies and markets, and eventually are made irrelevant by technology change except for lingering lawsuits. In our experience, device levies do not satisfy rights holders' needs to respond to technical change, and, again, quickly become outmoded.

In terms of copyright term extension, CTA views the public domain as a valuable resource for cultural creativity and for future innovation. We see Canada's agreement in the USMCA to add 20 years to terms to match the situation in the United States as unfortunate, but we would hope that in your review, through the measures we have suggested, you can mitigate the consequences of contracting the public domain. It has been suggested in the U.S. that some formality should apply in the last 20 years of protection to avoid orphan work problems, and Canada may also consider such a solution.

In conclusion, the pace of innovation is often faster than anybody's ability to legislate responsibly. Even the pace of a five-year review cannot anticipate or keep up with the changes that have replaced mechanical devices with digital ones, and then replaced many of those devices with online services. CTA recommends that this committee put a premium on creativity and innovation and be skeptical of impositions on digital services, digital devices and online services.

On behalf of CTA, I thank you for this opportunity to participate.

The Chair: Excellent. Thank you very much.

We're going to move to Ms. Merkley of Creative Commons Canada.

You have up to seven minutes.

Ms. Kelsey Merkley (Representative, Creative Commons Canada): Hello. Thank you for inviting me here today.

I'd like to begin by acknowledging that the land on which we gather is the traditional unceded territory of the Algonquin nation.

My name is Kelsey Merkley. I'm here as a public citizen and a representative of Creative Commons Canada. We are part of a global non-profit organization established in 2001, with 26 country chapters worldwide, each working with artists, librarians, scientists, film-makers and photographers. We create, maintain and promote the Creative Commons licence suite of globally recognized copyright licences that are free to use. They allow for creators to choose how their works are reused under simple standard terms.

Globally, the CC licences have been applied to over 1.4 billion works around the world. What's powerful to me about those 1.4 billion works is that individuals made an active decision to share 1.4 billion times. If you have used one of Wikipedia's 40 million articles, downloaded a photo from Flickr or watched videos on YouTube, you have come in contact with one of our licences in a commercial or non-commercial context.

Examples of our licences in the world include Lumen Learning, which permits commercial use under an open licence at over 280 institutions in the U.S. This year alone, they've had over four million visits per month to their open education content website. In multiple instances, Lumen has demonstrated that their supported OER, open educational resources, offering eliminates the performance gap between low socio-economic students and higher socio-economic students.

Here in Canada, the globally recognized leader in open textbooks, BCcampus, has saved economically stressed students in British Columbia over $9 million in textbook costs through Canadian-created open licence textbooks.

Canadian science fiction and young adult author Cory Doctorow chooses to license many of his works under a CC non-commercial licence that grants access to everyone as long as they don't sell his creativity. Researchers at MaRS in the Structural Genomics Consortium, Aled Edwards and Rachel Harding, have used the most open licence, CC By Attribution, to accelerate the pace of scientific discovery by opening up their lab notes to other researchers around the world without restriction.

The New York Public Library, the Met, the Rijksmuseum and, most recently, Europeana, all share works under a Creative Commons licence to allow for their collections to travel globally.

We advocate and offer advice to governments and institutions that want to use open licences to help their citizens access content. We've offered advice to the European Space Agency, the U.S. Department of State, the U.S. Department of Education and the European Commission. All of them have used CC licences in their publicly funded works to benefit the public. Here in Canada, Quebec was the first government worldwide to adopt the CC 4.0 licence to all open data released by the province.

I'm grateful to the committee for the opportunity to offer a few thoughts and suggestions as you continue your review for potential changes to the Copyright Act.

First, the public domain is harmed by copyright term extension. Fundamentally, we believe that all creativity builds upon the past and that promoting and protecting a robust public domain are central to our mission. Why? Because works in the public domain may be used by anyone without restriction. Works in the public domain become the raw material for creativity and innovation. The committee should not reopen the terms discussed under the Copyright Act. If the term is to be extended 20 years, significant consideration should be given to other permitted uses and clearer fair dealing to mitigate its impact on education, creativity and innovation.

Second, permit creators to reclaim their rights. We endorse Bryan Adams' recommendation to this committee for Canadian creators to reclaim their rights from 25 years after death to 25 years after assignment.

Third, protect fair dealing, especially for education. Fair dealing for education is crucial to ensuring that copyright fulfills its ultimate purpose of promoting essential aspects of the public interest.

Fourth, the right to read should be the right to mine. Considering the massive potential for novel research discoveries, advancements in AI, machine learning and Canadian innovation, the Copyright Act should clarify that the right to read is the right to mine. It should ensure that all of these non-expressive/non-consumptive uses, like text and data mining, are included under the fair dealing framework or broadly supported under other legal measures.

Fifth, improve open access to government-funded education, research and data. The sharing of works under Creative Commons licences is a legitimate exercise of copyright and should be the norm for all publicly funded resources such as research, education materials, government-collected data and cultural works.

● (1645)

Canada should reform Crown copyright regime, because all Canadians should have the right to access and reuse, without restriction, work produced by their government. Canada should place these materials directly into the public domain at the time of publishing.

I hope your questions will allow me the opportunity to speak more to the public value and scientific opportunity of open access publishing.

Gratitude is at the centre of the work we do, so I'll end here with thanks to you for extending the invitation to hear from me today.

The Chair: Excellent. Thank you very much.

Now we'll go to OpenMedia, with Laura Tribe.

Ms. Laura Tribe (Executive Director, OpenMedia): Good afternoon and thank you for having us.

I would also like to begin by acknowledging that we are on the traditional territory of the Algonquin people

My name is Laura Tribe. I am the executive director of OpenMedia. We are a community-based organization of more than 500,000 supporters working to keep the Internet open, affordable and surveillance-free. I am joined today by my colleague Marie Aspiazu.

Let me be clear in stating that Canada has a strong and balanced copyright system. But the recent NAFTA renegotiations have struck a significant blow to this balance and to Canada's position as a leader on copyright. We hope that through this review process we can amend the Copyright Act to improve access to content and restore balance to this system.

By allowing an international trade agreement to set a significant portion of Canada's copyright agenda, the government not only accepted troubling amendments, including extending copyright terms by 20 years, but actively undermined this ongoing consultation.

Over the past year, a number of extremely problematic levies, or taxes, have been put forward as a means to help compensate Canadian creators. We simply cannot afford the following proposals that would increase the costs of digital connectivity:

First is an iPod tax. This recycled idea would tax all smart phone devices sold in Canada to compensate for alleged music copying. This idea ignores the decrease in private music copying with the rise of subscription-based services, and the fact that people use smart phones for a wide variety of reasons far beyond music consumption —let alone illegal music consumption.

Next is the Netflix tax. This proposal would reverse the CRTC's digital media exemption order and see over-the-top, or OTT, providers required to comply with the same Canadian content regulations as broadcasters. This fundamentally misunderstands the nature of the Internet and would actually target all OTT services of all sizes, not just Netflix.

Then there's the Internet tax, a requirement for Internet service providers to pay into CanCon funding as Canadian broadcasters do. Unfortunately, we know these prices will be passed on to customers. Canadians already pay some of the highest Internet prices in the world for subpar service. This idea has been rejected by nearly 40,000 Internet users in OpenMedia's community.

Now there's a copyright tax. Recently, we heard a proposal for all Internet use over 15 gigabytes per month, per household to be taxed. This is based on the misguided claim that any Internet usage over 15 gigabytes must be due to streaming content, and that streaming content, even if users pay for it legally, means users should pay more to compensate creators.

Creators should be adequately compensated, but these are not the solutions to make this happen.

As OpenMedia community member Bill put it, “I'm a small business owner and use a lot of bandwidth for online meetings and other related activities. An internet tax would kill my business, putting six people out of work.”

We cannot afford to further increase our digital divide and the price of the Internet in Canada. A fast, affordable Internet connection is essential.

Separately, let's talk about sales tax. Charging federal sales tax to online content providers is often conflated with the above proposals, but is critically distinct. Should the federal government choose to apply HST to international online services, those taxes should rightly be charged and remitted to the government, then allocated into the general budget as the government sees fit, including as funding for arts, culture and creators.

● (1650)

Ms. Marie Aspiazu (Digital Rights Specialist, OpenMedia): Bell Canada's FairPlay website blocking proposal is one of the most dangerous suggestions we've heard yet. This would inevitably censor legitimate content and speech online and violate net neutrality protections, all without court oversight. It would set a dangerous precedent for other censorship proposals in the future.

Experts have pointed out the expensive and problematic technical aspects of implementing these censorship interventions. Additionally, nearly 100,000 OpenMedia supporters spoke out against Bell Canada's FairPlay website blocking proposal when it was tabled both during NAFTA and before the CRTC.

These are the words of our community member Ryan:

> Arbitrarily allowing website blocking and website takedowns will result in a severe reduction of civil rights and political freedoms, as companies and organizations can decide to remove websites that they don't like, regardless if any terms were violated....We have a strong legal system, where the accused is deemed innocent until proven guilty. Let the courts handle the matters, since they are subject to public scrutiny and inquiry by law.

Additional dangerous proposals making their way to Canada in light of the EU's proposed copyright directive are the link tax and mandatory content filtering algorithms. The link tax would copyright the snippets of text that usually accompany links, often used as previews to help Internet users find content online. Requiring aggregators to pay for content just to be able to promote it actually harms content creators by reducing the discoverability of their content, but it also entrenches the largest content aggregators, such as Facebook and Google, by making the cost for new entrants even higher. This proposal has already been implemented and proven a failure in both Germany and Spain.

Content filtering requirements would turn online platforms into the copyright police. Forcing online platforms to implement mechanisms to identify and block materials believed to infringe copyright before being posted, similar to YouTube's multi-million dollar content ID system, won't come cheap. As we know, it will still result in false positives and inevitably result in the takedown of legitimate content.

We have outlined a number of concerning proposals on the table, but we believe some simple amendments can be made to the system to help restore balance. At the very least, the government should maintain the current fair dealing list, including education, parody and satire. Additionally, explicitly adding transformative use would be greatly beneficial. Ideally, Canada will adopt broader fair use provisions, similar to those in the U.S. We also urge the government to eliminate Crown copyright.

As OpenMedia has previously stated, Canada's notice and notice system is a fair regime for addressing alleged copyright infringements. However, the government should provide content guidelines for notices that prevent threats or demands for settlements.

OpenMedia has been advocating on copyright issues over the past six years. Our community's lengthy efforts include five years of campaigning against the secretive trans-Pacific partnership and its dangerous IP chapter; “Our Digital Future: A Crowdsourced Agenda for Free Expression”, a positive vision for sharing and creativity online, sourced from over 40,000 people; over 50,000 people urging Canada's Minister of Foreign Affairs to stand up for citizens' digital rights in NAFTA; and over 2,500 submissions to this committee's consultation via OpenMedia's online tool at letstalkcopyright.ca.

Before coming here today, we asked our community what we should say to you. We hope their voices are well represented.

In conclusion, we ask the committee to address the needs of the people these rules affect the most: everyday people who depend on a balanced copyright regime for their daily activities.

Thank you. We look forward to your questions.

● (1655)

The Chair: Excellent.

I'd like to thank you all very much for your presentations.

Just so that we're all on the same page, we can extend up until six o'clock. I know that some of our guests may have to leave, and that's fine.

Before we start the questions, Mr. Lloyd wants to read into the record a notice of motion.

Mr. Dane Lloyd (Sturgeon River—Parkland, CPC): Yes. I have a quick motion, that the Standing Committee on Industry, Science and Technology pursuant to Standing Order 108(2) undertake a study of no less than six meetings to investigate and make recommendations on the impact of carbon pricing on Canadian industries’ global competitiveness.

That's just a notice. There's no debate on it at this time.

Thanks.

The Chair: Thank you. That is correct. There's no debate at this time.

We'll now go to questions.

Mr. Sheehan, you have five minutes.

Mr. Terry Sheehan (Sault Ste. Marie, Lib.): Thank you very much, Mr. Chair.

Thank you to our presenters for that very important discussion.

This question is for Lorne from the Canadian Anti-Counterfeiting Network.

In your testimony, you gave quite a few examples that seemed to be more related to trademarks or patents. Do you have any copyright-specific examples you can share?

Mr. Lorne Lipkus: I believe that every example I gave has a copyright aspect.

Mr. Terry Sheehan: Just delve into that.

Mr. Lorne Lipkus: The fact is that physical goods bear various kinds of intellectual property. One example is medication. For example, medication can come in across our borders or be sold in our stores in pill form without any packaging. If you look just at the medication, it's probably protected by patent laws. There are patents on that medication. You would probably have to know something about the medication itself to tell if it's infringing the patent.

The packaging itself may have logos, names and designs on the packaging. Very often when customs sees product coming into the country, they know by the packaging before they ever get to the product whether there is a problem with it and whether it's potentially counterfeit or pirated. What we've seen with things like pharmaceutical packaging and packaging of toys, packaging of shampoos, packaging of the things I have mentioned, is that the counterfeiter, the pirate, may copy the actual work, the copyrighted work, on the outside of that package and take off the trademark name, not realizing that it's protected by copyright as well. There is the example. Even something as simple as automotive parts can have logos and designs on them that are actually protected by copyright.

I hope that responds to your question.

Mr. Terry Sheehan: That helps a lot. It delves more deeply into it, and you certainly went down into an area.... In reading up on the subject, I saw that the Mounties stated that counterfeiting increased in Canada to $38.1 million in 2012 which was up from $7.7 million in 2005.

What percentage of these items infringe copyright? Do you have that number, or would you have a ballpark figure? Are there certain sectors of the cultural industries that are hit harder than others—more the cultural industries?

Mr. Lorne Lipkus: Nobody has the number. Anybody who gives a number is guessing. We do know that worldwide some recent studies—one was done by the OECD, which I'm sure has been shown to you. Those are about the most accurate numbers we're going to get. Nobody knows what it is in Canada, but I'll come back to one example that I think is extremely telling.

You read the numbers from the RCMP, which have not really had any pirating or counterfeiting cases in respect of consumer goods in over three and a half years, but when they did, the commanding officer in the Toronto area wanted to see how much counterfeit or pirated goods were coming in through the Toronto airport. At that time, in the entire year. the most amount of counterfeit that had come into Canada was in the $30-million range, so he wanted to see what would happen if for six months we answered all the calls we got from CBSA, how much product would there be.

In six months there was over $70 million in counterfeit just from Toronto, and it was everything you could think of. When I say anything and everything, products that we had not even seen counterfeited were being seized through the RCMP. That was Project O-Scorpion and that was, I believe, in 2012-13. Since that time there have been almost no seizures at the border by the RCMP or by customs.

I think that's pretty telling. If you look for it, you're going to find it, and we find the same thing in the marketplace. We just—

Sorry, I didn't know if you wanted more examples.

● (1700)

Mr. Terry Sheehan: That's okay. Thank you very much for that.

This question is for the CTA. First of all, it's nice to see you again. We met when we were doing our broadband study and we went down to Washington and met some of your members there.

From your perspective, does the Copyright Act restrict the development and use of current or emerging technologies, and if so, to whose advantage? Could you provide the committee with a sense of how new and emerging technologies could offer both opportunities or hinder the enforcement of copyright?

Mr. Michael Petricone: What keeps me awake at night is that we'll have some well-intended but overly broad regulation that will prevent new and socially beneficial innovations from hitting the market.

What we tend to find in technology is that new technologies come on the market and they are used by consumers in ways that are not originally contemplated. In my testimony I talked about the Sony Betamax controversy where Sony introduced the Betamax, which was a device that allowed people to record television shows. The movie industry took it to court and it ended up in the United States Supreme Court where it was declared a legal product, by one vote. It then became a very popular product.

The irony is that what the movie industry was concerned about was the record button, but what consumers found valuable in the Betamax was the play button. What that did was start a brand new industry in pre-recorded media, such as compact discs and DVDs, which ended up making up the majority of the movie industry's revenues some years out.

Had they been successful in shutting down that technology, they would also have shut down one of their biggest revenue streams. You see that a great deal in technology, where it goes in ways you don't expect.

The general trend is that new technologies open up new distribution platforms, allow access to new consumer groups, and allow new ways to monetize, as you're seeing now on the Internet with the growth of streaming music.

Our advice is always to be very light-handed on the regulation of new technologies because you're not sure what kinds of opportunities in terms of creative opportunities or economic opportunities you may be inadvertently foreclosing.

The Chair: Thank you.

Now we're going to move to Mr. Lloyd.

You have five minutes.

Mr. Dane Lloyd: Thank you to all the witnesses today.

My first line of questioning is going to be for you, Mr. Lipkus.

There are a lot of things we've been dealing with at this committee. We've been talking to authors and music creators. These are really intangible things, like with the digital sphere. A lot of the things you were talking about in your testimony are really physical things that could be crossing the borders.

You talked about effective tools. Does your organization have any effective tools that you would recommend for dealing with things exclusively in this digital sphere? What would be these effective tools?

Mr. Lorne Lipkus: One of the things that we recommended is, as you know, the simplified procedure that is in relation to the physical goods, but I am not sure that I have a good answer for you in relation to something that would just deal with the intangible.

Mr. Dane Lloyd: Okay.

Mr. Lorne Lipkus: The intangible that we're talking about, even in a physical good, is the intangible of the work itself. The work itself finds its way into the physical good—

Mr. Dane Lloyd: Yes.

Mr. Lorne Lipkus: —so we're still there on the creative side. It's just that it's put onto something that is sold as a physical good.

Mr. Dane Lloyd: I appreciate that. Thank you.

My next question is going to be for you, Ms. Merkley.

I was in B.C. as a student when they actually unveiled the Creative Commons. The B.C. Liberal government did that. As a student, it seemed like a really good resource.

Could you explain to me how authors and creators are compensated under a Creative Commons licence? How does that work?

● (1705)

Ms. Kelsey Merkley: There is no difference in how they are compensated. Are we speaking in regard to textbooks?

Mr. Dane Lloyd: Yes, specifically.

Ms. Kelsey Merkley: Someone has to pay for a textbook to be created. Often, the way the textbooks are created now is either through institutional grants or through the universities themselves.

There is also a branch of study called open pedagogy where they work with the students to create the textbook themselves.

When people talk about the $9 million, we hear publishers say, “Well, we just lost $9 million,” but the rate of inflation of textbooks has outstripped the cost of any student's feasible responsibility. We're looking at textbook costs that are over $1,000 per textbook, and that's one textbook for one course for one term. These costs are just unreasonable.

Mr. Dane Lloyd: The question is how authors are compensated under Creative Commons. Are they not compensated?

Ms. Kelsey Merkley: They can be compensated through Creative Commons. Creative Commons does not mean that the book cannot be charged for. A book can still be charged for. It's just the creation of the work is made available for free.

Cory Doctorow makes money on his books. It's exactly the same model as a textbook. He creates a book and then the physical book is sold. He sells e-book copies and he makes a PDF available for anyone for free. He is able to make more money as a result because his product is available more widely and people are more likely to purchase the book because a PDF is less readable on a Kindle, on an e-reader. It's the same thing with textbooks.

Mr. Dane Lloyd: I appreciate it. Some authors are able to have a wide audience and are able to leverage it and give away some things for free. We've had a number of authors come before this committee. It has not been quite unanimous, but overwhelming that these authors are asking for stronger copyright protection, term extension, because we've seen statistically that their revenues as authors are going down.

We're hearing people say these books are the raw resources that are used for future creativity, but these are the creators, and they are coming here and telling us to please protect their works because they can't make a living off it. If they stop creating these works, then we'll lose a really important value-added industry.

What do you have to say to that?

Ms. Kelsey Merkley: With Wikipedia and with open content creations, I think we're seeing an additional industry being created that allows for work to be created and for people to still.... I would encourage these authors to look at different revenue streams. We are in a new digital era. The old models simply are not working the way they used to. It's time for new and different business models.

Mr. Dane Lloyd: If we're talking about a medical textbook, though, are you arguing that Wikipedia is a viable replacement?

Ms. Kelsey Merkley: Wikipedia is written by experts and is accessible. There are many examples of textbooks that are crowd- and community-written by the medical community that are licensed under a Creative Commons licence.

One of the big challenges with Wikipedia is it is currently being written at a too advanced level, not at an encyclopedia level.

Mr. Dane Lloyd: Thank you. I appreciate that.

How much time do I have left?

The Chair: You have 10 seconds.

Mr. Dane Lloyd: Then, thank you.

The Chair: We will get back to you.

Mr. Masse, you have five minutes.

Mr. Brian Masse (Windsor West, NDP): It was going to be a great 10 seconds.

Mr. Lipkus, I had a piece of legislation that improved CBSA detainment, seize and destroy, and it was on invasive carp. In the past when carp came into Canada, it had to be tested to make sure it was dead. They have so-called zombie-like characteristics. When it was packed in ice, it could live up to 24 hours.

To make a long story short, the Conservatives stole and implemented my bill, which was great because the regulation was that the carp have to be eviscerated so we don't have to have people check to make sure they are alive.

Does your suggestion say the same thing? Can it go through regulation? Can you give a little in terms of detain, seize and destroy? I could see maybe detain and seize, but destroy or sending back probably could be through regulation. Destroy might require some legislation.

Mr. Lorne Lipkus: Sending it back just adds to the problem.

Mr. Brian Masse: It doesn't for our country. I've seen stuff get into hospitals. I was part of a parliamentary group on counterfeiting and piracy. Stopping it getting into our country is progress. Sending it back to where it came from makes it their problem now. Therefore, I would disagree because stopping is one thing, but then having to be responsible to destroy it is another. That's where I'm focused. Why not just send it back? It's probably a regulatory change versus destroying, which is probably a legislative change.

● (1710)

Mr. Lorne Lipkus: Leaving aside statistically what happens, I can tell you anecdotally that products that were destined for Canada and were sent back have found their way back into Canada. That happens.

Statistically, I can't tell you how often, but counterfeiters are quite aggressive, and they will find a way to get it back in. Yes, sometimes they will bring it to another country, but if they want to get it here because they have a customer here who wants it, they will get it back in through another port.

Mr. Brian Masse: With a trade agreement with the port it came from, we could simply send it back. We could notify them that we're not accepting it because we suspect it's counterfeit, is dangerous and so forth. We can send it back to countries that exported it. Most countries have trade agreements or WTO standing with us so we do all those things.

I want to focus on this because a regulatory change means we don't need legislative change, which is probably not likely to happen right now with this time frame, whereas regulatory change could be done in a matter of weeks.

Mr. Lorne Lipkus: Clearly, any regulatory change that makes it easier to prevent the importation of counterfeit or pirated products into Canada is welcome. Even if it creates another problem, which I've just mentioned, it's still better than what we have.

Mr. Brian Masse: I'm not trying to discourage that. I'm not trying to be argumentative. It's just that it's about what we can get done here.

I would ask a question to the researchers.

Can we find out whether or not what's being suggested here is a regulatory change or a legislative change, in terms of detaining, seizing or destroying counterfeit items coming into Canada?

Mr. Lorne Lipkus: Could I make a comment about the destruction part?

Mr. Brian Masse: Of course.

Mr. Lorne Lipkus: I don't know if it's a regulatory change or not, but in the existing legislation, there's a 10-day period of notice given to both the importer and to the rights owner. It says, “These goods are on their way into the country. You, Mr. Rights Holder, have 10 days to bring an action or else we're going to be releasing the goods in some way.” The importer is given 10 days' notice to say that these goods are suspected of being counterfeit.

In the cases that we're finding right now, the importer either doesn't respond, or says, “I didn't order those goods.”

If part of the process were an abandonment situation, which is done with other goods in Canada in similar situations—after 10 days the importer does not respond, or responds and says they didn't order these goods—then why can't we destroy them right away?

Why is the government paying to continue to store these goods? They could be destroyed immediately.

Mr. Brian Masse: That's why I want the legal advice.

I think what you're asking for is a far more complicated process for something on which we could have a simpler solution in the medium and short terms.

I'm not disagreeing in terms of responsibility of it. However, in my opinion, there's low-hanging fruit in your situation that you're advocating, and public health benefits as well, especially with more drugs and so forth now getting into counterfeiting.

At any rate, I'm going to quickly go to OpenMedia.

With regard to your statement about undermining the consultations with the extension of the trade agreement, perhaps you could enlighten us a little more on that. One of the things that has dramatically shifted during these hearings is a trade agreement in principle. We can debate whether it's going to get passed or not, but at the same time, we have agreed that that contains the context, and....

Ms. Laura Tribe: I think that this committee has been tasked with undertaking a review of the Copyright Act. What we've seen is an international trade agreement that is largely focused on physical goods and how they pass across borders, and provides some of the answers to the questions that this committee is asking.

If that trade agreement is passed and does become ratified, one of the concerns we have is that this committee has asked for what people think and how people feel about these issues and, at the end of the day, some of those answers have been deemed irrelevant by this trade agreement.

That's a concern we have about the democratic process, how these trade agreements are being negotiated. As for the NAFTA consultations and negotiations, the results of those consultations were never released to the public. Again, within that, we're having this consultation here, and we still don't know what the NAFTA consultations said. That deal was then moved forward.

Ultimately, all of these deals, all of these negotiations, all these consultations, are supposed to be in the best interests of people in Canada, and we're not certain where their voices are going or how they're being heard.

That's our concern with that being run in tandem to this consultation.

● (1715)

The Chair: Thank you.

Mr. Brian Masse: I have less than 10 seconds.

The Chair: You had less than 10 seconds probably two minutes ago.

Mr. Brian Masse: It probably wouldn't have been a good 10 seconds anyway.

Thank you.

The Chair: You are two minutes over, but that's okay; we like to give you your time.

Mr. Graham, you have five minutes.

Mr. David de Burgh Graham (Laurentides—Labelle, Lib.): I was going to go to you, Mr. Lipkus, on the question of why you'd want your toy labels protected for 70 years

However, before I get to that, I'm going to let Mr. Lametti ask a quick question.

Mr. David Lametti (LaSalle—Émard—Verdun, Lib.): Thank you.

Mr. Lipkus, one of the fundamental principles of copyright law is that copyright on the book doesn't mean ownership of the book. It's a physical object versus copyright.

Most of the examples you gave were a patent or a trademark—I think you would definitely agree with that—with copyright coming in at the end. Now, if there's a copyright violation on the label, why should it give you the right to seize or even destroy the physical object?

Mr. Lorne Lipkus: That's an excellent question.

In fact, what happens in practice right now is that they seize the package, because it is illegal to be using the packaging to advertise that. If the product is authentic, for example, it doesn't show—

Mr. David Lametti: But then you're back to trademark and a patent again for authenticity.

Mr. Lorne Lipkus: No, no. If that package—

Mr. David Lametti: The copyright only applies to the design on the label.

Mr. Lorne Lipkus: Exactly.

Mr. David Lametti: It doesn't apply to the authenticity of what's inside.

Mr. Lorne Lipkus: Exactly. You're 100% right, and so the product itself can flow through. No one is taking a position on the product.

Unfortunately, when the packaging is an infringement, very often the product is counterfeit as well, but—

Mr. David Lametti: You seem to be pushing for ability to seize or destroy the product based on copyright. If that's the case, you're misleading us.

Mr. Lorne Lipkus: No. If I said that, that's only predicated on the product being counterfeit. We've seen toys, for example—

Mr. David Lametti: We've seen toys under patent or trademark.

Mr. Lorne Lipkus: Correct.

Mr. David Lametti: Okay. Thank you.

Mr. David de Burgh Graham: Thank you.

I have questions for everybody, but I'll go to the more interesting ones right now.

You both talked about replacing Crown copyright, or getting rid of it altogether, which is, I think, a very poorly known subject for most people.

Can you briefly explain how you understand Crown copyright? Should it go to public domain, or should there be, for example, a Creative Commons licence for Crown material?

Who wants to go?

Ms. Laura Tribe: I think it's probably across the board. I'll let Kelsey look at my notes.

Exactly what that looks like in implementation, I'm not the expert to tell you what that solution looks like. I think that what we are advocating for is more content in the public domain. If these are publicly funded materials created by the public service and the Canadian government, then those are things we would expect to be put into the public domain in one form or another.

I'll let Kelsey speak to the Creative Commons aspect of that.

Ms. Kelsey Merkley: Thanks, Laura. I echo those comments.

Works that are paid for by the public are already the public's and should be easily accessible to use and be able to build, innovate and create on top of. We know that governments such as Australia's retain the copyright but publish works openly under a Creative Commons CC By licence, which means the government would continue to get attribution for the work being done, and allows for a broad reuse with minimum restriction.

We know that the European Commission has recommended open licences, the CC By and the CC0. CC0 is a licence that will apply public domain immediately to the licence. That's for publishing open data collected by public sectors and bodies within Europe.

Mr. David de Burgh Graham: Kelsey, you made a comment earlier that the right to read should be right to mine. That's a great line. I haven't heard that one before.

Should we differentiate in any way between a person reading something and a machine reading something?

Ms. Kelsey Merkley: That's a great question.

I think there is ample opportunity for those...there are differences between a machine reading a document and a human reading a document. The speed, access and ease with which a machine can read is vastly different from that of one human.

Mr. David de Burgh Graham: Ms. Aspiazu, do you have comments on that as well? You seem to.

Ms. Marie Aspiazu: I agree that the way in which information is processed by an artificial intelligence device is different from how a human being does it. I believe that the outcome of allowing for this exception for mining of text and data would be incredibly beneficial for Canada's AI industry, which is something the government had in mind when they set out the budget this year.

● (1720)

Mr. David de Burgh Graham: You mentioned FairPlay. I guess it boils down to this question: Should companies be allowed to be vertically integrated into the media market?

Ms. Marie Aspiazu: Sorry, can you repeat your question?

Mr. David de Burgh Graham: Should companies be allowed to be vertically in—

Ms. Marie Aspiazu: No. Do you mean vertical integration?

Mr. David de Burgh Graham: Does vertical integration of the media market pose a threat to...?

Ms. Laura Tribe: I think what we've seen with FairPlay is a clear indication of the difference between those that are vertically integrated and those that are not.

When you look at the companies in the media industry that have come out to support FairPlay, they have clearly been those that have content interests, not those of ISPs. Independent Internet service providers that are strictly focused on providing telecommunication services have not come out with the same position, because it is a huge burden on ISPs in doing this, and is not the business they're in. That's where we really do see the difficulty of the deeply vertically integrated market our telecom and media conglomerates have.

Mr. David de Burgh Graham: I appreciate it.

Dan is going to cut me off. Thank you very much.

The Chair: Thank you very much.

Mr. Carrie, welcome to our committee. You have five minutes.

Mr. Colin Carrie (Oshawa, CPC): Thank you very much, Mr. Chairman.

I used to be on this committee about 10 years ago, and 10 years ago we were talking about copyright. Brian was here. Brian, I thought we had this figured out. What's happened? When I left....

Voices: Oh, oh!

Mr. Colin Carrie: It's been the longest study ever.

The Chair: We have a trifecta, because you all worked on it.

Mr. Colin Carrie: You know what, though? These are exciting times. We have the new USMCA.

Mr. Petricone, I was wondering if you could comment on this new deal that actually will be coming to the international trade committee, the committee I do sit on. I'd really like your insight on the new USMCA.

Mr. Michael Petricone: From our perspective, it is a good deal. It contains important elements for the innovation industry. For example, there are limitations on liability for Internet platforms that host third party content, without which the Internet.... It's a fundamental part of the ability of American Internet companies to exist and thrive. Otherwise, from a legal and liability standpoint, it just wouldn't work. That is in the agreement, and that is good.

Also, there's limitation.... There are no data localization rules. That is good. There's a limitation on duties for digitally purchased goods, and that is good for all of our industries.

In terms of Canada, we would not have been in favour of the extension of copyright term. We believe the focus should be on incentivizing new works and that the public domain is a hugely fertile and dynamic area for new innovation. It's a building block for new innovation and should be protected and extended.

Also, we would have been pleased with a specific mention of fair use in the agreement because we believe that fair use is important. On the whole we believe it is a good agreement for the creative industry and a good agreement for the innovation sector.

Mr. Colin Carrie: Thank you very much.

Ms. Tribe, could you comment, please?

Ms. Laura Tribe: Sorry, I missed the last part of it.

Mr. Colin Carrie: I was wondering if you'd be able to comment on what you think of the new USMCA.

Ms. Laura Tribe: We have concerns around some of the elements contained within not just the IP chapter but the digital trade chapter. I think that our fundamental concern with the USMCA—as I was starting to get to earlier—is that this is a deal that we have no indication included the voices of Canadians in it. People feel very strongly in support of or against the deal itself based on the issues that they care about.

As an organization that is committed to the future of our digital economy and Canada's Internet, it's very concerning to see issues that are very complicated and technical, like digital trade, like intellectual property, being negotiated in the same way that we are trading cows and milk and chickens. That is not to discredit any of those issues. They are all very important, but they are very different from the types of issues we're looking at in digital trade.

That's the concern we have with this being negotiated as part of a larger trade deal where we're making concessions across the board. To us, it feels like the IP chapter was one of the concessions made as part of this larger negotiation.

Mr. Colin Carrie: Thank you very much.

I have a question for the panel in front of me, because I believe in your presentations and in our history you do advocate for stronger users' rights. I remember 10 years ago it was a balance between the users and the creators. I remember creators back then were struggling. The stats are out there. I think in 2010, writers' and authors' income was around $29,700, and in 2015 it actually went down to $28,000. It seems that they're struggling.

If you're advocating for stronger users' rights, is it actually the time that we should be advocating for stronger users' rights when we're actually seeing employment income for creators actually dropping and they're struggling?

● (1725)

Ms. Kelsey Merkley: I am a library member. I am a librarian by background. I'm a strong user of the Toronto Public Library. I am an active reader. I have a lot of empathy for those who are trying to make a living selling books.

I don't believe that it is the copyright challenge that is preventing them from making a lot of money. We see this creeping from Amazon's publishing model and the impact it's having on them. There are a lot of levers that are involved in whether or not an author is able to make money. [*Inaudible—Editor*] it is not solely because there are not enough user rights. We need to be able to give a bigger audience so that users are able to use and participate, especially in the area of textbooks where student costs are extraordinarily high and the textbook costs are not increasing at the same rate as for an author of a novel. It's important to differentiate between those two.

Ms. Laura Tribe: I would agree with Kelsey and echo what she's saying.

I think that a lot of the problem we're seeing is not a copyright issue. It's the power dynamics between creators, the publishing industry, and where those revenues are going. When we look at some of the larger companies that are in control of these issues, they're doing fine. Their revenues are doing very well.

A lot of this comes down to the power for creators to leverage in their contracts and their negotiations a stronger position for themselves to make sure that they have ways and avenues and venues, whether that's publishing through Creative Commons, whether that's publishing independently and through different avenues, to make sure that they can be compensated. And they should be compensated for their work.

I would agree that I don't think this is a matter of copyright infringement or copyright rules not being stringent enough to ensure they're compensated. I think that's actually the marketplace and the way it's constructed to prevent them from being adequately compensated.

The Chair: Thank you very much.

Mr. Longfield, you have five minutes.

Mr. Lloyd Longfield (Guelph, Lib.): Thanks, Mr. Chair.

Thank you to all the witnesses. It's a very technical discussion we're having in a very short period of time.

Mr. Petricone, again, thanks for meeting with us when we were in Washington.

I'm wondering whether you've seen some of the same discussions around the revenue share between the creators and the providers of technology in the States. Have the creators in the States had the same kind of drop in revenue that we've seen in Canada?

Mr. Michael Petricone: It depends on how you want to measure it. One aspect of these new technologies is that they've changed the revenue stream, so not only might there be more or less revenue coming in, but it's also going to different groups.

However, there is some good news. According to the RIAA, the Recording Industry Association of America, the first half revenues in the music industry in the United States are up 10%, to $4.6 billion. Most notably for us, 75% of those revenues come from streaming music.

Clearly, the music industry went through a period of disruption with new technology. That is not uncommon. Now what they're doing is meeting the consumers' needs, because consumers want streaming music. They want to be able to listen to their music anywhere on a variety of devices. Now, the record labels are enabling that and the revenue is coming in. So, as we get through this period of transition, the picture looks quite bright.

Mr. Lloyd Longfield: Is that something the technology companies are doing voluntarily, or did you have a change in legislation and regulations in the States around how streaming is handled?

Mr. Michael Petricone: We just passed a law in the United States called the Music Modernization Act, which basically streamlines how digital music is paid for and incorporates pre-1972 music into our system, because before it was a state-by-state policy, which was unhelpful if you're trying to run a national business.

In what has become emblematic of the entire debate, the passage of the Music Modernization Act not only was bi-partisan in Congress but also included all the stakeholders of record labels, publishers, artists, streaming platforms.... At first, when the new technology came out, it was quite adversarial and fractious, but I think there's a growing realization that we are all part of the same ecosystem, and if the ecosystem is healthy, we all benefit.

● (1730)

Mr. Lloyd Longfield: We've been trying to get some witnesses from the American streaming services to testify at our committee. We're still in the fractious state, I think, in Canada. The creators are getting paid fractions of fractions of pennies per stream. They need millions and millions of streams to try to make up for lost revenue.

There was a pivot point at some point in the discussion in the States. How long ago was that?

Mr. Michael Petricone: I think it has been gradual, as consumers have been adopting streaming music.

Mr. Lloyd Longfield: Okay. Thank you. That's definitely something that we need to include in our study.

I'll turn to OpenMedia.

We've had a lot of conflicting testimony, which is why we do these things. We don't want everybody agreeing. I'm wondering where you would sit in terms of the protection of revenue for creators when you look at, let's say, things like resale right, reversionary right, for copyright to go back to the artist after a set amount of time, or granting journalists remuneration rights so that people who are using photos, as an example—revenue used to go to the original photographer.

How does that fit, in terms of the openness you're describing to us today?

Ms. Laura Tribe: I'm not familiar with the details of all of the proposals that you've put forward, but I would say that, generally speaking, as I said earlier, we do believe that creators should be compensated. I think that if there are copyrighted images that are being passed around by journalists that have had their content—they should make sure that that's being used fairly and appropriately.

I think there are a number of challenges in making sure creators are compensated. What we're looking at is trying to find ways that make sure that is available—specifically, the angle we're going for is making sure people are able to access the content they're interested in and they want, whether that is through the ability to legally license that through streaming services or whether that's through paid news sources where they're accessing content because it's something that matters to them.

If there's a specific proposal within there that you'd like me to dig into a little more to see how it fits against the openness....

Mr. Lloyd Longfield: The chair's looking down, so he's looking at the clock right now. I'm over time.

The Chair: Thanks for reminding me.

Voices: Oh, oh!

Mr. Lloyd Longfield: There's a lot I could dig into, but unfortunately, I don't have the time.

Thank you for your testimony.

The Chair: I was ignoring you so that you could keep going.

Mr. Lloyd, you have five minutes.

Mr. Dane Lloyd: Thank you.

Ms. Tribe, you talked at length about the USMCA, or NAFTA 2.0, and its impacts on this copyright study, because it's a very fluid environment. I was wondering if you had any comments, in terms of the study, on any recommendations we should have in light of the context of the new NAFTA to promote users' rights in the context of the deal.

Ms. Laura Tribe: Absolutely. I think the number one thing is we need to actually expand what fair dealing looks like, and fair use, to bring more balance to that. Our concerns with what was agreed to in the USMCA is that it shifts into a more heavy-handed copyright regime without providing anything for users in exchange. What we're really looking for is expanding fair dealing, potentially adopting the U.S. model of fair use to just broaden it more wholeheartedly.

Marie, I'm not sure if there's anything else you want to add on the things he asked for.

Ms. Marie Aspiazu: The only thing I would add is that we would definitely want to keep our notice and notice system as opposed to taking the U.S. notice and takedown system, which is a lot more restrictive.

However, as I mentioned in my part of the testimony, we can definitely tweak the notice and notice system, especially in terms of the language in the notices and the settlement fees as well as some of the more technical aspects and the ways in which ISPs are asked to deal with these notices, which can be very burdensome.

Mr. Dane Lloyd: You mentioned “heavy-handed”. Can you give us some examples of heavy-handedness?

Ms. Laura Tribe: I think looking at the copyright term extensions is a good example. We're hearing a lot of arguments here and we're discussing a lot of ways that creators need to be compensated. Extending copyright terms from 50 to 70 years after the life of an artist does not compensate that artist.

We're talking about creators who are looking to be paid now, and that has a lot of challenges; but extending it from 50 to 70 years after their death harms the public. That harms people who are no longer able to access that information in the public domain for another 20 years. We will have a 20-year period in Canada where no new content enters the public domain once this deal is adopted, without any real justification for how that's going to help people in Canada.

Kelsey, did you want to add something?

● (1735)

Mr. Dane Lloyd: Isn't that the consensus around the world, though, the 70 years after the death of the author?

Ms. Kelsey Merkley: We are seeing a definite move towards that. I'm—

Ms. Laura Tribe: We're seeing the standard of 50 increasingly move to 70 with pressure from the United States.

Mr. Dane Lloyd: Where is the standard 50?

Ms. Marie Aspiazu: The international Berne Convention, which is—

Mr. Dane Lloyd: Every European country is 70, America is 70, so which countries are we talking about?

Ms. Kelsey Merkley: The Berne Convention.

Ms. Laura Tribe: The Berne Convention is where it is 50, and we're seeing it increasingly move to 70, particularly with pressure from the United States.

Ms. Kelsey Merkley: At this point, it's really Russia, the U.S. and now Canada. One other thing I really just want to jump in on, though, is that—

Mr. Dane Lloyd: One thing I thought was interesting is how Europe's being used as an example for how open they are on these things, but we're also seeing Europe as the front-runner/pioneer on content filters and things like that. Can you comment? It seems there are two different emerging streams of thought coming out of Europe. One is that they're very open to using technologies to crack down on copyright infringement, but then your testimony is saying that Europe is somehow more open. Do you have comments on that?

Ms. Laura Tribe: I think trying to loop Europe into one viewpoint is like trying to loop every person testifying at this committee into one perspective. There are a lot of diverse approaches, and I think the concern we do have in Europe is there's a lot of pressure from individuals.

We're hearing from people in our community and a lot of creator groups that the copyright directive being proposed through both the link tax and the censorship machines that are being put forward in articles 11 and 13 is heavy-handed. There's, I think, a distinction between the policy proposals that are being put forward and what people are looking for and asking for, and I think that's where the division is.

I think that tension does very much exist. There's a lot of pressure from publisher groups to adopt these stricter regulations, but at the same time, there's a lot of push-back, because not only will these proposals greatly infringe on the openness of the Internet in Europe, but they will also have larger international implications.

Mr. Dane Lloyd: That's interesting, because we've been talking about publishers. Everyone thinks it's just this monolithic industry, but I have a publisher in Edmonton who met with me and said, "The only reason I'm profitable this year is that I haven't taken any salary for myself." We're seeing lots of publishers, especially Canadian publishers, who are struggling.

How does increasing users' rights help Canadian publishers compete in a world where American and European publishers have more rights and are more competitive than our publishers are?

Ms. Laura Tribe: I think that we need to make sure that those publishers are able to reach the audiences that can and will pay for that content. I think that the proposals we've seen put forward, through content filtering and through website blocking, do the exact opposite of that. They make it even harder for content to reach users.

In addition to making sure that we are promoting that content and making sure it's available, we have to distribute it. We have to make sure that it gets into the hands of as many people as possible in the ways where they can pay for it, where it's easy. We've seen this across so many different issues, but I really think, fundamentally, that the tension between FairPlay, as an example, and the alternatives is that we're not going to get people to go back to paying for cable TV. You have to make content available in the way that people want it, in the formats that they want it.

How can we facilitate and support Canadian businesses and publishers in getting their content created and produced in the hands of the ways that people want to actually touch it, and make sure that we're supporting those industries to reach those audiences? If those audiences are there—we have seen it; we've seen it with subscription services—people will pay, and they do, as soon as it's easy. How do we support Canadian publishers to do that?

The Chair: Thank you very much.

Ms. Caesar-Chavannes, you have five minutes.

Mrs. Celina Caesar-Chavannes (Whitby, Lib.): Thank you very much to each of the witnesses. I really appreciated some of your testimony today. I'm going to pick up from where you left off on the last question.

In this copyright review, I'm torn between the testimony that I've heard in terms of our need to make amendments versus whether this is the right place to help people increase their revenue streams or their ability to access different markets for their products.

My question is for each of you, whoever feels like answering it.

Do we increase competition or increase access through amendments to the Copyright Act, or is it required that our artists and creators change their business model to be able to access different markets and create that increase in revenue that is currently not happening? We've seen the decline.

Not all at once, guys. Whenever you're ready.

Voices: Oh, oh!

● (1740)

Ms. Laura Tribe: It looked like Michael wanted to speak.

Michael, do you want to speak?

Mr. Michael Petricone: I will just add one thing. I think it may be both. Certainly creators will hopefully change their business model to take advantage of new technologies and the abilities to monetize and reach large audiences. That's a good thing.

I think the one thing that I would caution is that.... Certainly, it's a goal of this committee to broaden competition among Internet platforms. That's a good thing. The whole start-up ecosystem is very dynamic and provides more opportunities for artists and creators.

The route that Europe is taking with these regulations, article 11 and article 13, while well-intended, may have the opposite effect by concentrating the power of larger companies. This is just because some of the regimes, like the filtering regimes that are being mandated, are really expensive and resource intensive. Look at YouTube's content ID as an example. They spent $60 million on it.

Those may be mandates and obligations that larger companies are able to meet, but for somebody who's creating a new company in her dorm room and who has to meet the same kind of obligations, she cannot. That's the kind of result that I think we need to be mindful and careful of.

Ms. Kelsey Merkley: I agree with my colleague's statements.

I also want to echo that we are seeing shifts in business models that are challenging across.... There was a comment that was brought up earlier about Betamax. There's a company in the U.S. called OpenStax, which is a for-profit publishing company that releases its textbooks through an open licence, but is able to make quite a substantial amount of money and increase jobs. There's also the example that I referenced in my testimony, Lumen Learning, which is also a for-profit entity. It still allows some aspects of open educational content, which does reach the most marginalized students, and it is reaching out. Again, I want to reiterate that it's important to separate the creators of novels from those who are making textbooks.

I want to make a point that I was trying to make earlier around creators reclaiming their rights. Artist Billy Joel, who many of us know and love, has said that he will no longer create any new music as a result of overreaching copyright in the U.S. and the deals that he has with record companies. We're in that complicated place right now where we need both new business models for these creators and also some regulation to help us get through this time.

Mrs. Celina Caesar-Chavannes: My subsequent question is around the five-year review. With the speed that the digital age is changing, in my opinion—and perhaps I'll just keep it to me and my opinion—a five-year review is perhaps too slow. What do you say to that, knowing the challenges that the industry currently faces? We're doing a five-year review. We're all sitting here providing input, and by the time legislation comes out, things might change, so is a five-year review relevant?

Ms. Laura Tribe: I would say that OpenMedia doesn't have an official position on this, but my opinion—

Mrs. Celina Caesar-Chavannes: I'm just throwing it out there.

Ms. Laura Tribe: —on your opinion is that I think we are five years now, almost six years in, since this has been another year since the five-year period, and we are debating quite small nuances within the Copyright Act itself. Overall, it's held up for five years, and I think a lot of that is a reflection of the thought that went into making this something that would last, and I think the challenge that I would extend to this committee is recognizing that this does need to last. This is not something that can exist just on the ecosystem we have right now. We cannot predict the future, so how can we try to make these pieces of legislation as future-proof as possible to be flexible for the new technology that comes up as well as the new challenges that arise? That's a big challenge, and you have a large task in front of you.

The Chair: Yes, we know.

For the final two minutes of the day, Mr. Masse, take it home.

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

I'm going to finish with what Mr. Lipkus said. It appears that we can't do any regulatory changes. There's no shortcut there in terms of maybe low-hanging fruit. The researchers have come back to me with that advice so far.

Very quickly, if we do not get the legislation tabled, because this is a review, what would be some simple things that we could do immediately? There could be an election before any tabling of legislation. We'd have to get it back from the minister, from the review, and it would have to go through the Senate and so forth. Really quickly, what are the things that we could do in the short term?

● (1745)

Ms. Kelsey Merkley: Make articles that are produced by the Canadian government publicly available immediately on publication, either through a Creative Commons licence or releasing it to a public domain.

Ms. Marie Aspiazu: From my end, I would say reject FairPlay Canada's website-blocking proposal, at least as part of this review. Thank you.

Mr. Brian Masse: Mr. Lipkus.

Mr. Lorne Lipkus: I'm not sure, other than what we talked about, that you can do something without legislation.

Mr. Brian Masse: Okay.

Is there any advice from Washington?

Mr. Michael Petricone: Yes. Enable innovators and enable start-ups, as that's where the dynamism comes from, and avoid website blocking.

Mr. Brian Masse: Okay. Thank you very much for your patience.

That's it, Chair.

The Chair: Will that do it?

Mr. Brian Masse: Yes.

The Chair: I want to thank everybody for coming in today.

As you know, we have quite the task ahead of us. There are conflicting stories on either side, and our task, as well as the task of our great analysts who will help guide us to where we need to go, and then we'll blame them later....

Some hon. members: Oh, oh!

The Chair: But, yes, we have definitely been hearing a lot of good information, and we look forward to putting it all together.

Thank you very much, everybody, for coming in.

Thank you, Michael, from Washington.

The meeting is adjourned.