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Chair

Mr. Dan Ruimy

Standing Committee on Industry, Science and Technology

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● (1650)

[*English*]

The Chair (Mr. Dan Ruimy (Pitt Meadows—Maple Ridge, Lib.)): I call the meeting to order.

We're going to get started. We're going to start with Meera Nair, because I know she has to leave fairly quickly. She is an independent scholar and a copyright officer from the Northern Alberta Institute of Technology.

We'll let you go first with your seven minutes and we'll go from there.

Thank you.

Dr. Meera Nair (Independent Scholar and Copyright Officer, Northern Alberta Institute of Technology, As an Individual): I've actually pruned to five minutes so I'll give my time to Carys.

The Chair: Five minutes is good.

Dr. Meera Nair: Thank you for having me here. For nearly 15 years, my research interest has been in systems of copyright, both contemporary and historical.

One of the challenges in dealing with copyright is that people tend to forget that it was designed to regulate industries. Because of an accident of vocabulary, it now includes individuals.

People also forget the baggage we have carried for 150 years, that our system was largely designed by other countries for their advantage. To the extent that we have successful writers, musicians, artists and publishers, those gains came despite the system, not because of it.

I would like to start by setting some definitions. What are we talking about?

The system of copyright is composed of two parts: there are rights of control and there are rights of use. Why do we have it? For a very long time, we had no purpose. Copyright was simply one of 29 responsibilities handed to the federal government in 1867, with no explanation attached. However, if we look at our multicultural roots —that is, the influences of both civil law and common law—we see a shared goal, and that is to protect the process of creativity. While our Supreme Court has operationalized this as seeking a balance between creators and users, it might be helpful to take one step back and simply think about this process and how we can enhance it. How do you assist individuals to maximize their creative potential? And from that, there is reasonable historical data to believe that larger social gains will follow.

I am drawing in particular from the work of Zorina Khan. She is an economist who explored American intellectual property policies early in the time of their nation building. The U.S. deviated from the IP norms of the day and instead focused on educating its people and creating a framework that encouraged everyone to enter the arena of creativity.

A part of that framework was the theft of other nations' work, and to be clear, I am not recommending doing that, but we could adopt the best aspect of current American policy, which is their structure of fair use. It would give leeway for new ideas to take form.

A guest at one of your earlier meetings alluded to some challenges faced with fair use, or fair use in the States, and he quoted Lawrence Lessig as saying that fair use was simply the right to hire a lawyer. I want to emphasize that the Unites States made great productive use of fair use before the better part of the 20th century, creating multi-billion-dollar industries, but towards the end of the century they did run into some troubles. Their court started treating fair use as merely a response to market failure.

Fortunately, the Canadian judiciary has already ensured that Canada can avoid such a a self-defeating approach. Creativity is a cumulative affair; whether we are talking about books, music, software, medicines or a free press, creativity relies on exposure to and use of prior work. Some uses must remain above the cycle of permission and payment if creativity is to be sustainable.

In 2012 we came up short on fair use, but one pleasant addition stood out: section 29.21, which is commonly known as the YouTube or the mash-up exception. I would have called it the "creativity exception". It gives future Canadian creators some reassurance that their government does not wish them to be prosecuted for doing what Canada needs them to do, which is to hone their creative skills.

We need our next generations to be at their best in order to address the intractable problems that we are being left for them to solve. Drawing from the combined wisdom of Julie Cohen and the late Oliver Sacks, we know that it is important for individuals to play with whatever content they are interested in, to cultivate a capacity to see something that others cannot, and to build the curiosity and determination that we hope will carry them into groundbreaking intellectual effort across all disciplines. Much is being made of our innovation agenda, but we will not get innovation simply for the asking; we need to nurture it.

Regardless of whether we have strictly enumerated exceptions or a more flexible condition of fair use, we cannot gain the fullest potential on either unless we adjust the current language on digital locks. This committee has been asked repeatedly to do more to support Canadian writers and Canadian publishers. This is a worthy goal, but I hope that the proposed solution will not include billing students for materials already paid for, or, worse, billing students for materials that are not prescribed at all.

Moreover, if we want to target Canadian operations, copyright is not an effective means. More money will leave the country than will stay in it. As I wrote in my brief, “copyright is a blunt instrument; it cannot distinguish between literary superstars and novice writers, between fostering a homegrown operation and serving an international conglomerate, or between writing for an audience and writing for financial gain.”

● (1655)

As I mentioned at the start, our act draws from both our common law and civil law ancestry. The Copyright Act has long been recognized as being bi-jural; we have vivid evidence of both our founding nations in it. However, the third is present. Indigenous paradigms about creative endeavour and property are implicit to the system of copyright as we practice it today. Acknowledging this will not solve the problems encountered by indigenous communities with respect to protecting their intellectual property, but given the objectives of the Truth and Reconciliation Commission, we ought to recognize that the Copyright Act is tri-jural.

I would like to close simply by acknowledging that we have gathered on the lands of the Algonquin people.

Thank you.

The Chair: Thank you very much.

We'll move to Carys Craig, an associate professor of law at Osgoode Hall Law School at York University.

You have up to seven minutes.

Professor Carys Craig (Associate Professor of Law, Osgoode Hall Law School, York University, As an Individual): My thanks to the committee. My name is Carys Craig. I'm a professor at Osgoode Hall Law School at York University. I have been teaching and researching in the copyright field for almost 20 years. I'm a co-signatory on the Canadian IP scholars brief, about which you heard last week.

The views I'll express today are my own. I'll speak to some guiding principles underlying the copyright system. Then I will highlight a few key proposals that reflect, I think, these guiding principles.

The committee has heard from certain stakeholders that Canada's copyright laws have fallen behind the pace of technological development and that urgent reforms are needed in order to catch up. I would urge the committee to be skeptical of such claims. I've written about the principle of technological neutrality at length. The best way to future-proof our law is not to regulate the technical minutiae in response to the pleas of industry lobbyists but to seek to ensure the consistency of the legislation in its purpose and effect, across time and technologies. This requires steady reliance on guiding principles, functional standards, and core concepts, not narrow, technical, and inaccessible rules that will require constant revisiting.

The task, then, is to keep the policy focus on copyright's overarching purpose as technologies evolve, maintaining the balance between protection and the public domain that best supports the creation and dissemination of expressive works and a vibrant cultural sphere. Indeed, in the 2012 Entertainment Software v. SOCAN case, the Supreme Court of Canada agreed with me on what technological neutrality really demands: “The traditional balance between authors and users should be preserved in the digital environment.” In the Robertson v. Thomson case, Justice Abella wrote that this means that “the public benefits of this digital universe should be kept prominently in view”.

If copyright is a lever to encourage learning and creative exchange, the Internet and digital technologies have advanced this goal enormously. Unduly curtailing their use in the name of protecting authors typically flies in the face of copyright's rationale.

This hints, I think, at the absurdity of much of today's copyright rhetoric. Consider how bizarre it is—how facially false it should be—to portray, as the self-interested antagonists of Canadian authors, our public educational institutions, students, the scholarly and research community, librarians, archivists, and academics, while casting a handful of commercial publishers, collectives, and content industry representatives as the natural allies of Canadian authors and the arts. This is the same tired narrative that powerful interests have employed to justify ever-stronger copyright protection for centuries. It's time to see past it and to imagine a better-functioning system of incentives and rewards, offering more public benefits and imposing fewer social costs.

The reality is that copyright does a disservice to today's creators not because of its limits and its exceptions but because of the restrictions it places on creativity and sharing, the monopolistic interests it helps to preserve, and its failure to actually attend to the real needs of the artists it is said to serve.

Today, more than ever before, the line between creators and users, between authors and the public, is more rhetorical than it is real. Today's users are authors, and authors are users. Authors are students and educators. They are consumers. They are curators. The task for lawmakers is not to “reprioritize authors”, as some have suggested, but to recognize the changing nature of authorship and the shifting realities of the information economy.

This brings me to my more concrete proposals. First, I think this should mean resisting calls to strengthen owners' rights and remedies. If the objective is to assist authors, copyright is a blunt tool indeed. An ever-stronger copyright brings inevitable collateral damage to the public domain, to free expression, to public education, and to the functioning of the Internet.

Second, this means recognizing and safeguarding copyright limits and exceptions and respecting user rights consistent with the internationally acclaimed jurisprudence of our Supreme Court and the constitutional right of free expression. This takes a variety of forms. It supports the move to an open, flexible and general fair use defence that is not limited to particular purposes but capable of evolving to embrace new uses that are consistent with the objectives of the Copyright Act. It supports shielding fair uses from the chilling effects of potential moral rights liability by clarifying that fair dealing and other exceptions are also defences to moral rights claims.

● (1700)

It means ensuring that neither digital locks nor boilerplate contracts are permitted to override user rights by foreclosing otherwise lawful uses.

It also means protecting and preserving the public domain in the same sense that you might protect a nature preserve from private appropriation. This must include finding ways to minimize the harmful impacts of any term extension—for example, by imposing additional formalities or costs on those who would claim protection beyond life plus 50 years.

It also includes finding ways to support the creation of an accessible intellectual knowledge commons—for example, by providing a right of retention for authors to deposit publicly funded research in online repositories and opening up government works to the public domain.

As a very final thought, I would note that this government prides itself on its feminist agenda and should consider what that means in the copyright context. Good copyright policy is concerned not only with providing economic incentives but also with advancing equality, and equality requires access to affordable education and to knowledge and supports an ethics of sharing and collaboration.

Leadership in this field cannot simply mean reinforcing 20th century models of private profit and control. It must mean preparing the copyright system to embrace the full potential of the 21st century while reflecting Canadian values.

With that, I thank you for your attention and look forward to your questions.

The Chair: Thank you very much.

Finally, from Toronto via video conference, we have Ticketmaster Canada, with Patti-Anne Tarlton, chief operating officer.

Can you hear us okay?

Ms. Patti-Anne Tarlton (Chief Operating Officer, Ticketmaster Canada): I can hear you fine. Thank you.

The Chair: All right. Go for it.

Ms. Patti-Anne Tarlton: Good afternoon, Chair and members of the standing committee.

My name is Patti-Anne Tarlton. I thank you for the opportunity to join you here and, importantly, for inviting a dialogue with the live music industry.

I'm honoured to represent this diverse and vibrant industry, one that I have participated in nationally throughout my career. I was born in Montreal and grew up in Vancouver, and I have lived, worked and toured from coast to coast. I've experienced the risks and rewards of concert production. I've witnessed at first hand the investment in infrastructure as a catalyst to new economic and cultural growth in my years with Maple Leaf Sports & Entertainment. I now oversee Canada for Ticketmaster, servicing attractions large and small across the country.

I appreciate the committee taking the time as part of the Copyright Act review to hear from such a wide variety of stakeholders, including the live event industry. The common focus across the live event industry and that of writing, publishing and recording is on the health and success of the creators and performers themselves.

Today, more music is consumed than at any time in our history; however, the remuneration for this content has not kept pace with the technology changes or with the way fans consume music, nor with the record levels of consumption.

The reality for Canadian music creators is that there remain provisions in Canadian law that limit artists from receiving fair market value for their work. In fact, research by Music Canada, the voice of Canada's recorded music industry, has demonstrated the existence of a significant disparity between the value of the creative content enjoyed by consumers and the revenue that is returned to the people and the businesses that create it. As a result, the creative middle class is being threatened, and with it numerous jobs. As well, the creative fabric that binds us together is also at risk.

We know that Parliament's mandate is to review the Copyright Act every five years. In industry, we must also evolve. Music discovery, engagement at live events and shared stories reliving experiences are all in the palm of people's hands today. At Ticketmaster, we are investing millions annually in product development to keep pace with the speed of change, technological advances and the expectations of fans and attractions alike. In an environment where fans want tickets always available despite the variances of supply and demand, our goal is to make the link between fans and the performers they love as frictionless as possible and to get tickets into the hands of true fans.

Similarly, with the unprecedented speed of change in the methods of distribution of music, government's strategy and policies with regard to the live music sector need to be current with our 21st century reality. Music Canada's document “The Next Big Bang” very successfully outlines how the music world of today in this country has changed immensely. The way government views, engages and supports our industry needs to keep pace, and it's committee engagement such as this that is heading in the absolute right direction.

Recommendations large and small in policy modifications should all be centred around breaking down those roadblocks impacting the growth and success of the music creators themselves and the connection with the fans who enjoy their content across Canada. With a guiding principle of making Canada an easier place to play music live, the goal is to consistently make Canada friendlier for musicians, fans and business alike.

Musicians rely on live events more than ever before. The live industry is well positioned to help there, and a number of associations, including Music Canada Live, have collaborated and will continue to collaborate with government and the diverse cultural landscape, all with a common goal of advocating for the creators themselves.

As it relates to the government's review of artist remuneration, and beyond the performance guarantees that are paid at live performances, the compensation mechanism for music creators and songwriters for a copyright-protected live performance or a musical work is through royalties collected by SOCAN. As industry, we continue to iterate with SOCAN on the use of technology to streamline the collection and redistribution process and to benefit the creators, as well as the simple exception mechanics for the rights owners when they're performing their own musical work.

In addition to the collaborative efforts under way and the live performance rights, there are a couple of fairly straightforward steps articulated by Music Canada that this committee could recommend in the modernization of the Canadian Copyright Act and that would benefit creators almost immediately.

● (1705)

The first is the elimination of the radio royalty exemption for commercial radio stations on their first $1.25 million of advertising revenue. No other country has a similar subsidy today. The elimination of the commercial radio subsidy could amount to some $8 million of collected revenues across the industry for the creators themselves.

The second is an amendment to the definition of “sound recording” in the Copyright Act. The current definition of “sound recording” in the Copyright Act excludes performers from receiving royalties for the use of their work in television and film soundtracks. Again, the amendment would financially support creators quite directly.

Third, amend the term of the copyright for musical works. Under the Copyright Act, protection for musical works subsists for the duration of the author's life plus a further period of 50 years. By contrast, the majority of Canada's largest trading partners recognize longer copyright terms for musical works, and the general standard of life of an author plus 70 years has emerged. This will ensure that music creators continue to receive fair compensation.

Thank you again for your time today. Success will be enhanced with the collaboration of all levels of government, and you have the industry leaders willing to be a partner in this journey. I applaud all members of Parliament for commissioning a review of the Copyright Act with an eye to benefiting creators. It is a pleasure to add additional perspectives, with a particular focus on Canada's live event industry today.

Thank you again. I look forward to the questions you may have.

● (1710)

The Chair: Thank you very much.

We will only have time to do one round of five minutes. If members have extra questions, write to the clerk. We can send those to our witnesses for written testimony.

We're going to start right now with you, Mr. Sheehan. You have five minutes.

Mr. Terry Sheehan (Sault Ste. Marie, Lib.): Thank you very much, Mr. Chair. I'll try make it as condensed as possible.

Thanks for the testimony. My first question will be for the people who are here: Professor Craig and Meera Nair.

We're heard testimony, as has the heritage committee, about proposals from different groups on how changes may benefit the creator. There were many of them. I'll pick two of them and ask for your comments and thoughts on how these might work.

One was on the resale rights on visual works of art and how it would benefit the creators, the visual artists, to receive a percentage of every subsequent sale after their work. There was also the reversionary right, which would bring the copyrighted work back to an artist after a set amount of time regardless of any contract to the contrary.

I'll start with those two. Would anyone like to make a comment?

Prof. Carys Craig: I'm going to start with the reversionary rights, if I may.

I think this is an interesting area and one that probably does deserve attention. Certainly it's something that can create a surprise in the market for people who have acquired rights and are not aware of the reversionary interest. I think one of the bigger concerns around this is precisely that it takes away, essentially, rights that people thought they had, and the people who have rights don't necessarily know that they have them.

Of course, it's different in the U.S., where it has to be actually triggered by an act of the party who is seeking to retain the rights. The other difference, of course, is that ours always happens after the death of the author and 25 years thereafter.

It's an interesting issue for me, because I can see certainly that there is a sense in which it might benefit artists and authors and allow them to essentially reclaim rights and better use and enjoy or share those works with the public than under the commercial assignments they may have entered into earlier on in their lifetime.

For me, the problem really is the timing of it, which is to say I think that if you were going to say it's going to benefit artists and authors, then it has to be something that happens when the artists and authors are alive, or else this will just be benefiting the heirs. We've seen that heirs can be some of the most ardent and strenuous asserters of copyright interests in a way that is not conducive to the further circulation of the work.

Dr. Meera Nair: That was what I was going to pick up on as well. It is that aspect of who the right is going to benefit.

I would just like to point out that copyright is a body of laws over 308 years old. Throughout, it's been expanded in depth and breadth. At every expansion, it was always in the name of the writer, the artist or the musician. Here we are, three centuries later, and writers, artists and musicians are still struggling. I tend to get a little skeptical about this adding of rights that we believe will improve the lot of some people in life. It has not played out that way historically.

Mr. Terry Sheehan: Thank you.

For Ticketmaster, last year the CBC and the Toronto Star went undercover at a conference where they met some Ticketmaster representatives who were promoting TradeDesk, which is an online tool that helps resellers buy thousands of tickets. It's kind of contrary to your policy. Your policy states that Ticketmaster tries to limit the number of tickets that can be purchased per transaction "to discourage unfair ticketing practices".

Number one, could you explain how TradeDesk works and what your position is on these resale tickets at events? Also, how much has Ticketmaster collected in service fees for resold tickets over the last five years?

● (1715)

The Chair: You have about a minute.

Ms. Patti-Anne Tarlton: I'll start with the question about TradeDesk.

The misconception there would be that this tool, this piece of technology, actually has anything to do with acquiring tickets. It's a technology that is used by resellers to distribute their tickets or manage their tickets onto multiple marketplaces. Ticketmaster, our organization, does not facilitate it by any means, and does not believe in it to facilitate access to tickets by brokers the way the clickbait of those headlines would have inspired that debate in those articles. To be clear, it's a distribution tool and not an acquisition tool.

Could you just read the second question you had?

Mr. Terry Sheehan: It was about how many resold tickets Ticketmaster has collected over the past five years. I'm just trying to get a sense of what that is. If you don't have that number, perhaps you could provide that to us in writing.

Ms. Patti-Anne Tarlton: It takes longer than 13 seconds to talk about the primary and secondary resale markets in North America, which are very different from those in Europe, etc. I'd be happy to do some follow-up there.

The Chair: If you could follow up with the clerk, that would be great. Thank you very much.

We're going to move to Mr. Albas.

Mr. Dan Albas (Central Okanagan—Similkameen—Nicola, CPC): Thank you, Mr. Chair. I would like to thank all of our witnesses for both their patience and their testimony and expertise. I think I'll start with Ms. Craig.

Ms. Craig, you've argued that transformative new works should not be impeded by copyright law at all, as they are not copies. How would you suggest the law spell out a specific line in which something is considered transformative?

Prof. Carys Craig: Certainly one of the big differences between fair use and fair dealing is the capacity, especially in the U.S. jurisprudence we've seen for fair use, to accommodate transformative uses writ large, so the real question that comes to the fore is whether a defendant's use of a particular work is simply a substitute for the original in the marketplace—one that simply appropriates the efforts and the originality of the underlying work—or whether the work is in fact itself a creative act, something that engages in another creative process and gives the public something new.

In my work, I've looked back historically to the origins of fair use to show that what concerned the British courts when it was evolving as an equitable doctrine was whether or not a new work was created with public benefit. In all of our attempts to create a fair dealing exception that creates sufficient space for ongoing creativity or for downstream creators, we're trying to find a way to ensure that a transformative use is not triggering copyright liability but rather is something that people are free to do. One way is to think about what we mean by a copy, and whether something really is just a colourable imitation of an original work or really is giving something new to the public.

This is something I would hope the courts would pick up on in part. It's something, however, that through the statute you could achieve by adding transformative use as a relevant purpose. Even within a fair dealing kind of provision, transformativity could be a purpose that leads to a fairness inquiry. Otherwise, of course, simply by moving to a fair use defence in which you're not limited by purposes but are in fact engaging in an assessment of the fairness of a use, you could entertain the same questions by asking whether there is new creativity, what the purpose of the use is and whether it's a substitute in the market for the original.

Mr. Dan Albas: Thank you for that.

I think one of the most challenging things in this environment is that ultimately if we make recommendations to a minister, the minister then has to figure out where the line in the sand is, and that's where it becomes quite difficult, especially if we're saying that we should write the law in terms of letting the courts decide.

I do appreciate that you're tackling a very difficult issue. Fan fiction is not a new subject and it has always been controversial, but I do think it's worth having the discussion.

To Ms. Nair and Ms. Craig, would either of you suggest Canada adopt a more American-style fair use clause in our copyright regime? Why or why not?

Dr. Meera Nair: Largely, it is the flexibility within that language. We don't have to determine in advance what might or might not be an eligible unauthorized use.

The flexibility of language has been proven to be useful as far as U.S. developments go, both in terms of building industries and in the potential to serve aspects like freedom of expression or having a free press. It is largely that element—that it removes you from having to figure out in advance what it is that you are trying to achieve.

● (1720)

Prof. Carys Craig: I would just add that that is very consistent with what I was saying about future-proofing the Copyright Act in a sense, by not needing to come back to constantly revisit on questions like “What about text and data mining now?” or “What about fan fiction now?”

New kinds of uses will emerge as technologies evolve, and the question should be whether those uses are fair and should be permitted and are consistent with the objectives of the Copyright Act or not, rather than giving as another thing to argue about whether they can fit within this narrow purpose as defined in the act. Then we begin parsing things like private study and study in classrooms, or we start parsing things like news reporting and reporting current events and what are facts and what counts.

Whenever we have these specific enumerated purposes, we actually create more uncertainty, I think, because we are more concerned with what those mean and how they apply in new contexts than with the bigger picture.

Mr. Dan Albas: I appreciate that. If you look at the United States, whether in terms of IP or creation of new works or whatnot, it's not just population. You could chalk it up to economic development. There are many different aspects, so certainly I appreciate the conversation here.

Some witnesses have suggested using terms like “such as” to elucidate or pronounce where a starting point would be, and then letting the courts eventually determine where that limit is.

Is that something both of you would support, or do you believe that going to an actual fair use versus fair dealing model would be better?

Prof. Carys Craig: I think we shouldn't get hung up on the language of whether it's fair use or fair dealing. In fact, I think simply adding the words “such as” arguably makes it much more like a fair use defence, as that term is used, but our focus should be on whether it's open, whether it's general, and whether it's flexible, and the words “such as” will achieve that.

Plus, I think codifying the fairness factors from the Supreme Court would be helpful in giving that a little bit more clarity.

Dr. Meera Nair: I would agree.

It's also important to remember that our fair use or our fairness factors, which were developed by our Supreme Court, are actually more in tune with Canadian events. Particularly in the 2004 CCH case, one of the elements our judiciary brought in was this aspect that the presence of a licence is not relevant to deciding whether a use is fair. I think it is important that we keep that front and centre, because that is where the United States went off the rails for a little while, when they started attributing fair use as being applicable only as an antidote to market failure.

I think as long as we are following what our courts have already instructed us, then, yes, “such as” and our own framework of exploration in the act would be very good.

The Chair: Thank you very much.

At this point I believe, Ms. Craig and Ms. Nair, we have a vehicle ready to whisk you away to the airport, if you would go with the clerk.

Prof. Carys Craig: Thank you very much.

Dr. Meera Nair: Thank you very much.

The Chair: Thank you very much, and once again, our apologies about the inner workings of the House. It happens.

Prof. Carys Craig: We appreciate your attention and we appreciate you taking the time.

The Chair: Thank you very much.

If we have any further follow-up questions, we will send them to you.

Prof. Carys Craig: Feel free to do so.

Dr. Meera Nair: Thank you very much.

The Chair: Thank you very much.

Mr. Masse, you have the floor.

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

Thanks to the witnesses who are leaving here, and as well to Ms. Tarlton of Ticketmaster for being here.

My question to Ticketmaster is with regard to the resale of tickets and artists' compensation. In 2003 Ticketmaster purchased TicketsNow, and then there was a prohibition on the resale of tickets. However, last year the Ticketmaster parent company, Live Nation, along with Maple Leaf Sports and Entertainment, lobbied the Ontario Government to change its policy for resale, which had been in place for 30 years. Since that took place, it has cost consumers millions of dollars.

I'd like to know how much Ticketmaster has profited from this new policy change and how much Maple Leaf Sports and Entertainment has profited. Also, to compare, how much have artists profited from this change in policy?

That's what I think I'd like to know to start with, please.

Ms. Patti-Anne Tarlton: You're referring to the Ontario provincial legislation?

Mr. Brian Masse: I mean the sale of tickets now has increased profit margins, so where is the distribution of those profits and that resale money going? I'm wondering how much of that split is going to Ticketmaster or Maple Leaf Sports and Entertainment—I know you worked there before—and to artists, now that millions more dollars are being brought in for shows.

● (1725)

Ms. Patti-Anne Tarlton: The commercial terms in both primary and secondary and marketing partnerships in today's digital age are comprehensive, so there isn't one answer that will cover the entire industry. The specifics of the terms of those commercial arrangements are not public.

That said, you spoke also to the change in policy, and I think you are referring to the Ontario legislation, which allowed resale to happen in a sanctioned way in this province, in Ontario, and yes, we are very supportive of it. The reason is that it allows for those of us who are investing in the safe technology and the safe buying experience to—

Mr. Brian Masse: I'm not looking for that. With the increased revenue streams coming in, I'm looking for how much the artists or creators have benefited from resale or secondary ticket exchanges —"primary", "secondary", or whatever terminology is fine with me —as there has been more money made off their performances. Do they benefit, and how can it be quantified?

Ms. Patti-Anne Tarlton: The industry is working in partnership. It's all about the balance of supply and demand and pricing. At the same time that we're building out safe resale environments, we're building out pricing tools so that the pricing can be market value. Artists and teams and such attractions as Broadway will be able to sell the tickets at closer to a market rate so that those revenues stay in their ecosystem.

The challenge we've had in the past is that those tickets do get traded when supply doesn't meet demand and market forces price them above. They are sent into third party environments that those artists do not benefit from.

Mr. Brian Masse: What percentage of the resale or secondary market does Ticketmaster give to artists for a ticket? You put them out if you're a holder, and then they're resold for something if it's a hot show or whatever it might be. How much does the artist get percentage-wise of that resale as the market price then escalates?

Ms. Patti-Anne Tarlton: As I said, every attraction is its own business. Every venue, every touring attraction, every business has its own commercial terms. There's no one answer to that.

Mr. Brian Masse: No. You would expect, then, that smaller shows would be differently compensated for resale than larger shows? Is that generally what you're saying—that every act is different in terms of what deal they can cut?

Ms. Patti-Anne Tarlton: What I'm saying is that what we will continue to do is invest in technologies to get tickets into the hands of the fans who want to see those attractions at the prices the attractions want those tickets to be issued—

Mr. Brian Masse: Investing in technology is fine. That only helps your company and your process, because it controls the actual resale market. It now goes on Internet devices and so forth, as opposed to the traditional, for the person on the street.

What I'm interested in, though, is whether there's a difference for the actual creators. You're investing, obviously, to get a profit on return, but on the street the artists aren't getting anything from that resale. Putting aside the whole ethical issue of the resale of tickets virtually before they even enter the marketplace, what are artists getting out of this? Are they on their own individually to enter into separate contracts from Ticketmaster? Is that it? Do they have their own individual, separate contracts, whereby they'll each get maybe 1%, 10%, or 20%? What types of thresholds are we looking at for artists to be compensated for this resale?

Ms. Patti-Anne Tarlton: Again, we work in partnership with artists. We are investing in new mechanisms to right-price the tickets so that that money ends up in the hands of the artists. We use different technologies to....

We're not in the game of trying to promote resale. The resale is a safe environment, but really, we would prefer to sell tickets at the right price and keep them in the hands of those fans.

Mr. Brian Masse: Does Ticketmaster withhold certain sales of tickets, then, to actually watch the price increase or decrease? You're saying you release all those tickets, and then...?

You lobbied to change a system here, and I want to know how much artists are actually benefiting from this, especially if other prices are arranged. Are you confirming that it's up to each individual act or artist to actually cut their own deal? What would those thresholds be? I'm not talking about a specific deal. Are some getting 100% of the increase in the cost? Are some getting 1%? Is it 50%? What's happening with this?

● (1730)

Ms. Patti-Anne Tarlton: You're asking a very specific question throughout a whole ecosystem of an industry. What I'm trying to articulate is that we are continuing to invest to get the monies into the hands of artists. We are on the side of the artists, trying to have those monies that are generated from their live performance accrue back to those artists.

Mr. Brian Masse: Why don't you just give them 100%, then? You got your cut at the beginning of the thing. If you're going to resell something, why wouldn't artists get the full increase indexed?

The Chair: I'm sorry, Mr. Masse, but I have to jump in. We are over time.

Perhaps I can recommend that if we want to put questions, we can send them to Ms. Tarlton.

Mr. Brian Masse: Yes.

Thank you. I do appreciate....

The Chair: Ms. Tarlton, we thank you very much for putting up with our antics today. We'll let you go now, because we have some committee business we need to take care of. Thank you very much.

We'll suspend and go in camera.

Thank you.

[*Proceedings continue in camera*]