HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

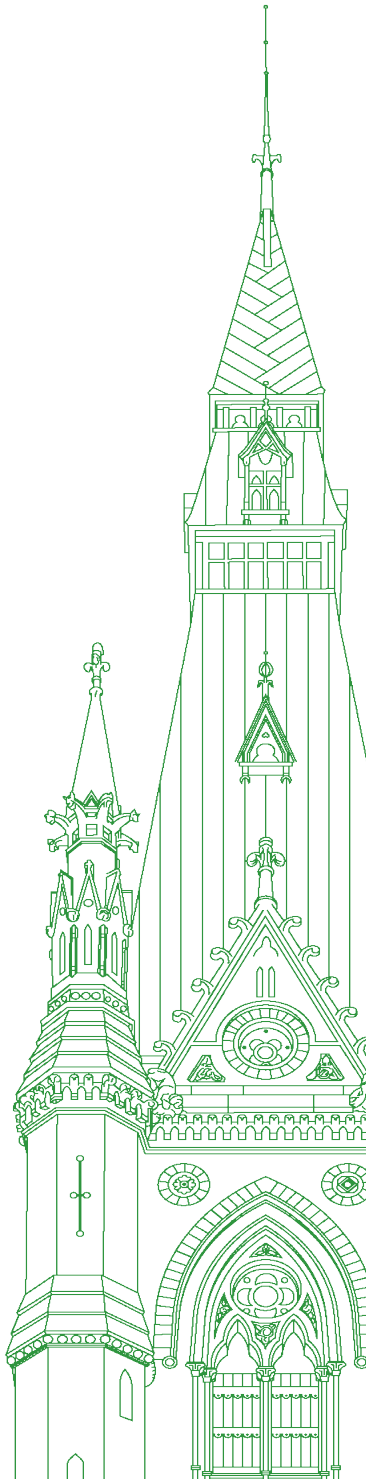
44th PARLIAMENT, 1st SESSION

Standing Committee on Industry and Technology

EVIDENCE

NUMBER 064

Monday, March 27, 2023



Chair: Mr. Joël Lightbound

Standing Committee on Industry and Technology

Monday, March 27, 2023

● (1545)

[*Translation*]

The Chair (Mr. Joël Lightbound (Louis-Hébert, Lib.)): I call this meeting to order.

Welcome, everyone, and welcome to meeting No. 64 of the House of Commons Standing Committee on Industry and Technology.

Pursuant to the order of reference of Wednesday, November 30, 2022, we are studying Bill C-288, An Act to amend the Telecommunications Act (transparent and accurate broadband services information).

Today's meeting is taking place in a hybrid format, pursuant to the House Order of Thursday, June 23, 2022.

We welcome Mr. Andre Arbour, director general of Industry Canada's Telecommunications and Internet Policy Branch, as a witness to answer questions that may arise as we proceed with clause-by-clause consideration of the bill. I thank him for being with us.

Let's proceed without further ado with clause-by-clause consideration of Bill C-288. We will then move on to study Bill C-294.

I will start by clarifying that, pursuant to Standing Order 75(1), study of the preamble is deferred to the end of clause-by-clause consideration.

(Clause 1)

We are now reviewing Clause 1 and amendment CPC-1.

Who will move this amendment?

[*English*]

Go ahead, Mr. Perkins.

Mr. Rick Perkins (South Shore—St. Margarets, CPC): Thank you, Mr. Chair.

I'll introduce it. It's been circulated, I believe.

The purpose of this amendment to the bill is just to create—as we heard from, I think, four witnesses during the testimonies—a monitoring mechanism or requirement within the bill.

I don't know if the bill's author has anything else to add.

Mr. Dan Mazier (Dauphin—Swan River—Neepawa, CPC): Yes. It's that during the process, when the CRTC actually has hearings, it's about how it's going to enforce this legislation when it will be enacted. It's just to ensure that there is a conversation about it during the hearings.

[*Translation*]

The Chair: Mr. Lemire, you have the floor.

Mr. Sébastien Lemire (Abitibi—Témiscamingue, BQ): I'd like to ask Mr. Arbor about the impact such an amendment would have on the bill.

Mr. Andre Arbour (Director General, Telecommunications and Internet Policy Branch, Department of Industry): Thank you for the question.

I do not foresee significant impacts on industry, because the consultations include measures to strike an appropriate balance for industry. Furthermore, the order published in February by the government regarding telecommunications policy renewal outlined various requirements.

The Chair: Thank you very much, Mr. Arbour and Mr. Lemire.

Is there unanimous consent to pass amendment CPC-1?

Some hon. members: Agreed.

(Amendment agreed to. [See *Minutes of Proceedings*])

(Clause 1 as amended agreed to. [See *Minutes of Proceedings*])

The Chair: We are now on the preamble. Shall it carry?

Some hon. members: Agreed.

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

The Chair: Shall the committee order me to report the bill as amended back to the House?

Some hon. members: Agreed.

The Chair: Shall the committee order the reprinting of the bill as amended for the use of the House during report stage?

Some hon. members: Agreed.

The Chair: This concludes clause-by-clause study of Bill C-288.

Congratulations, Mr. Mazier.

Mr. Masse, you have the floor.

[*English*]

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

I want to congratulate the member, who is here today, and his work as well in the committee. I've been here for a while, and getting private members' business through is not always the easiest thing. Not only is this a good effort in terms of bipartisanship; it's a good issue.

I want to congratulate the member for working so co-operatively with the committee. Thank you for leading us through this and getting a bill to the House. Hopefully, the government will adopt it and put this in order once it's passed the Senate.

The Chair: Yes. Congratulations to Mr. Mazier, and thank you to all for your collaboration. Good work.

I will briefly suspend so that we can get to Bill C-294.

● (1545)

_____(Pause)_____

● (1550)

[*Translation*]

The Chair: We are now proceeding with clause-by-clause study of Bill C-294, An Act to amend the Copyright Act (interoperability).

With us again are Mr. Patrick Blanar, director of the Department of Industry's Copyright and Trademark Policy Directorate. With him is Mr. Pierre-Luc Racine, policy advisor within the same department. They are now true committee regulars. We thank them very much for being with us today.

(Clause 1)

We will start right away with clause 1 of the bill. There is an amendment on the table, amendment G-1, for which I will give the floor to Mr. Fillmore.

[*English*]

Mr. Andy Fillmore (Halifax, Lib.): Thank you, Mr. Chair.

I'll try to set the stage for this amendment so that we're all starting on the same page. Then, after Mr. Perkins has a word, perhaps we can invite Mr. Blanar and Mr. Racine to elaborate if there are further questions.

The gist of this is that I've been spending quite a bit of time with Mr. Perkins and Mr. Patzer, and I think we've covered a lot of ground. I think we've gotten very close to agreement. I don't think we're 100% there yet. I hope we get there after the next hour or so.

The government has one amendment, G-1, which we think is important to make sure that Mr. Patzer's intention is achieved, because as the bill is written right now, we think there's a weakness. It's one amendment in five parts. Parts 2 to 5 are dependent on part 1 passing the committee.

My impression, although I don't want to put words in anybody's mouth, is that I think there's agreement with the opposition parties, at least with the Conservative Party, on parts 2 to 5, if I'm understanding our conversations correctly. It's really the first part we need to explore to get some more comfort for Messrs. Patzer and Perkins, so when you're ready, Chair, I'd like to invite Mr. Blanar to elaborate on why that's important to achieve Mr. Patzer's intention.

Thank you.

The Chair: Thank you, Mr. Fillmore. I'm sure we'll have the opportunity.

I'll turn to Mr. Perkins, who has asked for the floor.

Mr. Rick Perkins: Thanks.

Mr. Fillmore, that was a good summary of where we are. I think some of the members have a few questions that maybe could go to the officials, but you're right that our main concern is around new proposed paragraph 41.12(1)(b). We have some questions about some of the others, but the main one is around paragraph (b) and the feeling that two things are sort of lost, perhaps, if I have it right, in the amendment.

One is that the bill itself was very specific in choosing the term "manufactures". It was for a reason. To my understanding, "manufactures" has a very specific meaning and definition in terms of a group or an activity under law. The loss of that to a more general term in new proposed paragraph 41.12(1)(b) is a question.

I guess the second part is the term "lawfully obtained". That can cause a bit of a challenge in some of the circumstances when somebody is assembling something. It's a question of.... I assume that "lawfully obtained" means the licence, basically, or who owns the licence. The original manufacturer of a small piece and, say, the end buyer at retail ultimately own some element of a licence, but there can be an assembly manufacturer in the middle who doesn't actually own the licence in that process and needs to be able to make the pieces talk together, if I've captured it right.

I wonder if you could answer those two questions, dealing first with new proposed paragraph 41.12(1)(b).

● (1555)

[*Translation*]

The Chair: Mr. Blanar, you seem to want to speak.

[*English*]

Mr. Patrick Blanar (Director, Copywright and Trademark Policy Directorate, Department of Industry): Thank you, Mr. Chair.

Specifically on "manufactures", we understand the desire to be more specific. The concern we have is that it comes at the risk of actually locking other people out. Specifying who can do something creates a situation in which anybody who isn't a manufacturer may not be permitted to take these same actions.

The example I've been noodling with in my head really comes down to this: A farmer already owns one combine—I think that is the right term—and then they decide to change to a different platform. They've already invested in a whole bunch of headers. They simply want to make that interoperable, but they are not manufacturers. If they have a fellow farmer who has already done this, they would not be permitted to rely on that colleague to assist them or to actually do this for them. They would have to go through a manufacturer. Honestly, I don't fully appreciate what that would mean in this situation.

With respect to “lawfully obtained”, in the way the Copyright Act is drafted right now, it talks about the owner or the licensee, essentially. When we looked at this bill and at CUSMA, and then looked also at the way U.S. law is being drafted, we saw that the U.S. law is using this concept of “lawfully obtained”, which we feel is broader. We believe that once someone is the owner, if they allow access to a third party, that software is still lawfully obtained, even though that third party is not the owner or the licensee.

That's where we feel this actually expands the scope of the bill as drafted. We think this better fits the purpose and the intention that Mr. Patzer is seeking to achieve.

The Chair: Go ahead, Mr. Patzer.

Mr. Jeremy Patzer: I think that “lawfully obtained” shortens and, as you say, broadens the definition. There is still the practical barrier around how that's all obtained. I'm just going to get right into the specifics of it.

The John Deere X9 combine, for example, is set up so that part of the controller is on a header and part of it is now in the combine itself. Normally the controller is all in the combine, and then you have a cable running out through the feeder house to the front end, where the header would attach. Then the header manufacturer has their interface with the cabling that goes out to make the connection, and away it goes. The interface does the talking with the controller, and it's done.

However, the way that John Deere is now manufacturing products is that you have part of it here and part of it there. It's now a technical or physical lock as well that is now in between there, but through the Copyright Act, they're still able to hide and be able to lock John Deere off the platform, because they still can.... Honey Bee, for example, is not going to buy 70 different models from all the different manufacturers across the world. They testified about how they sell to 27 countries around the world. Some of those machines never make it to North America, so they're not actually going to be able to have the machine come to their shop and to reverse engineer it and do the thing.

A lot of it is dependent on companies just having a standardized electrical cabling system, but now you have a company that has gone beyond that and has reinvented the wheel, per se, and nobody else is allowed to have access to the reinvented wheel. This is what's happening, both physically and digitally. That's the barrier we're trying to prevent from becoming a more common practice, because as the rest of the OEMs see that John Deere can get away with it, they are going to start doing the same thing—monkey see, monkey do.

Again, whether it's Honey Bee or the tow-behind implements for planting and seeding, there are lots more short lines in the industry. The impacts are going to be realized by them in the not too distant future as well. Then the other industries, like mining and forestry, are going to see the impacts as well, as companies go to both physically and digitally locking out these other companies.

The reason we had the very specific exemption for manufacturers was that we think that under (a) we would be able to get somebody who is maybe not necessarily a manufacturer but is still trying to make a product. They would fall under proposed paragraph 41.12(1)(a), whereas proposed paragraph (b) would be very specific. The dictionary references a manufacturer as a corporate entity that makes a product. It's very specific about what they're talking about. It also recognizes that what we're trying to accomplish with some of the new wording that has been added to the other portions of the act is the aftermarket product that we're talking about here and being specific to.

I definitely appreciate the language that has been recommended through G-1. I just don't know that it's actually going to provide the certainty and clarity that industry is looking for, especially since a lot of this will be settled in court. That's the way a lot of this will work. At the end of the day, some of these big OEMs have a lot of power behind them, and nobody can withstand that legal challenge. We want to make sure we have absolute certainty and clarity within the act so that it's abundantly clear to the people who are trying to make these short-line products.

Again, there was a good study done by Western Economic Diversification Canada that speaks to the impacts that it has across the country. It's about making sure that those people have the jobs, but also the innovation that goes along with it, and about the benefit to small town and rural Canada all across this country.

● (1600)

I worry that by removing some of the specifics on the manufacturers exemption that we put in there, we're removing the clarity and certainty we were trying to achieve and obtain by putting forward the bill.

I agree with the language in proposed paragraph 41.12(1)(a). The way (a) and (b) are written, they make sense, but again, steering away from the actual intent of (b), as it was written in the draft of Bill C-294 originally, waters it down. It makes it a bit ambiguous, which opens the door for litigation to be levied against people who are trying to innovate.

● (1605)

The Chair: Thank you, Mr. Patzer.

I'll now go to Mr. Erskine-Smith.

Mr. Nathaniel Erskine-Smith (Beaches—East York, Lib.): Thanks, Jeremy, for that.

It would be helpful if we could get an answer from the department as to the example that Jeremy laid out there. How would the G-1 amendment capture the example that Jeremy proposed there, which is a real one?

We heard testimony on it. Jeremy has expressed a concern about the language. Can the department credibly say back that this example is captured? It's a bit technical, but can you walk us through how that example would be captured in the G-1 amendment?

The Chair: Go ahead, Mr. Blanar.

Mr. Patrick Blanar: It's a little tricky to speak specifically to the example. I guess I don't fully appreciate how manufacturers would get access to the equipment or the software that they need. If it were to be via an infringing method, and they had an infringing copy, the exception would no longer apply, because there's a non-application.

At the end of the day, they need to get it from someone who has it, and has it legally. That's where we believe that “lawfully obtained” does that, because at that point, it's not restricted to simply whether or not they are the owners or the licensees, which I feel is quite a direct relationship.

We believe that the “lawfully obtained” basically expands that. If individuals wish to work with Honey Bee, or any other manufacturer, and make the equipment they have purchased interoperable with the equipment that Honey Bee produces, they would be able to provide access to their combine to Honey Bee, which would then be able to do the work.

There's nothing here—whether it's in your bill, in the law as drafted, or in the amendment that is being proposed—that would allow a manufacturer to make an infringing copy in order to then work on it and circumvent it.

The Chair: Go ahead, Mr. Perkins.

Mr. Rick Perkins: I have a follow-up to Mr. Patzer's statement.

If I'm doing my layman's interpretation of what he said, proposed paragraph 41.12(1)(a) is intended to be the broader application, and (b) is meant for a specific purpose. If (b) goes in, do we just end up with two broad statements that are doing the same thing, as opposed to the specific example Mr. Patzer wanted in the bill in (b), with (a) being the one that gives the power that you were speaking to?

The Chair: I'll go to Mr. Patzer and then Mr. Blanar.

Mr. Rick Perkins: I just wanted a response.

The Chair: Mr. Blanar, go ahead.

Mr. Patrick Blanar: Thank you, Mr. Chair.

In Bill C-294 as drafted presently, proposed paragraph 41.12(1)(a) already captures the majority of it, but it doesn't go as far as what the government amendment would do by expanding it to beyond only those who own and license. With regard to proposed paragraph 41.12(1)(b), it is difficult to interpret whether or not it would apply to a broader universe or whether it continues to be restricted by that same requirement of ownership and licensing.

I think, from what I've heard, that the intention is to expand it, but at that point it becomes somewhat expanded without bound. I think it's still bound by subsection 41.12(6), which basically says that you can't do anything that's infringing, but it still has fewer bounds, which I understand is what seems to be sought. This is where we think that this concept of “lawfully obtained” also, by being somewhat undefined, allows for more of that flexibility and more of that certainty that, as long as it is not infringing or illegally acquired, at the end of the day they can work on it. It can be used not only in tractors but in any number of industries, and not only by manufacturers but by others who are seeking to create interoperable devices, including small inventors who might be working in their garages and who would not qualify under the definition of a manufacturer.

● (1610)

Mr. Jeremy Patzer: Those innovators wouldn't be captured by proposed paragraph 41.12(1)(a) in Bill C-294 as written.

Mr. Patrick Blanar: They would not, not as the bill is written, because at the end of the day, if they don't purchase or license the piece that they are seeking to make interoperable, then I think there's a gap there.

The Chair: I'll go to Mr. Erskine-Smith and then Mr. Fillmore.

Mr. Nathaniel Erskine-Smith: I have a question for Jeremy with regard to the G-1 amendment.

My reading on proposed paragraph 41.12(1)(b) is that someone can buy a piece of equipment that has a piece of software embedded into it and than want to manufacture their own equipment that is interoperable with it. They've lawfully obtained it, so proposed paragraph 41.12(1)(b) does enable them to make that interoperable; it says, “with any other computer program, device or component.”

Let's say I'm manufacturing a device. If someone has lawfully obtained the original equipment with the software embedded in it.... Maybe it's not a question for Jeremy, but that's the example you're using, right?

I don't know if you can clarify that, and then maybe we can hear from the department as to whether that then answers.... If I went about manufacturing a piece of equipment and I lawfully obtain what I want to ensure my equipment is interoperable with, am I not meeting the challenge here?

Mr. Jeremy Patzer: Specific to a combine—a harvesting machine—you have anywhere from 10 to 15 brands globally, if not more. Some brands have 10 different models and some have five different models. These machines are running at about a million dollars apiece now, so for a company like Honey Bee to go out and purchase every single machine and every single model of that machine within the model year, but then also be at the mercy of a software update to void the licence that they have to use the software in the machine....

They don't own the software in the machine. They buy the machine, but they don't own the software, right? When you go to fire up your machine, you have to accept the terms and conditions, which state clearly that you do not even own the software in the machine. You don't actually own it, but you get a presumed licence as the operator of the machine and the software.

The problem for manufacturers is that they're not going to go out and buy all of these machines. Honey Bee sells to 27 different countries around the world, which means that many of these machines are never even made available in North America, but it still exports its product overseas.

For example, it has a rice belt header that's widely used over in other parts of the world. There might be a few people who use it in North America, but generally speaking, it's a specialty header for a machine that's used in other parts of the world.

Mr. Nathaniel Erskine-Smith: Jeremy, can we get the department to respond to what you just said? We want to include....

I speak for myself.

The challenge you have laid out is a real one, and it makes perfect sense. How does the department respond?

If the amendment is not going to address that challenge and allow for that kind of innovation, what are we left with, exactly?

Mr. Patrick Blanar: My first response is that it's not so much a copyright issue and it's not so much a TPM issue: It's a contract issue at that point.

If there are contractual obligations between the manufacturer and the end user and they have the authority to modify the software that's embedded at will, I don't know how copyright addresses that.

● (1615)

Mr. Jeremy Patzer: I'll jump in quickly.

They are not looking to modify software at any point. All they are looking for from the OEMs is the information to make their product work.

In the case of Honey Bee, they don't necessarily need the software; they just need access to the information to make their product work. If they can't get that.... They can't buy a copy of the software to be able to find that information. John Deere now has that proprietary physical connector. It's illegal for them to reverse-engineer it. John Deere is not selling an adapter to all the other competitors to be able to make their product connect.

Some of that is competition. Some of that is taken care of by Brian's bill, which, hopefully, he can bring forward down the road.

It's a multi-faceted issue, but a lot of it comes down to certainty within the Copyright Act. In order for them be able to circumvent a TPM to get the information they need, they need the clarity within the act.

In the United States, the exemption has existed for 10 or 11 years to be able to circumvent a TPM to access information to make a product interoperable. We don't have that in Canada. That's what we try to.... We kind of do, but not to the extent the Americans do. That's what we're trying to accomplish with this bill. It's to match what the Americans have by what the end result is. It's not the same mechanism. Their system is different, obviously, in how they achieve it, but we're trying to get the same level of exemption that the Americans have so that we're on a level playing field with them. We're also trying to be able to encourage industry to continue to innovate.

Mr. Patrick Blanar: The Americans use the same language. They use “lawfully acquired”. If the objective is to reach the same level as what is permitted in the United States, that is how we achieve that.

Ultimately, that is what this does, and this goes beyond it. What the U.S. has done with its exceptions to TPM regimes is create very narrow verticals. It has said that you can have exceptions for farming equipment, medical devices or cellphones. We're taking a broader approach. It's one that says that if you are seeking to achieve interoperability.... It's not even that we are taking that approach. We have had it since 2012, when we first introduced this. We have had the exception since 2012 for creating interoperability between computer programs. What your bill is seeking to do is expand that to ensure that it isn't just computer program to computer program, but computer program to, potentially, a dumb device.

The answer you gave, which was that part of the program is in the combine and part is in the header, is already captured today in the Copyright Act. That is interoperability between two computer programs.

At the end of the day, this is expanding it, but it's really to capture those situations in which the interoperability is not between two computer programs but between one computer program and one device that may not have embedded software but may have some kind of embedded serial number or something like that. It is simply being verified or validated against, versus actually creating that handshake between the two pieces so that they can speak to each other.

Mr. Jeremy Patzer: Yes. I guess it's that barrier that's blocking the handshake right now that we're trying to get around. That is the topic *du jour*.

Mr. Nathaniel Erskine-Smith: Okay.

● (1620)

Mr. Jeremy Patzer: There seems to be.... I'm trying to make sure that we have as much certainty and clarity as possible for these guys. Yes, it's big money, but it's entire communities being wiped off the map too if these industries all disappear from their towns.

The Chair: If there are no more questions....

I had you, Mr. Fillmore, but you're okay?

On the suggestion of Mr. Perkins, we could take a break for a few minutes just to see where all parties are at on G-1 and resume shortly.

I'll suspend briefly.

● (1620)

_____(Pause)_____

● (1645)

[*Translation*]

The Chair: Dear colleagues, we will resume our meeting and I welcome you once again.

It seems that an agreement has been reached after the huddle and I believe there is consensus among the parties.

I now give the floor to Mr. Perkins.

[*English*]

Mr. Rick Perkins: Thank you.

With the agreement of all of the parties—the government, the opposition parties, officials and the sponsor of the bill—I think we have an agreement right now to put G-1 into place, with the thought, obviously down the road, that there will be some more work and opportunity perhaps to refine it a little more when it goes to the Senate.

Is everyone else in agreement with that?

A voice: I sure am.

The Chair: Go ahead, Brian.

Mr. Brian Masse: I absolutely agree. Thank you again to the sponsor of the bill. To have two bills come through today is pretty historic. Again, thank you to the sponsor.

The Chair: I gather that G-1 is adopted unanimously.

(Amendment agreed to [*See Minutes of Proceedings*])

[*Translation*]

The Chair: We will proceed with the required formalities.

Is there unanimous consent to pass clause 1 as amended?

Some hon. members: Yes.

(Clause 1 as amended agreed to. [See *Minutes of Proceedings*])

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

The Chair: Shall the committee order the Chair to report the bill as amended back to the House?

Some hon. members: Agreed.

The Chair: Shall the committee order the reprinting of the bill as amended for the use of the House during report stage?

Some hon. members: Agreed.

The Chair: Thank you.

Mr. Patzer, I'll add my voice to what Mr. Masse said and congratulate you for your work. I also thank you for being with us today to facilitate the discussion.

Mr. Blanar and Mr. Racine, I also thank you for joining in several times.

Since we've covered all the items on today's meeting agenda, the meeting is adjourned.