



House of Commons  
CANADA

## Standing Committee on Canadian Heritage

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CHPC • NUMBER 012 • 1st SESSION • 39th PARLIAMENT

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EVIDENCE

**Monday, September 25, 2006**

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**Chair**

**Mr. Gary Schellenberger**

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Monday, September 25, 2006

• (1535)

[English]

**The Chair (Mr. Gary Schellenberger (Perth—Wellington, CPC)):** I will now call this meeting to order.

Before we get into the meeting, I must say welcome back from summer, everyone. It seems a short time ago that we met; it was shortly after the House was recessed that we met, and we didn't even ask for overtime pay, did we?

Oh, Mauril did?

I presented the last report from Mr. Kotto to the House last week. It was my first opportunity.

Yes, Mr. Bélanger.

**Hon. Mauril Bélanger (Ottawa—Vanier, Lib.):** It's a bit unusual, but I would inquire formally if you are aware of the rumour, and whether or not you can substantiate that rumour, that as of this moment the Minister of Heritage might be involved in a public announcement somewhere regarding funding of the programs in her department.

Are you aware of any of that?

**The Chair:** I am not aware of that, sir.

**Hon. Mauril Bélanger:** Thank you.

**The Chair:** I'm going into a little bit of a preamble here. Our gentleman here has to have a little bit more time before we start our meeting on copyright.

Again, I must thank my nominator, Scott Simms, for nominating me as chair. It's a tremendous honour for me to be the chair of the heritage committee. I'm sorry I didn't quite reciprocate in the way that I should have maybe with a nomination, but I am very pleased, again, to chair this committee, which we seem to have gotten along so well with.

There are a couple of things we are going to do today. We will carry on our meeting with the officials who will be here today until 5 o'clock. At 5 o'clock we'll switch into a little other business we have to do. We have some scheduling we should look at, or that at least everyone should have to peruse.

In regard to the next meeting, it goes back to some of the suggestions that were made at our last meeting about where we wanted to go as a committee.

Also today I'll be reporting a draft schedule of meetings for October, and I'll be outlining a museum study to be presented to

members, as well as an operational budget proposal for a railroad museum study, and this is with the expenses. I think Mr. Scarpaleggia has made a request that a railroad museum from his area might want to come here, and I know Mr. Abbott has suggested a railroad museum from his area.

I have a couple of other things to put forward when we get into museums. It may be that each one of us could think of a small museum in our riding that we might ask to come as a witness. Then we would all know where we're coming from around this table. I think if there's a museum in your riding that could come, that would maybe represent something we might want to do. It's something to think about. Maybe down the way we could invite some of those people here when we come to discussing small museums.

Again, I have one announcement, and I'm going to make it now, regarding our meeting on Wednesday with CBC Radio-Canada. It's been requested by the CBC that the meeting be extended by 30 minutes. So I'm proposing that the meeting would run from 3:30 p.m. until 6 p.m. I don't know whether I can stay for the whole time. If I can't, I might have to ask one of my vice-chairs to chair the final part of the meeting.

That gives you a little bit of insight into where we're headed. I was going to bring some of these things up a little bit later, but we're going to talk about some of them from 5 o'clock until 5:30 p.m., to see where this committee will be going in the next little while. We do have estimates. We do have some of the those things that we can talk about at that time.

That said, I think I've taken up the time I had to take up.

Again, welcome to the Standing Committee on Canadian Heritage, meeting 11, it says, pursuant to Standing Order 108(2), a briefing on copyright.

Our witnesses I invite to the table are from the Department of Canadian Heritage and from the Department of Industry. Take your positions, please.

• (1540)

[Translation]

**Ms. Danielle Bouvet (Director, Copyright Policy Branch, Department of Canadian Heritage):** Thank you, Mr. Chairman. I also thank the committee members. We are pleased to appear before you this afternoon to give you an overview of the Canadian Copyright Act, as well as the international obligations that it entails.

Today's presentation is purely technical. You have read the presentation that was handed out to you. This presentation describes the current Canadian Copyright Act. This presentation makes no reference at all to the history of this legislation over the past few years, nor does it refer to anything that might happen to this legislation in the future. This afternoon, our aim is to describe the legislation as it stands today. We are really confined to the present.

I gather that there will be a second sitting next week. At that time, we will be pleased to deal with the issues that might have to do with the history of the Copyright Act. This afternoon, we will give a 101 course on the current legislation.

The presentation will last more than 10 minutes. As it will be rather long, we beg your indulgence. If you have any questions, we will be pleased, Albert Cloutier, my colleague from Industry Canada and myself, to answer them during the presentation.

Let me begin without further ado. I invite committee members to turn to page 5, as the first pages give a quick view of the table of contents in which today's subject matter is covered quite exhaustively.

Page 5 deals with—

**Mr. Luc Malo (Verchères—Les Patriotes, BQ):** Let the staff know that I do not have a copy of the presentation.

**Ms. Danielle Bouvet:** Without further ado, let us go to page 5, which deals with the principles of the Copyright Act.

Let me begin by saying that the Copyright Act is a framework law that deals with many sectors, such as the artistic community, authors, artists, writers, cultural industries like film and music, information technology, service providers like Sympatico, Rogers, Telco and Telus, the fields of education and research, museums, libraries and consumers in general, just to name a few. Besides, we can also mention foreign stakeholders, given that works by many foreign authors are being used here in Canada. These people are very interested in the way our country meets its obligations in copyright matters.

Thus, we are dealing with legislation that affects a great number of people and has an obvious impact on Canada's economy. This act, which came into force in 1924, has two fundamental principles, the first one has to do with control and remuneration for rights holders. The term "control" refers to the highest degree of protection pursuant to the Copyright Act. When an exclusive right is granted to a rights holder, it gives him the right to accept or refuse the way in which his work will be used. This is a very important right. As a whole, rights holders want to have as many exclusive rights as can possibly be derived from this legislation.

The right to remuneration has been somewhat reduced, to the extent that a rights holder can no longer accept or refuse that his work be used. He is only allowed to receive remuneration in exchange for the use of his work. This is an important distinction to draw. In our Copyright Act there are cases where the rights holder only receives a right to remuneration.

A corollary to this basic principle has to do with the dissemination, or access to works. This involves any means that can facilitate the use of works through the application of emerging

business models that allow users to keep better track of works and to be in a better position to pay the appropriate fees. Here I am referring to management companies that have been set up to facilitate access. There are also individual licences and a host of business models that can facilitate the use of works. This concept also extends to exceptions and limitations, whereby certain categories of persons can use a copyright without having to ask for the rights holder's authorization.

Page 6 deals with jurisdiction in copyright matters. First, let us note that the Copyright Act belongs to a set of laws dealing with intellectual property. Some examples are given here. We should also note that in Canada, copyrights falls exclusively under federal jurisdiction.

I really want to emphasize the fact that this is a legislated right. In other words, unless a right's holder has a right that is specifically provided for in the legislation, he cannot exercise any kind of control over his work. Let me explain this. For instance, there are no royalties for renting audiovisual works in Canada. Thus, any retailer can rent out films, without asking for any authorization for anyone who took part in creating the film, be it the producer, the manager or anyone else.

• (1545)

This is why the field of copyright is constantly evolving and adapting to new kinds of use. Since this is a statutory right, if some kind of use has not been provided for in the legislation, creators cannot exercise any kind of control over this kind of use.

Page 8 deals with departmental responsibilities. The responsibility for this file is shared between two departments. The Ministry of Industry is responsible for intellectual property as a whole, including copyright. The Copyright Act identifies the Minister of Industry as the minister responsible for this legislation.

The Minister of Canadian Heritage is responsible for the formulation of cultural policy as it relates to copyright. He is given this responsibility pursuant to the incorporating act of his department, namely the Department of Canadian Heritage Act.

• (1550)

[English]

**Mr. Albert Cloutier (Director, Intellectual Property Policy Directorate, Department of Industry):** In the next section of the presentation we'll discuss what kind of material is actually protected by copyright and what is the nature of that protection—in other words, what rights are inherent in the copyright.

First, I'd like to mention that ideas themselves are not protected by copyright; it is the expression of the idea that is actually protected. By way of example, we can think of software. There are many ways of executing certain instructions to do certain things, but it's the way the author chooses to create the program that is protected, not necessarily what the program does.

The same is true with a literary work. There are certain stories that in a sense are universal and very much belong to the public. But what is expressly protected are the words used by the author to tell the story.

Copyright protects a variety of works: literary works, dramatic works, musical works, artistic works, and combinations of those works, as well as combinations of facts. Although a fact is not typically protected by copyright, the combination of those facts may give rise to protection as a compilation.

These are the works of creation, but copyright also protects what builds on that creation and enhances it. Thus the way a performer actually performs a musical work is protected, as is the way that performance is recorded. As well, the way it's communicated through a broadcast signal may be protected. These latter types of protections, which are not the works themselves, are sometimes referred to as neighbouring rights.

On page 9, there are some examples from each category of works. While you may wish to read through them, there are a couple of points worth noting. Under "Literary works", for example, copyright obviously protects works of fiction, but it also protects academic material, and computer programs are recognized as literary works.

Under "Compilations", I want to draw your attention to the fact that a database of facts can be protected, where the arrangement and selection of the facts that go into the database give it an original character. Although each individual fact is not protected, the database as a whole may be protected as an original work.

In terms of what I've talked about regarding neighbours, when we talk about performances, there are the performances of actors, musicians, dancers, and singers. They get a type of protection that's more limited in scope than the work they're actually performing. Presumably that's in recognition of the special originality and creativity that attaches to the underlying work. The same is true for sound recordings and broadcast signals, which benefit from protection.

On page 11, we start to describe the rights inherent in copyright. Copyright is not a monolithic single right; it's sometimes referred to as a bundle of smaller rights that cover very specific kinds of activities. Not all uses of a copyright work are protected by the Copyright Act.

The list on page 11 is not exhaustive but identifies perhaps the most significant rights. It includes the right to control the reproduction of a work, which is probably the most important right in copyright. Reproduction in the paper world obviously refers to photocopying, but the right is crafted in a way that's technologically neutral. When you have a digital reproduction of a work, it's also covered by the Copyright Act.

• (1555)

The second right, communication to the public by telecommunication, is something that covers what we traditionally think of as broadcasting, and until the later 1980s was actually referred to as a broadcasting right, but subsequently it's been broadened to be more technologically neutral and is now a communication to the public by telecommunication right. That right not only governs traditional broadcasting, but communications that take place over the Internet. We have confirmation of this through a decision of the Supreme Court of Canada when it looked at a tariff that would have been applied to Internet service providers. While the court concluded that

Internet service providers are not communicating works, it still recognized that the right does apply to the Internet environment.

A third important right is the public performance right. Again, in a traditional setting we think of the performance of plays or perhaps a work of choreography in the form of a ballet, but it also extends to venues where you might have some kind of electronic performance. For example, if you're talking about a sports bar where there's a widescreen TV with a sports event going on in the background, in that case there's the public performance of the sports event as a work, so the use of that work is controlled by the rights holder. In contrast, a private performance in one's own home is not covered by copyright, and that's the distinction there. Ultimately, the list is finite, and anything that's not on the list is not protected by copyright.

I won't go through the other two. There are illustrations, but again this list you see here is not the full list you would find in the act.

Pages 12, 13, and 14 give some sense of the more limited right that's granted to the neighbours. So performers, until their performances are actually recorded, have the right to control their broadcasts to the public.

**Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.):** Could you repeat that?

**Mr. Albert Cloutier:** Sorry, which...? Just the latter part?

**Mr. Francis Scarpaleggia:** Yes, their performance is protected until.... I just missed that last sentence.

**Mr. Albert Cloutier:** Okay.

Until a performer actually consents to the recording of his or her performance, they have the right to prevent its broadcast or they have the right to control the broadcasting of that. That right actually disappears once they consent to its recording. So it's a limited right to control the communication to the public of the performance. In that way, they're treated somewhat differently from the author of a work who has a much stronger right to control the broadcast of their work. Once they've consented to its fixational recording, as I call it, then they have a right to control the further reproductions of their performance that may be based on that recording.

Were there further questions?

On the next page, in terms of sound recordings, music labels have the right to control the publishing, the reproduction, and the renting out of their sound recordings.

As Danielle mentioned earlier on, there are in a sense two kinds of rights that may be conferred. One is an exclusive right that gives the rights holder the ability to control the use of the work. A more limited right is the right to be paid for the use of the work, but you don't actually have the ability to refuse permission to use the work. Currently, for the communication of musical works, there is a right to be paid, but there is no right to say no. That's the case for both the performer and for the label. They can't deny a broadcaster, for example, the right to broadcast their recording or their performance, but they do have the right to be paid. That payment is established by the Copyright Board of Canada, which is an independent, quasi-judicial tribunal that's been established precisely to fix copyright royalties, among other things, for the purpose of setting royalties for the communication of music. There again, it's an important distinction between the creator of the work who does have an exclusive right versus the neighbour who has a much more limited right.

On page 14, it talks about the rights in broadcast signals. By a signal here, we're not talking about a work as such. We're literally talking about the electromagnetic waves that are used to communicate some copyright material. The nature of the protection here is basically to provide broadcasters with protections against the theft of their signals. So they can say no to the recording of their signal, to the rebroadcasting of their signal, and the performance of their signal in a public place where there is an entrance fee. In the example I had given previously—the sports bar—where typically there is a cover charge, they have the right to prevent the public performance of that.

• (1600)

**Mr. Jim Abbott (Kootenay—Columbia, CPC):** I know we don't want to get into heavy Q and A at this point, but you raised the issue of an electromagnetic signal. Has there been any jurisprudence on the difference between an electromagnetic signal and whatever the heck digitization is, and does the medium of the transfer of the information or image have any impact? Has that been looked at, and does it make any difference, or do we just ignore the difference between whatever a digital signal is and whatever an electromagnetic signal is? Do you understand my question?

**Mr. Albert Cloutier:** I think what you're alluding to is, is there a difference in the treatment of, say, webcasting versus more conventional broadcasting.

**Mr. Jim Abbott:** Yes, except that in the case of webcasting versus the more conventional, we're talking about the end result. I'm talking about the technical medium and the difference between the two. Has there been a look at that? Does it make any difference? Should we ignore it?

**Mr. Albert Cloutier:** At this point in time I'm not aware of any jurisprudence that talks about the distinction. Of course, for other categories of rights holders, as I mentioned previously, the communication right is a technologically neutral right. It's been interpreted so as to apply on the Internet, but that doesn't deal with what the broadcaster emits in terms of a signal; it deals with the content that's actually being disseminated.

**Mr. Jim Abbott:** I think you just answered the question.

**The Chair:** We can have the questions after. I'd just as soon have the presentation and we'll have the questions after.

Thank you.

[*Translation*]

**Ms. Danielle Bouvet:** Page 16 deals with moral rights. Following what my colleague said about economic and neighbouring rights, moral rights have only been granted to authors of works in Canada. No one holds any neighbouring rights. For instance, no artist, no producer of a sound recording, no radio broadcaster holds any moral rights in Canada. Only authors hold moral rights, which can be divided into three categories: the right of attribution, the right of integrity and the right of association.

The right of attribution is the right to be associated to one's work, to be identified as the author of a work. The right of integrity is the right to prevent anyone from modifying, altering or changing a work in a prejudicial way. I am emphasizing this term because if the change is not prejudicial to the author, no recourse can be applied. As for the right of association, it is meant to prevent any prejudicial use of a work by associating it with some product, service or cause.

In Canada, there was a *cause célèbre* involving an author who had created geese that were displayed at the Toronto's Eaton Centre. Now during the Christmas season, the Eaton Centre had decided to tie little red ribbons to the little geese. These red ribbons that were added were deemed to go against the author's moral right. This is an illustration of how this right is implemented.

Page 16 gives criteria for protection, which are the basic requirements for copyright protection. This deals with originality; of course, the work must be original. A mere copy of reproduction of someone else's work would not satisfy the standard of originality. Fixation of the work is also required in order to benefit from protection pursuant to the Copyright Act. We must note that protection of a work arises automatically upon its creation. This is very different from patents, for instance, where the potential patent holder must apply to the patents' commissioner who, after studying the file, will say whether this inventor can become the patent holder for a given invention. In the copyright field, as soon as the standard of originality has been met and the work has been fixed, protection arises, without any need for any authority to declare whether or not this work is truly a work as defined by the Copyright Act.

In Canada, copyright can be registered. Registration is optional. The creation of a work is in itself sufficient for its protection under the legislation. However, if someone wants more security, he can register his copyright with the Intellectual Property Office. Let us also note that it is unnecessary to mark a work with a "c" symbol in a circle to protect it. Here again, we see that the originality of a creation suffices under the Copyright Law.

Who is the author of a given work? It is the person who created this work, for example someone who wrote the lyrics of a song, or someone who has created a computer program. However, there are exceptions to this legislation. For instance, in photography, the author is the one who owns the original plate, or what is sometimes called the “negative”. But what happens to copyright in a digital setting where there are no more plates or negatives. In such cases, the owner of the camera is the author of the photographic work.

● (1605)

Who is the copyright holder? Once again, generally, the copyright holder is the author. However, the legislation has provided for situations where the first copyright holder could be someone else, tout the extent that there is no agreement to the contrary. Let me explain.

When working in an employee-employer relationship, the employer would be the first copyright holder for any document prepared by his employee, to the extent that certain criteria are followed, specially regarding the employer's supervision of the work done by his employee. If there is no agreement to the contrary, the employer would be the first copyright holder.

When dealing with patents, agreements to the contrary frequently occur, but normally, when the work is done in an employer-employee relationship, the employer would be the first copyright holder.

As for works prepared or published under the direction of the Crown — like the work done by consultants for the Crown —, the Crown would be the copyright holder.

There is another exception. In the case of photographs and portraits, the person who commissioned the photo is the first copyright holder. If, for instance, you get married and you ask a photographer to take your wedding pictures, as you are the one to order the photos from the photographer, you would be the first copyright holder. We must note that in fact, photographers often sign agreements to the contrary. Photographers very frequently want to be the first copyright holders for the photos, but even when that happens, we must know that the legislation is very clear regarding the fact that the one who commissioned the photo is the first copyright holder.

Let us go on to the duration of protection for works. In general, works remain protected for 50 years after the author's demise. This means 50 years beyond the author's life span. There is a technical detail; we should know is someone passes away on September 25, 2006, the protection will continue to the end of a calendar year. Thus, the 50 year period would begin on January 1<sup>st</sup>, 2007. When the period of protection expires, the work comes into the public domain. This is a standard formula for copyright. When the work is in the public domain, anyone who wants to use this work can do so without asking permission from the author or from the copyright holder.

But we must be careful, because this rule is not as simple as it may appear. For instance, in the case of Beethoven, who died a very long time ago, his work has been in the public domain for a very long time. But if, on the other hand, a producer of song recordings, or a symphony orchestra, for instance, were to make a recording of Beethoven 9<sup>th</sup> symphony, in such a case, neither Beethoven or his

succession would have any rights regarding that work, the producer of the song recording who has done the work needed to produce this new version of the work would benefit from protection. Likewise, all the musicians, as artists, could be protected by the Copyright Act, for a 50 year period.

● (1610)

I mentioned other matters, namely neighbouring rights. Protection is somewhat shorter for artists and producers, it covers 50 years after the first fixation of the audio recording or after the execution, if it has not been fixed, or, for audio recordings, 50 years after fixation. Of course, for audio recordings, individuals are very rarely involved. Most cases involve corporations, and the protection lasts for 50 years. Thus, neighbouring rights are more restricted and less protected than the rights of authors.

[English]

**Mr. Albert Cloutier:** The rights set out in the Copyright Act are subject to certain exceptions and limitations. These exceptions may be in the nature of allowing a use in a certain context without requiring not only the consent of the rights holder, but also without requiring payment of the rights holder. In some cases, a limitation may derogate from an exclusive right such that the use can be made, but there still is a requirement of compensation.

I'll discuss a few examples to illustrate some of this.

There's a general exception that applies broadly to all the rights in the act and that's what we refer to as fair dealing. It's possible for somebody to use material in a limited way for the purposes of research or private study or news commentary or criticism. This provision was recently looked at by the Supreme Court of Canada in a case called CCH, which is a legal publisher, versus the Law Society of Upper Canada. The situation was that the law library at the Law Society was making reproductions of certain case material from the books published by law publishers for client lawyers. The court held that even though this was a commercial context, because the lawyers were doing it to derive revenues, it was nonetheless fair dealing in this context because it was done for research and private study.

Apart from this general exception, there are some very specific exceptions that have been put into place for the benefit of a number of public institutions, such as non-profit libraries, archives, museums, educational institutions, and persons with perceptual disabilities. In that category, for instance, a school or a teacher can perform a sound recording in the context of a class for the benefit of students. That doesn't require payment or consent of a rights holder. They can also turn on the television so that they can watch a news program, even though normally this would be considered the public performance of that program in the classroom, and there's no payment or there's no consent required.

● (1615)

**Mr. Francis Scarpaleggia:** Can they make copies of articles from newspapers and magazines?

**The Chair:** We'll go through the questions after.

Mr. Francis Scarpaleggia: I apologize. You did mention that.

The Chair: Carry on.

**Mr. Albert Cloutier:** Another limitation on the communication right exists in the context of what we call retransmission. Retransmission is done by cable companies and direct-to-home satellite companies. They pick up television signals and then transmit them by cable to their subscribers. Normally the rights holders that produce the content contained in those signals would have the ability to say no or to negotiate terms of payment. In this particular case, however, just because of the large number of rights holders that would need to be consulted and clear all the rights for, there's what we call a compulsory licence. There's a requirement of payment again, but you don't go to each and every rights holder to obtain authorization. The Copyright Board establishes a tariff and the cable companies and satellite companies pay according to that tariff. That's a limitation as opposed to a true exception.

The private copying regime is another kind of compulsory licensing scheme with a bit of a twist. What it allows people to do is to make copies of music for their personal use on certain kinds of recording media. They don't again need the consent of the rights holder and they don't pay. However, the manufacturers and importers of the media that qualify under the regime for the making of these copies must pay a form of levy to a collective society that represents various classes of rights holders, in this case authors of musical works, the sound recording makers, and the performers. That gives you a sense of the range and type of limitations and exceptions you might find in the act.

If you turn to page 22, that slide discusses a bit about how the rubber hits the road, as it were, in terms of how rights holders can exploit their rights to their advantage for economic purposes. Not only is copyright in a sense a bundle of individual rights, and each of these individual rights can be administered in different ways, but by the same token a rights holder can decide that they will license by territory or over a certain timeframe or into a certain media. It's up to them to decide how they wish to exploit their rights.

A fundamental principle of copyright is that these rights are alienable. In other words, you can assign your right to other people so that they can then exploit the right. This is very important for the manner in which ultimately these rights are administered.

This is true of the economic rights, but the moral rights are treated on a slightly different footing. The moral rights recognize that it is important not to allow the honour or reputation of the author of the work to be prejudiced. They can't be transacted away; they can't be sold or assigned. But if somebody wants to use a work in a particular way that in theory could be prejudicial to the creator, then they can approach the creator and the creator can waive their right and say they consent to the use in this context. That's a bit of the distinction between the economic rights and the moral rights.

How is consent given? That's dealt with on page 23. I can give a simple permission that is generally known as a licence. I just allow you to use my work in a specific instance or for specific uses, but I can also surrender my right to you. I can sell it to you, if you will. In that case there's actually a change, a transfer of the ownership of the right. I'm no longer the person who can exploit it and you have to go to the new owner to get all the necessary consents. To be legally effective, these assignments and these licences must be in writing and signed by the owner of the copyright. That's a small technical matter.

● (1620)

On page 24, we deal with the way in which rights management actually occurs in practice. For the most part, individual creators are not interested in having to go out themselves to try to sell their works. They're more interested, by and large, in the creative act and the creative process. They have a number of options that are open to them in terms of how they can do this. In some cases, they can assign their right to a publisher. In the literary world, that's the typical arrangement. They will assign their right to the publisher, and then the publisher is responsible for marketing the work and exploiting the right.

In the case of music, on the other hand, particularly as it relates to communication, the rights holders have banded together in the form of a collective society, and the collective society is the entity that will license the rights on their behalf. There again, how the licensing is done can vary. In some cases, licences are transactional, so they relate—

**The Chair:** I'm just going to interrupt for a second.

**Hon. Mauril Bélanger:** I'm sorry to interrupt, Mr. Chairman, and I thank you for your indulgence. I've just received confirmation that the Minister of Heritage has indeed just announced serious cuts to the department.

So I beg your forgiveness, but I think I have some other things to do right now.

**The Chair:** Carry on, Mr. Cloutier.

**Mr. Albert Cloutier:** So licences can relate to a particular work, or for a particular use of a particular work. We call this a transactional licence. It's a one-time use. On the other hand, most collective societies aren't interested in licensing uses by the work. Rather, what they prefer to do is license the whole repertoire of all of the members of the collective, all the rights holders that have joined the collective. This presents significant advantages to users as well, especially in the educational sphere where schools need access to large bodies of works and it would just be too costly to try to negotiate on a piecemeal basis for the utilization of the work.

The last kind of licence is the compulsory licence where the rights holder doesn't have an exclusive right but a right through remuneration only, in which case the copyright board establishes the tariff. Again, it's typically for a broad repertoire of works, a repertoire administered by a collective society.

So there's a wide range of ways in which a rights holder can actually exercise their rights. They're not obliged to join collective societies. They do so because it's beneficial to them. But in the new world, in a digital world, some rights holders are finding that they do want to administer their rights themselves through online licensing arrangements, and that's fine too. The act can accommodate all.

● (1625)

[Translation]

**Ms. Danielle Bouvet:** Page 25 deals with international copyright forums. Some of them deal solely with copyright, others deal with copyright and education sciences, and others still are of a very commercial nature.



The World Intellectual Property Organization only deals with copyright. The United Nations Educational, Scientific and Cultural Organization deals with access issues. It has also dealt with the Convention on the Prevention and Promotion of the Diversity of Cultural Expressions. This organization has occasional indirect dealings with copyright matters.

Regarding commercial agreements, the World Trade Organization has the WTO agreement on those aspects of intellectual property rights that have to do with trade, the TRIPS contains a chapter aimed specifically at intellectual property. Chapter 17 of the North American Free Trade Agreement deals with intellectual property and more specifically with copyright. Finally, the free trade agreement between Canada and the United States that was concluded in 1989 sets out obligations for rebroadcasting.

Page 26 deals with international copyright norms. These are based on the fundamental principle whereby copyright is dealt with on a national basis, whereby foreigners can enjoy the protection of Canadian law pursuant to our international commitments. Likewise, Canadians whose works, audio recordings and performances are used in foreign countries can benefit from protection outside Canadian borders.

Page 30 deals with the international agreements of which Canada is a member. It is very important to emphasize the word "member", because these conventions are binding for Canada, I mean the conventions that Canada has already implemented, such as the Berne Convention, the Rome Convention, the Canada-US Free Trade Agreement, and more recently, the WTO Agreement on TRIPS.

Page 32 mentions various international agreements to which Canada is a signatory. The word "signatory" means that the Canadian government is not bound by these agreements. Canada signed these conventions because it agreed with their underlying principles, but has not yet taken any steps to become a member of these conventions. To do this, the Copyright Act would have to be amended.

Page 34 goes into further detail about one of the international conventions that I mentioned earlier: the Berne Convention for the Protection of Literary and Artistic Works. This convention is administered by the World Intellectual Property Organization and already has 162 members. It is very important in the copyright field, because it not only contains a broad list of exclusive rights granted to authors, but it also includes obligations regarding moral rights as well as a three-step test.

The three-step test is a provision of the Berne Convention that allows a member state to restrict the scope of certain activities or exclusive rights under certain conditions. This is called a three-step test because there are three criteria to be met. The member state must only use exception or restriction in special cases.

• (1630)

Also, it cannot unjustifiably impede the marketing of the work. It also cannot cause prejudice to the rights holder. These three conditions must be fulfilled before the government can oppose the exclusive rights prescribed by the convention.

The Rome Convention is a convention on neighbouring rights. A little earlier, my colleague Albert talked about the rights of artists,

sound recorders and broadcasters. The Rome Convention is a convention which frames the protection these three beneficiaries receive. The convention is administered by three international organizations: the World Intellectual Property Organization, or WIPO, UNESCO and the International Labour Organization, or ILO.

It should be noted that the United States is not a member of this convention. It's a convention which grants rights to the three beneficiaries mentioned a little earlier, but more limited rights in certain cases. There are no moral rights, there is no three-step test, but there is a fairly exhaustive list of exceptions which can be taken into account under this convention.

Let's move on to page 32. You can see the Canada-United States Free Trade Agreement, which was signed in 1988. This agreement established minimum standards for cable retransmission. Following this agreement, Canada amended its own legislation to create the famous mandatory licensing system my colleague Albert Cloutier talked about a little earlier. You should also know that this agreement contains a cultural exemption for cultural industries.

Then, there was NAFTA, signed by the United States, Mexico and Canada. Again, this agreement sets minimum levels. In fact, the minimum levels of copyright protection were largely based on the Berne Standards. The agreement also includes a dispute settlement mechanism, which means that if one of the three countries does not respect its obligations, one of the other countries can lodge an appeal before a group of experts who would have to decide whether the country in question did or did not respect its international obligations. As well, the agreement includes a cultural exemption for cultural industries. No complaint has ever been lodged to date.

Further, the World Trade Organization has implemented paragraph 6 of the Doha Declaration on TRIPS and public health. This agreement, yet again, established minimum levels. I'm insisting on using the expression "minimum levels" because this means it would be possible for a member State to go beyond the obligations set out in the convention, but each country must, at the very least, respect these thresholds. Within the framework of this agreement, new standards had been introduced for computer programs. It was the first time that an international convention specified that a computer program was protected under the Copyright Act. Again, a three-step test and a dispute settlement mechanism were also established. You should know that, until today, only one complaint was made to the WTO regarding copyright, and it was a case which pitted the European Union against the United States.

Let's now turn to the WIPO Treaty on copyright, or the WCT. This treaty came into effect in 1996 and is administered by the World Intellectual Property Organization. Today, 60 countries are members of the treaty. Canada is a signatory, but not a member. This treaty supplements the Berne Convention. The WCT represents a special arrangement within the meaning of the Berne Convention, and it completes the Berne Convention to ensure that the Internet and any use made of digital works are framed and subject to international minimum standards.

•(1635)

Lastly, there is the 1996 WIPO Performances and Phonograms Treaty which affects sound recording producers. That treaty was also signed in 1996. There are 58 signatory countries including Canada. At the outset, this treaty was to provide economic rights so as to address new technologies and all the digital issues. It also provides for a three-step test.

Mr. Chairman, that completes our technical presentation. We will be pleased to answer certain questions.

[*English*]

**The Chair:** Thank you very much.

Mr. Simms is the first questioner.

**Mr. Scott Simms (Bonavista—Gander—Grand Falls—Windor, Lib.):** Thank you, Mr. Chair.

If I may, I'll take a brief minute before I get into the timing of my question—just as a little aside, maybe for the benefit of new members—to say that we dealt with copyright in the last session. Some of you have already dealt with it. As you can see today, it's quite complex.

You will be lobbied from many different angles in many different ways. Maybe you have been already; I don't know. I found in my experience with it that they would come to see me, and I hadn't, I guess, done jurisprudence in the first place. They came in fresh, and I didn't know much about the issue—say with radio transmissions and that sort of thing, or photographs.

Just as a word of advice, get some information from these guys about this before they come to you. You'll find that it is incredibly beneficial and will shorten your meetings. I just want to put that out there—I say it to all—because it gets quite crazy.

Anyway, in questioning I want to talk about WIPO for a minute. We're way behind, aren't we?

[*Translation*]

**Ms. Danielle Bouvet:** That is your opinion.

[*English*]

**Mr. Scott Simms:** Well, it seems to me we're a signatory to it, which does not give us any.... We're not members, is that correct?

**Ms. Danielle Bouvet:** Yes.

**Mr. Scott Simms:** Am I to assume we should have done this a long time ago? I know I'm asking you to express an opinion, but it has been 10 years. Can you shed some light on why it's been going on this long?

[*Translation*]

**Ms. Danielle Bouvet:** I think you are right when you refer to the dates. In 1996, the treaties were signed and here we are in 2006, and Canada has still not amended its legislation so as to enable it to become a signatory to these conventions. It seems to me a lot of time has passed.

However, Canada is following the example of many other countries. These issues are not easy to deal with. New technologies and the utilization of creative works are constantly evolving. While some countries may have decided to act very quickly, others, such as

European Community member nations, are still not signatories of these international conventions.

A great deal of work is being done in both these departments. We are examining very important and complex issues. Several different divergent interests are at stake. I think that once the government is ready, it will be pleased to announce its action plan in this regard. However, it cannot be denied that a great number of issues must be analyzed.

•(1640)

[*English*]

**Mr. Scott Simms:** It seems to me we've taken a run at comprehensive copyright legislation now several times. In the past few years especially we keep hearing about it. Where are we right now with respect to tabling legislation?

[*Translation*]

**Ms. Danielle Bouvet:** That is a question I cannot answer. I can only confirm that we are working very hard on this issue.

[*English*]

**Mr. Scott Simms:** Sorry to interrupt, but where were we at in the last session? What stage were we at with copyright legislation before the election was called?

[*Translation*]

**Ms. Danielle Bouvet:** A bill had been tabled.

As I was telling your chairman a little earlier as well as the rest of you, there will be a meeting about copyright next week. During that meeting, we will be pleased to discuss the background of this file, whether you are addressing my colleague, myself or other officials from either department. In that context, it will be possible to answer many of your questions.

[*English*]

**Mr. Scott Simms:** Going back to the general agreements once again and the fact that through the free trade agreement of 1988 and NAFTA in 1992 there are the grand cultural exemptions, which we have and hold so dearly, certainly for us, do you think the copyright legislation coming up and international treaties such as WIPO threaten that situation we're in when it comes to our cultural exemptions?

[*Translation*]

**Ms. Danielle Bouvet:** You are asking me for a legal opinion, but it is not my place to give such an opinion. I therefore cannot answer that question.

[*English*]

**Mr. Scott Simms:** Could you briefly explain, then, the copyright legislation as to what pertains to Heritage and what pertains to Industry? I know you explained that before, the difference, but I want you to do it again, just one more time, so that we get it straight.

[Translation]

**Ms. Danielle Bouvet:** Actually, responsibility for copyright is shared by the two departments. That is Industry Canada or more specifically its minister who is responsible for enforcing the law and formulating policy and the Department of Canadian Heritage. Under the Department of Canadian Heritage Act, the Department has oversight over the formulation of any policy that impacts cultural industries.

[English]

**Mr. Scott Simms:** I'm going to get into a little detail about a situation I had. When I was discussing just how complex this is, I remembered a situation whereby now, when it comes to a particular medium by which music is disseminated to the public, if a radio station has 200 CDs and they copy all those onto one hard drive to disseminate to the public on their computer screens, is there not a charge applied when that transfer takes place? Is that true?

**Ms. Danielle Bouvet:** At this point, yes.

**Mr. Scott Simms:** Why?

**Ms. Danielle Bouvet:** Why? Because rights holders have a bundle of rights, including the right to reproduce and the right to communicate to the public by telecommunication.

**Mr. Scott Simms:** But that's not communicating.

**The Chair:** Mr. Simms, complete your question, because you're already over time here and Mr. Kotto is frantically waiting to get to a question.

**Mr. Scott Simms:** He looks it.

[Translation]

**Ms. Danielle Bouvet:** I would say in conclusion that like any other business, authors have various products to offer. It might be music that will be reproduced by the users, licences granted for public performance, public communication, adaptation and so forth. Many rights are recognized under the Copyright Act.

As soon as utilization involves one of the rights provided for under the Act, the authors are entitled to be paid. This is comparable to any business that has several products to offer. Regardless of the product used or purchased, there is a price to be paid. That is what the Act provides for currently.

• (1645)

[English]

**The Chair:** Mr. Kotto, finally.

[Translation]

**Mr. Maka Kotto (Saint-Lambert, BQ):** Thank you, Mr. Chairman. Allow me to congratulate you once again for the few months you have been chairing this committee. It's a pleasure to work with you.

Good afternoon and thank you for being with us.

Indeed, this whole issue dragged on in the last Parliament. The presentation you've made before us is still very enlightening, even though we dealt with this issue for a long time. Some details that we haven't paid attention to are thus resurfacing.

On December 20, 1996, Canada signed two copyright treaties in order to comply with the requirements of the World Intellectual

Property Organization. That was 10 years ago, and we are far from having achieved our objectives.

I'm asking the following question so that all members of the committee can be aware of this. Who is most penalized by the fact that we are not respecting the objectives of the WIPO?

**Ms. Danielle Bouvet:** Our Copyright Act, as currently worded, does apply to the digital context. When my colleague Albert reviewed economic rights, he mentioned on several occasions that economic rights that are provided for under the Copyright Act do apply to the digital context.

Clearly, several cultural industries feel that additional legislative efforts must be made in order to allow them to profit fully from their creations. In this context, the film industry, the sound recording industry and the software industry—to name but a few—are demanding amendments to the Copyright Act. Many associations also think that it would be appropriate to amend the Copyright Act so that they can work in a more secure and clear context in terms of their business model or in order to benefit fully from their creations.

Others are also demanding that the legislation be updated. Service providers, for example, now that works are circulating on their networks, are wondering what their role is and their responsibility in this context and they would like these issues to be examined.

The education, research and library sector would also like us to address the increasingly frequent usage of contemporary digital works and they would like to see amendments to the act in order to facilitate their work.

**Mr. Maka Kotto:** You undoubtedly know that Bill C-60 died on the *Order Paper*. Given the work that was already done, what was the reaction to that, both positive and negative?

**Ms. Danielle Bouvet:** People who have an interest in copyright issues are generally not timid. At the time Bill C-60 was tabled and thereafter, several pressure groups expressed their agreement or disagreement in this regard. Reactions were sometimes positive, sometimes negative. We heard all kinds of opinions about this bill.

• (1650)

**Mr. Maka Kotto:** Given these reactions—which I had gotten wind of but I wanted to confirm this—is it safe to assume that regardless of the outcome of any new bill, we won't necessarily reach a consensus and we could end up in hot water?

**Ms. Danielle Bouvet:** I am working on this and I would be so pleased to find the ideal consensus on the upcoming amendments. However, you're right, this is an issue that affects a lot of people. Like or not, it's a no-win situation. As soon as you grant one person a right, someone else will have to pay. When the government decides to make an exception, someone will be deprived of money that he or she would have gotten or never had but was hoping to obtain some day. This is an issue where the causal link is very direct.

Because of the very large number of people affected by this and the fact that granting a right has a direct impact on people, we can't please everyone. We've always tried to reach a consensus or get as close to one as possible, but this is a file which, up until now, has rarely led to any kind of consensus. It's a very difficult one.

**Mr. Maka Kotto:** All right. Thank you.

[English]

**The Chair:** Thank you, Mr. Kotto.

Just before we ask Mr. Fast to ask questions, I might have been a little premature in saying that we were going to close the questioning at five o'clock. I think it will be 5:15, if we can. I think we can get the rest of our business done, and then we can carry on for that time. Is everyone in agreement with that?

**Mr. Scott Simms:** Until 5:15 we can question, and then—

**The Chair:** We can question to 5:15, because I know Mr. Scarpaleggia had a question or two earlier, and maybe he'd like to get them in.

**Mr. Francis Scarpaleggia:** No, I'm fine.

**The Chair:** Okay, you're fine.

Maybe, then, we'll take just one more question.

Mr. Fast.

**Mr. Ed Fast (Abbotsford, CPC):** Thank you, Mr. Chair, and thank you to the witnesses for appearing before us this afternoon.

For the most part, you've given us an overview of the current state of the law in Canada. As I understand it, Bill C-60, as it was originally formulated, was intended to move us in the direction of compliance with a number of the treaties that Canada has signed on to. Is that correct?

**Ms. Danielle Bouvet:** Yes.

**Mr. Ed Fast:** Where are you in that work? I'm assuming that this is just a prelude to us actually dealing with either a new act or a substantial amendment of the current Copyright Act. Where are we in that process?

**Ms. Danielle Bouvet:** I think it's fair to say that these issues are still alive, but at this point there has been no decision as to how and when we're going to move on this file. That's all I can say at this point.

No decision has been taken with respect to the content of the package or with respect to the timeframe of the package. For the time being, I know my minister has said she would like to move on this file. I know that at one point she said she would like to move as quickly as she can, but that's all I can say at this point.

**Mr. Ed Fast:** Just to follow that up, Bill C-60 received some criticism as well. Many felt that there were certain aspects of it that either weren't broad enough or didn't deal with issues that are currently on our technological table. Reform and statutory damages was one, and digital libraries, crown corporations—there is a whole list of these items.

I'm hoping the next iteration of this bill will actually come forward with something that's going to be a substantive step forward in bringing us into compliance with some of those treaties.

Having heard your presentation, I think most of us at this table still probably don't understand the difference between economic rights and moral rights. I'm still confused. Could you be a little bit more explicit as to the differences between those two?

●(1655)

**Ms. Danielle Bouvet:** In principle, moral rights have no money value. Moral rights have to do with the right to be associated with a work, the right to prevent others from changing or altering your work, or the right to be associated with your right.

I gave the example of the white geese at the Eaton Centre in Toronto, where an author has designed a white goose....

**Mr. Albert Cloutier:** I thought they were Canada geese.

**Mr. Ed Fast:** Suffice it to say that they had ribbons on them at Christmas, right?

**Mr. Albert Cloutier:** It was a sculpture, basically, of a flock of geese, so Eaton's decided—

**Ms. Danielle Bouvet:** During Christmastime.

**Mr. Albert Cloutier:** —during Christmastime to tie little red ribbons around the necks as part of a publicity campaign for Eaton's. The creator of these geese in that case was a fellow by the name of Michael Snow, and he objected because he felt that his geese were being used in association with a commercial activity that he didn't necessarily sanction.

He was able to successfully get an order from the court, based on his moral rights, to have these little red ribbons removed from the necks of the geese.

**Mr. Ed Fast:** It's a very small subset of the larger copyright rights.

**Ms. Danielle Bouvet:** It is, and normally you cannot assign your moral rights; you can only waive them. That's the reason why I say in principle it's not a right that could call for money; it's more attached to—

**Mr. Albert Cloutier:** It's personally to the actual creator, because the creator can be different from the rights owner, but the moral right is always with the creator.

**Mr. Ed Fast:** Understood. Thank you.

I have one more question, a very brief one on cultural exemptions. As we move forward, with perhaps crafting another bill, which would address amendments to the Copyright Act, can you give us a bit of an insight as to what's included under cultural exemptions, what that means? I'm assuming it has to do with protecting our sovereignty or our cultural identity as a nation against the claims of other nations. Is that correct? Could you be more specific as to what kinds of things that would include?

**Ms. Danielle Bouvet:** In fact, it is an exemption you will find in the free trade agreement and in the North American Free Trade Agreement. You don't find this concept in the WTO, nor do we find it in the WCT or the WPPT, for example. The cultural exemption is aiming at preserving Canada's sovereignty with respect to some obligations.

For example, if we were to do something that would fall within the scope...if there was an obligation in the NAFTA that would have had an impact on our cultural industry, for example, it would have been possible for Canada not to implement, not to take action with respect to that obligation, for the very reason that we can rely on the cultural exemption.

In the WPPT and WCT, there was no need to have such an exemption in these treaties because they have been crafted in a way that did not require such an exemption in these treaties. First of all, that exemption does not exist in these treaties, and there was no need to seek or to ask for something like this in these treaties.

• (1700)

**Mr. Ed Fast:** Okay, thank you. It's a little fuzzy still, but I'll speak to you privately.

**Mr. Albert Cloutier:** But that goes well beyond just copyright.

**Mr. Ed Fast:** Yes, understood.

**The Chair:** If I may, as chair, I have two questions, and I hope I can get a short answer.

In Bill C-60, it was suggested that copyright shouldn't be left up to the heritage committee and that there be a "study of the Copyright Act committee" set up between the Ministry of Heritage and Industry. Is something like that still in the works, or was there ever a committee struck?

**Ms. Danielle Bouvet:** Sorry to disappoint you, but I cannot answer that question.

**The Chair:** Okay, that's one.

**Ms. Danielle Bouvet:** I'm honest.

**The Chair:** The second thing I'd like to ask then is this. Was Bill C-60 one part of copyright that would only fulfil one part of the WIPO? If we had passed Bill C-60, I know there were some things that weren't in there. When we did our study, the "Interim Report on Copyright Reform", I was of the understanding that this was the first of three parts. If we had passed it, we would not have been in compliance with the WIPO; it would have only been the first step.

**Ms. Danielle Bouvet:** Once we have implemented our obligation, the second step will be to decide whether or not we want to ratify the treaties. Ratification is the step where you can become a member of the treaties, so we're at the stage where we're contemplating amendments in order to comply with the treaties. Once our legislation is in line with the treaties, we're going to have to go to the second step, the one dealing with the ratification of the treaties themselves.

**The Chair:** So in essence, if Bill C-60 had passed, or if something like that were to pass, it would only be the first step in the ratification process.

**Ms. Danielle Bouvet:** Correct.

**The Chair:** Okay. Thank you.

I must thank both of you for coming today and giving us some insight. I know we have some new members on this committee. There are some people who have been through the copyright mill before. It's very complicated. I was part of the interim report on copyright reform in 2004, and I'm quite sure there are things that have changed even from then until now.

So thank you again for enlightening us today, with some apprehension, on what's here. We look forward to seeing you again in another couple of meetings.

Let's take a recess for a few minutes.

• \_\_\_\_\_ (Pause) \_\_\_\_\_

•

• (1705)

**The Chair:** Thank you for returning.

First of all, I'd like to go over the agenda from now until October. Everyone has the calendar.

On Wednesday the 27th, as I explained earlier, CBC will be here from 3:30 until 6. Again, I might have to have one of my vice-chairs do part of that meeting for me.

On Monday the 2nd, we have another copyright briefing. If you can get the fog out of your mind about some of the things we've just heard, check Bill C-60 and you'll notice there were certain parts of Bill C-60 that weren't clear and still weren't answered. Do scan through at least the recommendations this committee put forward in the May 2004 report. I think those would be important, so we can question where we might be going with copyright and some of the bills.

On Wednesday the 4th we're talking about some museum studies. Everyone has that and objectives of this study and stuff. Let's go over some of that in the next little while and be ready for that particular study that day.

• (1710)

**Mr. Jim Abbott:** Mr. Chair, under the lead page from our friend Mr. Scarpaleggia, there's the "Issues and Challenges With Small Museums in Canada". Who is the author of this document? Is this something created by the minister?

**The Chair:** I think this came from the research staff.

Am I correct?

**Mr. Marion Ménard (Committee Researcher):** Yes.

**Mr. Jim Abbott:** Okay. I'm glad I asked the question, then, and I'll tell you why.

I think as far as it goes, it's fine, but I believe the real question that has to be answered is what criteria should the federal government establish—and here I mean any federal government, whether it be ours or not—in terms of federal responsibility for the funding that would go to small museums? This information on small museums in Canada—the overview, the introduction, the issues and challenges, and so on and so forth—is all very interesting, but at the end of the day, if we have not defined what the criteria should be for the federal government....

If I may, I just want to be completely clear so that my friends understand. To me this is not a partisan question; this is a question of jurisdiction. If we are talking about something that has a real interest to Ed Fast and his constituents in Abbotsford, and there is a strong local flavour, is there a federal responsibility to Mr. Fast's constituents or not? Is there a national concern, a national connection? Clearly, in the case of railways, I think there is. I think that case can be made. But even with railways there are sub-concerns.

So I would suggest that what we need from our researchers is a more concise way to say what I'm expressing right now, establishing criteria, or a recommendation on criteria, for the federal government to determine federal responsibility. It's not a jurisdictional question as much as it is a question on what is the rationale for there to be a federal contribution to a museum.

• (1715)

**The Chair:** Mr. Kotto.

[*Translation*]

**Mr. Maka Kotto:** Mr. Chairman, I agree with Mr. Abbott that we should quickly consider Mr. Scarpaleggia's motion.

On the other hand, I will come back to our last meeting when we spent so much time on the museum studies. I thought we had settled the matter. At the meeting, I said something to the effect that it was a waste of time, given the work that was initially done by the previous government with regard to museums.

The consultation of regional and local museums will only be useful in response to a bill tabled by the government. Besides, given the \$4.6 million cuts to museum assistance that has just been announced, it seems the government has information on the state of affairs.

Why lose time on this issue? Let us allow the government to move forward with its bill, and we will respond accordingly. Initially, we had presented issues that might take time to consider, given that there might be an election called next spring. In addition to museums, we need to deal with such urgent issues as film, television and the CRTC.

With respect to the agenda that was submitted to us, I find that too much time was set aside for studies, which in the end will probably be of no use.

[*English*]

**The Chair:** We'll take that into account. Our experts will work on that.

Yes, Mr. Abbott.

**Mr. Jim Abbott:** This arises from the suggestion last June from Mr. Scarpaleggia about having the railway museums come here. Generally, most of the committee members, I believe, were in agreement that railway museums had some particularly unique needs among museums. For the record, I have done a little work on this and have received information.

There are fundamentally, in the area of railway historical museums, two organizations, and there are different manifestations of those two organizations. I think we have to listen to both of them.

Before I carry on with that, let me make a quick aside. I would suggest respectfully to Mr. Kotto that if we have time in this committee to do this work, the information we gather will be of very high value for our government or any successor government for making policy, particularly with respect to railway museums.

I'll just finish my summary.

Number one, concerning organization, the Canadian Railroad Historical Association or CRHA, my notes say, is a world-class, pan-

Canadian institution that owns, preserves, and disseminates information on Canadian railway heritage throughout Canada. The museum Mr. Scarpaleggia is recommending we hear from is actually the most significant manifestation of the Canadian Railroad Historical Association.

In addition to that, however, there is a second organization that is not in competition with but actually adds to this picture. That is the Canadian Council for Railway Heritage. In summary, the CCRH is an organized railway interest group that lobbies for improvement and sustainability on behalf of railway museums, tourist railroads, and railway heritage organizations in Canada. They are actually involved sometimes in rail tours and so on.

It's all part of this very unique thing that Canada has. Canada would not be a nation—we would not exist—without the railways. That's how key railways are to us. If we have time and if it's the wisdom of this committee to go ahead with these hearings, my recommendation would be to hear from spokespersons from both of those organizations.

• (1720)

**The Chair:** Thank you.

Mr. Kotto.

[*Translation*]

**Mr. Maka Kotto:** I will not be pushing on any open doors. I'm not opposed to discussing Mr. Scarpaleggia's motion, which we do support. We were talking about the distinctiveness of that museum.

However, to come back to the testimony by the representatives of the Canadian Museums Association prior to the adjournment, it had been made clear that further studies would lead us back to the same conclusions reached during the previous parliament.

The information is available. Once again, if the government is announcing a \$4.6 million cut to museums assistance this afternoon, it is because it has information at its disposal. If not, we might think it was improvising, which would greatly surprise me. The government should move forward with its bill on the basis of work undertaken by the previous government, and then we will see.

I am astounded, stung and exasperated to see that so many weeks have been set aside for reviewing museums. We need to deal with the Canadian Railway Museum because its distinctiveness is definitely not an asset, contrary to what we might think.

[*English*]

**The Chair:** Mr. Scarpaleggia.

**Mr. Francis Scarpaleggia:** Mr. Chair, may I present and ask support for this motion?

At the beginning of the meeting you mentioned that this museum was in my area. Just for the record, it is not in my riding. It's important, because this is not about my constituency per se. It's not in my riding. It's not even in my region of Quebec, and to be honest, I didn't know that much about the museum until I was invited this summer for a visit. I was just amazed and bowled over by what I saw.

This, Mr. Chair, is one of the top five rail museums in the world. It is not a small museum. The breadth of its collection is extraordinary. It captures the history of rail in Canada. At one point it was considered for integration into the Canada Science and Technology Museum. This is an extraordinary asset and treasure for Canada.

If we invite representatives from this museum, we will be alerted to a very important situation, almost a crisis situation, with this museum. I would hate to see this museum take a step backwards in any way. I think the hearing could probably generate some information, some answers, and even some further questions in relation to the museum policy in general in Canada, maybe in relation to small museums as well.

I was amazed at what this museum offers. It's not just any kind of museum; it's a very unique situation, and I would ask that the committee take one session to hear representatives of the museum discuss the challenges they face in relation to their future.

**The Chair:** Okay. I'd like to bring the motion forward: That the committee invite representatives of Canada's premier rail museum, internationally renowned Exporail Museum in Saint-Constant, Quebec, to discuss significant challenges facing the museum's future as a foremost guardian of Canada's rail heritage and history.

We have in our calendar that we would see if they could attend a public hearing here on October 16; that's a Monday. I ask that we take a vote on this motion.

**Mr. Jim Abbott:** I intend this as a friendly amendment to the motion we're going to be voting on. I'm just going to ask, Mr. Chair, if it would be appropriate to add...how can I phrase this? Please work with me here.

Both of those organizations that I outlined just a couple of minutes ago are represented with the railway museum and the Canadian Museum of Rail Travel, which is in Cranbrook. I would like, if possible, to get a representative from each of those organizations, because they do represent...

I am fully supportive and couldn't possibly be more supportive of where Mr. Scarpaleggia is coming from. I want that to happen, but in addition it might be of value to complete the circle by bringing in people from outside just that one facility, because the railway museum issue is a nationwide issue, and these people could represent both of those organizations.

• (1725)

**The Chair:** Are you saying it would be at the same session?

**Mr. Jim Abbott:** I don't know if we would have time, but—

**The Chair:** If we are going to do the railroad museums, I see no reason why we couldn't go with Mr. Scarpaleggia initially; then down the way, once we get finished with estimates, we could perhaps have those other two on October 25. Would that be acceptable?

**Mr. Francis Scarpaleggia:** For me it is. My goal is to give some time to this institution.

**The Chair:** May I ask for a vote on Mr. Scarpaleggia's motion to have the rail museum from Saint-Constant, Quebec, come to our October 16 meeting. All in favour?

(Motion agreed to)

**The Chair:** For the next meeting, would you like to make a motion to have two museums here? We could entertain that at the next meeting.

**Mr. Jim Abbott:** If you'll permit me, I believe in being completely transparent and candid. I think there is a chance that by the time we get to the next meeting—if we are in agreement, and I think we are at this point. We should do the full circle on this railway idea. I think the people coming from the west would do exactly that.

My concern is there is going to be enough potential backlash relative to the whole museum issue and so on that I would like to handle my request at this meeting, if we could. I believe that procedurally I need to have unanimous consent to move the motion to invite those people. Am I correct?

**The Chair:** Do we have unanimous consent from the committee on Mr. Abbott's motion to have those two rail museums from the west on October 25?

**Mr. Francis Scarpaleggia:** Mr. Chair, the idea is that we'd basically have two sessions on rail museums, but we're not necessarily approving a longer, more involved study of small museums.

**Mr. Jim Abbott:** No, no.

**Mr. Francis Scarpaleggia:** If that's the case, then I would support that a second session be held and that we stop there.

**Mr. Ed Fast:** Mr. Chair, is there a reason why we're not having all of these individuals appear on the same day? Is it a timing problem?

**Mr. Jim Abbott:** It's not a timing problem—

**The Chair:** It's a timing problem.

First of all, do we have unanimous consent to bring the motion forward?

Mr. Kotto.

[*Translation*]

**Mr. Maka Kotto:** Thank you, Mr. Chairman.

I would only like to know whether we need to devote two sessions to the museum issue. Is one meeting not enough to deal with this issue?

[*English*]

**Mr. Francis Scarpaleggia:** Mr. Chair, I would like to move forward with my motion, which was approved. I think that Exporail needs some dedicated attention. That's why I'm in favour of a second meeting to invite the associations Mr. Abbott referred to, but I would like it to stop there. That's my personal view as a member.

• (1730)

**The Chair:** Can we have a vote?

The biggest thing is to get the witnesses here, and it's easier to get your witnesses here first.

I think we'll find if we have these people here, we'll be able to ask more interesting questions than maybe we could today in copyright. I know copyright is very technical, whereas this other might be different enough to give us some insight into the problems with the rail museums.

Again, if it's unanimous that we entertain Mr. Abbott's motion to have the two rail museums represented from the west on October 25, I would entertain that.

Do I have unanimous consent?

[*Translation*]

**Mr. Maka Kotto:** Mr. Chairman, I agree that we can call on the museum representatives that Mr. Abbott has named, but it seems a bit excessive to devote two hours in order to review the problems at the Saint-Constant museum.

[*English*]

**The Chair:** Well, maybe we can have them here for—

[*Translation*]

**Mr. Maka Kotto:** They could start by submitting a position paper, which would allow all committee members to become familiar with the situation. The same goes for museums in Western Canada. I have already seen the position paper and understand the problems they are facing.

This way, we could cover all issues in two hours. I find it excessive to be spending four hours on the same issue. That is a waste of time.

[*English*]

**The Chair:** Mr. Abbott.

**Mr. Jim Abbott:** We're in a constructive and friendly debate here. I would suggest that I have perhaps the same intensity Mr. Scarpaleggia has towards that organization, because it is unique. If we can complete this, the point is that it's not as though we're going to be asking other rail contributors relative to museums and so on in the future. This completes the circle and gets the job done. There's more than enough material, and information that will more than fill it.

Having briefs is very useful, particularly for the people in the department to be able to take away and work with and develop and so on, but I think the testimony of Mr. Scarpaleggia's people and the testimony of my people will be a very pleasant surprise to Mr. Kotto.

**The Chair:** First of all, I have to ask, do we have unanimous consent? If we don't have unanimous consent, then we don't go forward.

**Mr. Scott Simms:** I have a question.

**The Chair:** Okay, Mr. Simms.

**Mr. Scott Simms:** I'll be as quick as I can.

My understanding is that we are calling in these rail museums simply to look at these as a case study for the broader context of fundraising, operational money, or whatever it is the federal government should be involved with in small museums. Am I right or am I wrong?

**The Chair:** I think you're right.

**Mr. Jim Abbott:** I think you're partially right.

**Mr. Scott Simms:** I'm only partially wrong.

**Mr. Jim Abbott:** Well, you're not necessarily partially wrong. You're partially right in that what Mr. Scarpaleggia and I are saying is that railway is part of the museums picture, but railway is so

unique that we have to look at it. It cannot be considered in the same policy as the rest of the museums outside of Ottawa. Railway museums have very specific and very unique challenges that are not duplicated in any other kind of museum—including tractor museums, by the way.

**Mr. Scott Simms:** And lighthouses.

**Mr. Jim Abbott:** And lighthouses.

**Mr. Scott Simms:** If I'm going to devote two sessions to this, or if I'm going to sit here for four hours, I would like to see it put in a broader context and not just be about rail museums. That's what concerns me about this. And this is not to diminish your particular museums; don't get me wrong. It's just that I would like to see it used in a context—

• (1735)

**The Chair:** I'm going to interject—

**Mr. Scott Simms:** I'm sorry, let me just get in one quick point. I want to get to the meat of the matter, which to me is this. These museums need money for operations. Who pays up?

**The Chair:** Okay. What I need is for everyone around the table to want to do this. If that's not the case, then Mr. Abbott's motion won't go forward. So I'm looking for unanimity here.

**Ms. Tina Keeper (Churchill, Lib.):** As a new person on this committee, I would like to mention that although I completely understand the concerns—you have a short-term study and there are only a limited number of sessions—you do have in the objectives of your study that the committee will consider the particular situation of railroad museums in Canada. Although I completely understand and agree with the concerns, until I read the objectives of this study... And I think they must be from a discussion you had in defining this study. For that reason I would agree to the two sessions on railroads.

**The Chair:** Does Mr. Abbott's motion go forward? Do we have unanimity on it?

**Some hon. members:** Agreed.

**Mr. Jim Abbott:** Thank you.

**The Chair:** Okay, with that answered...

What we have to do, since we're a little bit behind time here—

**Mr. Chris Warkentin (Peace River, CPC):** Are there any more votes? I have another meeting that I really have to attend.

**The Chair:** What we have to do is come up with a budget to cover witnesses to come to these meetings. We need an operational budget.

Could we have a motion to propose that an operational budget in the amount of \$12,500 for inviting witnesses to appear in Ottawa on a study on Canadian museums and on other matters be adopted?

**Mr. Francis Scarpaleggia:** These are not my figures. The people from Exporail, I'm sure, would drive up at their own expense. It's not that far, so I don't know what these figures are covering.

**The Chair:** Could we ask the clerk for a little explanation?



[*Translation*]

**The Clerk:** The amount would cover the expenses of a number of witnesses. However, we still do not know how many witnesses might appear. For example, the cost of sending for two witnesses from Western Canada would be approximately \$3,000 for each witness.

Concerning the other issues under review, the committee will need a minimum amount to cover the costs of witnesses who will appear.

**Mr. Maka Kotto:** In fact, the budget would only commit us to these two meetings.

**The Clerk:** That is to say that the budget will allow the committee to operate until it decides to undertake a broader study, which will require additional funds. The budget will allow us to hold a number of meetings and cover witnesses' expenses.

[*English*]

**Mr. Ed Fast:** Can we identify how many individuals we're actually inviting to come? I've asked Mr. Abbott and he indicated one from each.

May I ask Mr. Scarpaleggia?

**Mr. Francis Scarpaleggia:** I would imagine two or three, but as I say, they'll all get in a car and drive up.

**Mr. Ed Fast:** It's not a big issue then.

**Mr. Francis Scarpaleggia:** No. I doubt very much that they'll be staying the night.

**Mr. Ed Fast:** I'm not sure \$12,000 is necessary.

**Mr. Jim Abbott:** Well, it's better to ask for \$12,000—

**The Chair:** The biggest thing is that we don't have to use it, but if we ask for \$6,000 and it comes out to be \$7,000, then we have a problem.

This is what the proposed budget is for witnesses for the rail museums. It is moved by Mr. Scarpaleggia and seconded by Mr. Fast.

(Motion agreed to)

● (1740)

**The Chair:** Thanks for your extra time. The meeting is adjourned.

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**Publié en conformité de l'autorité du Président de la Chambre des communes**

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