



House of Commons
CANADA

Legislative Committee on Bill C-32

CC32 • NUMBER 003 • 3rd SESSION • 40th PARLIAMENT

EVIDENCE

Thursday, November 25, 2010

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Chair

Mr. Gordon Brown

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• (0850)

[English]

The Chair (Mr. Gordon Brown (Leeds—Grenville, CPC)): Good morning, everyone.

This is the third meeting of the legislative committee on Bill C-32. Today we have two ministers, Minister James Moore, the Minister of Canadian Heritage and Official Languages, and Minister Tony Clement, Minister of Industry. We're happy to have both ministers here today.

Minister Moore, you have the floor.

Hon. Tony Clement (Minister of Industry): I'll begin, Mr. Chair, if that's all right with you.

Thank you very much, and good day, colleagues. Thank you for allowing both of us the opportunity to speak to the committee about our government's Copyright Modernization Act, Bill C-32.

[Translation]

With this bill, the Harper government is keeping its promise to introduce legislation to modernize Canadian copyright law, protect and create jobs, foster innovation and attract new investments to Canada.

[English]

The act strikes a balanced approach. It is both consumer and creator friendly. It is the result of an unprecedented consultation process. We've received submissions from over 8,600 Canadians. There were face-to-face meetings in nearly every major city in Canada, and we took into account the views of artists, performers, shoppers, surfers, business people, and students.

Today I can confidently say to you that this bill represents what we feel is the best compromise for the betterment of both creators and consumers that we could possibly reach. Frankly, for a bill of this scope, balance is our only option.

Mr. Chair, on Monday I delivered an interim report to Canadians on the progress our government has made on developing Canada's digital economy strategy. As a government, we are committed to encouraging further engagement and growth in the emerging digital economy.

Digital media is poised to transform our economy in ways we have not yet imagined. Worldwide the digital media sector is expected to grow to \$2.2 trillion over the next five years.

To flourish in a global digital economy, Canada is not only going to need strong technological industries, we're also going to need to

equip our labour force with the digital skills necessary to embrace and succeed in an era of new media, services, and commerce.

Bill C-32 is an important brick in the foundation we are building to support the digital economy of tomorrow.

[Translation]

Technology continues to evolve quickly. New devices and products are constantly coming on the market, and it is important that our Copyright Act be adjusted to that evolving digital environment. Our government anticipated this situation.

[English]

That's why this legislation has been drafted as technology neutral, to stand the test of time and adapt to the technologies of tomorrow. It removes barriers to the smooth introduction and adaptation of technologies like the network personal video recorder and file computing.

In the classroom, it ensures that online lectures, Smart Boards, tablet computing, and other innovative technologies, and, most importantly, the students they benefit are not going to be disadvantaged under the law.

Our kids can learn in a multitude of ways with the aid of a multitude of technologies. With this legislation we'll be able to better equip them with the tools they need to learn, so that they can grow into the digitally skilled and tech savvy workforce Canada needs to be competitive in, in the digital age.

[Translation]

These amendments are needed not only for the schools, but also for all Canadians who are involved in activities such as home schooling by parents, distance learning or skills acquisition.

[English]

The bill ensures that Canada's students will benefit from material that has already been made publicly available online as a powerful learning tool in the classroom wherever that classroom may be.

To sum up, Mr. Chair, this is an important and essential piece of legislation. It is Canada's foundation for the digital economy of tomorrow, and what Canadians need now is the timely passage of this bill. We cannot wait any longer.

I'm sure I don't need to remind anyone in this room that the last time the act was updated we were waiting for *Titanic* to come out on VHS so we could watch it at home on our VCRs. Times have changed.

Thank you, Mr. Chair.

The Chair: Minister Moore.

[*Translation*]

Hon. James Moore (Minister of Canadian Heritage and Official Languages): I would just like to make a couple of additional comments.

[*English*]

First I'd like to thank members of this committee for agreeing to sit on the legislative committee. I know many of you have parliamentary obligations beyond this committee and sit on other committees. I think your agreement to have the legislative committee, where you have more flexibility to deal with this legislation and to come together and work cooperatively on what is large, complicated, and technical legislation is a very good sign of cooperation for something that I think we all agree is essential for Canada's future, which is a true, proper modernization of Canada's intellectual property rights regime. So I want to thank all members of this committee for agreeing to this process and also for inviting me here today.

The consultations that Minister Clement spoke about are what resulted in this legislation.

[*Translation*]

Bill C-32 is the result of the extensive efforts made over the last decade to modernize our copyright law. It is flexible, balanced and consistent with international standards. It reflects the exact approach that is needed to create jobs and promote the new technologies of tomorrow. Allow me to explain why it's important.

[*English*]

The contribution of the digital industries that make up a huge part of Canada's economy, frankly, can't be understated. They comprise, in total, 5% of Canada's GDP. That's nearly \$50 billion in direct economic impact for Canadian industries, nearly one million jobs across Canada, and growing.

It is absolutely essential that we protect these jobs and these industries that are critical to Canada's economic success.

[*Translation*]

Digital technologies are fuelling the Canadian economy and enabling job creation. For example, the entertainment software industry represents \$1.7 billion a year for Canada's economy. More than 250 gaming development companies employ more than 14,000 people across the country.

[*English*]

Canada's film and television industry has over 160,000 jobs from coast to coast, a \$5.2 billion industry for this country. These are important jobs that we as parliamentarians must be committed to ensuring stay in Canada and are protected well into the future.

Before we take any questions, there's one central part of this bill that I think has been underreported and I think underappreciated in terms of Canada's intellectual property rights regime, and that is that this legislation, as many of you know, has a provision within it that mandates Parliament to review Canada's intellectual property regime

and our copyright laws every five years. By law, Parliament will be forced to keep our copyright legislation up to date going forward.

This week marks the 10-year anniversary since the last time Canadians elected a majority Parliament. Because of successive minority Parliaments, it's become politically very difficult, I think, for this legislation to be addressed and updated, in spite of many efforts in the past by John Manley, by Jim Prentice, and now by Minister Clement and I to get this right.

I think what's important is that the political pressures of Parliament and the possibility of an election campaign cannot arrest our responsibility as a country to maintain our intellectual property rights regime. So while we think that Bill C-32 strikes the appropriate balance in terms of what's in the best interest of all Canadians, we also recognize that in the future there will be new technologies, new pressures, new dynamics that come forward, and in spite of any political dynamic, Parliament must be forced to make sure that Canada's intellectual property rights regime stays up to date, in line with international obligations, and, most importantly, in line with what's in the best interests of Canada's future.

So I think that element of the bill, the five-year mandatory renewal of this legislation, is the big win of this legislation for all Canadians. It will force Parliament to have to deal with this legislation on an ongoing basis to make sure that this massive engine of Canada's economic growth, which is the creative economy, will forever be well served by Canada's intellectual property rights regime.

Again, I want to thank all of you for being involved in this process. This is a large legislative effort. It's a sincere effort on our part to get this right in the best interest of all Canadians. We look forward to working with you in the weeks ahead.

●(0855)

The Chair: Thank you very much to both ministers.

We'll go to questions now. For the first round, from the Liberal Party, for seven minutes, Mr. Garneau.

Mr. Marc Garneau (Westmount—Ville-Marie, Lib.): Thank you, Mr. Chair.

I would like to say at the outset that I welcome your opening remarks. We in the Liberal Party also definitely want to proceed with haste on Bill C-32. It has been a long time coming. It is with some regret that we realize that our undertakings on WIPO go back to the previous century, if I can say that. So we definitely need to get on with this.

I also welcome your comments on achieving a balanced project here. We must try to achieve that, and hopefully we will demonstrate the wisdom of Solomon in coming up with a balance that will address not only the needs of our consumers, but also the needs of our artists and creators.

As you know from speaking to this in debate, we believe that a number of issues will need to be looked at in greater depth. I would like to start with one that deals with the question of digital locks.

At the moment, for products that do not have digital locks, the bill allows for the consumer to do some format shifting or time shifting, and this is welcomed. However, it is also clear that if there is a digital lock and a person infringes on that, they are breaking the law.

Minister Moore, I would like to ask you about a comment you made on *Power & Politics* on November 17. You said:

When I buy a movie, I've paid for the movie. To ask me to pay for it a second time through another device—and to assume that I'm doing illegal copying, to assume that I'm being a pirate, to assume that I'm thieving from people because I happen to own an MP3 player or a Blu-ray player or a laptop, I think treats consumers unfairly.

How do you reconcile that with the fact that you have also said that if you buy a product that is equipped with a digital lock, it would be against the law for you to infringe on that and put it on some other device for personal use?

Hon. James Moore: I was answering a question in that context about the idea of having a new fee or levy put on devices that you would consume. I was speaking specifically about Blu-ray players in that answer to Evan Solomon. That was the context.

But this is a question about balance, and as far as my personal digital media consumption habits, I personally choose to buy products that don't have digital locks. It's my right as a consumer to be able to do that. As we're seeing increasingly with technology, certainly the music industry, the television industry, and the film industry are creating products where people have the right to shift things from one format to another.

An important element of this bill, as you know, is format shifting and time shifting, because it's modernization and recognition of people's consumer habits. We want to make sure consumers know that the government understands these are changing dynamics, and we want to modernize these things. So when I was talking about paying for things multiple times, it was with regard to a levy.

On where I think you and I disagree on the issue of being able to break a digital lock for personal or commercial reasons—and I understand that the Liberal Party is considering an amendment in that regard. When Napster was created by Shawn Fanning, it wasn't for commercial purposes; it was for fun. For fun, they cratered huge parts of the recording industry and took away a business model that was successful for a lot of people. Over time, things have modernized, changed, and evolved in different ways that have seen some real benefits for consumers.

However, I don't think there has to be a commercial purpose in order for it to be destructive to those who are doing the creating. The idea that we would allow people to circumvent digital locks, as long as it's not for commercial purposes, misses the point. If I digitally unlock someone's creation when I put it on BitTorrent or the Web, or circulate it with some friends on a university campus, whether I'm doing it for commercial purposes, corporate sabotage purposes, or altruistic, anarchistic reasons because I think everybody should have everything for free, the effect is the same.

That is why virtually without exception in creative communities, if you look at all the submissions we have received—we're talking about music, television, video, video games, the software industry—everybody believes that if they've invested money, labour, and effort to create products and decide to protect those products by whatever

mechanisms they choose to digitally, they should be allowed to do that. And consumers are free to purchase or not purchase those devices.

● (0900)

Mr. Marc Garneau: Thank you, Minister. I only have seven minutes here.

I can't let you off the hook quite that easily, because the context in which you made this statement was that it was for personal use, and it should not be a problem, if you legally bought it and it was not for commercial purposes, to simply transfer it from one device to another for your viewing or listening pleasure.

It is difficult for me to understand that this comment you made should be interpreted differently because it's being taken in a different context. You very clearly said, "When I buy a movie, I've paid for the movie", and to prevent you from transferring it to another device, you said you think it "treats consumers unfairly".

This is for personal use; we're not talking about commercial use. You've made some good points about commercial use. We're talking about personal use here.

Hon. James Moore: That is why, as I said, in our legislation we allow for format shifting, time shifting, and other elements. However, you have to counterbalance that with the right of creators to protect their property from those who would do them harm. As I said, for personal use, if something does not have a digital lock on it, the creator has decided to put their product on the market in that format. Format shifting is legal under this legislation, and I respect the rights of those creators. That's what I was referring to.

I have never—and no one should—hacked software or movies and format shifted them without the consent of the creator.

Mr. Marc Garneau: But you did not qualify this comment by saying "if it doesn't have a digital lock".

Hon. James Moore: I think the comment is missing the context, which includes the question itself. The question itself was on imposing a new tax. I said I don't think you should have to pay twice for a product. If I purchase a Blu-ray or a DVD once, I don't think I should have to pay for it a second time through a second tax or a fee on a device in order to watch that product. That is the point I was making.

Mr. Marc Garneau: We all agree on that.

The Chair: Thank you, Mr. Garneau.

We'll move to the Bloc Québécois.

[*Translation*]

Ms. Lavallée, you have seven minutes.

Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ): Thank you very much.

I have seven minutes, but I would have preferred the two ministers to be with us for two hours. It seems to me that would have been the normal procedure.

There is a great deal to be said about Bill C-32. First and foremost, the point must be made that there is no balance in this bill. I am happy that you are both here today, side by side. I want to emphasize the fact that this bill has been designed for big business, the seven major U.S. companies, major broadcasters, gameware and software companies. This bill is based on use of the digital lock, which in no way meets the needs of the music industry or musicians. According to the Union des consommateurs, it reflects “a punitive approach that has proven ineffectual elsewhere in the world”. It is also a bill that relies on prosecution. And the fact is that large corporations have far greater means to take on legal battles than rights holders and creators of artistic content.

In fact, in defence of this bill, your Parliamentary Secretary, Dean Del Mastro, stated in the House on Friday morning that everyone supports you: 400 film, television and interactive media companies, 150 corporate CEOs, who are making \$4.5 billion thanks to artists, 38 software multinationals and 300 chambers of commerce. That is what he said. But he did not name a single organization that defends the rights of artists, nor did he mention a single artist, musician, performer or author. And that is how the parliamentary secretary to the Minister of Canadian Heritage defends a bill that is supposed to defend the rights of artists.

In Quebec, the number of opponents of the bill is huge. I could give you a full report, but let's just say that since the day before yesterday, the Quebec National Assembly is at the top of that list, and it's unanimous. Sovereignists are not the only ones represented in the National Assembly, Ministers.

As I said, this is a bill designed for the industry. A digital lock may work for gaming software and possibly even the film industry, but it certainly doesn't work for the music industry. Let me give you another example. A musical work will never be worth more than \$20,000, since your bill has preset damages at no more than \$20,000. On the other hand, circumventing a digital lock—and it is clear that this is aimed at big business—will result in a \$1 million fine and a five-year term of imprisonment. It is obvious that there is a double standard here.

One does not have the sense that the Minister of Canadian Heritage has really defended this bill. The Minister of Industry has vigorously defended it, though. The Minister of Canadian Heritage has been totally absent from the debate. The non-modernization of private copying will cost artists \$13 million. The elimination of transitory copying will cost \$21 million. The education exemption will cost \$16 million. Overall, we are talking about \$50 million.

Minister Moore, you have done nothing to defend the rights of artists. You wrongly state that consumers support you. You know that is not true. The Canadian Consumer Initiative has told you that and the Union des consommateurs has repeated it over and over. Under this bill, not only are artists' incomes reduced, but no new support is offered them either. No one is defending the rights of artists in this government where we have, not one, but two Ministers of Industry.

That's the reality, Mr. Moore. There is a complete imbalance. Mr. Moore, you have failed in your duty to defend artists. I challenge you to tell me how this bill can possibly benefit artists and creators of artistic content.

● (0905)

Hon. James Moore: Thank you.

To be frank, you are completely wrong. I have a long list of quotes from artists and organizations that promote the interest of artists in Quebec and the rest of Canada and who are fully supportive of Bill C-32.

For example, I have quotes from the Canadian Entertainment Software Association.

Mrs. Carole Lavallée: The Canadian Entertainment Software Association is a large multinational company.

Hon. James Moore: I allowed you to speak, so please extend me the same courtesy.

I also have quotes from the Canadian Independent Music Association and from Quebec artists. For example, the artist Loreena McKennitt says that the changes to the Copyright Act proposed in this bill are fair and reasonable

I also have quotes from the Canadian Alliance of Students Associations, private broadcasters in Canada, including some in Quebec. The International Alliance of Theatrical Stage Employees is commending the government for protecting our creative industries “as well as the men and women who work in film and television production in Canada”, including Quebec.

Since we're talking about music, I also have a quote from the Canadian Council of Music Industry Associations, which believes it is absolutely critical that we have recognized in this bill the value of products created by this country's creative industries.

From one end of the country to the next, Canadian artists were affected by Internet piracy. That is why we are enthusiastically supporting Bill C-32 and the Conservative government's efforts to reform copyright law.

Artists have made their views known and we have listened. We are proposing a balanced, responsible bill which reflects the interests of Canada as a whole, both creators and consumers.

I am pleased that we have secured the support of the provinces of Canada. Ministers of Education and governments in Canada, be they Conservative, Liberal or New Democrat, have voiced their support for our bill, which is responsible, balanced and in the interests of all Canadians, including artists who are strongly in favour of the bill. The provisions of this key piece of legislation aim to protect their ability to continue to develop creative content all across Canada, including in Quebec.

● (0910)

Mrs. Carole Lavallée: Your comments are a little strange, considering that the Quebec National Assembly voted unanimously in favour of substantial amendments to Bill C-32. Everyone wants—

Hon. James Moore: If someone—

Ms. Carole Lavallée: Let me finish please. Everyone wants a bill that will modernize copyright law, but everyone has to work towards that end. There is still a great deal of work to be done on this bill, because it does not protect artists. In fact, you said as much yourself:

[English]

“no right to an income, only a right to have their works not stolen”.

[Translation]

Obviously, it's in the medium term, and that is also the view of the Union des consommateurs with respect to this bill. The fact is you will be cutting off oxygen to creators. You will be preventing them from receiving the income they need to continue to create. In the medium term, you will effectively kill the cultural industry in Quebec and Canada.

Hon. James Moore: We are interested in ideas. That is why we held consultations. The Liberal Party is seriously considering this bill. It has pledged to study it and consider the amendments. We are prepared to listen to what the Liberals have to say. Mr. Charlie Angus himself has tabled a private member's bill on this subject. So, we are waiting for your suggestions, Ms. Lavallée. If you have the interests of artists at heart, we are inviting you to put something on the table, instead of just speechifying. If you have amendments to propose, we are prepared to look at them. You received the bill five months ago but have made no suggestions. The others are serious about this bill, and we are also prepared to hear what you have to say.

[English]

The Chair: Thank you, Minister.

We have to move on to Mr. Angus for seven minutes.

Mr. Charlie Angus (Timmins—James Bay, NDP): Thank you, Mr. Chair. I want to say at the outset, Mr. Chair, now that we're on national television, what an excellent chair you are.

Some hon. members: Oh, oh!

Mr. Charlie Angus: Welcome, Ministers.

I don't want to be brusque at the beginning. I was hoping we were going to have two hours. We only have an hour; as the lone New Democrat, I have seven minutes of questions, so I'm going to move you along quickly through the questions, because there are a number of issues.

The issue of copyright is a fairly straightforward concept. It's the right to copy and decide who gets to copy and who gets to be remunerated. My concern with Bill C-32 is that it seems to put copyright a little bit on its head.

Minister Moore, you're claiming that the public now has numerous new rights for making copies to back up, to time shift, to extract sections, all without any compensation to artists, yet these rights only exist if a technological protection measure is not interfering with them.

Now, in July I wrote to you asking to get a legal opinion from WIPO about whether or not the exemptions that would exist in the analog world can be applied to the digital realm and we would remain WIPO-consistent. I haven't seen that legal opinion, but since July, the United States court, for example, has ruled that even under the DMCA, the fair dealing provisions that exist within rights are not to be trumped by a digital lock.

We're now in a situation where Canadian citizens would face even more restrictive limits on rights that they're being guaranteed than under the notorious DMCA. So my question is, are you willing to amend the bill, which brings us into line with many of our WIPO-compliant partners, or is this going to be fixed in stone and we're going to have fewer rights than our U.S. neighbours, who are governed by the DMCA?

Hon. Tony Clement: Thank you for the question, Mr. Angus, and indeed it is true that copyright, of course, alters over time, evolves over time. Its original purpose 400 or 500 years ago was to limit the right of the creator and owner such that his property right did not extend into perpetuity, because at that time—and I agree with this concept—there was a greater societal interest, at some point, that trumped the owner's right, and I still agree with that concept. That's what copyright is all about.

In terms of the evolution of things in the United States, obviously I've been following that closely. There is some movement on this file, there's no question about it, in the United States. This committee could have regard to that. It's your right to do so. As I say, we tried to erect a balanced piece of legislation. It's like the three legs of the stool. You've got the creators, you've got the consumers, and you've got sometimes the ones who help creators get to market. My only comment is it's your right to propose amendments, of course, but when you propose an amendment, have regard for the fact that we're in a zero-sum world. I'm afraid to say that, but we are. So it might have another impact; it might not.

● (0915)

Mr. Charlie Angus: Are we looking at a bill that is fixable or a bill that is carved in stone? That's my concern.

Hon. Tony Clement: Well, I've never been accused of being Moses, so it's not carved in stone.

Mr. Charlie Angus: Minister Moore, I know you have a long list of the artists you say support the bill. Madame Lavallée and I have people who are very concerned. One of the issues that I've heard again and again is that Bill C-32 seems to strike out systematically a number of existing rights of compensation that have existed. The Educational Rights Collective licence is removed. The broadcast mechanical tariff for music is removed. That's \$21 million. It goes to musicians. Exemptions override numerous collective licence rights and numerous sections under education. And then of course there's the notorious levy, which you've defined as a “killer tax”, that has provided \$200 million to artists since 2000. We've now seen a 60% drop in the last two years because it hasn't been updated.

Now, I believe that in the digital age we're talking about access and remuneration. Yours seems to be that it's going to be for free or you can lock it down. So would you be willing to amend the bill to address the issue of compensation that is being lost directly through provisions in the bill in order to have this bill go through?

Hon. James Moore: As you know, we don't address, at all, the issue of the private copying levy, and it's not, frankly, for a lack of sympathy for the stresses that a lot of artists are facing right now in the new digital age. But with regard to this legislation, I think we're trying to stop the theft, stop the piracy, and stop the bleeding that's happening with all of Canada's creative industries.

There seems to be this locked-in focus, not by you, but to be honest, a lot of the media coverage about copyright is as though this is just about music. It's not. We're talking about authors, libraries, and education, as you mentioned. We're talking about the video game industry, the software industry, and television. We're talking about a million jobs in the Canadian economy.

The impact of this is vast in scope. The issue of the private copying levy...while I understand it is important, I would hope that if you look at what is in the bill—and some are critical of what's not in this bill—it is good for everybody.

We purposely left out the idea of modernizing the private copying levy, as did the previous Bill C-61. To be honest, with all the proposals that came forward, none of them seemed practical or workable. We thought none of them struck the right balance between what's in the best interest of consumers and the best interest of creators.

I think when we're transitioning now to streaming audio online, and things like Pandora—

Mr. Charlie Angus: Mr. Minister, in all fairness, your party has attempted to use a levy as a political wedge issue. You've misrepresented the fees that were discussed at the Copyright Board. You've misrepresented the extent of Bill C-499 and what it would cover. You've tried to portray it as some kind of socialist plot. Yet levies are the norm in many countries. We've got Belgium, France, Germany, Italy, and Spain that are applying the levy.

I don't know if you've seen the recent Dutch Court of Appeal decision. It said that the right of reproduction must include a compensation plan, which means that the Dutch are likely to extend the levy onto MP3 players as well.

This bill is not technologically neutral; you've targeted out the levy.

You're saying you have an interest in privacy, but I'd like to read a line from the social research council paper that's going to be delivered this December 1 at the WIPO. Paragraph 13 concludes:

We have seen no evidence—and indeed no claims—that enforcement efforts to date have had any impact on the overall supply of pirated goods. Our work suggests, rather, that piracy has grown dramatically by most measures in the past decade, driven by the exogenous factors...[such as] high media prices, low local incomes, technological diffusion, and fast-changing consumer and cultural practices.

Your approach on the locks is a failed approach. We either go to levies or we see that artists are not going to get paid.

Will you continue to use a levy as a political wedge issue, or is this an area where we can find a way to get compensation for artists and get this bill through?

● (0920)

Hon. Tony Clement: Charlie, this idea of this levy—we call it the iPod tax, or the “i-tax”—is not good for consumers. This is not the solution that's going to work for consumers.

What you're doing is adding a tax to the smartphones, iPods, BlackBerrys—

Mr. Charlie Angus: Those are rights that exist. Under the three-step Berne Convention, these are rights that have existed. You can call it a tax, but they are rights. Are you going to erase these rights for artists?

Hon. Tony Clement: It's a tax.

Two wrongs don't make a right. The fact of the matter is that to extend it to smartphones is wrong for consumers.

The Chair: Minister, we're going to have to wrap up this round.

Hon. James Moore: He mentioned a political wedge.

I think you're doing a good job of doing a political wedge right now, Charlie.

We're not the ones holding rallies on Parliament Hill condemning our political opponents for not agreeing with us on an issue that's frankly quite complicated.

The Chair: Minister, we're going to have to move to the Conservative Party for seven minutes.

Mr. Del Mastro.

Mr. Dean Del Mastro (Peterborough, CPC): Thank you very much, Mr. Chairman.

I want to come back briefly to this issue. I've talked, many times, about how Madam Lavallée has mentioned she has had opportunities in the after-hour sessions in Parliament to raise questions about digital copying levies.

I have talked about the connection between a cassette tape and copying audio music, which was very clear, but it was a little less clear with CDs. To put a tax on a smartphone, a laptop computer, or that type of media, is frankly a loose connection, at best.

Maybe you can address that, because that's really what we're talking about. We're talking about a tax on technology, and that's been the position of the party. Maybe you'd like to expand on where you're going with it.

I'll give both ministers an opportunity to address this.

Hon. Tony Clement: The thing that bothers me about this i-tax idea is that you're adding costs for the Canadian consumer, who is presumably wishing to buy his or her smartphone product domestically. That person may not be consuming.... I have an iPod, and I'm fortunate enough to own a BlackBerry. I use my iPod for my music, not my BlackBerry, but you're going to be taxing both of them, even though one device is not being used for music or entertainment at all. Consumers will see this as unjust. Some, not all, will find ways around it. That isn't the right business model.

This legislation is about going after the bad guys and creating some rules that are reasonable for the consumer—we allow time shifting and format shifting—but also providing ways to get at the people who are really destroying value. Those are the BitTorrent sites and other people who are destroying the value. That's what this legislation is about.

Hon. James Moore: Ideas came forward in the consultations, but none of them are practical or workable in the transition that is happening right now in streaming digital media—video games, television shows, movies, and so on. We haven't seen a proposal that we think is workable or practical in the new era.

As Minister Clement said, this is an unnecessary attack on consumers. I don't think it serves our cultural communities to make it more expensive for consumers to consume Canadian culture. As Minister of Heritage, I can tell you that we spend in our department hundreds of millions of dollars every year to help Canadians to create Canadian music, to support theatre, to support television, movies, books, and so on. I don't think it makes it more expensive. I don't think it serves anybody to make it more expensive for Canadians to buy a Kindle or to read a Canadian author. I don't think that serves Canadian authors or consumers. It doesn't serve anybody. So I don't think it works. And I don't see any workable proposals. Even the proposal that Charlie has put forward has massive loopholes in it that would impose a massive tax on a number of items. Anything that has a hard drive would be subject to this proposal. That includes automobiles and devices that aren't used for listening to music.

Automobiles have hard drives, Charlie. I don't know what wagon you go to and from home in. Automobiles have hard drives to which you rip music. By the way, that happened many years ago, and this would be subject to the tax. Your proposal, your legislation, says that anything with a hard drive would be subject to this massive new tax. This would include pretty much every electronic device out there—memory sticks, automobiles, cellphones, laptops, computers, desktops, and everything in between. You're using a scattered approach to address a focused problem. We think the focused problem is that creative communities are being gutted because we don't have a strong intellectual property regime. With Bill C-32, we're trying to stop the stealing.

• (0925)

Mr. Dean Del Mastro: Both of you spoke of the broad consultations we undertook. In fact, I believe the government undertook the broadest consultation in history in putting this bill together. We received thousands of submissions, electronically and otherwise. What we heard time and time again were artists asking for protection from this piracy. They were saying that their work has

value and needs protection so that it can't be stolen on the Internet. The bill seeks to do that.

We also heard from chambers of commerce saying to construct a business model. I'm not going to adopt a common defeatist attitude, namely, that illegal copying is going to go on no matter what, so we need a levy. Perhaps you could both speak to what the chambers of commerce, the recording industry, our international partners say about where the bill is going, the intent of the bill, and what they believe the effect of it will be.

Hon. Tony Clement: We have some specific quotes. Let me give you one story that I remember very well. As part of our consultations, I was speaking to the large movie studios that produce all those Hollywood works we know and love. I was going through a bit of an esoteric description on the history of copyright over the last 400 years, and about how copyright was created so that things were protected for a period of time, 20 years or 30 years. One of the producers looked at me and said, “Tony, we're not trying to protect something for 20 years. We're trying to protect something for 20 seconds.”

And that's the nature of the threat right now for creators and those who distribute creative works. They're trying to protect them for 20 seconds so that they can get some value to the artists and to all the other trades involved in producing a movie or an album, whatever it is. That's the challenge, and that's what this bill seeks to address.

Hon. James Moore: You mentioned chambers of commerce.

[*Translation*]

Françoise Bertrand, President of the Fédération des chambres de commerce du Québec has stated that Bill C-32 is “critical to maintaining a competitive and stable business environment in Canada” and in Quebec for the benefit of artists and the cultural communities.

[*English*]

As Minister of Canadian Heritage, I don't want arts and culture in this country to become a hobby. I want people to derive an income from it, and I want them to be able to engage in the marketplace. Being able to engage in the marketplace means being able to protect what you're creating, with digital protection measures. It also means that the government has an obligation. The government has an obligation to take whatever legislative steps are reasonable and necessary to protect people who are being stolen from.

That's our obligation as members of Parliament and that's what this legislation seeks to do—to stop theft from people who are creating software, video games, television shows, and the new 3D technology. We're talking about patent protection for the creative community. That's what this is. We're allowing them to protect what they're creating and to engage in the marketplace. That's what this legislation does, and it takes us a great distance. People can be critical of what may not be in the legislation. But what is in this legislation—the ratification of WIPO, the fair-dealing policy, the digital protection measures—is a huge victory for all Canadians.

The Chair: Thank you, Minister.

We're now going to move to the second round of questioning.

For the Liberal Party, for five minutes, Mr. Rodriguez.

[*Translation*]

Mr. Pablo Rodriguez (Honoré-Mercier, Lib.): Thank you, Mr. Chairman.

Good morning, Ministers.

We agree on the fact that the copyright regime needs to be modernized. That requires balanced legislation, as we said. It also means that the committee has to be able to operate in a collegial and effective manner. I hope we can avoid rhetoric.

I would like to briefly discuss levies, without dwelling on it. I would just like people to stick to the facts. You are talking about a tax. For me, a tax is when the government raises money and uses it to meet its own requirements. In the case of a levy, the government doesn't receive a penny. It is not the one spending that money; the money is only redistributed by the copyright collective.

So, I would just like everyone to stick to the facts. I don't think it will be helpful for people to use excessive language or use words or situations for political purposes that do not reflect reality.

We talked about the need for a balanced bill. In my opinion, this one is not. Some aspects of it are positive but it also involves a loss of acquired rights that will result in income losses, primarily for creators.

I have visited the ten provinces, and I hope to be able to travel to the territories soon. I met with a number of groups in different communities who took part in roundtable discussions. It's always the same category of people telling me that there is something wrong. These people are losing their rights, either through the elimination of a levy, through an education exemption which represents a potential loss of fees, or through transitory recordings.

Have you analyzed these income losses? Have you determined how much the loss of these fees will cost creators or the industry?

• (0930)

Hon. Tony Clement: There is an analysis that was prepared following our consultations, obviously. I'd like to say something about rights.

[*English*]

Let me just take one item that you've mentioned, Mr. Rodriguez.

I want to give some comfort to this committee on education, because that's another issue that's going to come up, the fact that we've added education to the fair dealing concept. Again, I'm conscious that I'm at a copyright hearing, so I will attribute my remarks to Professor Geist, who educated me that fair dealing is not free dealing, and there's a big difference between the two.

Fair dealing means that the work must be for a non-commercial purpose, that the original material was lawfully acquired, and that the use of that original material must not harm the market for that material. That's a very different concept from just saying, because we've added education to fair dealing, all the rules are gone. That's

not true: the rules are still in place and they seek to create that balance. Again, I want to give you that assurance.

[*Translation*]

Mr. Pablo Rodriguez: We can come back to education.

In this case, I presume you are open to the idea of our presenting certain amendments to specify what will be included in fair dealing as regards works used for educational purposes. You say you're open to the idea of better definitions and a more precise framing of these provisions.

Hon. Tony Clement: I repeat that it is important to achieve balance in this bill.

With respect to education, this is not just a situation

[*English*]

no holds barred.

[*Translation*]

According to the way the right is interpreted, there are situations where it is possible for there to be another educational system used for the benefit of students, without that being a violation of the act.

Mr. Pablo Rodriguez: Minister, you are going to have to demonstrate some openness on this. We have concrete proposals that are put forward in good faith. We want this to work, but not at any price, and not just any way. Some amendments are important to us, and we hope you will consider them and be open to the idea of discussing them. In my opinion, they're absolutely critical for our creators.

I have a final question for you. In your opinion, do Internet service providers have certain responsibilities? When I talked to them, they always say that they are just the "tube" carrying the information, when in my opinion, they are much more than that. They play a fundamental role and they have certain responsibilities.

In your opinion, at what point do their responsibilities come into play?

[*English*]

Hon. Tony Clement: Again, we have to make sure that what we do does not have some unintended consequences. As I say, things are finally balanced, so if you add more duties and responsibilities for Internet service providers, you run the risk of their not providing as robust a service to consumers as consumers want in this country.

So yes, we want to help artists, we want to help creators, but we also want to help consumers, and I would encourage you, when you put forward your amendments, to consider what the impact will be down the line for other aspects of our society. That's all I'm asking.

• (0935)

Hon. James Moore: Also, I would add, just very briefly, Mr. Chairman, that yes,

[*Translation*]

Internet service providers do have responsibilities, under this bill, and as part of our system. There is no doubt about that.

[English]

Service providers also have a responsibility to participate and must participate in the “notice and notice” regime that is part of this legislation as well, to help engage in the enforcement of intellectual property rights. This is an obligation that this legislation imposes on them to join with us, with all Canadians, in stepping up and confronting those who are doing the infringing.

The Chair: Thank you, Minister.

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

Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC): Thank you, Mr. Chair.

I'm interested that all three opposition parties are continuing to talk about the iPod tax, and I'm going to start on that again. It's interesting to hear Mr. Rodriguez point to a levy as somehow not being the same as a tax. If we talk to our constituents and tell them that in addition to paying what they pay now for an iPod or a BlackBerry, they're going to pay some additional amount—\$10, \$20, \$50, whatever it might be, even \$75—my constituents are going to call it a tax and they're not going to be happy about it. I think we need to encourage Canadians to adopt new technology and to be able to purchase new technology, so they can consume the creative works they want to consume and can go out and purchase those creative works. That is what's going to further the interests of the industry, in my view anyway. It also seems to me to be something that's not covered in this bill. There are lots of great things that are covered in this legislation, and those are the things that we need to talk about.

At some point, Mr. Angus' private member's bill is going to come forward, and we can vote as we agree or don't agree with his legislation. Personally, I oppose that private member's bill, but certainly we can have a good debate on that when the time comes.

In terms of this bill and what it does, I just want to talk a little bit about the digital economy, particularly as it relates to students and the ability to flourish in an increasingly digital environment.

To Minister Clement, could you maybe highlight for us how Bill C-32 expands the ability of teachers and students to make use of digital technologies and copyrighted materials for the purpose of education?

Hon. Tony Clement: Thank you.

I did describe already that education would obviously be included in fair dealing. This has been welcomed. I have a quote from the

[Translation]

Council of Ministers of Education, Canada, which says that this bill will allow students and teachers in schools and universities to have reasonable and fair access to resources available over the Internet.

[English]

That's the whole point, to expand the horizons of our education and scholarly pursuits to the 21st century. As I said, this will be a limited right, not an unfettered right, giving our educational institutions the ability to take in other means of collecting material for the specific uses demarcated in the legislation. I think that's a good thing for our ability to compete; it's a good thing for our students as well as our scholars.

Hon. James Moore: Mike, if I might, I would just add a little more momentum to that, especially on the education side. I say so because I think I didn't address Marc Garneau's comments. He raised the issue of education and that the Liberals are considering an amendment to this. Obviously, we'll wait to see the language of what's proposed, but we think this strikes an appropriate balance.

I had meetings this past week in my office with book publishers and those who are concerned about what the fair dealing provisions in the legislation might mean for them. Again, I know this is technical and complicated, and that's why copyright and intellectual property law is so difficult, in trying to imagine the unintended consequences going forward. That's why I'll bridge back to what I said in my opening comments about the five-year renewal of this legislation, that we'll learn some things as we go forward. This is not a case of our sitting here in the last week of November 2010 and saying we know for sure what the world will look like. We want to have an ongoing engagement on this.

But on the education provisions you mentioned, Mike, I just want to make sure that the committee knows that the Council of Ministers of Education, the ministers of education from across the country, came together and endorsed this legislation, Bill C-32, because they said this legislation “allows students and educators in elementary and secondary schools, colleges, and universities to have fair and reasonable access to...materials” that they need. And the Canadian Association of Research Libraries said they applaud the government because we have “respond[ed] to the copyright reform concerns expressed by the library and education community”. Students' organizations have also come out in support of this legislation because they think it helps students.

Now again, counterbalancing that with the needs of those who are providing and creating the educational materials is something that we've done our best to do in this legislation, but we think so far it strikes the right chord from what we've heard in our consultations.

• (0940)

The Chair: Thank you very much, Minister.

We'll move to

[Translation]

Mr. Cardin, from the Bloc Québécois, who has five minutes.

Mr. Serge Cardin (Sherbrooke, BQ): Thank you, Mr. Chairman.

Good morning, ladies and gentlemen.

Mr. Clement, Mr. Moore, I listened to your presentation and, from the very beginning, I've had the sense that we are talking, not so much about the Copyright Act, but about a bill on technological developments which is intended to help business.

We basically were asking whether you had done an extensive impact study in order to determine what creators would be losing, permanently, if Bill C-32 were to pass. There are income losses for artists here, but nothing is being offered in the way of assistance. There are net losses.

Also, Mr. Lake is comparing remuneration for artists and creators. They talk about a tax. Of course consumers will have to pay, but they are always the ones who pay. The users are always the ones who pay. They pay us and they pay you.

A survey was done in January, 2010, and not by just anyone; it was carried out by the Praxicus Public Strategies firm founded in 1999 by the Conservative pollster Dimitri Pantazopoulos. The results are pretty clear: 67% of Canadians support the idea of paying musical creators for private copies; 71% of Canadians feel that the current 29¢ levy on blank compact discs is fair to consumers; 71% of Canadians support royalties of between \$10 and \$20 for MP3s and iPods. You say that you're trying to defend consumers, but the fact is that they are willing to compensate artists and creators who create works for them.

Have you really assessed the economic repercussions of this bill for creators and the artistic community?

Hon. James Moore: Yes, but it's difficult to calculate that fully. We are talking about technologies that change on a daily basis. You would like to identify the financial consequences for each and every artist since the advent of MP3 players, but it is absolutely impossible.

Mr. Chairman, I'd like to raise a point of order, if I may, because the fact is we are here to talk about Bill C-32. What you are talking about is not included in this bill. We are not blind, but when we held our consultations, we listened to what people had to say.

As I was pointing out to Ms. Lavallée, no group brought forward balanced proposals reflecting the interests of both consumers and creators. When the bill was tabled on June 2, we forwarded it to all Bloc Québécois MPs and every member of Parliament in the House of Commons. So, if you have comments on the bill, we are interested in hearing them.

We know that Mr. Angus has presented his own views and that he would like there to be royalties paid through the creation of a new tax on iPods and other technologies. We do not agree with him.

If you have any ideas, we would like to hear them. However, what you are referring to has nothing to do with the bill, because we have not included that in this policy. In fact, it's impossible to—

Mr. Serge Cardin: How can my question be out of order? We're talking about the Copyright Act. Yes, there are new technologies, but we're talking about the Copyright Act and we also have to protect copyright, which is a form of remuneration for artists and creators who want to disseminate their work, but also want to be paid.

However, why not try to address the technology issue by considering the technical aspect of this, which is the need to protect the remuneration of authors and creators and the dissemination of their work. How can a question about wanting to protect copyright and remunerate our artists be out of order?

• (0945)

[English]

Hon. James Moore: Let me put it this way. Let me give you a specific example that I think the vast majority of Canadians can understand.

You're saying that artists are losing income because of the advancement of new technologies, so therefore new technologies should have a new fee imposed on them. Did you know that in Canada one of the largest sources of distribution of music right now, electronically, with the consent of the creator is Facebook? What kind of tax or new levy would you put on Facebook to compensate artists who are circulating their music on Facebook? How does that work?

Pandora and Stitcher, these new digital apps that are on iPods and iPhones—how do you propose to do that?

I am trying to be as objective and empathetic as I can to the stated goal and concern, but how do you attach a solution to that?

When artists come forward with an idea and they say they want to have as many people buy tickets to their concert as possible, so they are going to put their music online, and somebody takes that music and puts links to it on Facebook.... People are losing income because a song is being circulated to people's friends list on Facebook. How do you put a fee or a levy on Facebook? How do you actually do that? If you wanted to, how do you do that? This is the question that we asked during consultations. How do you actually achieve the goal? You're identifying a problem and that's great. Identifying a problem...that and 50¢ will get you a cup of coffee. We can do that all day. But our job as legislators is.... If you're going to identify a problem and say the government has to act—well, you're a legislator as well. If you have an idea about how we do this, we're open to your proposal. I don't know how to put it.

[Translation]

Mr. Serge Cardin: Well, Minister, this is only our first meeting, and you—

[English]

Hon. James Moore: Fair enough. But you've had the bill for five months. It's our first meeting, but you've had the bill for five months. I don't know how you propose to put a levy on Facebook and think that's good for consumers or artists.

The Chair: That's going to have to be it.

On behalf of the committee, I would like to thank Minister Clement and Minister Moore for appearing today.

We will suspend for a few moments while the table is cleared, and then we are going to hear from departmental officials.

•

_____ (Pause) _____

•

• (0950)

The Chair: We're going to call back to order this third meeting of the Legislative Committee on Bill C-32.

We have before us now departmental officials from both Canadian Heritage and the Department of Industry. We have Jean-Pierre Blais, Barbara Motzney, John Connell, and Colette Downie.

To our officials, you have the floor.

Mr. John Connell (Associate Assistant Deputy Minister, Strategic Policy Sector, Department of Industry): Thank you, Mr. Chair.

Pierre and I would like to present a short overview deck on Bill C-32, and I'd like to begin with three messages.

The first is one of thanks to you, the members of the special committee that's been established to review the bill. We know you've made a significant commitment, given the strong interest in the bill among Canadians. Your scrutiny, your time, and your effort are invaluable to us in the public service.

The second is, as officials, we'd be pleased to meet the committee at any time for technical briefings or bilaterally with any member of the committee to answer questions you might have. I find the field of copyright is both wide and complex, and as public servants our interest and duty are to help you understand the need for legislative amendments and all the issues that arise.

The third is that it's time for Canada to modernize its copyright law. There is a variety of reasons to do so, ranging from lining up with best practices and obligations that Canada has internationally, to reflecting advances in new digital technologies. We think this Parliament has a historic opportunity to update the Copyright Act and the Departments of Canadian Heritage, Industry, and other interested departments will spare no effort in assisting you in this task.

Turning to page 2 of the deck, in the last Speech from the Throne, the government committed to strengthening the laws that govern intellectual property and copyright "to encourage new ideas and protect the rights of Canadians whose research, development and artistic creativity contribute to Canada's prosperity".

This bill will modernize the Copyright Act. It will provide clear copyright rules to support creativity and innovation, as well as contribute to economic growth and job creation. The bill offers a balanced approach between the rights and interests of users and the creative community to grow and prosper in the growing digital economy in response to a wide array of views and issues that were raised by Canadians in 2009.

I'd like to emphasize that Bill C-32 strives toward a common sense middle ground. It will be impossible to accommodate all known interests and proposals, and victory on this bill will be very much defined by where Parliament finds the centres on the issues before you.

Again, we look forward to assisting you with that task.

● (0955)

[Translation]

Mr. Jean-Pierre Blais (Assistant Deputy Minister, Cultural Affairs, Department of Canadian Heritage): Thank you, Mr. Connell.

I would just like to echo the comments of my colleague and say that we are here to support the committee with its work.

We will be sharing the presentation this morning. I am on page 3 now, but before I begin, I would also like to mention that we have an additional presentation, which has been given to the clerk, regarding the current Copyright Act. So, if members would like to know how the act is structured now, before any amendments, we are ready to take any questions dealing with that.

[English]

I know, however, there are a lot of committee members who are very familiar with copyright in general, but should you want a briefing on copyright as it stood before the proposals, we're more than willing to do that.

To continue, on page 3 of the presentation, one of the key objectives of the bill is to, obviously, modernize the act. As others have mentioned, the last major reform of the act dates back to 1997, and there has been widespread change to the technology since then.

There is a genuine attempt to try to address the interests of Canadians, and Canadians, in this, have a variety of perspectives. Many Canadians are artists and creators. Others are consumers or users of content. So there are a variety of perspectives from Canadians.

We've also attempted to ensure the law is forward-looking and flexible, because it does have a broader impact. Yes, copyright is important to creation and culture, but as we move forward towards a knowledge economy, the economy of tomorrow, it's also important as a framework legislation, whether it's in the area of manufacturing or natural resources, more traditional areas of economic growth. Even those sectors rely on copyright in one way or another.

As well, we've attempted, to the extent possible, to make the legislation technologically neutral so that the law is more adaptable to future developments. Needless to say, the law is itself driven by change in technologies. So it is a response, as many of the previous changes to copyright legislation have been in the past, to technological change.

On page 4 you can see that much of the content of the new bill is driven by the two Internet treaties of the late 1990s. One dealt with copyrighted works, and the other one dealt with neighbouring rights, which are very similar to copyrighted works but are dealt with in a separate treaty.

The whole approach to international copyright has two purposes. One is to give nationals from foreign jurisdictions national treatment in Canada. But it's also a movement, over a number of years, to create certain norms as to what each country that is a signatory of the treaties should protect over time. So as part of that normative process, the bill introduces a number of rights.

[Translation]

In particular, it will institute new rights, including the distribution right, to control the unauthorized distribution of copyright material. Amendments relating to this change are found in clauses 4, 9 and 11.

It adds the making available right, which grants the exclusive right to offer copyrighted material over the Internet—clause 9. Moral rights are added, along with a clear reproduction right for performers, through clause 10.

Furthermore, it adds new protections, notably in clause 47, which are quite considerable: provisions that prohibit the circumvention of digital locks, with public interest and competition exceptions and a specific carve-out for cell phones.

It also prohibits the removal of rights management information, such as digital watermarks—clause 47.

It increases the term of protection for performers and producers—clause 17—and harmonizes the rights of photographers with other creators, with an exception for private use of commissioned photographs—clauses 6, 7 and 38.

• (1000)

Mrs. Carole Lavallée: Do we have this deck?

Mr. Serge Cardin: Which one are you presenting?

Mr. Jean-Pierre Blais: It's an overview entitled “Copyright Modernization Act”.

Mrs. Carole Lavallée: Unfortunately, we don't have that deck.

Could we get a copy of the deck being presented? Is it available in both official languages?

[English]

The Chair: One moment.

[Translation]

Mr. Jean-Pierre Blais: Yes, that's the one.

Mrs. Carole Lavallée: I'm trying to figure out where you are, but I'm having trouble. Because it's not the same format.

Mr. Jean-Pierre Blais: My apologies. I was on page 4. It's not paginated.

Mrs. Carole Lavallée: Oh, I see.

Mr. Jean-Pierre Blais: I was mentioning the related clauses. The deck is not comprehensive; it is only meant to support my presentation.

Is that all right?

[English]

The Chair: Okay, copies of both decks in both official languages.

Carry on.

[Translation]

Mr. Jean-Pierre Blais: I'm moving on now to page 5.

[English]

This bill helps those who create content to protect their works. If you want to write down the clause number, clause 18, it provides new provisions to target online enablers.

At clause 47, there is the “notice and notice” regime to ensure ISPs will help curb piracy by requiring them to notify subscribers when copyright owners detect infringing activities.

As well, it recognizes the interests of consumers and Canadians more broadly. For instance, clause 22 provides for user-generated content as well as time shifting, format shifting, and backup copies.

There are as well new measures for the perceptually disabled, at clauses 36 and 37.

Canadians must also not face unreasonable penalties for minor infringements of copyright through amendments provided for at clause 46.

And parody and satire for fair dealing are being proposed at clause 21.

John.

Mr. John Connell: Turning to page 7, one theme that frequently emerged during the copyright consultations was technological neutrality. The bill includes provisions that are technologically neutral and reflect the reality of an ever-evolving media and technological landscape.

For consumers, the bill includes private-use exceptions that are not tied to a specific technology. It will ensure that businesses have the freedom to introduce innovative products and services, like the network PVR.

The bill includes clear exceptions that permit educational institutions and libraries to make better use of new digital technologies. For teachers and students, this includes an exception that will allow for the copying and communication, for educational purposes, of material publicly available on the Internet and not protected by a technological protection measure. It also includes an exception that will allow for the use of innovative technologies such as Smart Boards in classrooms, by extending the scope of current reproduction for instruction beyond specific media such as dry erase boards and flip charts.

Thirdly, at the same time, to ensure creators' ability to advance new digital business models, the bill provides copyright owners with remedies against those who circumvent technological protection measures or digital locks applied online or on CDs or DVDs to prevent unauthorized access to copying of their digital material.

Finally, the bill, as the ministers mentioned this morning, includes a requirement for a review of the Copyright Act by Parliament every five years to ensure it remains responsive to a changing environment.

This concludes our overview of Bill C-32.

Jean-Pierre, Colette, Barbara, and I would now like to answer your questions.

The Chair: You did miss page 6. Was there a reason that was omitted? We'll give you another minute or two to go over that, please.

Mr. John Connell: Okay. My apologies.

On education...emphasize that a skilled and educated workforce will be a vital part of the economy of tomorrow, and that all countries are investing in education and competing, using it as a tool for economic development. This bill introduced new measures aimed at enriching the educational experience and facilitating use of the latest technologies. It includes an extension of the change to the provisions for fair dealing that will enable the use of copyrighted materials for the purchase of education. Students, particularly those in remote locations, will benefit from new exceptions that accommodate the use of technology for live or on-demand learning. Educational institutions with licences to photocopy educational material will now be able to make use of this material in digital copies of course packs.

The bill supports business innovation for technology companies. For example, it will include measures to enable activities related to reverse engineering for software interoperability, security testing, and encryption research, including the circumvention of TPMs for these purposes.

Finally, the bill will foster the growth of the Internet and support the sharing of ideas online. The bill will grant Internet service providers greater limited ability in situations where, without their knowledge, their subscribers are infringing copyright by using their networks. This is the so-called “safe harbour” provision.

•(1005)

The Chair: All right. Thank you very much.

We'll now move to questions. For the first round of questions, which will be for seven minutes, we have from the Liberal Party, Mr. McTeague.

Hon. Dan McTeague (Pickering—Scarborough East, Lib.): Thank you, Chair.

Thank you, witnesses, for being here.

I want to save these for the minister, but I'm glad, Mr. Connell, you were able to provide number 6, because it's that area of the enabling and the safe harbours section of this legislation that I'm most interested in.

I understand the bill is supposed to of course target those who enable and profit from massive online copyright infringement. I'm not sure it makes clear that this also includes hosting services. I really need to think that we would not want to have that avoided here, since they're meant, obviously, to deal with the wider definition of the enablers of those who may promote infringement.

I don't want to assume the government's intention, but I take it that the legislation's intention is that pirate host facilities, enablers, should also be captured here and then should not be able to make claims of being protected or exempted under the safe harbour provisions of the act. My sense is that this would obviously be very inconsistent with the bill.

Can you assure the committee that the legislation in fact is intended to capture pirate host enablers as well?

Mr. Jean-Pierre Blais: This enabling provision is quite unique. It may be the first one in the world ever proposed. It has garnered a lot of interest around the world. It's actually targeting the bad guys, those who are doing the enabling and allowing peer-to-peer networks to operate to the detriment of copyright owners.

We are aware that there are people out there who are suggesting that the drafting isn't quite right with respect to hosting. There is an intention to examine that more closely.

Hon. Dan McTeague: Yes, if I'm using a platform that has as its intention to provide a means by which I can enable infringement, it seems to me that we may have lost a very important and critical definition.

Mr. Jean-Pierre Blais: That was the policy intent.

Hon. Dan McTeague: We're going to have to tighten that.

I'll move, because I do want to allow my colleague, Mr. Rodriguez...I know that a few of us have quite a few questions.

I was looking at an Industry Canada fact sheet, Mr. Connell and Madam Downie, that states that it's the intent of C-32 to send a clear message. The wording I have here is:

Copyright infringement is unacceptable. It recognizes that the most effective way to stop online copyright infringement is to target those who enable and profit from the infringements of others. By allowing copyright owners to pursue these “enablers”, such as illegal peer-to-peer file sharing sites, this bill supports the development of significant legitimate markets for downloading and streaming in Canada.

I take it this is also a position held by Heritage Canada?

Mr. Jean-Pierre Blais: Yes.

Hon. Dan McTeague: Okay, so it's consistent.

Mr. Jean-Pierre Blais: There's only one government position.

Hon. Dan McTeague: I understand that, but I want to make sure it's both. I see it from the Department of Industry, and I want to make sure that we're on the same page.

The way it's drafted, only services, and I'm going to quote this, “designed primarily to enable acts of copyright infringement”...those would be liable for infringement.

We know that there are peer-to-peer sites—Mr. Blais, you referred to this a little earlier—such as BitTorrent index sites, which are not primarily designed to enable acts of infringement. My view is that they're designed to be content neutral. The reality, however, is that they are primarily operated in a way that enables substantial amounts of infringement. In some instances, 90%, 95%, 98% of downloads from these services are in fact infringing.

I'm wondering if the legislation or the wording “designed primarily to enable...infringement” should also include “which induce infringement”. That's an add-on to the question I had earlier on hosting.

These are early observations, but I want to signal to you the concern that we have on our side that some of the language may not capture the intent that you're seeking. We may need to tighten the wording.

Comments?

•(1010)

Mr. Jean-Pierre Blais: You correctly described the intent behind it. The drafting of a provision like this involves a lot of lawyers. If you wish to improve the drafting of it to get to the policy intent...it is the intent to do it. But it's hard for us to react without seeing specific language and what it would do.

Hon. Dan McTeague: I have a feeling this is why we're going to be taking a bit of time to look at the legislation.

I am going to cede my time to Mr. Garneau.

The Chair: Okay.

Mr. Marc Garneau: I would like to ask for clarification on the issue of digital locks and fair dealing.

Would you say that in this bill digital locks trump everything? For example, if somebody wants to produce educational materials under fair dealing but they have digital locks on them, would the person be prevented from doing so?

Mr. Jean-Pierre Blais: The provisions with respect to time sharing and format sharing provide that you can't otherwise break or circumvent a TPM. However, one has to remember that what I was referring to in clause 47, which deals with TPMs, is quite a long provision, and people focus a lot on the locks. But even within the legislation, there are numerous exceptions to when locks are effective. There is law enforcement, national security, interoperability, increase in research—

Mr. Marc Garneau: Let me ask specifically about education. That's the one I brought up. Do digital locks trump the use of material, copyrighted material, for educational purposes under “fair dealing”?

Mr. Jean-Pierre Blais: In the bill, as drafted, the answer is yes.

Mr. Marc Garneau: Okay.

I have one last question. Do you intend or has there been any thought given to defining what constitutes education under “fair dealing”?

Mr. Jean-Pierre Blais: The bill does not define what education is. It relies on a case law that has, in various contexts, defined that. The bill does not define education per se.

I am aware that some stakeholders who will appear will raise issues related to that, and we're interested in seeing what their views are.

The Chair: Thank you.

We'll move to the Bloc Québécois.

[Translation]

Ms. Lavallée, you have seven minutes.

Mrs. Carole Lavallée: Thank you, Mr. Chairman.

As you were moving quickly through your presentation, I must admit I didn't see how this bill could benefit artists and creators of artistic content. This bill contains 17 new exceptions. In French, it's called the *Loi sur le droit d'auteur*. That suggests that it addresses the rights of authors and content creators. In English, however, it's called copyright. That suggests more the right to make copies.

The presentation made earlier by the Minister of Industry suggests to us—and our reading of the bill only reinforces that feeling—that with these 17 new exceptions to the rights of authors, the bill is moving more in the direction of providing copying rights, as opposed to protecting authors' rights.

Other than the fact that photographers will now have rights, what benefits does this bill provide to artists?

Mr. Jean-Pierre Blais: We could have a lengthy debate about the difference between the terms “*droit d'auteur*” and “copyright”. I—

Mrs. Carole Lavallée: We can talk about history and philosophy, if you like. I could also quote John Locke.

Mr. Jean-Pierre Blais: While there may be differences, as a result of international treaties, the main schools of thought tend to agree now. Even in countries that apply copyright, more rights are now part of the standards.

In terms of the specific benefits the bill would have for creators, there is no doubt the media have paid less attention to them. However, all the new rights are there, including the making available right, the right—

•(1015)

Mrs. Carole Lavallée: What is the making available right? Would you tell me which clause we're talking about; that will help.

Mr. Jean-Pierre Blais: Yes. The clauses are 3, 9 and 11. The distribution right is dealt with in clause 4; the reproduction right for performers is in clause 9; the increased term of protection for sound recordings is in clause 17; moral rights for performers are in clause 10 and protection of digital watermarks and other information measures dealing with rights management are in clause 47. I would also mention clause 18, which deals with enablers, and clause 58, which talks about the five-year review.

In my opinion, all of these items very much promote creation. Also, somewhat counter-intuitively, I should mention clause 22, which deals with user-generated non-commercial content. Nowadays, users can sometimes be creators. So, there is a different category of creators.

Mrs. Carole Lavallée: I guess you're talking about the “YouTube exception”?

Mr. Jean-Pierre Blais: Yes.

Mrs. Carole Lavallée: So, you're taking rights away from artists and giving them to users, and you see this as a new benefit to artists?

Mr. Jean-Pierre Blais: That's why I was saying that, sometimes, new artists and creators develop content within that environment. For them, it is a benefit. I understand your viewpoint, which is that for some artists this could be seen as a loss—

Mrs. Carole Lavallée: Not just for some artists, for all artists.

Mr. Jean-Pierre Blais: For others, however, it is seen as an advantage. It's a question of balance.

Mrs. Carole Lavallée: Some people may not understand our jargon. So, I would just like to clarify that what is known as the “YouTube exception” refers to the provision that allows any user to put any kind of music or artistic work on the Internet for their own purposes, without being required to secure the authorization of the rights holder or pay royalties. Do you see that as a benefit to artists?

Mr. Jean-Pierre Blais: First of all, Ms. Lavallée—

Mrs. Carole Lavallée: I'll look at the other ones, but they're all the same—

Mr. Jean-Pierre Blais: I understand your views on this, but this provision is not as radical as you have described it. There are some restrictions: it cannot be for commercial purposes and the person has to have secured the content legally. The clause sets out a whole series of restrictions. It isn't a free-for-all. There are limitations on use for private purposes that do not affect the commercial value, for users.

Mrs. Carole Lavallée: But that is what is going to allow people to create new hybrid works that they can boast about. We know how the web works. A lot of people do this more for the glory than for the money. And if you connect this to other clauses in the bill, it's clear that, ultimately, the artists are the ones who lose out. The bill contains 17 new exceptions, which means 17 sources of lost rights for creators of artistic content.

I have some other items to address with you. I would like to talk about education. The exemption for education purposes is difficult to accept. It will take \$40 million away from artists, rights holders and copyright owners all across Canada. It represents \$11 million in Quebec alone. The current system is working very well. We know that the annual budget for the education sector in Canada, in educational institutions as we know them, is \$72 billion. So, \$40 million is not a large amount of money in comparison. And yet, it would guarantee that creators receive royalties for the use of their work in educational institutions.

I'd like to ask you to explain your rationale for including this new exception, which comes totally out of the blue, in my opinion. Under that exception, the educational sector will now be an open bar in terms of copyright. Education stakeholders will be able to use whatever play, music CD, or book they feel like, and they will be able to make photocopies and distribute them. The fact is there will be no fees for the educational sector. Between you and me, this is not a very good lesson to be giving our children in terms of raising their awareness raising and instilling respect for copyright.

I really wonder how you can possibly justify requiring creators to provide their works free of charge to the educational sector. Their contribution is absolutely critical. It's part of education. I'm talking about artistic works, but I imagine that this also applies to scientific works. Teachers, principals, janitors, suppliers of computers, pencils, desks and so on all receive compensation and are paid.

•(1020)

[English]

The Chair: If we could get an answer on that, please, that will have to end that round.

Mr. John Connell: Perhaps I could answer that question.

First, fair dealing currently is an essential part of copyright law in Canada, and this is very much recognized by the Supreme Court. There are specific purposes right now in the Copyright Act for which fair dealing exists, and it includes, for example, research, private study, criticism.

The proposal is to extend it to education right now, but in a way that is not open-ended. Right now, for example, fair dealing in Canada is what permits a doctoral student to copy articles for

published research, a writer to copy chapters of a borrowed book—limited uses like that. That continues to be the intent in extending fair dealing to education.

There are particular Supreme Court tests that will limit this. It's called fair dealing for a reason, and it has to be fair, so in no way is it to undermine the livelihood or the value of the creator's work; it's instead to permit particular constrained uses within structured educational context for purposes of education. So I think we can have some back and forth on what it actually allows.

There are the educational exceptions themselves, again, which are very limited. For example, on the use of material posted to the Internet, the creator will still have the right to put a digital lock on that material if he doesn't want it used; moreover, he can post something on the site that you don't want the material used either. So again it goes to the balance in the bill. It's trying to strike a balance between the interests of creators but also of educators, who are really trying to do their best to teach classes and use material that is publicly available in a balanced way.

The Chair: Thank you very much.

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

Mr. Charlie Angus: Thank you very much.

I just want to follow up on what one of my colleagues asked earlier, whether or not the digital lock provisions trump education rights. You were very clear that they do.

I am surprised that the government has taken this position, given our international obligations, particularly under the WIPO treaties. If you look at article 10 of the WIPO treaty, it is very clear that limitations, such as technological protection measures, may be supported, as long as they “do not conflict with a normal exploitation of the work”.

In fact, WIPO, the Berne Convention, and the WCT treaty have defined the rights that exist within the non-digital world as rights that continue on. And technological protection measures are not rights within themselves, but are enforcement measures for rights.

So have you decided that we would do this as a made-in-Canada solution, that the rights for technological protection measures would override the rights citizens would otherwise have?

Mr. Jean-Pierre Blais: The WCT and WPPT require contracting parties to provide adequate legal protection and effective legal remedies.

You asked me that question the last time I appeared here. No, actually, I was before the heritage committee.

But there is a difference of opinion in academia as to what is actually required to meet the test. We know that Professor Geist has a view and Professor Samuelson at Berkeley does too, but there are others who say that, according to the standard, it has to be adequate and effective. That extends to what the government is proposing in this particular legislation.

Mr. Charlie Angus: Thank you.

I wrote in July asking for a legal opinion on this that you would get from WIPO. I never heard back.

It seems to me that a legal opinion would clarify the situation for us. For example, in an analysis of the WIPO treaties of 1996, by Reinbothe and Von Lewinski, it says very clearly that the world copyright treaty:

contains no obligation to protect technological measures in areas...where limitations and exceptions to the rights exist under domestic law and have thus permitted by law the use of the protected works.

The language is very clear in article 10. So have you vetted this to say that this is what we are obligated to do, or is this a made-in-Canada solution that is now out of step with the United States and many of our WIPO-compliant countries?

●(1025)

Mr. Jean-Pierre Blais: I wouldn't agree with the statement that it is out of step with our trading partners and other WIPO members. There is some flexibility in how countries can implement the treaties.

With respect to a legal opinion, I apologize if the department somehow was involved in not responding to a letter. I was not aware of that, but we cannot provide you, unfortunately, with legal opinions directly. The opinions that we would get, unfortunately, are privileged, and we would not be able to share them with you. That, of course, is a challenge for you. But I'm sure others could probably provide you a solution to that.

Mr. Charlie Angus: I'm looking at some of the claims that have been made today, particularly about the rights of students and how students are going to be able to access....

I represent a region larger than Great Britain. Many of my communities don't have access to college, unless they take long distance learning. And yet under proposed subsection 30.01(5)...you point out that these rights are second-class rights, because what rights would normally exist in the classroom and when they're in a digital learning environment.... Sure, we can send the materials, but they have to be destroyed after 30 days. It says in the bill that any student learning in a digital environment has to destroy their class notes after 30 days.

So, on the one hand, the creators of these works are not compensated; it's an exemption. But, secondly, they have to destroy their class notes. I find this a really backwards step. Why have we created a two-tier standard for education?

Mr. John Connell: I think in this case the bill does propose new exceptions that directly and significantly support the sharing of knowledge. It does allow for technology-enhanced distance learning, even incorporating allowable uses of the copyright materials. It allows for the digital delivery of inter-library loan material that's allowable under fair dealing.

Both of these provisions, we think, are vitally important to promoting learning in remote areas of a vast country like Canada. As with all exceptions in the bill, these activities are subject to clear common sense rules.

Mr. Charlie Angus: Yes, but what's common sense about telling a digital student if they're taking a course that they have to burn their notes, whereas students going to school in Ottawa don't? That doesn't seem common sense to me.

Mr. Jean-Pierre Blais: Earlier you quoted the three-step test. One has to look at it within the context that in a digital world, as the

minister has mentioned, within a fraction of a second a document could be in millions of copies around the world. What's the right balance? Is it what is proposed by the government in this bill? Yes, people can have access to the information, to the works, in a distance education setting. However, you have to counterbalance with some of the other preoccupations and make sure it does not become excessive. Indeed, we are concerned about the rights holders and the creators as well.

Mr. Charlie Angus: If we were concerned about them, there would be a compensation regime, and students would be able to take their notes home, because there's nothing to stop any student from making a PDF and flipping their class notes all over the world. So we have a two-tier standard.

I need to move on quickly.

I'd ask the ministry to comment on the Social Sciences and Humanities Research Council study that's being delivered at WIPO on December 1, which has said quite clearly that the enforcement mechanisms in place have not done anything to alleviate piracy.

I'd like to quote to you from Canada's largest music publisher, ole, that has said that:

Bill C-32 contains measures that have failed in other countries' technological protection measures, and the government is mimicking certain US copyright concepts. There is no reason to believe that this legislation in Canada will be anything but a failure.

They go on to say that...on the one hand, they put on the locks, and music publishers aren't believing this is going to work. They say "...Bill C-32 guts the two most digitally-savvy provisions in the current Copyright Act—the Broadcast Mechanical Tariff and the Private Copying provision", which is bringing in \$30 million a year to the music industry right now, with no new compensation plan to replace it.

Our question here, as the opposition, is, how is it we can say we'll have absolute sacrosanct rights for locks that may or may not work, whereas your bill targets the compensation of the artists, who are now supposed to do this for free?

●(1030)

The Chair: A quick answer, and then we're going to have to move on.

Mr. Jean-Pierre Blais: Mr. Angus, I'm not aware of the paper that will be delivered. I will certainly have a look at it and get back to you. In the end it's a policy choice that is difficult for us to answer. We're more than willing to explain what's in the act, but you're asking us a question that's a bit beyond what we are able to answer.

The Chair: Thank you.

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

Mr. Peter Braid (Kitchener—Waterloo, CPC): Thank you very much, Mr. Chair.

Thank you to the officials from both departments for being here this morning.

I have questions for both departments. I'll start with the officials from Industry Canada, if I could.

When your boss, the minister, was here for the first hour, he spoke to us in very clear terms about how important the burgeoning digital economy is. He described Bill C-32 as complementing the digital media strategy that's also in the process of being developed. Both of these initiatives go hand in hand.

Could you please describe why Bill C-32 is so important for companies like RIM and OpenText, who lead the pack in terms of digital media, digital economy companies, and why Bill C-32 is important for the next RIM and the next OpenText?

Ms. Colette Downie (Director General, Marketplace Framework Policy Branch, Department of Industry): Thank you for the question.

A number of provisions in Bill C-32 deal with the things you're mentioning. Some of the key provisions include provisions that promote computer program innovation, allowing third-party software companies to do things like engage in the development of new programs for software interoperability, error correction, reverse engineering, and security testing.

There are provisions that allow for technical reproductions of copyrighted material, things that are done every day now, like buffering or temporary copies of e-mails as they're downloaded. Even photocopiers sometimes make and temporarily retain copies of documents that would be technically infringing.

The provisions also encourage the development of new technologies by updating existing exceptions in the Copyright Act to encourage the development of new technologies like the Network PVR or the introduction of those technologies.

In addition, the bill targets those who promote and profit from copyright infringement, prohibiting the sale of tools or services to enable hacking of digital locks, with penalties for those who profit from that activity.

In addition, it gives strong new legal tools for companies like video game developers, to protect the investments they've made in their product so they can further innovate and provide jobs for Canadians.

Mr. Peter Braid: With respect to my second question now, also for Industry Canada, we've heard a lot this morning about the importance of Canada being in line with our international partners and the fact that Bill C-32 does just that, puts us in sync with international standards. Could you elaborate on what those international standards are that Bill C-32 puts us in line with? And why is that so significant?

Mr. John Connell: I think, principally, the bill would implement the rights and protections set out in the WIPO Internet treaties, which is an international consensus that was agreed to some time ago on the standard of copyright and protection needed to respond to the challenges and opportunities of the Internet. But more broadly, I think our trading partners—everyone—have adjusted their copyright law to the digital age.

It's essentially the plumbing for how that digital economy really works. They have particular creative industries that they will want to ensure have appropriate remuneration and appropriate protections, because we're really in a heavily globalized world, where I think one of the ministers said some things can happen in 20 seconds, and

that's about the level of the protection you're working with. We see the total interconnectedness of our economies.

For that reason, there is some interest on the part of our trading partners to come up to the standard that they've really set in terms of copyright law, to ensure that they are protected and to ensure as well that their users benefit from Canadian material.

• (1035)

Mr. Peter Braid: Thank you.

I will turn now to the Department of Canadian Heritage. Earlier this week, on Tuesday precisely, in Kitchener-Waterloo, the Greater Kitchener-Waterloo Chamber of Commerce held an information session on copyright and the importance of IPR. One of their presenters was Loreena McKennitt—of course, a famous Canadian musician.

I'd like to get your thoughts and your reactions to this. I'm going to quote from the Waterloo Region *Record*, from a story published in yesterday's edition. It reads:

McKennitt strongly believes Canada needs the new Copyright Modernization Act....

She goes on to say that:

"...the business model of the music industry is no longer predictable and therefore does not have the robust structure it needs for the continued investment of resources, expertise and talent into the future,"....

The article goes on further to say:

The music industry is much more than just the big record companies, she said. The business ecosystem her record label deals with includes recording studios, acoustic engineers, technicians, graphic artists, photographers, CD manufacturers, printers, publishers, travel agents, music equipment companies, caterers, merchandisers, local media advertising outlets...and many others.

While those people struggle, free file-sharing sites make money from stolen music because they are selling advertising to big companies on those sites....

Could you elaborate and comment on that?

Mr. Jean-Pierre Blais: Certainly, as you might be aware, the arts and culture sector represents about 3.8% of GDP in Canada, which is considerable. It creates jobs, and it is very much at the forefront of the knowledge economy on that, as you mentioned.

It's true, as the minister mentioned, that we have programs that support artists and creators, but the most important need is that we have the proper framework legislation, as my colleague mentioned, that is in a knowledge economy. We are falling way behind vis-à-vis our trading partners on the right framework to support artisans and creators in that environment. I believe what she's trying to get at is that we need the right tools in place.

Mr. Peter Braid: Great.

Do I have time for a final question?

The Chair: Just one quick one, Mr. Braid.

Mr. Peter Braid: To either departmental officials, is there urgency with this bill, and what will happen if this session of Parliament does not pass it? What are the consequences?

Mr. Jean-Pierre Blais: It certainly is a pressing matter in the sense that we hear from Canadians and from our trading partners. But beyond that, I can say that it is, because of the Speech from the Throne, a priority of the government, and we're here to help the committee as best we can for you to put this legislation into the state you will all feel comfortable with.

The Chair: Thank you very much.

We'll move to the Liberal Party and Mr. Rodriguez.

[*Translation*]

Mr. Pablo Rodriguez: Thank you very much, Mr. Chairman.

Good morning to you all. Thank you for being here.

You heard the questions I put to the ministers a little earlier. My concern relates to the loss of rights for rights holders, which will result in a loss of income. For example, the fact that there will no longer be any levies will mean a loss of income

The measures relating to the educational sector are also very worrisome. In my opinion, based on the current wording, we can assume everything and nothing. Some are saying that students and teachers will be able to use just about everything without having to compensate the creator. Others are saying that it's more restricted.

What kind of study or analysis have you done to suggest that these kinds of provisions should be included? Have you considered potential income losses for rights holders?

• (1040)

Mr. Jean-Pierre Blais: I don't think any actual studies have been done on this.

As I was saying to Ms. Lavallée earlier, there are also a lot of new rights that have been added, and we have not done any economic assessment of them either.

Mr. Pablo Rodriguez: Why? Is that because you can't? Is it not possible to do that or do you not think it's important?

Let's take a simple example—broadcast mechanical. Do you know how many millions of dollars that provision is going to cost? We do: \$21 million, according to what everyone is saying.

Mr. Jean-Pierre Blais: I think that question should more appropriately be put to the copyright collectives who deal with this. They would be in a better position to know what impact that provision would have on their revenues.

Mr. Pablo Rodriguez: Fine, but you're saying that—

Mr. Jean-Pierre Blais: I cannot give you a specific figure, but according to what the organization is saying, it seems there will be an impact on its revenues.

As I said earlier, a public policy choice was made by the government.

Mr. Pablo Rodriguez: Yes.

But isn't it a little worrisome that no such analysis was done? The consequence is that this could really hurt certain segments of the industry, rights holders in particular and creators.

It seems to me that when you draft a bill, you try to anticipate the consequences as much as possible.

Mr. Jean-Pierre Blais: Yes, absolutely, but we are part of the evaluation process, as we speak.

I was involved in preparing Bill C-60, which led to a number of studies and, ultimately, Bill C-61. We held consultations for an entire summer. We followed the process in committee, and the fine tuning of the bill will occur right here. You will be hearing from the parties who will talk about its specific consequences for their business plans and their circumstances.

Mr. Pablo Rodriguez: Yes, but it's after the fact—in other words, once the bill has already been drafted, the committee is meeting, we're talking and asking questions and looking for answers.

This is a general question. I'm not trying to trick you. It seems to me that it is particularly worrisome that no attempt was made to assess the consequences of these changes on our rights holders, particularly since it's fairly easy to do that.

In some cases, you probably met with the same people that I did. You probably got the same answers that I did. We know that because of certain provisions or clauses, specific rights will be lost. That means a loss of income.

Let's go even further. If we conclude that there are income losses resulting from the loss of certain rights, will it be possible to amend the legislation as we go along to add something that is not there now? I'm not referring to anything in particular. I'm not necessarily talking about levies. I'm talking about some means of compensating rights holders. Will it be possible as we go along to add something that isn't already there?

[*English*]

Mr. John Connell: Perhaps I could address the matter of the studies that have been carried out and then underline the public service's work on this bill. I would say that it has been extensive. There's been extensive analysis and advice provided to ministers.

Mr. Pablo Rodriguez: My question is very precise. Can we add something to compensate that is not in the bill?

Mr. Jean-Pierre Blais: Mr. Chairman, I think that's a procedural issue that you and your team would be in a better position to...

[*Translation*]

Mr. Pablo Rodriguez: Yes. We'll discuss this later.

However, in your opinion—

Mr. Jean-Pierre Blais: We are not experts on parliamentary procedure.

Mr. Pablo Rodriguez: So you have not considered that. Fine.

[*English*]

The Chair: Thank you.

We just have a few moments left, and we'll move to Mrs. Block.

Mrs. Kelly Block (Saskatoon—Rosetown—Biggar, CPC): Thank you, Mr. Chair.

Thank you as well to our witnesses for coming.

I want to direct the short time I have to Ms. Downie.

As was mentioned by my colleague, Bill C-32 was developed after one of the largest consultations in Canadian history on copyright reform. Our government listened to stakeholders from coast to coast to coast, and we believe Bill C-32 represents what we see as a balance between creators and users.

Could you share a bit about what was heard at those consultations and how the bill addresses what was heard?

Ms. Colette Downie: I do have a long list of the many things we did hear from stakeholders that were addressed in the bill. I'm having difficulty finding that in my notes right now, for some reason. I apologize for that.

Here it is. The first thing is that we did hold consultations, as you said, and we heard from a very large number of Canadians. All of that material and all the input we received, including in the town hall meetings and the round table meetings the ministers held across the country, is all still available on our website.

Because of the time, I'll touch on some of the key things we heard during the consultation.

The first was that Canadians told us they wanted a technology-neutral framework that would stand the test of time. This bill, as you've heard, does include many provisions that are designed to be technology neutral and reflect the reality of an ever-evolving media and technology landscape.

Canadians also said they didn't think it was fair that they, as individuals, could potentially face huge penalties for copyright infringement, so the bill creates two categories of behaviour to which statutory damages—it's a special tool in the act that you'll hear a lot about—distinguish between the commercial and non-commercial.

For non-commercial infringement, the penalties that are in the Copyright Act are significantly reduced.

Copyright owners told us they needed some new rights and protections to sustain online business models and bring us into line with our international obligations. As you've heard, the bill implements the rights and protections of the WIPO treaties, for that very reason.

Copyright owners told us that their online and digital models depended on strong protections for digital locks. Again, as you've heard, for the future the bill proposes protections for digital locks for those who choose to use them. It doesn't require, though, that businesses use digital locks.

Canadians told us they wanted to make reasonable uses of digital content. The bill legitimizes many common everyday uses of copyrighted materials—things like format shifting, for example, on our PVRs.

Finally, users said they wanted more flexibility when it came to using copyrighted material. As a result, the bill expands the existing fair-dealing provisions in the act to allow for education as a purpose for fair dealing.

● (1045)

The Chair: All right. Thank you very much.

That's going to be it for today. The next meeting will be on Monday at 3:30.

I'd like to thank our departmental officials for appearing today.

This meeting is adjourned.

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