



House of Commons
CANADA

Legislative Committee on Bill C-32

CC32 • NUMBER 015 • 3rd SESSION • 40th PARLIAMENT

EVIDENCE

Tuesday, March 1, 2011

—
Chair

Mr. Gordon Brown

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• (1125)

[English]

The Chair (Mr. Gordon Brown (Leeds—Grenville, CPC)): Good morning, everyone. We're going to call to order this fifteenth meeting of the special Legislative Committee on Bill C-32.

Because of the votes today, we have a little bit of a change in plan. In terms of our first panel here, they understand that they're going to have a total of 15 minutes. We will then follow that up with one round of seven minutes each. In the second one, there will be five minutes for each of the groups, plus one seven-minute round.

We'll do our best to try to get this done by one o'clock. That said, I understand the room is available. With unanimous consent we might have a few minutes extra.

Mr. Del Mastro.

Mr. Dean Del Mastro (Peterborough, CPC): Mr. Chairman, why don't we simply add...?

We've lost 24 minutes of the committee. We have some very important witnesses on this panel and the next panel. They've taken time out of their schedule to be here.

I think it's reasonable for this committee to suggest that we'll sit until 1:24 p.m. and at least provide the two hours that were originally scheduled.

The Chair: Are you moving that?

Mr. Dean Del Mastro: I'd like to move that motion.

The Chair: Is there discussion?

Madame Lavallée.

[Translation]

Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ): I am not against the idea of sitting until 1:24 p.m., but since the first and second groups are both quite large—as you yourself pointed out—if, at the end, they feel as though they did not have enough of an opportunity to express their views, we may want to invite them back to give us additional details about their position.

[English]

The Chair: Mr. Rodriguez.

[Translation]

Mr. Pablo Rodriguez (Honoré-Mercier, Lib.): Unfortunately, Mr. Chairman, I cannot stay past 1:00 p.m., because I have another meeting at that time.

Furthermore, since there are a lot of very important witnesses appearing today, both in the first and second hours of the meetings, I would like the opportunity to have them back, if they or we decide it's necessary.

[English]

The Chair: Thank you very much.

We'll move to start...

Mr. Del Mastro, quickly.

Mr. Dean Del Mastro: Obviously there would be no votes or motions. If you have to leave at one o'clock, you leave at one o'clock.

On this whole notion that we're just going to keep bringing people back, I mean, when are we going to get to consideration of the bill? I'd like to get through the witness list and get to consideration of the bill someday. I think the witnesses would like to see us get to consideration of the bill someday.

I mean, to suggest that we'll just keep bringing witnesses back because everybody has such a busy schedule that they can't possibly fit it in—it's getting a little outrageous, Mr. Chairman. Let's just sit until 1:25. Call the vote on the motion.

The Chair: I will call the vote on the motion.

All in favour to extend by 24 minutes?

Mr. Charlie Angus (Timmins—James Bay, NDP): [*Inaudible—Editor*]...on the record.

I understand my colleague's frustration. I'm certainly willing to meet on this. My problem is that I've committed to a meeting, and we have question period. If they want to meet at any time to talk about improving the process at committee, I've said all along that I'm open to meeting.

I can't do it. We weren't expecting this. I'm sorry.

The Chair: Okay.

So there are five in favour.

Those opposed to extending by 24 minutes?

(Motion negated)

The Chair: Okay. We'll go until one o'clock.

Let's get this meeting under way....

Mr. Garneau.

Mr. Marc Garneau (Westmount—Ville-Marie, Lib.): Mr. Chair, I just want to make a comment in reply to Mr. Del Mastro, who's talking about how we're sort of going on and on.

I want to say for the record that we in the Liberal Party have spoken to Mr. Moore, who of course is the heritage minister, and indicated to him that we are ready to discuss the possibility of speeding things up on the condition that the Conservative Party removes the ad in place at the moment that talks about an iPod tax.

If they're ready to take that out of their broadcasting to show how serious they are, then we're prepared to discuss things more seriously about speeding up the process.

The Chair: Thank you very much.

I'm going to move to our witnesses....

Mr. Del Mastro, quickly.

Mr. Dean Del Mastro: I would just point out to Mr. Garneau that there are two new ads that we're now running. He can check them out on conservative.ca; both are excellent.

Voices: Oh, oh!

The Chair: Thank you very much.

We will start with Mr. Graham Henderson....

Is this a point of order, Mr. Rodriguez?

Mr. Pablo Rodriguez: Yes, this is just a last point of order regarding Mr. Del Mastro's comments.

The fact is that there are too many witnesses today. I want that to be noted.

You know that, Mr. Chair; no more than three.

That is why some of them should have the chance to come back.

That's all.

The Chair: Okay. Thank you.

Mr. Henderson.

Mr. Graham Henderson (President, Canadian Recording Industry Association): In the interest of speed, Mr. Chair, I am going to make some general introductory remarks, but I think there are people here who are more important to be heard from. I'll let us start right off with Maia.

You all have our biographies, so we'll skip those. They're in French and English, and I believe they've been circulated.

Maia.

Ms. Maia Davies (As an Individual): Hello. *Bonjour*. I'm speaking today as a Canadian songwriter and recording artist.

The music industry as it existed 15 years ago in my experience is dead. The Internet has been an obvious game-changer. We have gained amazing things from this invention, yet business and government seem to have failed to keep up with the pace of the Internet revolution. The music industry is crumbling under the weight of illegal downloading. Those who still peddle the pros of BitTorrent sites and the like have fallen behind on the narrative of

those in the know. And those in the know are people like me, who are directly and painfully affected by the velocity of events.

I am a songwriter and musician who has poured endless energy, sweat, and passion into my life's work. Our band released our first record on a major label in Canada this past year. When Shania Twain released her first album, as an example, she sold about 50,000 copies, which is an average yet modest sales figure for an emerging artist backed by good marketing, advertising, and distribution support in a healthy market. That was then. Today my band has this same support. We are in the middle of a tour, playing to sold-out, 400-seat rooms, yet sales of our CDs total less than 5,000 copies.

Two weeks after its release, our album was available on every BitTorrent and downloading site, and was ripped for free countless times. Our mechanical royalties earned to date from record sales have amounted to just over \$4,000, and that's split among four members. Added to touring revenue for in excess of 150 shows played this year, and excess revenue from being a musician, my personal yearly income will still be less than \$15,000. Yet I work an average of at least 40 or 50 hours each week.

Let me tell you, I'm not alone. The list of famous Canadian musicians and songwriters—my friends, my peers—whose work is known and cherished by fans but who can no longer make a living from their life's passion will come as a shock to most people in our country. Illegal downloading has stripped us of our main source of income, and therefore our livelihood.

In a free market economy, consumers can choose whether or not to purchase a product, but they do not have the right to take it without permission. That's why I see downloading as nothing less than theft, and we need laws to protect our rights as workers.

We have a wonderful national musical heritage, one blessed with the likes of Neil Young, Joni Mitchell, and Bruce Cockburn, to name a few. Our musicians, our songwriters, and artists of all genres make up a large part of the Canadian brand. Taking the example of Arcade Fire, my fellow Montrealers who won big at this year's Grammy awards, music forms a large part of our Canadian identity abroad. This identity is built in large part on the work of these artists. These artists will reward all of us if given the opportunity. At the very least, I believe, they deserve fair treatment under the law.

Thank you.

● (1130)

The Chair: Thank you.

We'll go to John-Paul Ellson.

Mr. John-Paul Ellson (Chair, Canadian Council of Music Industry Associations): Thank you, Mr. Chair.

I am here as the chair of the Canadian Council of Music Industry Associations. I think a little explanation about what those are may be in order.

Quebec does not have an MIA. In Ontario, there is one in northern Ontario but not in southern Ontario. There are 10 MIAs across the country in every province plus the Yukon. The Northwest Territories is in the midst of forming one.

An MIA is a provincially incorporated non-profit corporation funded almost entirely by the respective provincial government. It's their way of putting money into the music industry. As non-profits, our role is not to make money, so to speak, but rather what we do most is provide professional development opportunities for our members.

On the question of members, we have at any one time about 5,000 registered members. But that number is actually much higher, because most of us allow band memberships where one person in the band can buy a membership and all four or five members can actually access our services.

We do professional development. Some of us provide pro bono legal services. We do a lot of representations to our provincial governments for advocacy. In that sense we are the representative of the average person on the street who just wants to do an album for the first time. Once we help them develop to a certain point, other groups sort of take on the higher development of their careers.

On the act itself, I'm here to say, contrary to what some people may have told you in the past, that it does have a tremendous effect on the street, from coast to coast to coast, and here's why. I think you can look at the current strategic plan for my organization, which is Saskatchewan Music. We had a very lofty goal this year in our strategic plan, and that was to bring our artists in Saskatchewan from their average annual income of \$8,000 up to the poverty line. That's our strategic long-term goal, and we don't know if we can make it. So every decision on this bill affects the person on the street.

We have specific positions on certain provisions, but in the interest of time, they are in my written submissions.

Thank you very much.

The Chair: Thank you.

We'll move to Grant Dexter, from MapleMusic Inc.

Mr. Grant Dexter (President, MapleMusic): Thank you for giving me the opportunity to address the committee today.

I'll start by stating that we absolutely need this bill. I come here as a constituent of the independent music community, speaking on behalf of Canadian-owned companies involved in every aspect of music, sound recording, and music-related industries. I can tell you that without a doubt we have been severely impacted by piracy. That is why copyright reform is crucial.

However, Bill C-32 is not without its weaknesses. As you have heard from many witnesses, the technical drafting does not, in some cases, meet what it sets out to do. As an example, Minister Clement has said time and time again that Bill C-32 targets the "wealth destroyers". But the way it's written, the isoHunts of this world will not be effectively brought to justice.

In many cases, the language of the bill is simply too broad to effectively meet its objectives. For instance, the enabling provisions—the single most important aspect of the bill to target the wealth destroyers—are written in a way that will surely allow isoHunt off the hook. I cannot imagine that is what the minister intended.

You have a one-page summary of our key recommendations, but I'd like to highlight a few.

Bill C-32 needs to separate the bad guys from the good guys, providing the good guys with safe harbour but not giving the bad guys refuge. The definition of these enablers must be tightened up so we can catch them, and the penalties must be high enough to deter them.

The Liberals have stated that the statutory damages need to be commensurate with the severity of the infringement. Currently they provide little or no deterrent to theft.

The "making available right" contains a fatal flaw that would require rights holders to file a tariff or get permission from the minister to exercise their rights. This cannot have been the intention. An earlier version of the copyright reform did not contain this flaw; therefore, it is easily fixed.

The user-generated content provision is written so broadly that individuals could post the entire MapleMusic catalogue of music and have a simple top and tail to qualify: MapleMusic is the best...all of our content...isn't this great? This law would allow them to do that.

The private copying exception is also very broad. While we do not object to consumers making copies of legally purchased music to their hard drive or iPods, the minister cannot have intended the iPod to become a filling station for the neighbourhood. This must be limited to reproduction of legal copies within their own households.

Finally, the same limit to legally purchased copies in the confines of the household can be said for time shifting.

The best outcome we could hope for is the restoration of a legitimate marketplace for creative products. With minor changes to avoid unintended consequences, Bill C-32 provides the copyright reform that is so desperately needed by the independent music sector in Canada.

Thank you.

• (1135)

The Chair: Thank you very much.

We'll move to Loreena McKennitt, from Quinlan Road Limited.

Ms. Loreena McKennitt (President, Quinlan Road Limited): Thank you for the opportunity to meet with you this morning.

I would like to restrict my comments to four points.

First, I would like to commend this government for the bill they have presented. I believe with few exceptions they have identified and achieved the main principle of this whole debate: the need to protect the content creators and copyright holders. The job to be done now is to finesse the language of what is intended, knowing that it can be tweaked through the course of time, and to get this bill passed without further delay. The situation at the coal face is dire.

Second, I am deeply disappointed with those vocal few who continue to frame this discussion as one that only affects major labels and who are driven by interests from across the border. As an independent artist with my own label who has worked with a vast ecosystem of Canadian suppliers for over 25 years, I can attest that this is not the case.

I would suggest that the true commercial interests behind the scenes who are playing a detrimental role in this issue are largely the enablers. They would include the BitTorrents and isoHunts, the new global media entities such as YouTube, and even the constituency of ISPs that pretend to be neutral in this matter.

I believe the ISPs and the website owners should most certainly play a significant role in the management of that content that passes through their hands and be accountable for that. This must be true not only for copyright purposes but surely for other matters such as pornography, privacy, and fraud. After all, it is these companies who are making their profits off the eyeballs that are driven to their site to access illegal content.

Third, due to the urgency of this bill, I would urge this committee not to get diverted on the matter of levies, which is not even in the bill. I have taken account of what this means in real terms to me, and it represents less than 1% of my income. For most other artists, this would hardly come close to a meaningful income stream, and in no way should a levy be considered a substitute for an artist having the tools to produce income from his or her work. Rather, what is important, especially for those starting out, is that their works are properly protected and not pirated and exempted at every corner.

Fourth, it is important to understand that everything can be accomplished within the framework of permissions. One need not tie oneself in knots trying to carve out exemptions for this and that. The default of all positions should be that the content creators' rights over the control and intention for their work should be fundamental, and if there are those who for commercial, charitable, or educational

purposes wish to use that music, they can simply request that use. My small label, which prides itself in customer service, successfully issues hundreds of permissions each year. This courteous and rightful practice is already in motion, and simply needs clarification in legislation.

Most important, it is essential that some sort of protection be achieved immediately and that any "made in Canada" solution be harmonized with other international territories and reflect our commitments. The creative communities around the world, not only in Canada, are relying upon us to finally do our part.

• (1140)

The Chair: We are sitting at about 12 minutes. We have agreed that this group would get 15 minutes. There are about three minutes remaining if any of the witnesses want to add a little more.

No? Okay. Thank you very much.

We'll move to the first and only round of questioning.

We'll go to Mr. McTeague, for seven minutes.

Hon. Dan McTeague (Pickering—Scarborough East, Lib.): Chair, do I get an extra three minutes?

Voices: Oh, oh!

Hon. Dan McTeague: Witnesses, thank you for being here and for your very helpful commentary at a very critical juncture. The timing, I suspect, could not be better.

I have open-ended questions for all of you here, so whoever should want to answer should just come forward.

Bill C-32 would place a cap of \$5,000 on statutory damages for all claims of rights holders where the infringement is deemed to be for non-commercial purposes. In your opinion, what effect would this change have on the actions of members of the public? Some of you have opined on this. Do you think this section actually needs amendment? If so, do you want to specify that?

Mr. Ellson.

Mr. John-Paul Ellson: Prior to the music business, I spent 20 years as a civil litigation lawyer, so these damages are quite interesting to me.

I quit private practice law about three years ago, but when somebody came into my office wanting to sue somebody, on average I would quote between \$30,000 and \$45,000 to do a two-day Court of Queen's Bench trial of 12 to 18 months. I'd ask for \$5,000 up front before I did anything.

To lower the statutory damages down to \$5,000.... In effect, what is going to happen is you might as well do away with them entirely. The public or whoever—it could be for-profit as well—will say, “Nobody’s going to sue us because it’s not worth it. We’ll just keep doing it.” You are basically giving them a blank cheque to continue doing it.

Ms. Loreena McKennitt: My feeling is that once a bill is established and the public is educated in what it’s set out to do, most Canadians seek to be law-abiding. I think that, as my colleagues suggest, one must set out penalties in such a way so that those who are driving for commercial interests are not able to do that with impunity.

Mr. Graham Henderson: [*Inaudible—Editor*]...suggestion. If the goal is to provide flexibility here to judges to take private purposes into account, I think that’s what the concern is. A good way to do this would be to leave the statutory damages provision exactly as it is, but to make infringement for private purposes a special case under proposed subsection 38.1(3), which would let judges reduce the damages to zero if it was appropriate.

Hon. Dan McTeague: You’ve submitted that as a recommendation, Mr. Henderson?

Mr. Graham Henderson: Yes.

Hon. Dan McTeague: For my question number two—I’m going to have to go very rapidly here—there are some who would argue that in today’s digital environment, Internet service providers must play a role in helping them to stem copyright infringement. As you know, Bill C-32 implements a notice and notice approach or regime, if you will. In your view, is this in fact sufficient? Is it enough? Do you think ISPs and search engines are in fact getting a free ride under the bill?

Mr. Grant Dexter: We don’t feel that the notice and notice has any teeth to it because, as copyright holders, we would go to the ISPs, and then they would inform whoever’s violating. That’s not strong enough.

Again, as Graham said and Loreena said, we don’t want to sue our own customers or go after the people that buy our music. For the folks who are commercially stealing our copyrights, we need stronger weapons than a notice and notice. That’s not going to do anything. It’s not going to change anything for us.

Ms. Loreena McKennitt: I think also it must be borne in mind that it takes time to do this process and that with the speed that digital information travels now, you can incur an incredible amount of damage without having a swifter and more severe remedy. I think it also goes back to the default that the copyright holders should have their rights deferred to.

Mr. Graham Henderson: At minimum, ISPs should be required to implement a policy that would deal with repeat infringers.

Hon. Dan McTeague: Chair, how much time do I have?

The Chair: Three minutes.

Hon. Dan McTeague: Well, I have two more. I think we’re just under the wire, so I’ll try to do this as best as I can.

We’ve been told time and time again on this committee that the UGC provision, the user generated content exception, is open-ended,

and that it might be subject or might have unintended consequences. From your perspective, what can be done in this legislation to improve this legislation?

• (1145)

Mr. John-Paul Ellson: I do want to address, on that issue, something that, from what I’ve read, may not have been brought to your attention.

Most of the discussion around this is on the financial consequences of this. But for our members, there is a much more important point, and that is the moral rights issue, the right of integrity of the work. Yes, there are financial consequences, but what if an artist writes a wonderful song about their cat, and all of a sudden somebody takes a film of a cat being killed or tortured or something and uses that song and puts it up there? That’s the right of integrity.

For most of my members, they won’t ever have a hit song. They play wedding socials. They play in bars on Friday nights. But they write songs, and it’s the right of integrity; keep that in mind on this issue.

Hon. Dan McTeague: How do you write that in?

Mr. John-Paul Ellson: It’s in there now. It’s moral rights. You’ve got moral rights in the current act.

Hon. Dan McTeague: All right.

I have a final question in the minute or so that I have left here. There are exceptions that permit the circumvention of technical protection measures, the TPMs, and there are flexible means of adding....

In your view, is there any way in which we can add a more flexible approach to this legislation if it is required? It’s obviously a serious flashpoint for a number of us, but it does require at least some dexterity on your behalf to try to provide us and cobble together what might be an alternative or a compromise that might make all satisfied, if such a thing can ever happen.

Mr. Graham Henderson: Perhaps I could just quickly answer.

I think often it is forgotten that there are a slew of exceptions already built into the legislation. Also lost in the discussion is the fact that there is a power to make regulations. If, down the road, someone has an issue relating to a TPM, there’s nothing to stop them under the existing.... You could tighten it up if you wanted, but it’s there. Appeal to the Governor in Council, make your case, and then, if there’s merit to it, a new exception could be created.

I think that's there, and I think a lot of exceptions have already been built in that cater to some of the issues that have come before us.

The Chair: Okay, we'll wrap up.

Madame Lavallée, sept minutes.

[Translation]

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

Mr. Dexter, you submitted this document, correct?

[English]

Mr. Grant Dexter: Yes.

[Translation]

Mrs. Carole Lavallée: It's the document entitled "C-32 Amendments", and it is signed by you.

You feel that C-32 requires some 14 amendments. Some of them are anything but minor. For one thing, you are suggesting doing away with the provision on user-generated content. You also suggest removing the exception for ephemeral recordings. You say as well that statutory damages should not be capped. In other words, there are a number of them here, and I don't intend to name all of them.

Do you believe that if Bill C-32 were to pass, it would effectively put an end to illegal downloading?

[English]

Mr. Grant Dexter: I think this bill is a great start for our community. With a few small changes and tweaks we could get a bill that our constituents would be thrilled with. I think everyone is willing to work with the government to do whatever is necessary, because without the bill we're in big trouble.

In 1999 the industry had almost \$1.2 billion in sales; we're probably down to about \$420 million to \$430 million this year. We're in real trouble. We're not creating future stars. The bus rental companies are all going bankrupt, and the recording studios are all going bankrupt. So we think this is a great start. We're happy to work with all governments to make the bill a little better and protect ourselves.

[Translation]

Mrs. Carole Lavallée: You realize that the amendments you are asking for are substantial. If those amendments do not go through and Bill C-32 passes immediately, would the new legislation be effective?

[English]

Mr. Grant Dexter: Well, I believe there will be some changes to the bill, so I'm not going to say that the current bill...because I think there is will on behalf of the government to represent its citizens. I think there will be changes, and I think we're going to end up with a great bill.

[Translation]

Mrs. Carole Lavallée: Mr. Henderson, do you think we should pass Bill C-32 and that it will be effective in putting an end to illegal downloading as well as restoring to artists the income they deserve?

•(1150)

[English]

Mr. Graham Henderson: I would echo Mr. Dexter's point. Having listened to this committee now for a couple of months, my sense is that there is an evolving consensus out there. I hear it from... either there's been very specific changes that you've sought, many of which are in Mr. Dexter's document, and I keep hearing from this side that they're prepared to make amendments.

In its current form, exactly as it is, no, we wouldn't want Bill C-32 looking like it does now. But a form such as what Mr. Dexter has proposed—that's a form that I think works for everybody.

I've heard nothing from this side, necessarily, that I think would stop this committee from amending the document in such a way to take into account the concerns that have been raised by your party, as well as the Liberal document that was published before Christmas.

[Translation]

Mrs. Carole Lavallée: You're not going to like what I say next, Mr. Henderson. The consensus that you seem to see is not one that I or my colleagues in the Bloc Québécois have any sense of at all. First of all, the Conservative government would have to amend Bill C-32 to restore artists' revenues, the ones they have now and that are slated to be taken away. The Canadian Conference of the Arts has estimated that they represent \$126 million a year. They are entitled to these royalties, royalties that Ms. Davies and Ms. McKennitt will no longer be receiving. So, I'm sure you can understand that \$126 million annually is a lot to ask of artists who currently only earn \$23,000 a year on average.

So, we are a long way from reaching any consensus with the Conservative government. As far as I myself and the Bloc Québécois are concerned, there is no doubt that if the Conservative government wanted to sit down and talk about these amendments, and negotiate a way of restoring artists' income, the Bloc Québécois would definitely take part in those discussions.

Unfortunately, however, there has been a total lack of good faith demonstrated in that regard. I understand that you all represent Balanced Copyright for Canada. Almost all of you are members of the board of directors, with the exception of Ms. McKennitt. I know that your organization is the primary funding source for Balanced Copyright for Canada and that Mr. Dexter is a member of the board.

[English]

Mr. Grant Dexter: We represent the music community.

[Translation]

Mrs. Carole Lavallée: Yes, but you are also a member of the board of directors of Balanced Copyright.

[English]

Mr. Grant Dexter: I'm on a lot of boards. I'm the chairman of the Canadian Independent Music Association, and I sit—

Mr. John-Paul Ellson: On that, I think an interesting thing to note about the people at this table is that this issue has actually brought us together. Prior to this, to have Mr. Henderson, me, and Mr. Dexter at a table with the same recommendations was not.... I don't think it ever happened. This issue has brought us together.

So what you're seeing here, in Balanced Copyright, is representing the artists from the very first step to the major hit.

[Translation]

Mrs. Carole Lavallée: Do you all take the same position as Mr. Dexter with respect to amendments to Bill C-32? Mr. Henderson, Ms. Davies and Mr. Ellson, have you seen this document? Since you seem to be saying you have not seen it, you don't know whether you agree.

Perhaps Mr. Dexter could address it with us, since he is well acquainted with the amendments he is suggesting. Are these amendments supported by everyone who is here today? Are these the amendments suggested by Balanced Copyright?

[English]

Mr. Grant Dexter: Why don't we ask everybody?

Ms. Loreena McKennitt: I must say, as an artist sitting here, and as a taxpayer, I find it incredibly demoralizing to feel that this is one more issue in our society that is bounced around through politics.

I used the word "dire". We all used the word "urgency". If this should be delayed any further because of political scoring, it would be deeply disturbing for those of us who are simply trying to make a living.

The Chair: Thank you very much.

We're going to move to Mr. Angus for seven minutes.

Mr. Charlie Angus: Thank you, Mr. Chair.

I'm glad to have you all here.

I'm sorry Ms. McKennitt is.... Your nose is out of joint on this. I think it's very important that we get a bill. I've been saying that from day one. I have some concerns about how this bill is going to be implemented, and my concern is artists.

Ms. Davies, you're new to our committee. We haven't had you here before. Do you support the dropping of mechanical rights, mechanical royalties right now, that some artists are getting from radio play?

• (1155)

Ms. Maïa Davies: The dropping of rights?

Mr. Charlie Angus: Yes. They're going to cancel that. It's worth \$8 million to \$10 million a year.

The Chair: He's talking about the broadcast mechanical.

Mr. Charlie Angus: Have you looked at that?

Ms. Maïa Davies: No, I haven't.

If you would like to ask me very pointed questions about the law, you're obviously—

Mr. Charlie Angus: No, no, I'm sorry; I don't mean to put you on the spot.

Ms. Maïa Davies: Okay. I'm here as an artist.

Mr. Charlie Angus: I was just clarifying, because this is my concern...and I know the situation is dire. But I remember touring in the early 1990s alongside a band that had the biggest hit in the country for about three years, and they were making \$300 a week. So it's always been dire, and I appreciate that.

Ms. Maïa Davies: It has always been a difficult industry, but...

Mr. Charlie Angus: Right now, under this bill, there are two elements that would take money that would normally go to artists—the mechanical royalties that are going to be stripped, and whether or not we amend the levy.

Now, Ms. McKennitt says it's pocket change to her, but I talked to the Copyright Board and it's \$35 million a year to recording artists and touring artists.

Ms. Maïa Davies: I heard about this last week. I have no revenue from it.

I'm not saying it's not an issue, but I'm asking, why we are delaying on so many things that we're obviously not completely in agreement on?

Mr. Charlie Angus: So you don't care if the levy exists or not.

Ms. Maïa Davies: I didn't say I don't care.

Mr. Grant Dexter: I think that's the point, Charlie, that you're talking to an independent—

Ms. Maïa Davies: I'm just saying that I would like to see something happen sooner rather than later, because I think we're already 10 years too late.

Mr. Grant Dexter: You're talking to an independent artist here who has no clue about the broadcast.... There are so many other troubles. You have an industry that has gone from \$1.2 billion down to \$420 million, and you're talking about an \$8-million broadcast mechanical and you're talking about a \$41-million iPod device tax. The house is on fire and you're talking...she doesn't even know about it. Of course she doesn't, because she's trying to sell CDs, and make a living live, and—

Mr. Charlie Angus: So your members don't rely on any of that? They don't care about the broadcast mechanical?

Mr. Grant Dexter: You know what? No one wants to take money off the table, but the thing we have to focus on is the bill.

Mr. Charlie Angus: Okay. No, that's fair. I mean, I'm not here to argue.

Mr. Grant Dexter: No one wants to lose any money—

Mr. Charlie Angus: I think the house burnt down ages ago. I think we have to build a new house. That's my feeling. I don't think the house that—

Mr. Grant Dexter: Well, you have that luxury because you're not making a living from the business, so....

Mr. Charlie Angus: I don't know if I have that luxury. It's my job to do due diligence, and that's what I will do.

Mr. Henderson, we've spoken before at committee. You had a couple of specifics that I was more interested in. You talked last time about carrot-and-stick and ubiquitous measures, but I didn't hear the specifics. I'm interested in two of the specifics that you spoke about.

One is in terms of the ISP to deal with repeat offenders. I'm hearing from your organizations about notice and takedown, but the Conservatives clearly aren't moving there because they don't think it will pass a Canadian court challenge.

What would you suggest in terms of dealing with the ISPs to make sure that we have some kind of...?

Mr. Graham Henderson: Well, as I said, I think that at a very base minimum there has to be a policy to deal with repeat infringers.

I mean, if we can identify people who are again and again going back to the well—this happens—and downloading Loreena's entire catalogue, and taking Maïa's record before it has even hit the streets, over and over....

At the very least, they should be doing something like that.

Mr. Charlie Angus: Is there something more specific? We haven't had the ISPs here, so we haven't heard them telling us that they're going to be good cops on this. We haven't heard what they're going to offer. Is there something specific in the bill, or are you just saying that we have to push them harder?

Mr. Graham Henderson: Well, there's nothing in the bill. I think what we're saying is that there needs to be.... If you look at legislation around the world, there is something in all of the legislation that deals with this issue. Nobody should be getting a free pass.

Mr. Charlie Angus: What is the status of the lawsuit with isoHunt that you guys launched in May 2010 under present copyright law? Is that going forward?

Mr. Graham Henderson: The history of isoHunt is that they've been in Canada for a long time. They've been sued in the United States; they're subject to a gigantic court judgment. They're trying to build themselves a lifeboat, I think, up in Canada so that they can sort of escape the long arm of the law. This is something that is giving our country a really bad reputation: that they're here and are starting to do that.

They went to court—I find this absolutely appalling—about a year and a half ago seeking an opinion from a British Columbia judge that what they did in Canada was legal. My view is that we simply cannot stand idly by and allow that to happen.

Mr. Charlie Angus: So you guys are suing them, right?

Mr. Graham Henderson: When somebody comes into your house, you're going to fight back with absolutely...and remember, Charlie, they're burning our house down. So we're fighting back with absolutely every weapon at our disposal.

And yes, did we counter-sue them? Sure we counter-sued them. That doesn't mean that the law is going to support our countersuit. What it means is that we're availing ourselves of every opportunity, and I might add not just ourselves but a whole host of independent labels.

• (1200)

Mr. Charlie Angus: Yes. My interest is in what the status of this lawsuit is now, because isoHunt are the main players. They're mentioned again and again. You guys right now are the only ones—

Mr. Graham Henderson: Right. I'm not so sure; it's litigation.

J.P., you could talk more about that than I can.

A voice: [*Inaudible—Editor*]

Mr. Graham Henderson: They fire a volley; you fire a volley back. It's like *Bleak House*. It's like Charles Dickens, only worse.

Mr. Charlie Angus: Right.

The other recommendation you made was on the personal uses for statutory damages. I would say I'm squeamish about statutory damages, because I've seen what they have done in the States. But you had a recommendation, and I haven't heard it before. What is that recommendation?

Mr. Graham Henderson: What the government seems to be concerned about is individuals being dinged for millions of dollars. Well, if that's the concern, it is easily addressed with the current wording, and then you just add in some discretion in the case of personal use by an individual in their basement. The judge could actually look at that.

By the way, that's the difference between Canada and the United States, I believe. I think there's no discretion down there. We want our judges to have discretion.

When I first made the point about this \$5,000 cap not being effective, I was ridiculed about this on some people's blogs: "You know, \$5,000 sure sounds like a lot to me." Then one guy, who's been talked about at this committee before, with six teraflops...every movie ever made, for his own purposes, for non-commercial purposes, is making them available to the world. He went on somebody's blog and said that, actually, \$5,000 sounds like a deal to me; it might save my bacon. That was his comment.

Mr. Charlie Angus: So how do we differentiate between him and

The Chair: Thank you very much, Mr. Angus.

Mr. Charlie Angus: I mean, this is a key issue.

Mr. Graham Henderson: We can do it. We can do it.

Mr. Charlie Angus: Thank you.

The Chair: Mr. Angus, you're well over time.

We're going to move on to Mr. Lake for seven minutes.

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

Thank you to all the witnesses for coming today. This has been a very enlightening bit of testimony.

I want to focus, Ms. McKennitt, if I could, on some of what you said. I thought you articulated very well the importance of passing this bill and maybe not necessarily waiting until every single thing that everybody wants is in it, because we're better off if we pass the bill than we are without the bill. Is that accurate?

Ms. Loreena McKennitt: That's exactly the sentiment.

Speaking as someone who has a private enterprise and who is not just a widget but also the owner and manager of a little company, sometimes you have to make tough decisions. You have to say, "I'm not going to win everything this time, but I need to move this train out of the station by 6 o'clock. If I do not, the train will not go, and all will be a disaster."

I just cannot underline enough how important it is that we get most of this done and dusted, such that it can be modified as time goes on.

Mr. Mike Lake: Mr. Dexter, I think, spoke to some technical changes that might happen. This committee process is an important part of the legislative process, because we're able, through expert testimony from witnesses, to identify places where tweaks can be made to strengthen legislation. It's a very important part of the process.

I'll come back to the levy issue. Obviously there's a legitimate debate between parties or political people about the benefits or non-benefits of a levy, which again is not part of this particular bill. Should we wait until we resolve the debate on a levy before we pass this legislation?

Mr. Grant Dexter: From my perspective on the street, on the ground, and running a business, I didn't even think the levy was in the legislation or in the bill, so I don't know how it has hijacked what we're talking about. I think we need to separate the two and move forward with the bill, and we can deal with the levy after. I think

everyone feels, as I said, that as a small business owner you never want to take money off the table, but at the same time you have to direct your energies to where you're going to get the most opportunity and bang for your buck, and that's to the bill right now. We can talk about the levy later.

Mr. Mike Lake: So speaking to what is actually in the bill, and again coming back to Ms. McKennitt, what within this legislation is the most important for you as an artist and as a business person?

Ms. Loreena McKennitt: I think it's the unequivocal protection for the creator's work. The default position should be to the creator. That really is the main principle, as I said in my opening remarks.

Mr. Mike Lake: Okay.

• (1205)

Mr. Grant Dexter: I work with hundreds and hundreds of independent artists, and they just want a choice. People confuse giving it away for free with promotion; with this or that; with touring. They just want a choice about what happens with their stuff. Some of them might want to give away to build their touring business; some of them might want to charge two cents; some of them might want to charge ten cents. But without legislation to protect that choice, there's no motivation to continue to make the music and to make better music and to enrich our lives.

That, for us, really comes down to the protections and the choice of what they do with their material.

Ms. Loreena McKennitt: And with how much of it can be accomplished in permissions.

As I say, we issue hundreds of permissions a year—some of them are people's dances; some of them are churches; some of them are movies. It's not complex; it's actually courteous.

Mr. Mike Lake: For you as an artist, I imagine that the advent of new technology and the Internet and the availability of those tools to distribute your works and make your works available.... They're tremendous tools for you, right? You want to be able to take advantage of those. And if we pass this legislation, you can take advantage of those and not worry that your work is going to be distributed for free to anybody who wants it.

Ms. Loreena McKennitt: Absolutely.

Mr. Graham Henderson: [*Inaudible—Editor*]...pass legislation with amendments such as we've been hearing about. A lot of them are very sensible that are coming from this side of the floor, and they're coming from us.

I think the key here is to just start talking about what a package would look like. It's very frustrating to us to see it go on and on, when in fact there's something out there; there has to be a compromise.

Most of what we're talking about here, and what I keep hearing from this other side—there seems to be a disconnect. The government is saying the same sort of thing: we want to get rid of wealth destroyers. But as I think Mr. Dexter was pointing out, the language doesn't do that.

Okay, then, let's just fix up the language. It's not requiring the government to make massive policy changes or to step back from the precipice; it's actually just asking the government to make the words match with the actions and the intent.

I think that should be easy enough.

Mr. Mike Lake: Based on my experience here, I wouldn't get too caught up in some of the political debate as it relates to issues, because we're going to get advice and we're going to, as a committee, work our way through this. What I would be concerned about, if I were sitting at your end of the table, is the time that it's taking to get through hearing all of the different ideas and getting those on the table. There's talk of a potential election. We don't know what's going to happen. In a minority Parliament, it can happen at any time.

How critical is it for us to get this legislation passed through this Parliament?

Ms. Maïa Davies: It's critical. It's time now. It was time ten years ago that you did something with this. Come to an agreement. You're smart people; figure it out, and get something that's going to work for us. We're desperate, for real.

Ms. Loreena McKennitt: I would say that it's time for consensus-building. We all have to be mature adults and accept that it's not going to be perfect. There are allowances in the system to continue to tweak and fine-tune things. But there must be a phase of consensus-building to move this along to where we are properly protected, because the industry is in absolute shambles.

Mr. John-Paul Ellson: For our members, it's directly affecting the production of music in this country, in the sense that why would somebody invest anything in the creation of a cultural product if they knew that there would be very little if any revenue coming from it because of the lack of protection? So we're seeing on a daily basis that people are not recording at the same rate they used to, and that affects the studios, the sound techs, the lighting techs, the performance guys, and everything.

Mr. Mike Lake: And it ultimately affects us as Canadian consumers, who want good-quality product out there to listen to, to watch, to read, and all those things.

Mr. Graham Henderson: It also generates revenue and taxes.

Ms. Maïa Davies: We're citizens who are proud of our cultural output. I'm giving a speech tomorrow at my old music college. Why would I tell any single one of them to ever follow any of their dreams or any of their art the way I have? If I already had a few-in-a-million chance and they have zero of ever making this a real career, what's the point?

Mr. Graham Henderson: Our artists are a huge part of what "brand Canada" is. Countries are always looking to differentiate themselves from other countries. There's mass competition. We buy German goods because we know if it's made in Germany it means it's.... When people think about Canada around the world, they think

of people like Loreena and Maïa. They're a huge component of brand Canada. I don't think we take enough cognizance of that. I don't think we do enough to protect them. I don't think we care enough.

This legislation, coupled with sensible, reasonable changes will, I think, provide the market framework that will enable people like Maïa and Loreena, and J.P.'s grassroots people with a guitar and a song on the way in the front door.... We talk about "made in Canada" solutions. Well, nothing's going to get made in Canada if we don't fix this up and impose some rules on the marketplace.

We love the new technologies. We love them. But we need to have some rules.

● (1210)

The Chair: Thank you very much.

That's going to have to be the last word.

Thank you to our witnesses.

We will briefly suspend.

● (1210)

_____ (Pause) _____

● (1215)

The Chair: We'll call this 15th meeting of the special Legislative Committee on Bill C-32 back to order.

We have four groups: l'Association québécoise de l'industrie du disque, du spectacle et de la vidéo, ADISQ; la Guilde des musiciens et musiciennes du Québec; the Society of Composers, Authors and Music Publishers of Canada; as well as the Songwriters Association of Canada.

Each of those four groups will have five minutes.

We will start with the ADISQ.

Solange Drouin, cinq minutes.

[Translation]

Mrs. Solange Drouin (Vice-President and Executive Director, Public Affairs, Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ)): Mr. Chairman, members of the committee, on behalf of l'ADISQ, I would like to first thank you for inviting us to appear before you today.

L'ADISQ is a signatory to the joint declaration on Bill C-32 released by more than 80 groups representing the Canadian cultural community. Several of them have already appeared before the committee and made you aware of their many concerns with respect to Bill C-32, which would deprive content creators of revenues of more than \$125 million. We share those concerns.

Since five minutes is not enough time to go over them all, we have decided to provide you with an overview which we hope will help you to understand why this bill is of critical importance for the development, sustainability and diversity of our different forms of cultural expression in Canada.

To begin with, I would like to briefly introduce the organization I represent. L'ADISQ is a professional association which represents independent record, performance and video producers in Quebec. An important fact to note is that these producers are responsible for 95% of the albums released by Quebec artists. What that means is that multinational record companies have minimal involvement in our local production in Quebec. Career development for Quebec artists is supported primarily by an independent industry made up of a number of small companies.

Sales for Quebec artists in their own market are remarkable. Year after year, almost 50% of the records sold in Quebec showcase Quebec artists.

In practice, this positive positioning in terms of sales of Quebec artists' work has had the effect of creating an environment which supports the sustainable development of artistic and entrepreneurial talent. What is even more important is that this has allowed the Canadian public to have access to a wealth of talent and a wide variety of music. Furthermore, from this wealth of talent has emerged a significant number of artists who are excellent ambassadors around the world. That is a very positive result which, unfortunately, does not tell the whole story. It does not show that, while Quebec artists' share of overall sales remains high, total sales have been dropping dramatically for several years now. In Quebec, we have gone from 13 million albums sold in 2004 to a little more than 9 million in 2010, a drop of 30% in six years.

All across Canada, the situation is equally alarming, if not more so. And it is unfortunately no different around the world. At the international level, according to IFPI, one of the consequences has been that, of the top 50 bestsellers, 77% fewer were first albums between 2003 and 2010. So, developing artists are the first victims of this dramatic downward trend, and the public is the big loser.

Surprisingly, at the same time, music has never been more a part of people's lives. Ways of securing it either legally or illegally are legion in the digital universe, and companies develop business models based on music with no significant return, and often, with no return whatsoever for content providers.

Why should I be telling you this today, when we're here to discuss copyright? Well, the Copyright Act is economic legislation. It sets the rules whereby rights holders will be remunerated when their creative works are used. Through your choices and decisions, you have the power to worsen the music industry's already dire situation or turn it around. In order to generate revenues that allow an adequate critical mass of artists to provide the Canadian public with access to a diversity of Canadian music, we must retain those tools now found in the legislation which are effective, and introduce similarly effective tools for the digital universe, as we did for the physical universe. With Bill C-32, we are completely missing the target.

The challenge is considerable. However, it is surmountable if the political will is there. France is an excellent example of that political will. This is only one example among many: France recently revised the royalties for private copying for USB keys, memory cards and hard disks, and it is seeking to establish a royalty for iPads. I would just remind you that here we are talking about ways of preventing

royalties from being charged for MP3 players. Why are we so out of the step with what is being done elsewhere?

• (1220)

Furthermore, I would like to understand why the Conservative government, which often defends small business, is not supporting small cultural companies. It's important to remember that our culture is developed by these small companies.

The Chair: Thank you.

We will now hear from the *Guilde des musiciens et musiciennes du Québec*. You have five minutes.

Mr. Luc Fortin (President, Guilde des musiciens et musiciennes du Québec): My name is Luc Fortin and I am President of the *Guilde des musiciens et musiciennes du Québec*. I'm also a professional musician. With me today is Mr. Éric Lefebvre, Secretary-Treasurer of our association. Like L'ADISQ, we, too, signed the joint declaration of Canadian cultural industries on Bill C-32.

The *Guilde des musiciens et musiciennes du Québec* is a recognized association of artists that represents almost 3,500 professional musicians working all across Quebec. It is affiliated with the Canadian Federation of Musicians and its mission is to defend and promote the economic, social, moral and professional rights of performing musicians.

To begin with, we feel it's important to clearly state our position on Bill C-32. Unless there are major amendments to the bill, it should not be passed under any circumstances. It is true that the government is establishing some new rights for performing artists, such as the moral right and exclusive rights provided for under the WIPO Performances and Phonograms Treaty which, theoretically, place them on an equal footing with certain recognized authors' rights.

Yet what the framers of the bill are giving with the right hand, they are taking away with the left. What is the point of an exclusive "making available" right if the bill only confirms the lack of accountability for Internet service providers? How can anyone assert a reproduction right over a sound recording when broadcasting entities and educational institutions can reproduce works without prior authorization from the author, performer or producer, and without any applicable royalties for this kind of reproduction? The incalculable number of exceptions granted users essentially invalidates several exclusive rights currently held by rights holders. Some examples include the broadening of the "fair use" concept for purposes of education and parody, the exception for television recording timeshifting, the abolition of certain legal licences in the education sector, and the list goes on.

The Berne Convention provides that an exception should only be permitted "in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author." That is article 9. Bill C-32 does not abide by the Berne Convention in that it grants several exceptions which will in fact deprive creators and performers of remuneration, thereby violating their rights.

As regards Internet service providers, the government is indeed proposing a series of technical protection measures. However, the large record producers, known as “the majors”, who are actually the ones able to take such measures, have long since given up developing these costly measures, due to their extreme unpopularity. It is worth mentioning, for example, that the iTunes site removed all protection measures from its on-line catalogue two years ago.

Furthermore, the private copying regime, which enables authors, artists and producers to be compensated for violations of their reproduction rights, is on its way out. Nowadays, who actually continues to reproduce musical works on cassettes? As for CDs, they will soon be joining cassettes and diskettes on museum shelves, having been replaced by USB keys and digital audio players. Music is reproduced daily on millions of iPods and other similar digital players; however, the royalties are, unfortunately, collected for other formats, all of which are gradually disappearing.

Relying on propaganda, some are currently attempting to convince Canadians that the royalty for private copying is a tax, when it is actually compensation for actions that previously were deemed to be illegal.

Finally, we note that the legislation still has not granted rights to performing artists for audiovisual productions. Yet an artist's performance is of crucial importance, in terms of both commercializing a sound recording and marketing a film or television program. It is time that lawmakers responded to that demand, one that has already been recognized in several countries.

In conclusion, the passage of Bill C-32 would turn Canada into one of the countries that affords the least protection for creations and innovations involving intellectual property.

• (1225)

[English]

The Chair: Thank you.

We'll now move to the Society of Composers, Authors and Music Publishers of Canada. We have three representatives: Mr. Spurgeon, Mr. Davies, and Mr. Valiquette.

For a total of five minutes, you have the floor.

[Translation]

Mr. Gilles Valiquette (Director, Board of Directors, Society of Composers, Authors and Music Publishers of Canada): Mr. Chairman, ladies and gentlemen members of the committee, good afternoon. My name is Gilles Valiquette and I am an author, composer and performer in Quebec. Today I am representing the Society of Composers, Authors and Music Publishers of Canada, better known as SOCAN. I am a member of the board of directors, a board which I chaired for five years, and with me today is my colleague, Victor Davies, who is also a composer and member of SOCAN's board of directors, as well as Paul Spurgeon, Vice-President, Legal Services and General Counsel for SOCAN.

Mr. Chairman, Bill C-32 is a very important bill as far as we are concerned. To help you understand our perspective, I should just point out that SOCAN is the Canadian collective that administers the performing rights, words and music, of more than 35,000 active Canadian members and all the members of its affiliate organizations

around the world. That said, it is important to state that songwriters who spend days and weeks creating a musical work receive no advance payment for their work.

Furthermore, the social convention embedded in the Copyright Act gives artists the right to be remunerated if, and only if, their song is used. In other words, my colleagues and I are entrepreneurs who make songs, as opposed to furniture or cars. We take the risk that our work will be used and we agree not to be paid at that point. That is the agreement we have with our clientele.

It is critical that, in a spirit of national unity, Bill C-32 respect the two legal traditions associated with intellectual property, both copyright and *le droit d'auteur* or, more specifically, that it ensure that Canadians have access to copyrighted work while at the same time upholding the right of creators to compensation. As currently drafted, Bill C-32 completely disregards the fundamental rights which are the cornerstone of copyright in Canada. Let us not forget that Bill C-32 deals with intellectual property.

Mr. Chairman, ladies and gentlemen members of the committee, I very much appreciate this opportunity to address you directly as both an artist and creator. I am calling on you to make the amendments to the bill that we have suggested in our brief, in order to ensure that creators' rights will be respected and that the music industry will be able to continue to move forward on a daily basis.

Thank you very much. I would like to turn it over now to Mr. Paul Spurgeon.

• (1230)

[English]

Mr. Paul Spurgeon (Vice-President, Legal Services and General Counsel, Society of Composers, Authors and Music Publishers of Canada): Good afternoon, Mr. Chairman and members of Parliament.

My name is Paul Spurgeon, and I'm SOCAN's general counsel.

I understand you have a copy of SOCAN's 16-page November 19 submission. Also I have left with the clerk a copy of a document, the WIPO study on limitations and exceptions, which I think you will find very interesting, especially if you refer to pages 74 to 80. It might help in your understanding of the issue of exceptions and limitations. I have also left with you a copy of a four-pager on the three-step test, which I am principally going to speak to in my brief remarks.

Turning to the last page of our submission, we propose that clause 41 be amended by adding a simple interpretation provision, as follows:

In interpreting any limitations or exceptions to copyright under Part III of the Act, the court shall ensure that such limitations or exceptions are confined to certain special cases, do not conflict with a normal exploitation of the work, and do not unreasonably prejudice the legitimate interests of the author, including the author's right to equitable remuneration.

I have to point out that this amendment is simply based on the three-step test that Canada has already agreed to in international treaties and has ratified, and intends to ratify, including the Berne convention, to which we have been a signatory for decades, the World Trade Organization treaty, and the WIPO treaties, which you are about to hopefully implement and ratify when Bill C-32 is enacted.

Since Canada has already agreed to this three-step test in these treaties, there is no reason why it should not be included in the Copyright Act.

Thank you.

Victor.

Mr. Victor Davies (Director, Board of Directors, Society of Composers, Authors and Music Publishers of Canada): My name is Victor Davies. I'm a music composer and I serve on the SOCAN board of directors.

As Gilles mentioned, SOCAN represents music composers, authors, and publishers. Please note that we do not represent record companies, and they do not represent us.

I would like to discuss two issues: digital locks and exceptions.

First of all, we respect the right of other copyright owners to use digital locks to protect their works if they so desire. However, SOCAN's business model is not based on blocking access with digital locks. Instead, SOCAN's mandate is to provide access to the world's music repertoire and to collect royalties determined by the Copyright Board of Canada for these uses. Therefore, although digital locks may help some copyright owners, they do not directly help SOCAN.

Second, we oppose Bill C-32's many exceptions, because they allow users to use our valuable intellectual property but we do not get paid.

The Chair: I'm sorry, I'm going to have to cut you off there; you're well over. You'll get an opportunity to answer questions.

We'll move to the Songwriters Association of Canada, to Jim Vallance and Greg Johnston, for five minutes.

Mr. Jim Vallance (Vice-President, Songwriters Association of Canada): Thank you for this opportunity.

These are challenging times for creators and rights holders. We appreciate the work you've done, and continue to do, on the bill.

My name is Jim Vallance, and I'm vice-president of the Songwriters Association of Canada. I'm a multiple Juno award winner and a member of the Order of Canada. I've composed music for hundreds of performers, including Anne Murray, Paul Anka, Tina Turner, Bryan Adams, and Ozzy Osbourne. My songs have sold more than 100 million copies worldwide.

This was possible because my career largely occurred in the 1970s, 1980s, and 1990s—the decades before Napster.

Given the state of the industry in 2011, it's unlikely the next generation of Canadian songwriters will have the same opportunities I had. In fact much of our industry could disappear, as music creators are forced to seek other employment to make ends meet. The loss to

Canadian culture could be incalculable: no more Shania Twains, no more Luc Plamondon.

Let me digress for a moment. For the better part of 100 years, British Columbia had a prosperous commercial fishing industry. Suddenly, a few years ago, the salmon failed to materialize. The consequences were devastating. Jobs were lost. Fishermen were bankrupted. Boats were sold. The scientists at the Department of Fisheries were baffled, unable to explain the anomaly. Quite simply, the fish were gone, and no one knew why or where.

The music industry is experiencing a similarly devastating crisis, each year being worse than the last. But unlike the fishing industry, we don't need to consult scientists: we know where our songs are. Every minute of every day, millions of our songs are being shared online.

Never in history has music been so popular or so accessible. It should be a golden era for the music industry. Sadly, the opposite is true, as 95% of the time our music is shared without compensation for creators or rights holders. Meanwhile, ISPs reap significant profits, providing access to our music over their networks.

During the past decade, consumers have demonstrated an overwhelming preference for accessing music online. Attempts by governments worldwide to stop or alter this behaviour have proven futile and ineffective. We must accept this fact because only then can we move forward.

As gatekeepers to the world's repertoire of music, ISPs must share revenues with those of us who create and own the content they deliver to their customers. Creators, rights holders, and the ISPs must work together as partners rather than adversaries.

Songwriters are not arts groups. We are self-employed entrepreneurs and proud professionals. We don't want government funding. We want a fair and legal marketplace for our music.

We propose a “made in Canada” solution where individuals who wish to share music online pay a reasonable monthly licence fee for the private non-commercial sharing of music. We seek a viable business model for the digital age where consumers, our fans, can continue accessing music online while creators and rights holders are fairly compensated.

•(1235)

Mr. Greg Johnston (Treasurer, Songwriters Association of Canada): My name is Greg Johnston. I'm a songwriter and the treasurer of the Songwriters Association of Canada.

I'm a 40-year-old. I have a wife, two kids, a car, and I live in downtown Toronto. I volunteer, shop for groceries, pay taxes, and I vote. I studied music at both Simon Fraser University and Grant MacEwan College. I had student loans and I paid them off. I picked a career, I was educated for it, and I'm really good at what I do.

I've worked with artists such as Olivia Newton-John, Marc Jordan, Ron Sexsmith, Hawksley Workman, and Nick Lachey, to name a few. Unlike my friend and colleague Mr. Vallance, my songs have not sold over 100 million copies, and unless drastic measures are taken, songwriters of my generation will never have the chance. In fact, despite my education, talent, and success, I may have no choice but to leave the profession entirely.

Some may say "That's life", something I would be willing to accept but for the fact that our songs have never been more popular. They're on your radio when you drive to work. They encourage you on the treadmill. They play at your daughter's wedding. They help to sell shoes, toothpaste, life insurance, and they've even helped the odd political campaign.

The solution to our industry's dilemma lies in the monetization of music file sharing. To reiterate what Jim Vallance said, a mutually beneficial partnership with the ISPs would allow consumers access to our work in the way they are now accustomed to. Rights holders would be remunerated, success would be rewarded, and fair business practice would be restored.

To this end, Bill C-32 has nothing to offer. Bill C-32, as written, opens the doors to years of lawsuits with regard to the definition of fair dealing.

The last decade has been a period of rapid decline for our industry. Forcing music creators to, in essence, sue for their supper only increases our financial hardship. It solves none of the basic problems we face.

Digital locks and lawsuits, as well as other repressive measures, are a well-worn path at this point, and they have proven to largely be a dead end.

We at the SAC support the private copy levy as a part of a comprehensive plan to remunerate music creators for our work. While helpful to creators, the levy in and of itself is not a comprehensive solution, and it should not be seen as such.

With blank CD sales declining annually, and the failure of Bill C-32 to extend the levy to devices like the iPod, this legislation offers little hope for our future.

In conclusion, we at the SAC are grateful for this opportunity to appear before the committee. We sincerely hope our input will be helpful in amending this crucial legislation so that it may foster an enlightened and profitable Canadian music industry.

Thank you.

The Chair: Thank you very much.

We'll now move to questioning. We have 21 minutes remaining, and with the consent of the committee we'll have five-minute rounds.

Is there consent?

Some hon. members: Agreed.

An hon. member: Do we have a choice?

The Chair: Mr. Rodriguez, you have five minutes.

Mr. Pablo Rodriguez: Thank you, Chair.

Thank you for being here.

[*Translation*]

Good afternoon.

Earlier, I heard my government member colleagues saying that the bill may not be perfect, but that we could pass it as is and make changes subsequently.

That greatly concerns me because, in my opinion, what we need are not minor changes, but major changes. Indeed, in my opinion, one shared by many of my committee colleagues, the bill is imbalanced and full of gaps, to the detriment of creators. It will result in the loss of acquired rights and revenues. Furthermore, the bill does not necessarily meet its objective.

By way of answer to my question, I would like each of you to comment briefly. If the bill is not amended, and if we have a choice between passing it as it is or defeating it, should it pass or not?

•(1240)

Mrs. Solange Drouin: Definitely, in terms of our analysis.

[*English*]

we're better without that kind of bill than with it.

[*Translation*]

There is no doubt about that, as I see it. Certainly, the situation in the music industry is disastrous, but it would be even worse if this bill were to pass without amendment.

Mr. Pablo Rodriguez: It would be worse. Thank you.

Mr. Fortin.

Mr. Luc Fortin: We also believe that the status quo is preferable to passing the bill in its current form. It would not be an improvement; it would actually be a loss for the entire music industry, for creators and performers.

Mr. Pablo Rodriguez: For the music industry, this bill is not even the status quo; it is a setback.

Mrs. Solange Drouin: Yes.

Mr. Luc Fortin: In our opinion, yes.

Mr. Pablo Rodriguez: Mr. Spurgeon or Mr. Valiquette—one or the other.

[English]

Mr. Paul Spurgeon: The bill needs work.

Mr. Pablo Rodriguez: No, we all agree on that.

Mr. Paul Spurgeon: It needs probably considerable work, and not just for the music industry. There are other sectors in the copyright and creative industries that are impacted by the bill. It's not just the music industry.

Mr. Pablo Rodriguez: Okay, but if there are no amendments, as is...?

Mr. Paul Spurgeon: We need amendments.

Mr. Pablo Rodriguez: Absolutely.

Mr. Paul Spurgeon: Absolutely.

Mr. Pablo Rodriguez: I agree.

Mr. Davies.

Mr. Victor Davies: I agree with all the previous speakers that we need amendments. The three-step test is a major component of that, in my view.

Mr. Pablo Rodriguez: Mr. Vallance.

Mr. Jim Vallance: Just briefly: amendments first, bill second.

Mr. Pablo Rodriguez: Okay.

So you all agree that the bill needs major amendments. We all agree on that.

What should be the main amendments? We won't go into details, because there are so many things to amend, I agree, but name one or two things.

Mr. Paul Spurgeon: The three-step test is important because the government has created over 40 brand-new exceptions and limitations. It has created a couple of rights—one for photographers, and a few others—but essentially it's an exception and limitation bill.

Let's make sure we can provide judges with guidance, so when they interpret those exceptions and limitations they'll know what they're doing. The three-step test will give judges the guidance they wouldn't have, because it's not in the law. It's in the treaty, but as the lawyers here know, it has to be a self-executing treaty.

[Translation]

Mr. Pablo Rodriguez: Another brief comment?

Mrs. Solange Drouin: I very much enjoyed the presentation made by my colleague Gilles Valiquette, as well as the one from the SAC, both of which clearly demonstrate that people working in the music industry are all small entrepreneurs, both artists and production companies. We are all small entrepreneurs.

As I said in my presentation that I was unable to complete, we cannot understand, in that case, why small cultural entrepreneurs are not receiving the same attention as in other cases where the fate of small entrepreneurs is at stake. We ask that committee members bear that in mind as they consider amendments to the bill. These are the most important amendments, as I see it, because they take away

acquired rights. I am talking about broadcast mechanical rights. Taking a right away from us that we currently have will mean a loss of \$8 million or \$9 million for those who... Those royalties have already been collected. And then there is the private copying regime which I think... And the example I cited earlier of France, which is currently considering imposing a royalty on iPads. Yet we are saying there will be no royalties on MP3 players. I simply cannot understand how we could be so completely out of step with everyone else. Those are certainly the most important ones—

Mr. Pablo Rodriguez: Thank you.

Since I only have a few seconds left, I will be brief. With respect to accountability on the part of Internet service providers, do you think the notice-to-notice principle is enough? If not, why is that approach not appropriate?

Mme Solange Drouin: No. But I can't provide any more of an explanation in five seconds.

Mr. Pablo Rodriguez: Is there anyone who thinks it is appropriate?

A voice: No.

The Chair: Thank you, Mr. Rodriguez.

Ms. Lavallée, you have five minutes.

Mrs. Carole Lavallée: First of all, I'd like to say that I'm surprised to see so many witnesses here for a single sitting. The committee had decided to only invite three, in order to give them a reasonable amount of time to answer—in other words, more than a few seconds. I do hope that if you feel you need additional time to explain your position, each of you will ask the clerk to be invited back. I'm sure he will agree.

Let's come back now to the subject at hand. As I was saying earlier, there are too many people here. By the way, the witnesses from SODRAC were cancelled at the last minute. You could have had them here with you, since you are all from the music industry. The difference between the witnesses we heard from earlier and yourselves is that the first group was here representing primarily the broadcasters. It was the Canadian Recording Industry Association. Mr. Henderson usually represents the broadcasters.

A voice: The multinationals.

Ms. Carole Lavallée: Yes, the multinationals. In any case, many of their demands are reflected in Bill C-32. On the other hand, the Canadian Conference of the Arts has established that the artists will be losing \$126 million. First of all, there is \$30 million for private copying. I'm not going to list all the losses, because you are well aware of them. There are also those associated with ephemeral recordings and the exemption for the education sector. As for user-generated content, I'm sure you know that in France, the SACEM, which is a copyright collective, has succeeded in negotiating royalties with YouTube for user-generated content, something that would be impossible here given the exemption granted under Bill C-32, if it is not changed.

In terms of specific changes—I invite each of you to take as much time as you need, and the others will have an opportunity to answer later on—which amendments are most critical, in your opinion?

Ms. Drouin.

•(1245)

Mrs. Solange Drouin: I believe I already partly answered that in my response to Mr. Rodriguez. Furthermore, I would just like to point out that between us and the music industry, whose representatives you heard from earlier, there are far more things we agree on than the reverse. There is no doubt that, in terms of the way the bill is currently drafted, we don't consider it to be adequate or appropriate, but we're not saying we don't want it at all.

If you're asking if it should be passed in its current form, our answer is no. However, if you're asking whether the Copyright Act should be amended, our answer is yes, but not necessarily in the way that is proposed in this bill.

Mrs. Carole Lavallée: What amendments do you see as most critical?

Mrs. Solange Drouin: In our opinion, the important amendments to the Act flow from the WIPO treaty that Canada has ratified. That means creating an exclusive right to make works available to the public—an exclusive right for producers to authorize or refuse to make their sound recording available to the public in digital format.

Our position is that it's very important that this right be recognized. That way, as Gilles Valiquette was saying, we could do business in the digital universe; however, we want this bill to provide us with the necessary economic tools. We don't want it to take tools away from us. We want to be given the tools that will allow us to negotiate business arrangements with the iTunes and YouTube of this world. So, we feel it is very important that we have the exclusive right to authorize or refuse to make our work available. And that is completely in keeping with the WIPO treaty that Canada signed in 1996, but never ratified.

Mr. Lefebvre.

Mr. Éric Lefebvre (Secretary-Treasurer, Guilde des musiciens et musiciennes du Québec): The option of applying a private copying levy to all formats is absolutely critical.

Ms Carole Lavallée: To all formats?

Mr. Éric Lefebvre: Yes, because formats have evolved. Cassettes and CDs still exist. However, we now have MP3 digital players. One day, there may be another new format out there. So, the private copying levy must apply to all formats; it has to be technologically neutral.

Furthermore, in 1997, when another Bill C-32 was under consideration and passed some years ago, I noted that there is a very fragile balance, in terms of exceptions, between the rights of users and those of copyright holders. That fragile balance is clearly destroyed by the new exceptions being introduced in the bill. The status quo has to be maintained with respect to the exceptions currently in place. They have allowed copyright collectives to apply and negotiate certain tariffs or agreements with users. Right now, the number of exceptions in the bill means that the fragile balance achieved in 1997 has been completely destroyed.

•(1250)

[*English*]

The Chair: *Merci.*

Mr. Angus, you have five minutes.

Mr. Charlie Angus: Thank you, Mr. Chair.

Thank you for coming today.

At the outset, I have to say that I'm a little lost. We just had a panel primarily led by CRIA, which represents Warner, Sony, Universal, and EMI—the four largest entertainment industries in the world. We had Maple, which is with Universal. They told us that they represented music and musicians across Canada, and they were speaking with one voice.

I see the Songwriters, I see SOCAN, I see ADISQ, I see the Guilde des musiciens. So who do you speak for?

[*Translation*]

Mr. Luc Fortin: We all represent the music industry at different levels. For l'ADISQ, it's music production. We are musicians, performers and composers. So, we definitely represent the Canadian music community.

Mrs. Solange Drouin: Perhaps you misunderstood what I said at the outset. There are very few multinationals operating in the Quebec market. We represent independent producers in Quebec, who are responsible for 95% of the albums released by Quebec artists, who represent 50% of the market. The Canadian Recording Industry Association can say it represents the Canadian music industry if it wants, but in Quebec, multinationals carry little weight. They are happy to distribute foreign content, and that's their job.

[*English*]

Mr. Charlie Angus: Thank you for that.

I don't want to create any false breaks between the multinational labels and the independents and songwriters, but I was very struck, because they were very clear that this idea of the levy was absurd. The house was burning down. I mean, there was so much smoke coming up from the table; we had to pass this bill immediately.

Mr. Dexter said that we have a \$400-million industry at stake. I was doing the math...and I'm kind of slow at math. I got 52 in grade 10. You can put that in my next attack ad.

At any rate, I did the math, and I thought, well, if we have a \$400-million industry, and I'm asking about money that's being taken off the table.... The mechanical royalties are more than \$8 million; the digital levy, according to the Copyright Board, is more than \$35 million. So I'm looking at people who are saying that their industry is in such dire straits that they're willing to give up 12%, to 13%, to 15% of their annual income just to get this bill passed.

Mr. Fortin, you and I were in Washington together at the Future of Music Coalition. We met with musicians from across North America. What we've heard from the record industry—my Conservative colleagues love this—is that if we increase the statutory damages and we put digital locks, we'll be in the promised land. But I didn't see, in the United States, musicians feeling that their situation was any better than ours. Yet we have a situation here where there's compensation for artists, direct compensation, and that is being taken off the table in this bill.

Why do you think this bill should be allowed to go ahead if the compensation for artists that has been guaranteed under copyright is one of the things that will be stripped?

[*Translation*]

Mr. Luc Fortin: As we all have been saying here today, and as this document signed by almost 80 cultural associations in Canada makes clear, no one can claim that a bill will improve protection for authors if it reflects a refusal to adapt to new technologies like the iPod, iPad, and so on. That is completely incomprehensible.

It is falsely claimed that this is a tax, when everyone knows full well that it is a royalty. And Canadians know the difference between a royalty and a tax. You, Mr. Angus, have taken part in discussions on the radio and phone-in shows, and when you explain that the money is going to artists, people clearly understand that it is not a tax. A tax is money that goes to the government, although we don't know exactly where it goes or what it will be used for; with a royalty, however, we know exactly where the money is going, what it will be used for and why.

Mrs. Solange Drouin: Unlike what you seem to be saying, Mr. Angus, that is not what I take from the position expressed by our friends from the Canadian Recording Industry Association. They are not our enemies—far from it. They said they wanted to set aside certain irritants to ensure that the most important elements would be included in the bill, such as the making available right... We fully support that position as expressed by the Canadian Recording Industry Association. They said we should set aside the question of the levy and simply pass the bill, not in the sense of saying that we'll sell it cheaply. They just meant we can put it to one side now and discuss it later on.

• (1255)

[*English*]

Mr. Charlie Angus: Sorry, but to be correct—my time is running out—according to the access to information, he stated clearly...Mr. Henderson stated that he opposed the creator groups.

The Chair: Mr. Angus, you have to wrap up. You're well over.

We're moving to Mr. Del Mastro for five minutes.

Mr. Dean Del Mastro: Mr. Chair, I think I'm going to have enough time to share some of it with Mr. Bernier.

I'd like to start with a bit of a statement. It seems to me that artists, record producers, people right across the country are split into two groups on this. This I think goes back to Mr. Angus's point. There are groups that believe that by re-establishing a marketplace, you will drive income opportunity and investment into the record industry and you will save the record industry. That's what we heard from the first panel. Then there are those who say that you can't

rebuild an industry, that there will never be an industry and the only way we can do it is to slap fees and levies on things.

By the way, a tax or a levy, they are the same thing. It's a fee placed on consumers. They are exactly the same thing. Ultimately, if you pay a tax, it goes to health care. People know where taxes go. They go to health care, to education. People understand that. But people do reject paying higher taxes even though they know that they are going to end up in health care, education, defence spending, foreign affairs and all sorts of things. People know that's where their tax dollars go. They just object to paying more when it has an impact on their household.

I'm just going to make a comment and then I'm going to pass this over to Mr. Bernier. Let us say there is a retail bakery and it sells bread. People go into the bakery and rather than pay for the bread, they just take it off the shelf and walk out the door. We have a law against that. It's called shoplifting. We say that people may not do that. People who take the bread without paying are charged.

It seems there is a contrary approach for intellectual property, which is a property just like anything else. We believe we can re-establish a marketplace.

Nine hundred and seventy one million dollars have been wiped out of the film industry. Three quarters of a billion dollars have been wiped out of the recording industry. For the film industry and the recording industry, almost \$2 billion has been wiped out. That's got to be close to 20,000 jobs in Canada that don't exist.

What we're saying is that if somebody comes in and takes something, we're going to wipe out the enablers. The top five pirate sites in the world are operating in Canada. We're going to shut them down. That's the intent of this bill, so that people go back to the marketplace and buy things.

We don't go to the bakery and say, now, we're just going to let people keep on taking bread, and we're just going to charge a levy somewhere else to reimburse you for the bread that people are just taking. Secondly, we certainly wouldn't say to them, oh, by the way, I notice that you made a sandwich with that bread; we're going to need an extra 15¢, because you've just shifted the format.

I'll pass the rest of my time to Mr. Bernier.

[*Translation*]

Hon. Maxime Bernier (Beauce, CPC): Thank you very much.

I have a question for Mr. Lefebvre. I would like you to give me some additional details. You referred earlier to a fragile balance between the rights of users and the rights of copyright holders in reference to legislation going back several years now. You said that in this bill, that balance has been destroyed.

Could you say a little bit more about that?

Mr. Éric Lefebvre: Well, one example would be that when you allow timeshifting of television programs, you are clearly allowing a form of reproduction. It basically is a kind of private copying, only without the royalties that are generally payable to rights holders.

For example, educational institutions used to have to pay for a license in order to use television or radio programming recorded for educational purposes. That license was payable to copyright collectives. However, it has been abolished. Those are a few examples that show that, as currently worded, given the exceptions it creates, this bill will mean that most copyright collectives will be losing a great deal of money in royalty payments that are distributed to copyright holders. At the time, those royalties were payable for certain types of use. They are not just there to keep the collectives in business; a large part of that money is redistributed to the people who make the music. So, we are really talking about wages for performing artists, authors and producers—wages that will disappear with these exceptions.

Mrs. Solange Drouin: Perhaps I could take up Mr. Del Mastro's analogy again. People say it's an industry like any other. However, in the breadmaking industry, for example, you are not telling bakers that they will be paid for brown bread, but not for white bread. The government doesn't make an exception with respect to the payment to be made by the consumer. Under this bill, however, we are telling consumers that, in particular circumstances, they will make use of someone else's work—buy a loaf of bread—but won't have to pay for it. That's exactly what you're doing by adding these exceptions. We already have exceptions in the current Act, but now you are

increasing the number of times when Canadian consumers will not have to pay for their loaf of bread.

● (1300)

Hon. Maxime Bernier: In terms of the exceptions, are you against the one provided to the education system, universities and so forth?

Mrs. Solange Drouin: Generally speaking, I do not understand why, when people have been acknowledged to hold certain rights, those rights should be taken away at certain times for certain uses. That shows a lack of trust in copyright holders; it's telling them that they are not being reasonable about certain uses of their works—in the education sector, for example—in terms of arriving at a solution that satisfies both parties. It shows a lack of confidence that the two parties will succeed in negotiating a commercial agreement—a business arrangement that both consider satisfactory.

For example, the Quebec Ministry of Education pays royalties for the use of protected works by the schools for school and extracurricular work. We were able to arrive at an agreement. The Ministry of Education did not go bankrupt as a result. On the contrary, it enhanced young peoples' education, as they understand that when they use a protected work, they have to pay in order to be entitled to use it.

Generally speaking, I do not support the principle of granting exceptions. I think we are all adult enough to be able to negotiate agreements that satisfy both parties.

[*English*]

The Chair: Okay. *Merci.*

Thank you to our witnesses.

The meeting is now adjourned.

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