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Chair

Mr. Gary Schellenberger

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•(1110)

[English]

The Chair (Mr. Gary Schellenberger (Perth—Wellington, CPC)): Good morning, everyone. I'd like to call this meeting to order if I could, please.

We're a little bit late again trying to get going. Our meeting will be over at 1:05, because we made a little change. So it will run from 11:05 to 1:05.

Mr. Charlie Angus (Timmins—James Bay, NDP): Point of order, Mr. Chair.

It's become a pattern with the Industry committee. We're always five or ten minutes late. I don't think they're showing us the respect our work and our witnesses deserve. I'd like you to raise it with them that when their meetings end at eleven, they should end at eleven, and we should be able to start.

The Chair: Mr. Del Mastro.

Mr. Dean Del Mastro (Peterborough, CPC): This committee might consider passing a motion to be considered by the House that the morning committee run from 8:45 to 10:45 so we could have the full two hours for our committee.

The Chair: Okay. Mr. Del Mastro will take that forward, correct? Or do you want me to? Can you take it forward?

Mr. Dean Del Mastro: I'd be happy to move a motion you could present to the House.

The Chair: Okay.

Mr. Dean Del Mastro: Quite simply, given that our committee has scheduled two hours for witnesses and for questions, I would move that the House consider moving the morning committee back 15 minutes, from 9 o'clock to 8:45, to give time for committee changeover. That will allow our committee to start on time.

I'm happy for somebody to put words to it. It just came before us.

The Chair: I've been advised by the clerk that a motion is going forward to the whips right now to try to alleviate this.

Mr. Dean Del Mastro: Okay, we'll allow that process to go forward.

The Chair: Let's see if we can make that work.

Okay. If you want, we'll accept that motion from Mr. Del Mastro.

Mr. Angus, do you want to second that motion?

Mr. Charlie Angus: Yes, I will.

The Chair: All in favour of me, as chair, through the clerk, sending the motion that Mr. Del Mastro just made, seconded by Charlie Angus, that the 9 o'clock meeting start at 8:45 and run to 10:45 so we can get our two hours in.

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

The Chair: Okay, we'll work on that.

Ms. Dhalla.

[Translation]

Mr. Royal Galipeau (Ottawa—Orléans, CPC): Mr. Chairman, I have a French copy of Mr. Caron's presentation, and I would like to have one in English as well. I'm told the clerk has all the copies.

[English]

The Chair: Okay.

Ms. Dhalla.

Ms. Ruby Dhalla (Brampton—Springdale, Lib.): Are we going to be discussing any committee business?

The Chair: No.

Ms. Ruby Dhalla: Can I, with the will of the committee, bring an issue to everyone's attention? In reading *The Globe and Mail* today, I noted that a telecom conference is being held with a lot of the telecommunications leadership. They are highlighting some of the digital and new media strategies. It's being held June 6 and 7, I believe. The honourable minister along with a number of other distinguished people in the industry are going to be attending. The committee may want to consider that all or part of our committee be in attendance at some portion of that conference. It's being held in Toronto, so it's also convenient for many of the members to attend. I think it would be beneficial, in light of the study we have before us at the committee.

The Chair: When is it, again?

Ms. Ruby Dhalla: June 6 and 7.

I cut it out from *The Globe and Mail*, but unfortunately I brought the wrong page.

I think it would be beneficial for us.

Mr. Dean Del Mastro: I think we could do that.

The Chair: We can look into it.

There's another conference going on next Monday and Tuesday in Stratford. It's a 3.0 digital media conference. We don't have time to get all of us there. Maybe we could do that next year.

Okay, we can look into that, Ms. Dhalla.

Welcome to meeting number 12 of the Standing Committee on Canadian Heritage. Pursuant to Standing Order 108(2), this is the study on the emerging and digital media: opportunities and challenges. For our first hour, or close to one hour, we will hear from Library and Archives Canada and the Writers Guild of Canada.

If you can, keep your presentations to ten minutes. It's very important so that we can get our questions in. I will hold my finger up when there's one minute to go.

We'll start with Mr. Caron, please, from Library and Archives Canada.

Mr. Daniel J. Caron (Librarian and Archivist, Library and Archives Canada): Thank you, Mr. Chairman and members of the committee, for inviting me to share my thoughts on the emerging digital media environment.

The mandate of Library and Archives Canada is to capture and preserve the documentary heritage of Canadians, including that of the Government of Canada. Through the collection of documentary heritage we provide an accurate account of the evolution of Canadian society. Documentary heritage is at the core of literacy in Canada, and even at the core of our democracy. By ensuring that the most relevant and significant material is acquired and preserved, we ensure that this material is there to be searched and accessed by Canadians over time.

Fulfilling our mandate in the new digital environment presents unique challenges and opportunities. As you know, the new information and communication technologies are continually evolving. They have fundamentally changed the way Canadians create information, safeguard it, and retrieve it. In the new digital environment, Canadians expect to find information everywhere and anytime. This is true in organizations and institutions throughout our society.

Information in all forms—films, documents, portraits, photos—is today more than ever ephemeral, instantaneous, and highly dynamic. And we are witnessing a new phenomenon: in the digital media age, too much information is recorded. This creates a major challenge unique to the archival function, which is how to be selective about what should be preserved and what need not be.

•(1115)

[*Translation*]

As the CNRS researcher Tzvetan Todorov wrote in 1995, collective memory is at risk today not because records are disappearing, but rather because there is too much available. This problem of abundance directly affects the capacity of societies to identify, preserve and ensure access to their documentary heritage. One consequence is that most countries are revisiting their policies and legislative frameworks to deal with the challenge of preservation in a digital age.

In Canada, LAC—as a key part of the Canadian Heritage portfolio—has a critical role to play in influencing and informing these discussions. Today, we are in a transition from a documentary environment of paper, canvass, vinyl and film to a new digital environment, where sensory information now takes the form of bits

and bytes—untouchable and invisible. This has caused a tectonic shift at the very foundation of our business.

The traditional archival materials that once came to us in a box filled with books, pictures and papers, all organized in the way the donor was thinking, will now be coming to us on a memory stick. This memory stick will contain books read by the donor in one folder, the texts he or she has written in another folder, and photos in yet another one. Moreover, all of these items will be readable only with the software utilized by the author twenty years ago and—to make things worse—the appropriate version of that software. And we will not necessarily know the nature of the content until we have accessed it. These are the challenges of the archival business in the 21st century.

Building and preserving Canada's documentary heritage in this new environment requires new approaches, new ways of working and, above all, new forms of partnership and collaboration.

[*English*]

To meet this challenge, memory institutions like LAC must change the way they do business. Increasingly, they will need to work together to identify relevant documentary heritage and to complement each other's work in the areas of acquisition, preservation, and access.

At the same time, the new digital environment offers wonderful opportunities, provided we can master new technologies in support of acquisition, preservation, and access. This is what we are doing today, and what we will increasingly be doing in the future, with new digital approaches to fulfilling our mandate and to better connect Canadians across the country with their documentary heritage. The digital environment can become a conduit to ensure that all Canadians, no matter where they live or what their socio-economic status is, will have access to their documentary heritage.

[*Translation*]

To deliver on the promise of the new digital media environment, we will have to address the issue of identifying and preserving the content created in the new social media networks like Facebook and MySpace. We must open up and link our digital and digitized documentary heritage to Canadian cultural industries, genealogists, historians, lawyers and Canadians in general. In this way, we will enable direct cross-country access to a largely untapped public resource. These assets can be leveraged for literacy development and democratic needs, and repurposed for a wide variety of uses, some of which are as yet unknown. For example, LAC is sharing its digital content with memory institutions and Canadian cultural industries to enable new digital media applications, thus contributing to innovation and new business opportunities.

In another case, we have enabled Inuit youth to connect with their Elders by inviting them to identify and tag photographs of their ancestors online. Often, these are the only visual records the Inuit community has of these individuals. Many of the photographs featured in this initiative, called "Project Naming", were digitized by LAC from paper-based Government of Canada collections.

• (1120)

[English]

Today, however, most records are born digital, including most government records. In this new environment, LAC has helped build a new policy suite to assist federal departments capture and manage relevant digital content so that it can be made accessible over time. The directive on record keeping is in direct response to the needs of digital work environments in the federal government.

The key lesson of the record-keeping initiative that serves as a best practice for how we collect and preserve digitally created content is the principle of linking the production of Canadian digital content to its preservation and access. As the Harvard University law professor Jonathan Zittrain notes, "In the digital environment, everything is saved yet little is preserved."

Mr. Chairman and members of the committee, we cannot wait a few decades before we tackle the challenge of digital preservation. To do so is to risk creating serious gaps in the continuing memory of this country.

[Translation]

As Canada moves forward in meeting the challenges of preserving its digital documentary heritage, we will need to develop a pan-Canadian network of Trusted Digital Repositories—electronic vaults where digital content can be hosted and distributed in both the short and medium term. This content will be carefully selected to determine what should be preserved and made available in the long term. LAC is currently developing the appropriate policies, standards, work processes and technologies to enable it to become a Trusted Digital Repository and thereby to ensure long-term access to this country's digital heritage. In this way, we are truly becoming a 21st century library and archives.

Our mandate to preserve Canada's documentary heritage for current and future generations places LAC in the unique position of being able to contribute our experience and expertise to the emerging national digital content strategies. Our own modernization efforts are focused on meeting these challenges to leave a meaningful legacy for Canadians in future.

As we reflect on the opportunities and challenges of the emerging digital media environment, we should bear in mind that in our free and democratic society, it is the content itself that sustains our institutions and drives our economic, social and cultural development. At the core of any Canadian digital strategy is the obligation to acquire, preserve and make accessible content that is authentic, relevant, reliable and accessible, both today and for future generations. Thank you.

[English]

The Chair: Thank you.

I didn't even have to stop you. You did well.

Mr. Royal Galipeau: He's a fast talker, be careful.

The Chair: I did not introduce Mr. Piché from Library and Archives. I'm sorry about that.

Now we move on to the Writers Guild, and Maureen Parker and Kelly Lynne Ashton.

Maureen, could you go ahead, please?

Ms. Maureen Parker (Executive Director, Writers Guild of Canada): Good morning, members of the heritage committee.

My name is Maureen Parker and I'm the executive director of the Writers Guild of Canada. Also with me today is Kelly Lynne Ashton, WGC director of policy.

The WGC welcomes this opportunity to appear before the Standing Committee on Canadian Heritage. The Writers Guild is the national association representing more than 2,000 professional screenwriters working in English-language film, television, radio, and digital production. Our members are on the forefront of the creation of cross-platform, convergent, and transmedia content.

Screenwriters are today's storytellers. As such, they welcome these new opportunities to entertain, but they are also worried about the challenges and about how they and we, as Canadians, are going to meet those challenges. We are appearing before you today to urge you to support a comprehensive national digital strategy to help screenwriters meet these opportunities and challenges.

A national digital strategy must first ensure that there is sufficient funding to create professionally produced digital entertainment; second, it must ensure that Canadian-owned and Canadian-controlled enterprises exist to support Canadian content, and that they have appropriate incentives or requirements to do so; and third, it must amend the Copyright Act and support terms of trade to ensure that fair revenue streams flow back to content creators.

First we'd like to talk a bit about what our members are actually doing in digital media. They are taking advantage of a variety of new creative opportunities. They write webisodes such as the ones for *Little Mosque on the Prairie*, in which characters from the television series extend the experience through additional stories. They also write original web series, such as the award-winning *My Pal Satan*, which is about what life would be like if your roommate were Satan.

My Pal Satan is an example of how digital platforms allow screenwriters more creative freedom. Our members not only write for linear formats but also for interactive games such as *Autopsy*, which is an extension of the television series *Crash and Burn*.

Screenwriters are experimenting with the convergence between story and game, and some members are breaking new ground with innovative new forms of storytelling, such as the Twitter soap opera *Crushing It*. By the way, we know that you do not have time right now, but we'd be happy to stay after the meeting and show you a few of these examples on our laptop.

Canadian screenwriters are interested in developing new methods for reaching audiences directly, without having to go through broadcasters. The online world offers very quick feedback from audiences. This allows writers to respond immediately, as they can incorporate ideas as they continue to create.

Also, the lower cost of digital production means that screenwriters can become digital content producers, overseeing all aspects of production in a way that just cannot be done in traditional broadcast television. Screenwriters now have control over their stories all the way through production to delivery to the audience.

Digital platforms also offer more opportunities for the distribution of traditional television programming as Canadians migrate their viewing to online platforms. Canadian television can now be viewed on broadcasters' websites and cable companies' online portals, and it can be downloaded to own through iTunes. Unleashed from the broadcast schedule, more Canadians will get a chance to view Canadian programming.

The primary challenges for everyone working in this digital world come down to money. There must be more money to fund new digital production and fair compensation for the exploitation of both new digital content and traditional television content.

Let's start from our very basic principle that screenwriters and artists need to be paid for their work and need to earn revenues from the exploitation of their work. We look first to our collective agreements and individual contracts to set minimum fees and identify revenue streams. We need to be flexible in collective bargaining and contract negotiation to take this new digital world into consideration.

Online business models are in flux, so it's difficult to identify where and how those revenues will flow. This is our challenge as a guild. What we cannot address alone are lost revenues from common consumer uses such as illegal file sharing and saving to hard drives, which are currently not allowed under the Copyright Act and not compensated for.

•(1125)

We don't want to stop these uses, but rather make them allowed uses for consumers and put in place collective licensing to compensate creators for those uses. There has to be a balance between consumers and creators.

It has been suggested by some that fair dealing be expanded to include these consumer uses. While this solution decriminalizes this common behaviour, it also eliminates revenue streams to creators. We therefore oppose the expansion of fair dealing or other exceptions to copyright infringement except in those specific cases, such as allowing for parody and satire, where it makes sense. Of course we agree that the definition of fair dealing and other exceptions to copyright infringement should be technology-neutral and not so specific as to require amendment again when technology

evolves, but they should also not be so vague as to allow every use imaginable under the name of fair dealing.

Another challenge is that the lack of revenue flowing to screenwriters from online distribution is not just limited by things like illegal file-sharing. Broadcasters are demanding more rights from producers for the same licence fee. For example, if a broadcaster exploits a TV show through iTunes downloads, in most cases the broadcaster keeps that revenue, and it is not shared with the production community. We support a terms of trade agreement between the broadcasters and the producers, because without it no one but the broadcaster earns revenue from these new uses. We will be working with independent producers to ensure that compensation flows equitably to the creative community.

Kelly Lynne.

•(1130)

Ms. Kelly Lynne Ashton (Director, Industrial and Policy Research, Writers Guild of Canada): Without adequate production financing, Canadians will not have the choice of sufficient professionally produced Canadian digital entertainment media. Yes, the costs of content creation have dropped so low that anyone can be a content creator. But it is the production costs that are dropping—cameras and editing equipment and software. The content is still amateur if unskilled amateurs are writing and performing in it.

My 13-year-old daughter has a YouTube channel, as do many of her friends. Jacob Glick from Google has appeared before you and told you that there is plenty of Canadian content on YouTube. He is counting my daughter's videos, and while I think she's very talented, I'll be the first to say that she is not a professional and her audience is somewhat limited. YouTube can be an inexpensive way to distribute content directly to consumers without the broadcaster as a gatekeeper, and our members are increasingly interested in this opportunity. But amateur content is not a substitute for professionally produced Canadian content. Canadians deserve better. Without government support, Canadians will have no choice but to enjoy the vast amount of U.S. professionally produced content that is online.

We welcome the changes to the Canada media fund that require content on more than one platform. However, as a result, the CMF now requires that broadcasters, producers, and content creators do more, by creating content for more than one platform. Under the new CMF, every TV show it finances must be accompanied by content on a digital platform, such as streaming the TV show, building a simple brochure site, or, for at least 50% of a broadcaster's CMF programs, building value-added digital content.

While the first two can be easily financed by the broadcasters themselves, value-added content requires third-party financing in addition to what is being provided by CMF and broadcasters. There simply isn't enough money in the system to cover the shortfall. The answer is not to reallocate more money from broadcast to digital content, either. We cannot compromise the quality of our television content. We must remember that the bulk of viewing is still to TV. According to a recent Nielsen study in the U.S., 99% of screen viewing is still TV, and according to the CRTC's annual communications monitoring report, an increasing proportion of viewing of video online is of traditional TV. Private sector investment is not a viable alternative, as there are not yet any secure business models available to guarantee a return. Yes, there have been a few online successes, such as Club Penguin and Justin Bieber, but they are the exception to the rule.

What do we need to ensure a Canadian presence in the digital world? We need the government to extend the current Canadian film or video production tax credit to linear original web series so that online distribution on a Canadian-owned site also acts as a trigger for the tax credit. We also recommend that the government create an interactive digital media tax credit modelled after several successful provincial digital media tax credits. However, to ensure that such federal funds support Canadian talent as well as producers and crews, there must be a Canadian content certification system for digital media, similar to CAVCO. The WGC has been recommending that the top five highest-paid creative talent must be Canadian, in addition to current funding rules that require that 75% of costs are spent in Canada under Canadian ownership and control of the project. This should not be hard to do.

We also need the ISPs, like Rogers and Shaw, to make an appropriate contribution to Canadian content under the Broadcasting Act. They are not dumb pipes. For one thing, due to graduated fees, ISPs earn more revenue when consumers download more rich media content. With our colleagues in the independent production community, we recommended to the CRTC at their new media hearing last year that ISPs make an appropriate contribution to the creation of content that they carry, through a levy. Even though the CRTC chose to extend the new media exemption order and not impose a levy, we still see the need for ISPs to make a contribution to the creation of the Canadian content they benefit from.

We look forward to the government's public consultation on the national digital economy. We will look to ensure that any national digital strategy includes an updated Copyright Act; terms of trade; expansion of the Canadian film or video production tax credit and creation of an interactive digital media tax credit; maintenance of Canadian ownership and control requirements on telecommunications and broadcasting.

We thank you for your time and look forward to answering any questions you may have.

• (1135)

The Chair: Thank you.

My finger didn't work, but that's okay. You were only a little over time.

First question, Mr. Simms, please.

Mr. Scott Simms (Bonavista—Gander—Grand Falls—Windsor, Lib.): Don't worry. He won't resist giving me the finger, so don't worry about it.

Ms. Parker, it's good to see you again.

I have a few quick questions here. Correct me if I'm wrong, but what you're looking at is a revenue stream that you believe, under the current regime, should be shifted to other platforms. Is that too general a statement to make?

Ms. Maureen Parker: It's not too general, but I guess to clarify a little bit, what we're really looking for are amendments to the Copyright Act. Those have to be made first in order to extend the private copying regime for artists of audio-visual works. We need to amend the Copyright Act to ensure that the uses that are currently illegal and are copyright infringements.... That needs to be corrected.

As the union representing creators, we want to ensure that our members' work can be distributed in various forms. We're not trying to stop that. That's what our members want. We want to be able to show you what we have, and you can store it on your PVR. We want you to be able to—Kelly Lynne had some other examples—use EOD and so on, but the bottom line is that we're not compensated for those uses. That's why we need to amend the Copyright Act first.

Mr. Scott Simms: Recently there was a huge fuss, a highly publicized fuss in the United States by writers. They went on strike. And from what I understand, the crux of the issue was the money that the bigger companies, the distributors, were getting through digital. Is that correct?

Ms. Maureen Parker: That is correct.

Mr. Scott Simms: From that, have we learned anything, or have we seen anything that's going to tell us how we get revenue in the future? For example, two days ago I downloaded a movie. A lot of Canadian money, government money and taxpayers' money, went in to produce it. The name of the movie is *Rare Birds*, the one made in Newfoundland. I downloaded it through iTunes. So explain to me—

Ms. Maureen Parker: That's a very good question. That, unfortunately, has an even different answer. Those rights—

Mr. Scott Simms: Could you address the American thing first?

Ms. Maureen Parker: Okay. The Writers Guild of America did go out on strike approximately two years ago over compensation for digital production. However, their system is quite a bit different. They were really looking for expansions to their collective agreement. They were looking to ensure that they were properly compensated for their traditional TV fare—things produced under their collective agreement, which are now distributed on the Internet, as well as original digital writing. The big strike issue was following the money flow for television content on the Internet. That is not what we're talking about up here.

Up here we have a collective agreement as well, with independent producers. So let's just talk about your iTunes, because it all connects. Our collective agreement looks after something called primary uses. Our job as a union is to negotiate on behalf of our members with their contractors, the independent producers. Independent producers then make arrangements and licensing deals with broadcasters. All of that creates money flow—revenue flow. Our deal with the independent producers covers things like sales and downloads—iTunes downloads. Those are covered between the writers and the producers.

However, the wrinkle is that when broadcasters purchase a television licence, they're acquiring every right, including iTunes downloads. So they're paying the producers, let's say, \$500,000 per episode, and that will cover all rights. That revenue flow stops there. There's no money to the producer. There's no money to the writers. There's no money to the actors. There's no money to the directors. The revenue is cut off. That is an issue called “terms of trade”, and we're dealing with that at the CRTC. The chair has told the broadcasters that they're not to apply for licence renewal next year unless they have draft terms of trade agreements in place with independent producers.

• (1140)

Mr. Scott Simms: You're confident that this is going to work itself out in a way that will be satisfactory to you?

Ms. Maureen Parker: In this particular issue, we certainly expect that the broadcasters will have to make fair deals with the producers. Then it's up to us to ensure that money flows back to creators.

The Chair: We now move on to Madame Lavallée, please.

[Translation]

Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ): Thank you very much, everyone, for being here today. I'm going to start by putting a question to the Writers Guild of Canada. It's not for lack of interest in the library, on the contrary, but I only have five minutes, and I'm going to try to see what I can do.

You at the Writers Guild of Canada have a talent for raising major problems, among other things, when you talk about having all the funds necessary for production; about ensuring that Canadians retain ownership of broadcasting and telecommunications businesses; about amending the Copyright Act, and the fact that you suggest there be contributions by the ISPs. I assume that's the FAIs in French, the fournisseurs d'accès à Internet.

I don't know which issues to start with, but I'm first going to talk about Google. Ms. Ashton, you said that what Google was doing was very good for people who used it as amateurs, if I may put it that way. Despite all the excellent work that represents, the fact remains that the money won't go to professional artists, that is to say to the people who live from their art or who are trying to live from it. I don't know whether the parallel I'm going to draw is a good one; you'll tell me. Thirty or 40 years ago—I'm not as old as that—some artists were invited to appear on stage and were told that, since they were going to become well known, there was no need to pay them. I've heard that so often it's hopeless. I don't think there's any difference between that physical stage I'm talking about and Google. So I want to know what you think of that.

[English]

Ms. Maureen Parker: Just to clarify the question, is it whether the same rules the performance artists have apply? Is that the question?

[Translation]

Mrs. Carole Lavallée: I'd like to hear your comments on the fact that Google is distributing a lot of Canadian and Quebec content but that it's amateur content, if I can put it that way. Furthermore, professionals can't use it as a real stage because they have to find financing and earn income from their work.

[English]

Ms. Maureen Parker: It's absolutely two different forms of content, Madame Lavallée. You're absolutely right.

What we're talking about is content created by professionals. These are not kids creating in their bedrooms or downstairs. That definitely has a place, and it's entertainment. But what we're talking about are professionally trained artists. They are the people who have chosen to do this as a career, and the content they create is also not being compensated for.

When you listen to people like Jacob Glick talk about the overabundance of content, they're not talking about professionally produced content; they're talking about amateur content. That's fair. As we say, it has a place, but it's not the same thing. Yes, there are certainly Canadians who are being highlighted, such as Justin Bieber, as Kelly Lynne was mentioning. Their success does happen, but it's extraordinarily rare. He was an amateur artist. But he was discovered by another professional, by the way, who actually assisted and mentored him.

It has its place. Google is a wonderful tool, but it's not the same as providing Canadian content through what we call affiliated media broadcasters—that would be CTV.ca and so on—and ensuring that there's professionally produced content available for Canadians.

[*Translation*]

Mrs. Carole Lavallée: I'd like you to tell me how the ISPs, the Internet service providers, could make contributions to Canadian content.

• (1145)

[*English*]

Ms. Kelly Lynne Ashton: When we talk about an ISP levy, this would be under the Broadcasting Act. All carriers of the content should make an appropriate contribution to the creation of the content. That was our argument in front of the new media hearings. There are still outstanding issues on that in front of the Federal Court, so I'm really not in a position to talk about the issue of jurisdiction, but we still believe that ISPs should have an obligation to contribute to the content they carry.

The Chair: We're almost at five minutes.

I'm going to move on to Mr. Angus, please.

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

Both presentations have been fascinating.

Mr. Caron, I was very interested in what you mentioned about the digitizing project with the Inuit. I'm a big believer in digital archives. I worked with the Algonquin Nation in Quebec; we did a photo thing, and it was really empowering to have kids bring their grandparents' photos, and we started to identify people. All across Canada I see digitizing projects and museums and phenomenal collections, but what I don't see is an overarching narrative that makes it possible to access all these works with key search words. When a small museum hires three students for the summer at nine dollars a student and tells them to digitize a very crucial collection, you can't expect that they're necessarily going to put in the right names or the right key searches.

How do we ensure that in this immense project of collective digitization of history that's going on, there is some way we can have an overarching narrative for us as a nation?

Mr. Daniel J. Caron: We have just started with associations of librarians and archivists across the country. They are national, provincial, and territorial associations. We met once on the topic of developing a common trusted digital repository and working together to get a better understanding of what's being digitized where, so as not to duplicate.

We're finding there is a lot going on everywhere in the country. For example, the University of Toronto has a project of 20,000 francophone books that we just found out about. We need to grab this information and develop a collective catalogue. That's what we will do, and that's what we're starting to do collectively.

There will be meetings in June in Calgary with the Canadian Library Association and the Association of Canadian Archivists. Those are the discussions we are entertaining currently through these associations and the various groups we have.

Mr. Charlie Angus: Thank you.

I'm going to make a transition to YouTube. We always have this discussion about YouTube. My kids never watch TV. The TV just sits there. The only time they watch TV is when they buy a DVD, and they buy a DVD because they saw something on YouTube that a friend posted and told them to check out. Then they posted it on Facebook.

YouTube is where they communicate. We can call them pirates or we can call them whatever you want, but there's so much information. I would challenge the image that it's amateurish. People post on YouTube because they love it. We see people posting all kinds of historic footage that they recorded on their own. There are amazing historic archives on there.

The transition is in terms of how we value this. It seems to me that there's one model being put out: we'll just make it illegal to break a digital lock, and then everything will go back to the market that used to be. I'm sorry, but that market's dead. It's never coming back. We have to find a way to attach a monetizing value to the content that the kids are loving and creating and posting. That, to me, should be the question of where we're going. It's not about how we stop people from using it, but about how we monetize it.

You've raised the issue of collective licensing. You've raised the issue of a levy. How do you see copyright realistically moving forward in the 21st century?

Ms. Maureen Parker: Well, we like to dream. First of all, we do need copyright to move forward, period. Let's get it moving. If there's one message, it's that we really need a new copyright bill. We need to ratify and implement the WIPO treaties.

I agree with what you're saying about digital locks, but it's tricky. There has to be some measure of control, or the people who have put up the money and financed the productions will not be able to recoup their investment. This has to be a business. Just because it's cultural doesn't mean that it doesn't make money and it's not a business—

• (1150)

Mr. Charlie Angus: I'm sorry to interrupt, but I want to make sure I'm very clear. What I said is that the model suggests that if we just put a digital lock on the content, the market will come back; I'm saying that it's not about using digital locks or not using digital locks, but is that sufficient?

Ms. Maureen Parker: No, it's not. What you said was very true, Charlie. We did say that, I believe, as well. Our members want their works to be exploited in all these various forms.

We're not trying to roll back the clock. We know that this is the future and we're excited about that, because it gives us new means of distributing our work. In fact, what we were talking about earlier is, yes, sometimes professional content does appear on YouTube because we can't yet figure out how to distribute all this work. But when it does get monetized, that's when it moves into a different realm and it becomes part of these affiliated broadcaster sites, etc. It's a good launching pad and it does have good content. I'm just saying there is a different level when you're producing professional audio-visual content.

So in terms of collective licensing, absolutely that's where we have to be, because there are going to be various uses that will fall outside the domain of our collective bargaining agreement, and we have to have a collective licensing regime imposed, something along the lines of a private copy model. We can work with you to do that.

Lastly, before you go down that road as well, in the audio-visual sector—I know we're considering it for music and the iPod—we need to address who is the author of the audio-visual work. We have not yet done that. The act is silent on that. We have already done some work with the other arts groups, and we have consensus between the creative community that writers and directors are authors of the audio-visual work.

We're trying to work and we're trying to move this forward behind the scenes, but we need to do a few things, and it all starts with amending the Copyright Act.

The Chair: Thank you.

Next we have Mr. Del Mastro, please.

Mr. Dean Del Mastro: Thank you, Mr. Chairman.

I have more of a statement first, to you, Mr. Caron.

First of all, it has been an outstanding presentation. I really quite enjoyed it. I agree with what you're saying. The library wouldn't function if there were no index cards at the front that told you how to get to things. I think you've taken a sound approach to digitizing things, and I do think you've also correctly pointed the committee to an area where we might be concerned—that is, on preservation, not just putting things online but adequate preservation. So I want to thank you for that. I really think you're on the right track, and I just want to make that clear and thank you for your presentation.

Ms. Parker and Ms. Ashton, I want to pick up on where Charlie was a minute ago. I am somewhat concerned by some of the statements, because I'm always afraid that you're looking backward as opposed to forward. This study is very much about looking forward and saying, how do we leverage all these tools, this

emerging platform, to really elevate Canadian artists, writers, and producers? How do we take advantage of these platforms?

I really think Charlie is bang on. It may be amateurish, some of the stuff on YouTube, but people love it, and they love it more than some of the professional shows that we're producing. They're really into it.

I'd also argue that there are more big hits being produced from things that might be seen as amateurish than there are coming from the conventional formats lately.

I remember, for example, when *American Idol* started up, the conventional music industry was saying "It's awful. Look at this platform. It's a joke." But that platform has spun out stars such as Kelly Clarkson and Carrie Underwood. Big stars have come out of *American Idol*. These were amateurs. These were people who, before that, were bussing tables and stuff, but they had skills. Maybe they would have never been discovered if there wasn't an opportunity for them to put themselves out there. YouTube is that opportunity. It's the opportunity for everybody to broadcast themselves.

But I think you're adequately putting a case forward, which is, how do we monetize these things? How do we make sure there is value coming back to the writers?

That's something that this committee needs to get its head around. I think it's something that the Writers Guild needs to get its head around as well, and frankly, the ISPs and everybody else, the actual producers of content. They all need to figure out this new emerging platform.

I think things are happening. They're happening very quickly. I'm just concerned that you might be looking backward a little bit.

Can you address that?

• (1155)

Ms. Maureen Parker: I understand your concern. As Kelly Lynne said, however, 99% of viewing is still television content. We're quoting a Nielsen study that came out last week. That's fact.

Let me clarify that.

Mr. Dean Del Mastro: May I say something very quickly?

Ms. Maureen Parker: Yes.

Mr. Dean Del Mastro: I'll tell you what I see, and my oldest brother is the best example of this I know. He'll have a television on and he's also on his computer. Are the shows on? Yes. What's he doing, though? He's online at the same time.

Ms. Maureen Parker: Absolutely.

Mr. Dean Del Mastro: My wife very rarely watches a show at a broadcast time. She watches it when it fits into her schedule or she watches it online.

Ms. Maureen Parker: That's the point I'm trying to make. It's called "television content", but we consume it very differently now. You store it on your PVR, your personal video recorder, you may stream it to your laptop, you watch it in different forms, but it's still television content because that's its initial distribution. But we also have new content, new digital content, and as Kelly Lynne was saying, the Canada Media Fund has now addressed that. There's going to be an experimental stream and those are things like webisodes and mobisodes and our members are also doing that. As I mentioned in my presentation, we even have members doing a Twitter soap opera. So we are at the forefront of this. This is what screenwriters do because they are the content creators.

We're not saying that YouTube does not have a very valuable role. What we're looking for is a diversity of voices. We use YouTube and professionals use it too in order to get that initial distribution. We have a series on the west coast that was initially launched on YouTube and then it got a broadcaster deal. So it can be used in all these different forms.

We are decidedly not looking back. In fact, I've just hired someone this week as a digital organizer. We're embracing this new world. We feel there will be a lot of freedom under it and that writers can tell the stories they want.

We just want to ensure there's enough money in the system to make these shows and that Canadians can find them, but that's a different discussion.

The Chair: Thank you.

We've got time, so we're going to do one more round of four minutes each.

I've got Mr. Rodriguez, then Madame Lavallée, and then—

A voice: Monsieur Pomerleau.

The Chair: Okay.

Mr. Rodriguez first.

[*Translation*]

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

Where do we stand relative to other industrialized countries with regard to the digitization of our documents?

Mr. Daniel J. Caron: That's a question I wouldn't dare answer. We're quite advanced. We at Library and Archives Canada have approximately 20 million digitized items. That's virtually equalled. Around the world, a lot of efforts are being made and many documents are being prepared on strategies, but when you scratch the surface a little, you see that not that much digitization is actually being done. You have to be careful. Here a strategy is emerging across the country. We're positioning ourselves quite well.

Mr. Pablo Rodriguez: Over time, have a lot of documents been lost because we were unable to digitize them?

Mr. Daniel J. Caron: No. The analog documents we have are well preserved. We have excellent preservation conditions. There is a preservation centre in Gatineau. There are such centres virtually everywhere across the country. We recently acquired a special building to preserve what we call nitrate films. To date, we haven't had to use digitization to preserve things that would otherwise have disappeared.

Mr. Pablo Rodriguez: So your success rate is nearly 100%?

Mr. Daniel J. Caron: In what area?

Mr. Pablo Rodriguez: In preservation.

● (1200)

Mr. Daniel J. Caron: Yes, it's nearly 100%, although there are always bits that disappear.

Mr. Pablo Rodriguez: You talked about the over-abundance of information. I've always wondered how that's managed. In fact, too much information is like not enough information. If you can't find the information, there's not much point in having it.

Mr. Daniel J. Caron: I'm pleased you asked me the question. That's one of our challenges. We work upstream. Our role is to ensure that our heritage will be there in 5, 10, 20, 50 years. Our archivists, our librarians are dealing with this new complexity. It's related to the fact that an enormous quantity of information is registered. We've always produced a lot of information, but now everything that's being done and everything that's being said is recorded. So we have to do a sort, for example, for what we find on YouTube. We have to determine what has value for the future. We have experts who are looking at this, obviously, but it is nevertheless more complex than it used to be. So we have to create new policies so that we can select what will be important and organize it so that it can be found.

Mr. Pablo Rodriguez: Thank you.

Ms. Parker, I'm going to finish with you. I have only one minute left. You talked about taxing the ISPs. Can you tell us more about that. How would that be done?

[*English*]

Ms. Maureen Parker: We're actually talking about an ISP levy with respect to the CRTC's jurisdiction. We're talking about imposing a levy, as well, in terms of distribution to compensate creators for things like illegal file-sharing. It's kind of a two-part solution.

Kelly Lynne, would you like to...?

[*Translation*]

Mr. Pablo Rodriguez: Is that like what the writers and composers suggested, a levy of two or three dollars per user per month, something like that?

[English]

Ms. Maureen Parker: We share an idea with the Songwriters Association. We're probably not the same in terms of an amount or a figure. And again, their levy was only going to cover music. We're looking at a more comprehensive idea that will cover audio-visual completely. We haven't put a figure on it, because we're not there yet, but that's a road we have to investigate.

Mr. Pablo Rodriguez: It's the same principle.

Ms. Maureen Parker: It's a similar principle in terms of compensation for artists for uses that are not permitted under the Copyright Act. First we need to amend the Copyright Act to allow those permitted uses. Then we need to figure out a way to compensate artists. A collective licensing regime is what we're proposing.

The Chair: We have to move on.

We'll go to Mr. Pomerleau, please.

[Translation]

Mr. Roger Pomerleau (Drummond, BQ): Thank you, Mr. Chairman.

Thank you all for coming to meet with us today.

My question is for you, Mr. Caron. I am taking up an argument of my colleague's. You're the first witness who has told us we have too much information. That's what I've been thinking for a very long time. We politicians are faced with this fact every day. I get the very distinct impression that people are losing interest in politics quite simply because there's so much political information that they can no longer analyze it, absorb it or understand it. I very much understand people who are in that situation.

With regard to digitization, what are you trying to do to provide an analytical grid? Exactly what are you doing, or what are you thinking of doing?

Mr. Daniel J. Caron: There are two aspects. The first concerns acquisition. It's not simply a matter of digitization, but also of acquisition. We're trying to establish new criteria to ensure we retain only information that, over time, is relevant for Canadians. We'll probably be more selective and not simply absorb everything that's being produced. That's our first job. We're doing that across Canada with our colleagues at the country's archives and libraries. This is a new model, a new approach, which should normally identify more information that will be preserved.

Digitization is also an interesting point. We believe we must digitize in a surgical manner. In other words, we have to choose. Not everything necessarily has the same value or the same level of interest. So we're trying to develop approaches that will enable us to see what is most interesting, what is most in demand. We mustn't simply digitize everything we have in our vaults. A large portion of all that would be of no interest. We have to be rational when we select what will be digitized.

Mr. Roger Pomerleau: Do you have the financial means to do all that on time?

Mr. Daniel J. Caron: To date, we've had very good support. We are getting in all in shape. In any case, as I mentioned earlier, it will be a collaborative effort, and we'll be doing it with colleagues. With

regard with what we're doing now, the most important thing will be the digital preservation issue. That issue will eventually have to be resolved. We're working on that, but it will probably require an effort.

• (1205)

Mr. Roger Pomerleau: You said that, in a digital environment, everything is saved yet little is preserved. Could you explain what you meant?

Mr. Daniel J. Caron: When you save something on your computer, it's saved somewhere, but not necessarily preserved and organized. You don't necessarily ensure the information will be transferred when the next version of the software appears. If, for example, you go back to your old computer, which is in your basement, you may find files that you won't even be able to open. You've saved them, but they haven't been preserved. That means they aren't in a trusted digital repository that guarantees you'll be able to read them in 10 or 20 years. That's our challenge, and it's an enormous one.

Mr. Roger Pomerleau: That's all, thank you.

[English]

The Chair: Thank you very much.

The last question is for Mr. Uppal, please.

Mr. Tim Uppal (Edmonton—Sherwood Park, CPC): Thank you, Mr. Chair.

I have questions for Ms. Parker.

First of all, I agree with you that artists need to be paid. They need to be compensated for their work. You talked about a comprehensive ISP levy encompassing audio-visual and other things.

My concern is about the consumer. This is another idea to go into the consumer's pocket. At some point we're going to start putting too much pressure on the consumer. Your idea of an ISP levy would not be user-pay; it would apply to anybody using the Internet, possibly for education or something else.

Are you concerned that we're off-loading too much onto the consumer?

Ms. Maureen Parker: Your question is twofold. It wouldn't necessarily be a levy on everyone. We're able to determine that those people who are using higher speeds and have greater broadband access are downloading files. We can see that's currently infringing on copyright, and artists are not compensated for it. So there is a way to see that this is a targeted segment of the population. That's my point.

I think your other point was this will be unpopular with consumers. It may be, but we don't intend to make it unpopular with consumers. We want to get a very clear message out to consumers and our audiences that the creative class cannot survive without compensation. I live on a street where half of my neighbours are artists. They're musicians and actors. They contribute to society. They have kids, go to school, go to church, and pay their taxes. They deserve to earn a living too. If we want to live in a country that supports a creative class, we have to figure out how to monetize those illegal uses.

So we're not trying to stop the train; we're not trying to roll back or look at the past. We're trying to move forward in a way that we can retain our artists and ensure that they're properly compensated.

Mr. Tim Uppal: I agree with you that we need to compensate them. We just need a fair balance between compensating them and making sure we're not putting the Internet and other things out of reach for some people.

Ms. Maureen Parker: Absolutely.

Mr. Tim Uppal: My colleague has a quick question.

[Translation]

Mr. Royal Galipeau: My question is for Mr. Caron.

First of all, thank you for your presentation.

Since you're talking about preservation, I have a very basic question concerning LAC, which is located at 395 Wellington Street. It's been a while since I read any news in the papers about the damage caused to our heritage by sprinklers. Has that problem been solved?

Mr. Daniel J. Caron: I knock on wood and cross my fingers. For the moment, it's solved, yes. In fact, we worked very hard with the Department of Public Works. The situation will further improve because we received funding to expand the preservation centre in Gatineau. It will be a building with high-density shelving. We'll be able to remove from high-risk areas all documents and books that could be damaged in order to keep them safe. We're—

Mr. Royal Galipeau: Are you telling me that the condition of the site at 395 Wellington Street can't be remedied?

Mr. Daniel J. Caron: No, the 395 Wellington Street site simply isn't a preservation location. It's a consultation location, a reference location.

• (1210)

Mr. Royal Galipeau: With regard to the recurring flooding problems, has the plumbing been repaired?

Mr. Daniel J. Caron: In fact, the problems we had have been solved, but I wouldn't be able to provide any major details on the subject. I'm not a building experts from the Department of Public Works. For the moment, there's been no damage.

Mr. Royal Galipeau: Thank you.

Thank you, Mr. Chairman.

[English]

The Chair: Thank you very much for attending this morning. Those were great answers, and I'm quite pleased.

We'll recess for a few minutes.

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_____ (Pause) _____

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• (1215)

The Chair: Welcome back. We will have the second half of our meeting this morning.

Bear with me, I'm going to attempt some French this morning.

From the Association des producteurs de films et de télévision du Québec we have Claire Samson, president and chief executive officer, and Brigitte Doucet, deputy general director.

From the Entertainment Software Association of Canada we have Jason Kee, director of policy and legal affairs.

Ms. Samson, please try to stay within the ten minutes. I'll hold up a pencil or a pen when you're getting close.

[Translation]

Ms. Claire Samson (President and Chief Executive Officer, Association des producteurs de films et de télévision du Québec): Good afternoon.

The APFTQ has been in existence for more than 40 years now and represents more than 130 professional production companies working in both official languages in all audiovisual production sectors in Quebec. We want to thank the committee for the opportunity to express our digital vision today.

We are currently in a period of transition to the transmedia or multi-platform production and use of cultural content. This is a new transition period, we should say, since our industry has undergone a number of technical and technological changes since the CRTC's ancestor, the Canadian Broadcasting Commission, was founded in 1932. Perhaps we're tempted to think that these changes were minor in comparison with those we are currently facing, but that would be a mistake.

These changes have resulted in quite significant upheavals to justify numerous adjustments to the mandate of the CRTC, or that of its forerunners, and various legislative amendments. The governments of every period have managed to adjust to the new realities and to take steps to adjust the oversight of the broadcasting and telecommunications industries to those realities.

The government must revise certain policies and acts already in place without delay to adjust them to today's reality, while enabling those of tomorrow to find their place as well. We do not support the position that everything is new, that nothing is like the past and that no oversight is required, or the opposite view that all new platforms should be covered by the oversight currently in existence.

We submit to you that the solution lies more in a grey area between those two extremes. An initial observation in broadcasting and telecommunications is that there has been an explosion in the number of content dissemination channels and distribution channels. The entire existing production, dissemination, communication and distribution system is now being reproduced with certain adjustments in the virtual world of digital media. However, a number of acts and government policies no longer apply there.

In our view, we should start by adapting broadcasting and telecommunications legislation to this new reality. The starting point lies in their respective policies. I will spare you the examples, but you can refer to our document. The policies under the two acts can very well be updated and adapted to digital media. We think that most of the major principles they contain are directly applicable to digital. Of course, the scope of those two acts will have to be expanded to clearly cover all the ways of communicating content, both known and to be invented. As for the resulting regulatory oversight, it will also have to be as technologically neutral as possible, while complying with new established policies.

The second observation concerns convergence. Digitization and convergence accentuate the trend toward the concentration of media ownership rights. There are increasing interrelations and complementarity between the telecommunications, publication, broadcasting and Internet sectors, where a small number of economic players own vast families of businesses.

• (1220)

Ms. Brigitte Doucet (Deputy General Director, Association des producteurs de films et de télévision du Québec): In light of these findings, we believe that a comprehensive government strategy is needed to develop a Canadian communications policy that would embrace dissemination, distribution and communication for both conventional and digital media, and that would reflect the values and principles that must be complied with in Canada. All the acts concerned can then be amended to comply with this policy framework.

Now, allow us to present a number of specific positions on foreign ownership, Canadian content, the major ownership groups, copyright and financing.

With regard to foreign ownership, it should be noted that the first principle of the broadcasting policy is to ensure that the broadcasting system is owned by Canadians and under their responsibility. We are convinced that is the only way to ensure compliance with all the other principles set out in the broadcasting policy. The federal government wants to deregulate this aspect for telecommunications and satellites. From the outset, we want to support the position of a number of cultural industry stakeholders, that there is no evidence that the relaxing of foreign ownership rules advocated by the federal government is the best way to solve the perceived problem of excessively high rates for consumers or of the lack of capital to develop infrastructure. We believe the government should analyze the problem, as necessary, and assess all the means at its disposal to solve it, as well as their impact. In that way, it will be in a position to implement the best solution. We are not convinced there is a problem, but, if that is the case, we believe the solution lies more in the enforcement of policies and regulations than in greater access to foreign capital.

What we fear is much too broad control by foreign interests. For example, a foreign business operating a satellite with growing bandwidth needs could promote the dissemination of its foreign content to the detriment of Canadian content, which could make it very difficult, even impossible, for Canadians to access Canadian content. How then could the principle of the diversity of voices be complied with.

Until the federal government has a clear and firm position that it will protect all Canadian cultural media from foreign control, we fear that what has happened in the case of Globalive will occur in the broadcasting field. The government should introduce policies, legislation and regulations that are solid and appropriate. It must ensure that the requirements arising from the Canadian Broadcasting Policy are equitably complied with in every distribution channel. Without this political will, the danger we refer to will be very real.

Ms. Claire Samson: As for Canadian content, we firmly believe that the new Canadian communications policy, including communication concerning digital media, will have to provide, in particular, for regulations that afford a framework for the supply of cultural content through digital media. Today, the CRTC has preferred not to regulate in this field in order to monitor developments—the entire Internet. We think it is time to do so, to ensure that there is Canadian cultural content and that it is accessible on all platforms.

This new policy should also provide that the obligation to contribute to the presentation of Canadian content applies to new cultural content and service providers offering access to that content through digital media. In fact, the majority of principles set out in the Canadian Broadcasting Policy should apply comprehensively to communication involving all media, including digital media. However, the resulting regulation should be adapted to the reality of new dissemination and distribution channels. It could take the form of sufficiently appealing incentives to attract providers and ensure that the interests of all stakeholders in the system are addressed.

With regard to large ownership groups, the APFTQ contends that the new broadcasting context increasingly calls for regulation that can guarantee that the major ownership groups do not conduct themselves in such a way as to jeopardize the existence of the conditions necessary for the diversity of voices. The principle of the diversity of voices is protected under the Canadian Broadcasting Policy. Policies must aim both to limit the rate of increase in ownership concentration and to frame the practices of those groups by putting in place guidelines that guarantee a genuine diversity of voices. For more details, we can provide you with a copy of the brief that we filed with the CRTC specifically on this subject.

• (1225)

Ms. Brigitte Doucet: With regard to copyright, we note that a brief was submitted to the federal government during the last consultations. It can be provided to you as necessary. What we are presenting now is a summary of certain aspects addressed in that brief.

With regard to piracy and protective measures, I will briefly say that, in representing all producers in Quebec and Canada in music and the audiovisual field, we filed an application for an injunction against a Quebec website that was permitting illegal file sharing. The Superior Court rendered a judgment and ordered that the site be shut down. One week later, the site was back on line, but hosted outside Canada. We continued our efforts for a year and a half before we came to the conclusion that it was impossible to fight. They had chosen a country that did not give us access to the identities of the persons responsible for operating the site. We thought it was the same people. Experience has shown us that it is very difficult to achieve a result against mass piracy. In our view, the persons responsible for this kind of website are clearly acting illegally. However, it appears that's not so clear in the act.

To solve this problem, we suggested ensuring that there is a clear statement that these providers of content retrieval tools are acting illegally and that, for those who choose to protect their content, the way of circumventing content should be made illegal.

We're also talking about the responsibility of intermediaries, but I won't go into the details. We'll come back to that in greater detail during the question period, if necessary.

With regard to ownership of copyright in an audiovisual work, we agree with other stakeholders that the act is silent on this point. You have to wait until the product is finally created in order to determine, through the courts, what creative contribution determines who holds copyright. To date, the case law has granted copyright to producers, screenwriters and directors, but it is never clear, never certain. There are types of production where there is no script. There are also types of production where the director merely broadcasts. The solution we propose in order to reach a permanent resolution of this situation and to simplify the release of copyright—a matter of greater importance with regard to digital—is to make provision for a scheme of exemptions for the employer, as is the case under the Copyright Act. In the context of people's jobs, when something is created, the employer is the first holder of copyright to succeed in exploiting it. In our view, the producer of audiovisual content, the only person who is there from start to finish and who hires people in turn and as necessary, should be granted the same kind of exemption and be the first owner of copyright.

Ms. Claire Samson: In closing, I'll talk about financing. The creation of the Canada Media Fund has shaken up the established order. From now on, not only will the fund finance the production of original television content, but that content will also have to include one or more digital media components.

We understand the government's wish to promote research and development in both technology and viable business models. Our traditional Canadian content will have additional distribution channels. The only minor point that has been forgotten in the process is the cost of these new requirements. Television as we know it will thus be impoverished in favour of new media. We think it would have been interesting and appropriate to enable Internet and new platform providers to contribute to the creation of a new fund to finance productions intended for the new platforms. We believe this is a missed opportunity.

In conclusion, we definitely would not want to see the political, legislative and regulatory frameworks that have enabled the cultural industry to grow abolished. Let's adjust them, as we have always managed to do in the past, in order to foster and promote Canadian cultural content on all platforms.

Thank you.

• (1230)

[English]

The Chair: Thank you.

Mr. Kee, please.

Mr. Jason Kee (Director of Policy and Legal Affairs, Entertainment Software Association of Canada): Thank you, Mr. Chair.

My name is Jason Kee. I'm director of policy and legal affairs with the Entertainment Software Association of Canada.

The ESAC is the industry association representing companies in Canada that develop, publish, and distribute video and computer games for video game consoles, handheld devices, personal computers, and the Internet. Our members include Canada's leading video game companies and collectively accounted for more than 90% of the \$2 billion in retail sales of entertainment software and hardware in Canada in 2009, and billions more in export sales worldwide.

We thank the committee for the opportunity to present the views of the ESAC on the challenges and opportunities of digital media.

First I'd like to give you a few quick facts about the Canadian video game industry.

Canada is rapidly establishing itself as a world leader in the global game industry and is currently ranked third in the world in game production, after the U.S. and Japan. Unlike many other Canadian creative sectors, we are a net exporter of creative product, and over half of Canadian video game companies report relying on foreign sales for 90% to 100% of their revenues.

The Canadian industry is estimated to generate \$3.5 billion in revenue annually and indirectly employs over 14,000 people in highly skilled, high-paying jobs across a variety of disciplines, including programming, art, animation, visual effects, game design, and production. Our industry continues to experience explosive growth. And despite the economic downturn, job growth has remained at the 30% mark over the past few years. This makes Canada the fastest-growing game development location in the western world.

While this is a major achievement, we cannot afford to remain complacent. We are currently in the midst of a profound transformation, brought about by the development and adoption of digital technologies, which is affecting the digital industry, such as the games industry, as much as more conventional industries. The issues, challenges, and opportunities arising from these changes are many, and they must be considered holistically with a view to their overall impacts on all sectors. Only a comprehensive approach, one that recognizes the interrelationships and linkages between different segments of the digital ecosystem and examines issues in this context, will permit us to develop effective solutions.

We strongly support the development and implementation of a comprehensive national digital strategy. Such a strategy must be highly ambitious and long-term, with a view to creating sustainable next-generation jobs and securing Canada's position as a world leader in the digital economy. In order to accomplish this, the digital strategy must include a comprehensive plan to support the production and distribution of content and the growth of robust domestic creative and digital media industries.

Content and technology exist in a symbiotic relationship. The development of new digital products, services, and distribution methods, enabled by a vibrant ecosystem of business models, will foster Canadian creative industries, generate innovation and technology in communications, and drive investment, economic growth, and job creation.

In our recently released paper entitled "Game On, Canada! Playing to win in the digital economy", we call for a comprehensive strategy that positions content industries at the heart of the digital economy. The paper provides ten concrete recommendations on a range of topics that are critical to the ongoing success of the domestic video game industry and that will ensure Canadian competitiveness in digital sectors.

We have circulated a copy of the paper to the committee. Many of the issues and recommendations have already been raised by a number of witnesses, particularly the Canadian Interactive Alliance. Accordingly, we will just touch on a few, which we would be happy to expand on if you have any questions.

First, we must adopt a plan to develop and retain cutting-edge talent. We should actively promote education in traditional technology areas, such as mathematics and science, but also in creative disciplines, such as art, animation, visual effects, game design, and sound design, as well as training in the business of digital media.

Canada should also remove regulatory barriers to bring in foreign workers with the right education, training, and experience in the digital sectors. Expanding existing programs and adjusting cumbersome work permit and visa processes will not only address unmet domestic supply of skilled employees, but will also spur skills and knowledge transfer and further job creation and retention of high-value employees in Canada.

Reliable access to financing and capital is essential to the development of robust digital media industries. Due to the high levels of risk involved, venture capital and other forms of outside financing can be difficult for digital media creators and companies to

obtain. New sources of capital will incentivize investment by providing a means to hedge against risk, thereby reducing industry volatility and providing more stable and predictable growth for the sector.

New funds should be allocated for the experimental stream of the Canada Media Fund, potentially in addition to a new interactive digital media fund, not only to supply the domestic market for content, but also to support world-class Canadian content destined for international audiences.

- (1235)

We should also bolster existing provincial tax credit programs for digital media by introducing a new federal tax credit program.

Quebec's success in attracting major players, including Ubisoft, Electronic Arts, and Eidos, and more recently THQ and Warner Brothers Interactive, has been attributed to tax credit programs for digital media and very supportive government policies.

However, in the wake of this success, other jurisdictions have introduced their own tax credit programs. With those programs, coupled with the rising Canadian dollar, we are in danger of losing one of our most significant competitive advantages. The introduction of a robust federal digital media credit will ensure the competitiveness of the rapidly growing domestic industry and assist Canada in establishing and retaining a leading position in the digital economy.

Updating our intellectual property framework and in particular modernizing Canada's aging copyright regime for the digital age are crucial to the development of a successful digital media industry and a market-driven digital economy. Online piracy fundamentally undermines the integrity of the online marketplace by requiring creators and companies to compete against their own products. It siphons revenue that's necessary to recover the significant investments associated with digital media production, which in turn leads to business failures and lost jobs.

A robust copyright regime that provides effective protection for creative works in the digital environment benefits creators, businesses, and consumers alike by providing greater certainty in the digital marketplace and permitting market forces to operate properly. By protecting the considerable time, money, labour, and creativity that companies and creators invest in these new and innovative digital works and enabling creators and companies to determine the most appropriate means to distribute their works, a modern copyright regime will spur investment in the development of new digital products, services, and distribution methods and support a diverse range of new business models, fostering legitimate competition, greater consumer choice, and lower prices.

Canada must enact copyright reform that brings Canada into full compliance with the WIPO Internet treaties, including prohibition of the circumvention of technological protection measures that protect copyrighted works and the trafficking in circumvention devices and services.

In Canada, the liability of those who knowingly facilitate, encourage, or contribute to the infringement of copyrighted works is ambiguous and uncertain. This must clearly be established. We should introduce safe harbours for ISPs, but these harbours should be conditioned by effective cooperation with copyright owners in combating online infringements.

Further, ready cost-effective access to a first-class wire-line and wireless broadband infrastructure is crucial to the development of new products, services, and distribution methods in the online environment, which will in turn drive broadband adoption and lead to greater development. Access to advanced broadband infrastructure is indeed essential for online games and the digital delivery of games and is vital to the entertainment software industry's future growth. Canada should adopt a comprehensive plan to develop and deploy the next generation of broadband in the near term.

Finally, Canada must make a concerted effort to update our legal and regulatory regime for the digital economy and should review existing framework legislation and regulatory regimes, including the Broadcasting Act and the Telecommunications Act.

Furthermore, as part of this process, Canada should review and possibly reconsider the role and mandate of government institutions such as the Canadian Radio-television and Telecommunications Commission, as well as the Copyright Board, and consider the roles they should adequately play in the online environment.

I will happily answer any questions you may have.

The Chair: Thank you.

[*Translation*]

Mr. Royal Galipeau: Mr. Chairman, I have a point of order. Behind the opposition table, there are chairs reserved for opposition officials. Behind the government members' table, there are chairs reserved for officials who work for government members. However, there are two individuals seated behind me whom I do not recognize. Can we please invite them to sit down in the public gallery?

[*English*]

The Chair: Would you gentlemen please move into the public sector?

Thank you.

[*Translation*]

Mr. Royal Galipeau: Thank you, Mr. Chairman.

[*English*]

The Chair: You're welcome.

The first question will be from Ms. Dhalla, please.

Ms. Ruby Dhalla: Thank you very much to all of you for your very insightful presentations.

I think you talked about what we as a country need to move forward on to ensure that, as Mr. Kee described, we're at the forefront of a lot of these changes.

I want to first touch on something Mr. Kee spoke about towards the end of his presentation in regard to the CRTC and some of the regulatory and legislative changes that are required. You hinted at the fact that we need some changes to these regulatory bodies to ensure competitiveness in the future.

What are some of the suggestions you have garnered from stakeholders in regard to these changes? What would they look like? How would they assist in taking us forward to ensure we are competitive and we continue to have that explosive growth in the industry?

● (1240)

Mr. Jason Kee: With respect to the CRTC, it's an area we watch very closely. But our members, being video game companies, are neither broadcasters nor telecommunications providers, so they're not directly regulated, which is a position we quite like being in.

As an aside, I would point out that our industry and its explosive growth is an interesting example of a situation that has really grown up quite organically. You have had a number of supportive government policies to grow the industry, but we haven't required regulation to foster creation of Canadian content, because we are delivering Canadian content, frankly to global audiences.

As a consequence, at this juncture we wouldn't have any specific recommendations. I know that a lot of different ideas have been floated, both towards this committee and in general. I think it's mostly that we need to reconsider it. The CRTC itself has been calling for a re-examination of its mandate; it feels it doesn't have the tools to address a lot of the issues that are coming up in the online environment. Everyone is talking, of course, about convergence. A re-examination of both the CRTC and all the legislation it administers is, I think, worthwhile.

All of this being said, this is going to be a complicated endeavour. It's not going to be easily accomplished. You need to make sure that all of the stakeholders have a voice at the table and can express their views on what they feel the mandate should be, whether or not everything should be amalgamated into a single communications act, whether or not there's actually any point in doing so. I think all of these views need to be considered, but as part and parcel of an overall digital strategy.

This is part of that issue of taking a comprehensive approach whereby we have to consider how each individual piece affects the whole. While the video game sector may not be much affected, certainly wide swaths of the digital media sector would be, particularly in audio-visual. We have to be very careful and cognizant of those impacts.

Ms. Ruby Dhalla: Here is another question. I go into schools every week in my riding and talk to a lot of the young kids. Instead of doing their homework, from what I hear from the teachers and parents, they're all playing Nintendo or are on their television and playing all the games that have come out. From the days of Pac-Man and Atari, I think there has been a dramatic progression.

Do you think your association has an educational role to play in terms of reaching out to some of these young kids and that your association could perhaps play in educating parents as well with respect to some of the content that kids are seeing? How would we proceed with regulations? As you said, the industry isn't regulated; there aren't a lot of guidelines surrounding it. What role do you think you would play in that type of regulatory change?

Mr. Jason Kee: That's a great question. There is an element in our paper that I didn't have a chance to address, which was with respect to digital literacy. We are actively promoting digital literacy and encourage the government to actively promote digital literacy.

When we say "digital literacy"—the term itself is a little unclear—we take a very comprehensive view of it. It's not just teaching kids how to learn to use digital technologies and to navigate the online environment, but also to fully appreciate all the risks involved with the online environment and all the ancillary issues that come up. We're talking about issues such as cyber-bullying, online privacy and safety and security, issues of what's called cyber-ethics, which has to do with behaviour in the online environment. It also includes respect for intellectual property rights. Education has a key role to play there.

We have actually been very proactive on these particular issues. I should be clear: with respect to the CRTC we're not regulated; however, five provinces have enacted regulations about video game content. We work very closely with provincial governments with respect to administering these acts, to make sure that children are not getting access to inappropriate content. We have a rating system. Kids shouldn't be playing games that are rated "M", which means they are for those above the age of 17. We work with them on that. We work with such groups as the Media Awareness Network to promote awareness of the ratings as well as digital literacy.

Certainly I think there is a significant role for industry to play on the educational front as well as to work in coordination with not-for-profits such as Media Awareness Network or the Kids' Internet Safety Alliance, and in coordination with government to support that and push it out to the provinces, and frankly, also incorporate some of the information into school curricula, where kids can get access to it.

The Chair: Time's up.

We move on now to Madame Lavallée, please.

[*Translation*]

Mrs. Carole Lavallée: Thanks to everyone for your evidence. It is extremely interesting and there may be too much information for us to be able to absorb, as the librarian who appeared before you said.

I want to talk to the people from the Association des producteurs de films et de télévision. I want to talk to you about foreign ownership because you are one of the rare witnesses who have talked to us about it in such an explicit manner.

First, I want to tell you that the Quebec cultural world, to which I have spoken, is extremely troubled about a number of points. On the one hand, it is troubled because everyone increasingly sees that telecommunications and broadcasting are the same thing. We also see that telecommunications businesses, which used to have nothing

to do with broadcasting, now do. That's not just because of the convergence of cable companies, but also because, among other things, smart phones have become genuine broadcasters. Not only do people want to present television directly on them, as is currently being done in France, but also—you'll no doubt be talking to me about this—they're also producing "mobisodes", episodes for mobile telephones. That's broadcasting.

I have a nice advertisement here, that I like to show you, which shows that the person who controls access controls content and cultural content. This is an advertisement from Bell, which offers free Canadian cultural content apps. This one is in English. They provide free access to CBC Radio, but also to Disney, which is American, and Maclean's, which is a magazine. No doubt in Quebec, free app offers would be very different, but the fact nevertheless remains that we can clearly see that telecommunications and broadcasting are increasingly the same. By providing foreign ownership access to telecommunications businesses, it's as though we were giving it to broadcasting businesses, a sector where there is currently no regulation.

First, it seems clear that you are opposed to foreign ownership of telecommunications businesses, aren't you? Second, even if there were no foreign ownership issues, don't you think we would have to have this public debate? Third, do you agree with the CRTC, which wants to merge the Broadcasting and Telecommunications acts?

• (1245)

Ms. Claire Samson: First, we are indeed not in favour of greater access to Canadian ownership for foreign interests, whether it be in satellites or broadcasting. Today, those businesses are all vertically and horizontally integrated. It would be extremely difficult to limit that to satellites.

[*English*]

And if you allow me to give you an example of what scares us, eventually what if a Canadian satellite company were sold to the United States? We know that five years from now the Americans will be ready with 3-D television. Broadcasting 3-D television will require between three and five times *de bandes passantes, je ne sais pas comment ce qu'on dit ça en anglais*. The bandwidth capacity will require three to five times the capacity that television requires to broadcast today. If those satellites are not owned by Canadian interests, we may very well end up with no Canadian signals on the satellites, because there will be no more room, or at what cost? So that's one example.

[*Translation*]

Mrs. Carole Lavallée: Pardon me for interrupting you, but less than two hours ago, the Telesat officials were seated exactly in the same place as you. They assured us of the contrary, saying that they were only "pipes". They used the English word "pipes". Are you contradicting them?

Ms. Claire Samson: Yes, I'm contradicting them. There are limits to "pipes"; there are limits to this pipe. As in the example you cited concerning smart phones, the person who controls the pipe controls the content. We live in a quite developed country, which can decide that its culture will exist and that it will be on the airwaves, whether it be wireless, satellite or something else.

Mrs. Carole Lavallée: Do you agree with the CRTC...?

[English]

The Chair: Madame Lavallée, your time is up.

We have to move on now to Mr. Angus.

Mr. Charlie Angus: Thank you.

They can call it the pipes, they can call it whatever they want, but the reality is, when they put the satellite to a CBC deal, and there are 100 stations—and we have three English, two French, or two English, one French—and we're told those will get North American distribution, all my people travelling across the country can listen to the Playboy station any time they want, but they can't listen to any Canadian content.

Madame Samson, my concern is maintaining the rights with the cable giants, the television giants. They are becoming more and more vertically controlling and they've sent the message. Mr. Péladeau told us very clearly he was into online content, he was going to control it all, end of story.

How do you maintain the balance, protect the rights of the creators, when they're now wanting all the rights online as well?

• (1250)

Ms. Claire Samson: Mr. Péladeau's plan has one great quality, it's clear. When he says he wants it all, he wants it all. Of course it worries us, because we think—in particular in Quebec we think—that the success of Canadian production, Quebec production, and of Quebec culture resides in the fact that it's very diverse. There are 150 companies producing cultural content. Over the years it has had a great effect on challenging others, improving the quality of productions that we've been doing, which we can compare with the quality of production anywhere in the world. We're very proud of that, but it's the diversity that allowed us to become such a great market. So of course we want to preserve the diversity, holding the rights.

Of course I understand the companies. The unknown scares everybody. Independent producers cannot make business plans five years ahead, because we're financed project by project. Nobody knows what's going to happen or not happen five years from now. Broadcasters are experiencing this now: how will the commercial revenue evolve? They want to make sure they capture all of the potential money for a product. It's something we'll have to fight about with them. Of course, we think that in our industry the fact that there have been regulations and the CRTC and certainly over the last 40 years a political will to preserve diversity of expression.... I'm sorry to say to Mr. Péladeau that I don't think he will win that one all the way.

Mr. Charlie Angus: Thank you.

Mr. Kee, I did a press conference in December with U.K. rocker Billy Bragg. He was talking about the phenomenal change in the

music industry—all the record stores that used to be are gone. He said that as much as he'd like it, the Wii is not going back in the box, that kids today are spending their money in a wholly different, new market. And your market is the one that has cleaned up. I come from rock and roll. I would prefer them listening to, living, and dreaming rock and roll, but it's games. It's phenomenal.

We were hearing earlier, in one of our other hearings, that these worldwide centres for games are very much clustering in the traditional art centres of Canada—Montreal, Toronto, Vancouver—and that there seems to be a convergence between the rise of gaming culture and where we've been traditionally strong, in television, culture, film, etc. Can you explain why these centres are growing and are so strong?

Mr. Jason Kee: I think there are many different reasons for it, and the core one is the one you touched on. It's that these are the centres, the creative clusters, that have been creative clusters. They have a culture and a lifestyle that is extremely attractive to the creative classes, which are also the classes who make games. The only difference between a traditional artist and a game maker, particularly one who is working on the art side as opposed to the programming side, is that they work with digital media as opposed to more conventional media. So I think there's been a strong attraction.

I think it's also that the centres, particularly urban centres, are not only where artists tend to congregate but where digital technology is more readily available, although that's not always true. Many of the institutions tend to be centred around there. We've been producing a lot of fantastic graduates.

Something that's important to say is that we strongly believe, and clearly a lot of other witnesses are in agreement on this, that we should seriously consider introducing a federal digital media tax credit to help support and incentivize investment. All this being said, the provincial programs that have been in place—in Quebec, which pioneered it, and then Ontario, and B.C. is now talking about one—are programs that don't work unless you actually have the talent already there, unless the ground has already been fertilized. The digital tax credit is just providing the investment to help it grow. I think these are the centres where you have these creative classes grow.

• (1255)

The Chair: Mr. Angus, be very brief.

Mr. Charlie Angus: One of the concerns I've had involves the issue of safe harbours. It would certainly throw a huge wet blanket on development of cable and Internet if those safe harbours didn't exist.

You're saying your industry is willing to work with them if they are willing to work with the concerns of the industry. Can you explain that?

Mr. Jason Kee: Absolutely. Essentially, it's critical that ISPs have safe harbours, and when they are not promoting or actively inducing infringement that they have an opportunity to escape liability. They shouldn't be liable for merely acting as conduits.

We are particularly sensitive to this issue, because as much as we are producers of content, we're also platforms. Microsoft has Xbox LIVE Arcade, Sony has the PlayStation network and so forth, and we are the ones who would receive these notices in the event that infringing content was made available. With the rise of user-generated content and the way that we, as an industry, have worked to kind of actually incorporate this kind of user content itself into games, it makes us very alive to these issues.

This is why we're strongly in favour of a safe harbour, but one with the appropriate conditions on it, which would essentially actively provide appropriate incentives for the industries to come together and work together to develop solutions that benefit all stakeholders. Those are actually the kinds of solutions we've been seeking. Because of the state of copyright, we've been in a bit of a deadlock, and we're looking to try to actually break through that.

The Chair: Okay, and because we don't have time for another round, this will be the last question. Is it going to be split?

Okay. Ms. Grewal, go ahead first, please.

Mrs. Nina Grewal (Fleetwood—Port Kells, CPC): Mr. Chair, I'll be sharing my time with Mr. Galipeau.

I would like to thank the witnesses for coming, for their presentations, and their time.

Mr. Kee, can you please expand on how the entertainment software industry uses technological protection measures?

Mr. Jason Kee: Absolutely. First and foremost, they're used to protect our products against piracy, which is of course why they were initially designed. In fact because we've always been a digital industry, we've always dealt with the issue of piracy. It's just that the introduction of the Internet and the online marketplace have just exploded that to an exponential degree.

However, because we have longstanding experience with these measures, we actually have used them to implement all sorts of different models. Not only do they protect against piracy, they are actually used to differentiate our products. So for example it's TPMs that make a trial version of the software available to you. You can test it out and decide whether you actually like it, and then decide to purchase it later on.

TPMs are also used to implement parental controls. This goes to Ms. Dhalla's point with respect to making sure that children aren't getting access to inappropriate content. While all the consoles have parental controls built in, which permit parents to actually prevent their kids from accessing inappropriate content, it's the TPMs that actually permit this to happen.

Mrs. Nina Grewal: What benefits have come out of these protection measures?

Mr. Jason Kee: The TPMs are one of the cornerstones on which our industry is built. They've significantly contributed to the success of our industry, because they allow us to offer a wide array of differentiated products that benefit consumers. So if you want to get a trial version of a game, if you just want to rent a game for a short period of time, or if you want to buy it, they actually allow for all of these options.

The Chair: Mr. Galipeau, would you like to complete the time?

Mr. Royal Galipeau: Thank you very much, Mr. Chair.

[*Translation*]

My questions are first for the representatives of the Association des producteurs de films et de télévision du Québec, whom I very much thank for their presentation.

Before starting, I have a comment. Ms. Doucet referred to Quebec and Canada, as though the one excluded the other. Until further notice, the geography of those two is—

Ms. Brigitte Doucet: That was not my intention... I didn't notice.

Mr. Royal Galipeau: It would be more appropriate to say “in Quebec and elsewhere in Canada”.

Ms. Samson, in the APFTQ's view, does widespread access to the Internet promote or reduce the consumption of Canadian content?

•(1300)

Ms. Claire Samson: As content providers—and you talked about this a little earlier with the other group—we don't have a position of seeking to flee the reality or to go backwards. I think it's important that Canadian artists and producers be present in the new media since the attraction of our culture is at stake. We have to have the means to do that and to do it with quality.

What we fear about the Canada Media Fund is that we go the Internet route simply for the sake of going the Internet route; if the quality isn't there, the objective won't be achieved. Canadians won't access Canadian works if we can't establish quality criteria and very high quality standards, as they have been used to high-quality standards in television. We think we have to be there.

[*English*]

Mr. Royal Galipeau: Mr. Chairman, I very much appreciate the presentations that were made by our guests today.

The other questions that I was going to ask require too much detail for the time we have left. I would like to ask your permission to direct my questions to the clerk so that he could transmit them to the witnesses. They might wish to respond to them, let's say, within 30 days.

The Chair: That would be very good.

[*Translation*]

Mr. Royal Galipeau: Ms. Samson and Ms. Doucet, thank you very much.

[*English*]

Thank you very much, Mr. Kee.

The Chair: Go ahead, Ms. Dhalla.

Ms. Ruby Dhalla: I also have a request that could be directed through you, Mr. Chair.

With regard to the digital literacy program component that Mr. Lee had spoken about, if he could also forward some information to the committee, it would be helpful for us to use in our particular ridings as well.

The Chair: Okay. Thank you for that.

I appreciate the presentations today. Your answers were great. Thank you.

The meeting is adjourned.

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