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Chair

Mr. Gary Schellenberger

Standing Committee on Canadian Heritage

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•(1105)

[*English*]

The Chair (Mr. Gary Schellenberger (Perth—Wellington, CPC)): I want to welcome everyone to meeting number 17 of the Standing Committee on Canadian Heritage.

This morning we start off with committee business, and we'll go right to that first.

There is a notice of motion from Carole Lavallée. Madam Lavallée, would you like to speak to your motion?

[*Translation*]

Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ): I will introduce both motions at once, if I may. Then we can either vote on or discuss each one.

I want to start by giving the political context behind my motions. Industry Canada has a marquee tourism events program. Last year, Industry Canada announced that \$100 million would be allocated to various festivals throughout Canada and Quebec. Then there was a delay in announcing the recipients of the program funding, and we are not sure why. The announcements were made a month late.

The Francolies de Montréal festival was denied funding. The decision was hard to accept, especially since it came barely a month before the festival was scheduled to begin. Organizers were never given any indication that they would not be getting their \$1.5 million in funding. That is pretty significant. Then suddenly, after the funding was allocated, people learned there was a new criterion, one they had not heard of before. It was a post-game rule, if I can call it that. It had been decided that only two festivals per city would receive funding. That criterion did not appear anywhere. People found out about it after the announcements were made.

Furthermore, that criterion was not even respected, because Winnipeg received funding for three events. The city of Winnipeg received three grants for three different festivals. In the end, program officials did not take into account that Montreal is a city of festivals, one of its defining characteristics. We do not understand why such a criterion was applied to a grant program, especially since we know it was done after the fact.

In short, when I examined everything, I noticed that \$12 million of the \$100 million initially announced in 2009 had not been spent. Only \$88 million had been allocated. What happened to that \$12 million? Where did that money go? Why was it not allocated?

My first motion calls on the government to immediately reinstate funding to the two events, Francolies de Montréal and Pride

Toronto. My second motion calls on Industry Canada officials to explain why they cancelled funding for these two major festivals without warning. Who made the decision? When was it made? And why? That is what we want to know.

[*English*]

The Chair: Mr. Del Mastro, go ahead, please.

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

I've had the opportunity to review each of these motions. It would strike me that in order to deal with them concurrently you'd have to amend them such that they were a single motion, so perhaps Madam Lavallée might want to consider that, if that's what she wishes to do.

I find it remarkable, Mr. Chairman, that the member has brought forward motions demanding funding from a program that she voted against. In fact, there are many things with respect to culture that the Bloc has voted against with respect to funding, but this specific program they most certainly voted against and now they are here demanding funding from it.

Be that as it may, the member specifically mentions Les FrancoFolies de Montréal. In 2006-07 the festival received \$75,000. In 2007-08 the festival received \$75,000. And if we move forward to this year and next year, the festival receives \$175,000 each year, for a total of \$350,000. Now, that's a record commitment, a multi-year commitment made to Les FrancoFolies. The member is simply not being forthright in that regard. I believe she knows that, but I think she is in fact simply not stating that.

With respect to the Toronto pride festival, quite simply, Mr. Chair, last year was a year when I think an awful lot of festivals right across the country were concerned about advertising support and sponsorship dollars coming in to help provide festivals. This is a major economic driver in the city of Toronto. As such, it was awarded funding. But frankly, what we're seeing this year, and in fact even what we saw last year in large part, was that a lot of the sponsorship dollars in the city of Toronto in fact hung in. Now, there was some fall-off, but it wasn't nearly as bad as we thought it might be. And this year certainly—and we can talk to any number of advertisers in the city of Toronto or in the city of Montreal—what we would find is that the advertisers are back. Television stations are largely sold out. Radio stations are virtually sold out. Festivals are in fact finding funding.

We have to remember, Mr. Chair, that funding was put in place last year that had never existed before. This festivals program was a new program. And I once again remind you, Mr. Chair, that the member voted against it. Now, Liberal members across the way did not. They did not vote against the festivals program. I think they saw that money was invested into festivals and supporting festivals right across the country and in Quebec. In every region of the country the program worked to that effect.

This year what they've done is put a rule in place so that it's a little bit fairer, so that we can reach a little further with the money. We've suggested that no one city would receive more than two funding applications. Now, in major centres that money is likely to be in larger quantity. But there is an opportunity for festivals in other regions of the country, in other cities, to receive money from this program.

I would add that this program, which was a temporary stimulus measure, will end. This is a temporary program, so any of the groups that received funding from it need to be aware that next year this festivals program will not exist, because it is part of the stimulus program that—we've been very clear—was targeted, timely, and temporary. So it is our hope that all of the groups who have received funding from this have found strength in this program, and that it has sustained them through a difficult time. But ultimately, all of the festivals....

Mr. Chair, you have a great festival in your riding, the Stratford Festival. I know that it did receive some funding from this program, but it's a festival with a strong heritage and there is no question in my mind that the Stratford Festival will outlast the two of us. It's well appreciated and well attended.

● (1110)

When we look at all these things in their entirety, we see this is temporary funding that the member voted against. Les FrancoFolies is receiving more money this year than it's ever received. The member well knows that the Department of Canadian Heritage is at record funding in support of the arts right across the country.

Frankly, neither of these motions tells the whole story. In fact, they seek to mislead what the actual support of the government is in these areas, and I would suggest that both of them should be defeated.

I would also suggest to the member that if she wishes to put it as a single motion, that she amend one or the other by attaching one to the other if she would like to deal with it as a single motion.

The Chair: Thank you.

Mr. Angus, then Mr. Simms.

Mr. Charlie Angus (Timmins—James Bay, NDP): Thank you.

I support breaking it down into one motion.

I listened to my colleague from the Conservatives. I hear that line all the time in the dumbed-down talking notes in the House of Commons, that because you did not vote with the government you are bad. That works in question period. I don't think it has any credibility around this table.

Regardless of whether the Bloc supports the government or not, they are here, just as I am here, just as the Liberals are here, to

scrutinize decisions that are made. That is what the role of this committee is.

Concerning the idea of having a fair balance by having a limit of two festivals per community, that makes sense if you're dealing with communities of equal size across the country. The city of Toronto is the size of a number of provinces, and Montreal is as well. To say you're going to have only two festivals supported in a city like Toronto or Montreal is frankly absurd. It sounds like an ad hoc explanation, and we should hear from officials as to why they made that decision. That is a fair question to ask.

There are also questions that need to be asked because we know there's been a lot of controversy about the funding of Pride Week in Toronto. If my colleagues have ever been in Toronto in Pride Week they will know you can't drive anywhere. This is one of the biggest economic drivers in the city of Toronto. This is not just a festival like many other festivals. This is a massive coming together of people.

We noted that last year when the government supported the Pride Week festival many noxious statements were made by Conservative members regarding it. There were questions whether Madam Ablonczy was downsized from her portfolio for supporting Pride Week. A lot of people were left wondering why this government seemed to be so opposed to the Pride Week festival. Is it a social conservative agenda? Perhaps. Then we see this year the Pride Week was left out entirely. Those questions returned, and I think those are legitimate questions to ask.

So I would certainly support my colleague in her motion.

● (1115)

The Chair: Mr. Simms and then Mr. Del Mastro.

Mr. Scott Simms (Bonavista—Gander—Grand Falls—Windsor, Lib.): I'm going to repeat many of the things that Charlie brought up.

There are so many festivals across this country. If we are staring at what we consider to be a \$12 million void—meaning the money is there and not being taken advantage of—certainly there are festivals across this country that fall into the same boat. I'm very uncomfortable, at this stage, to single out two of them. For the sake of getting answers—just simply that, I just want to get the answers—if you single out two to reinstate the money, wait a minute.

If this comes from an issue of ideology, that's one thing. I have no problem with the Gay Pride festival or Les FrancoFolies. Fine. I've lived in Toronto. It's a fantastic celebration. However, I could be equally suspicious in saying maybe there is an ideological bent, a social conservative bent, but I could also say that places in Newfoundland and Labrador never got money because there were no Conservative seats in that province. I didn't say that; I just said it was a possibility. I'll leave it for you guys to decide.

An hon. member: We're working on it.

Mr. Scott Simms: You're working on it, okay. All right, let me know how it turns out.

The only thing is, I'm not quite sure at this stage. I would like to see an amendment to this that doesn't single out two festivals in particular in getting money or being reinstated. It's a little too definitive for me. It's a little too prescriptive, if that's the right word.

As Charlie mentioned, I would rather put the horse before the cart. Let's find out the process or let's have a discussion with someone. We generally know how it works, but I'd like to bore down to more details and I would like to see more. Instead of picking two festivals, why can't we say "various events" that were excluded in the latest round?

The Chair: Mr. Del Mastro.

Mr. Dean Del Mastro: Thank you.

Speaking to what Mr. Simms has just added, perhaps the best way to look at doing that would be to amend the second motion, to call officials.

But I would like to clarify a couple of things that were said. There is not \$12 million that is unallocated or unspent; all of the money from the program is allocated. Perhaps if officials came before the committee, they could adequately explain that, if there are concerns in that regard.

I want to address a number of the things that Mr. Angus said as well, dealing with, I suppose, what he described as an ideological opposition.

I would say a couple of things. If we were ideologically opposed to it, then so are other governments that never provided any money previously. It's unfair to single this government out and say, because money isn't provided this year, that they were ideologically opposed to it. But other governments never saw fit to provide that money either. I guess you could take that to the same conclusion, which I think would be entirely unfair.

Not all parties are unanimous on everything. I can tell you that I have, I think, at least four official parades in my riding, Mr. Chair. They're all huge events. Canada Day probably draws anywhere between 12,000 and 15,000, which in a community of my size is an awful lot of the general public; plus there are many people watching at home on community television. None of them receives a dime in federal money—not a dime.

To what Mr. Simms has indicated, that some of the ridings in Newfoundland and Labrador never received this money, I can tell you that my riding didn't qualify for any of this, because we didn't have any festivals that were deemed big enough to justify any of the money, and none of my parades got anything. So either I'm entirely ineffective, which I don't believe I am, or that's just the way the program worked, which we can discuss.

Certainly, if you want to bring officials forward to discuss the program and to talk about the manner in which the program was dealt with this year, I would support that. I have no problem with that at all, because I think that an exchange of information on this... Madam Lavallée would like to ask them about these specific programs and put questions about them. She could do that at that venue.

I think that's entirely more constructive than what we have before us right now. Some of the comments that have been made today are,

I think, entirely inaccurate, and I would love to give officials an opportunity to speak to them.

• (1120)

The Chair: Just before I go to Madam Lavallée, I'd like some clarification. I think we're talking about the marquee festivals fund. Was it \$100 million or was it \$50 million?

Mr. Dean Del Mastro: It was \$100 million over two years.

The Chair: So it was \$50 million a year.

Mr. Dean Del Mastro: May I clarify that?

The Chair: Yes, clarify that, and then we'll go to Madam Lavallée.

Mr. Dean Del Mastro: Thank you.

The last thing I want to add is specifically concerned with FrancoFolies. I want to quote what Laurent Saulnier, the vice-president of Les FrancoFolies de Montréal, said. He said: "the Harper government is the one that's been the most generous toward... festivals". Those are his own words. I would welcome officials to come before the committee to speak to that.

The Chair: Thank you.

Madam Lavallée.

[*Translation*]

Mrs. Carole Lavallée: I am also in favour of inviting representatives from the Francofolies de Montréal festival to appear before the committee.

Mr. Simms' amendment is an excellent idea. In the first motion, we could replace the names of the two festivals with the wording "various events".

Allow me to read the motion: "That, given the significance of these cultural events, the Standing Committee on Canadian Heritage condemns the harsh manner in which Industry Canada cancelled its financial assistance to various events, and the Committee recommends that the government reinstate funding to these events immediately."

I could have added "[...] given the \$12 million surplus". But since I do not want to complicate matters, we will stick with those two minor amendments to the first motion.

I would like to respond to what Mr. Del Mastro said earlier. He said it was not true that \$12 million had not been spent. Unfortunately, when I add \$48,600,886 and \$39,184,246, I get roughly \$87,800,000, in other words, approximately \$12 million was not spent. According to a departmental news release last year, there was indeed \$100 million in funding.

[*English*]

The Chair: Mr. Del Mastro.

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

I would encourage committee members, perhaps before they pass the motion, to hear from the officials, who will in fact indicate that the money has been allocated. As members know, money is spent in the various estimates that pass through the House. To look at any given estimate does not mean that you're looking at the entire envelope. In fact, in this case, I think you'll find that you're not. So before you pass such a motion condemning the government for not spending the money, I would think you might actually want to find out if it has or hasn't been spent. So it might be prudent to look at your second motion and change the two named events and call the officials before the committee as soon as you want, and ask them specific questions about this. Call the minister, if you want. Ask him specific questions about this to find out if the money has been allocated and why the changes were made. Then if you want to pass the first motion, it would seem to be entirely more well thought out, because you would be basing it on information that you have, rather than on things you can't possibly be certain of—because, I can tell you, they're simply not the case.

The Chair: Mr. Rodriguez, and then Mr. Angus.

[Translation]

Mr. Pablo Rodriguez (Honoré-Mercier, Lib.): I think we need to hear from the officials to explain the decision-making process, in particular. We want to know why they waited until the end to announce their decision in certain cases. I understand that the program is temporary and limited to two years. In the case of the Francolies de Montréal festival, for example, which was a success right off the bat, they submitted a report and organizers were congratulated on their work. But they did not receive word until 30 days before the event began, despite the fact that they have to negotiate with artists who come from all over, book indoor and outdoor venues, technical people and so forth. There is something odd about telling organizers they will not get the funding a month before the event is supposed to start, an event of this size, with all the people, logistics, contracts and so on.

Therefore we need to examine that aspect with the officials. Nothing should be taken for granted. I do not think organizers of the Francolies de Montréal festival took anything for granted. But they did have good reason to think that since everything was in order and since the event was a month away, they could keep moving forward. So they ended up having to make cuts at the last minute. Those questions should also be put to department officials.

• (1125)

[English]

The Chair: Mr. Angus.

Mr. Charlie Angus: Thank you.

The clock is ticking and we have witnesses. So I would like to ask my colleagues if we could do something simple, which is take the second motion and say that the Standing Committee on Canadian Heritage call for officials from Industry Canada to appear to explain the decision-making process for the funding.

That way we can get answers. It simplifies it. If we find those answers, as some members of some parties find, not to be sufficient, then we could come forward with a motion at a later date, either condemning the government, if someone wants to, or responding to

that. But I think at this point we need to move on. I think we're all walking around a circle here.

Let's just bring the officials in. Let's hear them. Then we can make our political decisions from that. That's what I'd like to recommend.

The Chair: Okay, do you agree?

Mrs. Carole Lavallée: I agree.

The Chair: You agree.

Do you move your amendment, Mr. Angus?

Mr. Charlie Angus: I so move.

An hon. member: I agree with it.

Mrs. Carole Lavallée: It's okay.

The Chair: Could you read that amendment again, please?

Mr. Charlie Angus: Yes. It's that the Standing Committee on Canadian Heritage call for officials from Industry Canada to explain the decision-making process for the funding of—whatever the name is of the program is—the marquee tourism events program.

The Chair: Okay.

[Translation]

Mrs. Carole Lavallée: Marquee tourism events.

[English]

The Chair: Okay.

Mr. Dean Del Mastro: Is that what we're going with?

I can support it.

The Chair: We'll vote on the amendment.

Mr. Rodriguez.

Mr. Pablo Rodriguez: Yes, I just want to make sure that we will vote on that and then postpone the voting on the other one. We'll see how it goes with the public servants, and if there's a need, then we'll bring back the other motion and vote on it.

Is that okay?

The Chair: Okay.

We're voting on Mr. Angus's amendment.

Mr. Dean Del Mastro: And the motion as amended? Can we do it all at once?

The Chair: No, let's do Mr. Angus's amendment first.

(Amendment agreed to)

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

The Chair: Now we'll move on and ask our witnesses if they could please take their places. We'll move out of our meeting on committee business.

• _____ (Pause) _____

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• (1130)

The Chair: I call the meeting back to order with my gavel.

Pursuant to Standing Order 108(2), we are studying the attempted takeover of Canadian film production and distribution firm, Lions Gate Entertainment Corporation.

We are a little behind schedule, so we'll go to about 12:20 for this session.

We have, from Icahn Associates Corp. and Affiliated Companies, Mr. Keith Schaitkin, associate general counsel. Mr. Schaitkin, please.

Mr. Keith Schaitkin (Associate General Counsel, Icahn Associates Corp. and Affiliated Companies): Good morning. My name is Keith Schaitkin and I am the deputy general counsel of Icahn Enterprises, which controls the Icahn group of companies that are involved in the Lions Gate transaction. I will call this group of companies the Icahn Group.

The Icahn Group is primarily engaged in the business of investing in securities under the direction of Mr. Carl Icahn, acting through his affiliated entities. Mr. Icahn is a value investor. His focus is on companies that are undervalued. Mr. Icahn commits long-term capital, discipline, and active investment influence to assist companies to realize value enhancement for the benefit of all of their shareholders.

The Icahn Group presently holds just under 19% of the outstanding common shares of Lions Gate. The Icahn Group began acquiring Lions Gate shares in 2006, believing that the shares were undervalued. The Icahn Group is offering to acquire up to all of the outstanding common shares of Lions Gate so that the Icahn Group would be in a position to change the Lions Gate board of directors, which could then address necessary changes in top management.

Mr. Icahn believes that Lions Gate should continue to focus on film distribution and on producing niche films and television programming, which Lions Gate has done very successfully, instead of shifting its focus to producing very costly, and therefore risky, Hollywood celebrity vehicles. Mr. Icahn is also concerned about Lions Gate management's acquisition strategy.

Lions Gate is attempting to do everything it can to stop the Icahn offer. For example, Lions Gate's board of directors instituted a shareholder rights plan, commonly known as a poison pill, that was designed to prevent the Icahn Group from acquiring 20% or more of Lions Gate's common shares. This poison pill was struck down by the British Columbia Securities Commission as being an impermissible defensive tactic and abusive of shareholder rights. On appeal, the British Columbia Court of Appeal upheld the decision of the British Columbia Securities Commission.

We understand the committee is holding these hearings, at least in part, to discuss the approval process under the Investment Canada Act relating to the Icahn Group's offer to purchase shares of Lions Gate. I don't intend to discuss this process today. The Investment Canada Act contemplates that the review process under the act be conducted confidentially. Section 36 of that act makes all information provided to the government by an applicant, such as the Icahn Group, subject to legal privilege. This confidentiality protection is particularly stringent in the case of reviews under the act that are reviews in progress, which is the case here.

We can understand why Parliament determined that the review process under the Investment Canada Act should be conducted

confidentially. There would be a strong disincentive for a foreign investor to invest in Canada if the investment process required the investor to publicly disclose commercially sensitive information and engage in an open discussion about its future business plans, as this would benefit competitors and could both compromise the investment and harm the company in which the investment is being made.

I do want to say that the Icahn Group respects Canada's cultural policies and has been engaged in the review process contemplated by the Investment Canada Act. It should also be noted that the Investment Canada Act permits the minister to approve an investment only if it has been determined that the investment is likely to be of net benefit to Canada, having regard to the factors set out in the legislation.

Accordingly, if the Minister of Canadian Heritage approves our investment, it would mean that our investment was determined to be of net benefit to Canada, taking into account all factors determined by Parliament to be relevant. That means that we would have agreed to cause Lions Gate to take actions for the benefit of Canada that exceed the aggregate benefits that Lions Gate currently provides to Canada.

That is as much as I can say at this time about our discussions with the Department of Canadian Heritage, given that the review process is ongoing and in light of the confidentiality provisions of the Investment Canada Act. However, we thought it might be helpful to your consideration of this matter to have some context relating to the nature of Lions Gate's Canadian presence. I raise this point because it appears from the discussion among members of this committee on May 11 that the decision to hold these hearings was taken at least in part because of the perception that Lions Gate has a very significant Canadian presence and for this reason is deserving of special consideration.

Lions Gate was at one time a company with significant Canadian ownership, studio facilities, management, and employees. However, this is no longer the case. Lions Gate retains its Canadian status under the Investment Canada Act only by virtue of the fact that two-thirds of the members of its board of directors are Canadian.

• (1135)

While Lions Gate is still incorporated in British Columbia, Lions Gate's public documents indicate that over time, Lions Gate's connection to Canada has diminished to the point that Lions Gate is not significantly different from any other non-Canadian Hollywood studio that undertakes film and television production in Canada from time to time.

In particular, it should be noted that Lions Gate is based in California, not Canada. In its 2009 annual report, Lions Gate's registered and principal office in Canada is identified as being at 1055 West Hastings Street, Suite 2200, in Vancouver, British Columbia. It should be noted that 1055 West Hastings Street, Suite 2200, is the address of Heenan Blaikie LLP, a law firm, so it is more a mail drop than a Canadian office. I should note that the information in the appendices to this statement that relate to Lions Gate are excerpts from Lions Gate's public documents.

Lions Gate's other principal office is identified as being at 2700 Colorado Avenue, Suite 200, Santa Monica, California. This is where Lions Gate conducts its actual business operations. Lions Gate's 2009 annual report indicates that Lions Gate occupies 125,000 square feet of space in the Santa Monica office. Lions Gate shares were delisted from the Toronto Stock Exchange in 2006, and less than 4% of Lions Gate's shareholders are currently Canadian. Lions Gate no longer owns or leases any film studios in Canada. Lions Gate decided not to renew its lease on its Burnaby facilities in 2005 and then sold all of its studios in Vancouver to a third party in 2006.

Lions Gate makes feature-length films and television programs in Canada; however, it does so by renting or leasing equipment and hiring staff on an as-needed basis, just as is done by any foreign film company that undertakes production in Canada.

Lions Gate does not appear to have any facilities or offices in Canada at all. The description of Lions Gate properties in its most recent annual report includes 10 properties in which Lions Gate conducts its operations. All of these are in the United States. It is therefore very doubtful that Lions Gate has any employees in Canada at all. Lions Gate is not managed by Canadians. None of the individuals identified on the Lions Gate website as being part of the Lions Gate management team appear to be Canadian. Lions Gate has been trying to even further minimize its connections to Canada. Lions Gate has acknowledged publicly that it has considered officially changing its jurisdiction of incorporation from British Columbia to the United States, recognizing among other things that the "overwhelming majority of its shareholders" are located in the United States.

Lions Gate also filed an application with the British Columbia Securities Commission to cease being a reporting issuer in Canada in April, 2009, so that it would no longer be subject to Canadian securities laws. Following opposition from Mr. Icahn's representatives, Lions Gate withdrew that application.

Lions Gate currently holds a majority interest in Maple Pictures, a Canadian film distributor. Lions Gate and Maple may say to you that the Icahn Group's proposed investment should not be permitted to occur because it is inconsistent with the Canadian government's film policy, which says that Canadian distributors must be Canadian-owned and controlled. In fact, we believe that the Icahn Group's investment would serve to enhance, not undermine, the ownership and management of Maple by Canadians.

Maple was actually created by Lions Gate in 2005 for the purpose of legally separating Lions Gate from its entire Canadian film distribution business. Lions Gate sold to Maple the entirety of its Canadian distribution operations and entered into a long-term distribution agreement with Maple to distribute Lions Gate's films in Canada. Lions Gate owned only a 10% share in Maple, with the remainder held by Canadian investors. This situation continued until mid-2007, when Maple undertook what appears to be an unplanned repurchase of shares held by a significant third-party Canadian investor. This share repurchase resulted in an increase in Lions Gate's share position in Maple.

● (1140)

Since it reacquired control of Maple in 2007, Lions Gate has disclosed as a material risk to its business the possibility that Lions Gate, and therefore Maple, may at any time lose its Canadian status. This risk is acknowledged by Lions Gate, no doubt in recognition of the fact that Lions Gate is overwhelmingly owned and located outside of Canada and has been pursuing significant potential acquisitions in the U.S. If Maple is determined to be non-Canadian, there could be material financial consequences for Lions Gate and third parties who use Maple as their distributor in Canada, including the requirement to repay tax credits and subsidies to the Canadian government.

In light of the risks of continued ownership of Maple by Lions Gate, the Icahn Group has publicly stated its view that it would be in the best interest of Maple, Lions Gate, and third parties for Maple to be returned to its original status as an independent Canadian film distributor. Lions Gate has made no public statements disagreeing with this position. If the Icahn Group acquires control of Lions Gate, it will seek to cause Lions Gate to divest its shares of Maple to one or more independent Canadian purchasers.

Lions Gate and Maple may also say to you that the Icahn Group's proposal that the shares of Maple be divested to Canadians will create instability that would negatively impact Maple's business. We do not believe that this would be the case. First, we know that Lions Gate and Maple can operate successfully under separate ownership, as they did between 2005 and 2007. Second, in terms of Maple's face to customers and stakeholders, it does not appear to be widely recognized that Maple is controlled by Lions Gate today. Maple currently markets itself on its website as an independent film distributor and does not appear to refer to the fact that it is controlled by Lions Gate.

In summary, based on Lions Gate's public disclosure, Lions Gate's presence in Canada may be summarized as follows: Lions Gate is incorporated in Canada, at least for the time being, but is less than 4% Canadian-owned and is managed and located outside of Canada. Lions Gate currently undertakes film and television production in Canada, but does so without Canadian-based operations, just like any foreign film producer. Lions Gate controls Maple, but Maple's ownership and governance by Canadians would be significantly enhanced if Lions Gate divested its shares of Maple to one or more independent Canadian purchasers, as the Icahn Group has proposed.

In closing, the Icahn Group respects Canada's cultural policies and the importance of supporting a vibrant Canadian cultural sector. We believe that our commitments to Canadian Heritage will be of net benefit to Canada.

Thank you.

The Chair: Thank you for that presentation.

The first question will be from Mr. Rodriguez, please.

[Translation]

Mr. Pablo Rodriguez: Thank you, Mr. Chair.

Good morning and welcome, Mr. Schaitkin.

Oddly enough, you seem to have spent more time trying to discredit Lionsgate than telling us why the takeover would be a good thing. You tried to crush Lionsgate's arguments. The way I see it, you were trying to tell us that because Lionsgate is not really a Canadian company, you can do what you want. Am I wrong?

•(1145)

[English]

Mr. Keith Schaitkin: I'm sorry, the volume clicked off at the end. Was it me?

In any event, I think what our plans are in terms of net benefit to Canada are under discussion with Canadian Heritage. Those are privileged discussions. I don't think it's an area that, as I understand it, is appropriate for me to get into and discuss.

Mr. Pablo Rodriguez: That's a general answer you can use with whatever question I ask, right? That's fine, but...is Lions Gate Canadian or not?

Mr. Keith Schaitkin: Lions Gate spends money making films in Canada. That's something we would continue to do.

Mr. Pablo Rodriguez: But is it a Canadian company or not?

Mr. Keith Schaitkin: It's incorporated in Canada. Do you mean as a jurisdictional matter, a legal matter?

Mr. Pablo Rodriguez: As you see it, is it subject to this law? Do we have to go through this filter because it's a Canadian company? You spent more time explaining why they're not a Canadian company and why they have addresses here and not there than you did explaining to us why it would be a good thing for them to be bought by you.

I need to know. Do you think they're a Canadian company? If so, we have to go to this special process whereby you have to convince the government that there's a net benefit for the country.

Mr. Keith Schaitkin: Look, we have been engaged in that process for months. We believe that the process applies. We have provided significant amounts of information to the minister and have had lots of conversations, and we have Canadian counsel working with us, so yes, we believe that your law applies and that the review process needs to be engaged in, and we're engaging in it.

Mr. Pablo Rodriguez: Okay, so if the law applies, there has to be a net benefit.

Mr. Keith Schaitkin: Correct.

Mr. Pablo Rodriguez: What is it?

Mr. Keith Schaitkin: As I say, I think the issues of net benefit to Canada are determined by the minister, as I understand it. As I understand it, it is not appropriate for me to discuss the specific benefits that would result from our purchase.

Mr. Pablo Rodriguez: Okay, but it's the core of the conversation, right? They're going to make their decision based on that. If you can't answer anything, why are you here?

Mr. Keith Schaitkin: I assumed that people invited me here to discuss Icahn—who we are, what we are.

Mr. Pablo Rodriguez: Okay, but the decision will be taken according to whether there's a net benefit for the country. That's the principle of the decision. It's in the law, so we have to be able to understand if there is one or not.

How much time do I have? It's two minutes. When there's one minute left, please tell me, and we'll give it to Ruby.

Mr. Keith Schaitkin: Ultimately, as you are well aware, because of the way the law works on this issue, the discussions are privileged discussions. There will be a net benefit to Canada. That decision will have to be made. In order for the transaction to be approved, the decision is made by the minister. I think that beyond that, those discussions are privileged by law, so I don't plan to really discuss that aspect.

The Chair: You have one minute.

Go ahead, Mr. Del Mastro, on a point of order.

Mr. Dean Del Mastro: Thank you.

Mr. Chairman, I think that a review of the transcripts of the proceedings when this motion passed would show that I did specifically speak to the fact that there is privileged information here that we couldn't openly debate at the committee.

If members have questions related to the Icahn Group's experience, expertise, or reasons for looking at this company, that's all fair game, but with respect to net benefit to Canada, I would suggest to members that you're actually delving into a process in a way that, if committees start to do it, will throw the whole idea of privilege out the window—

Mr. Charlie Angus: Chair, I have a point of order.

Mr. Dean Del Mastro:—and groups will not look to invest into Canada if privilege doesn't mean anything.

Mr. Charlie Angus: He has asked a simple question—why is this good?—and we're told that's privileged information. He's completely on the right path, and those are the questions we should be asking. Let's get back to work.

•(1150)

Mr. Dean Del Mastro: Well, that's not what you agreed to when we passed the motion.

The Chair: Okay, let's—

Mr. Pablo Rodriguez: If you want general info, I can go to the Internet, and so can you. Anybody can go there, but they're here on a specific—

The Chair: Before we go any further, there are some questions that our witnesses cannot answer, and we have to respect that, so...

You have one minute. Go ahead, Ms. Dhalla.

Ms. Ruby Dhalla (Brampton—Springdale, Lib.): I'm moving away from the net benefit question, even though I think it's an important one.

On page 2 of your presentation, you state in the second-last bullet point from the bottom that "...4% of Lions Gate shareholders are currently Canadian". Then appendix I, where you have some documentation, says in the first major paragraph, and I quote:

Icahn Partners LP, a limited partnership governed by the laws of Delaware, Icahn Partners Master Fund LP, a limited partnership governed by the laws of the Cayman Islands...

I'm confused as to who is more Canadian. What percentage of shareholders within Icahn are Canadian? It says here that you're governed by the laws of the Cayman Islands.

Mr. Keith Schaitkin: Icahn is set up.... The public company is a Delaware limited partnership. We have public stockholders, and 92% of the stock of Icahn Enterprises, which controls these entities, is owned by Mr. Icahn, so—

Ms. Ruby Dhalla: How much is Canadian?

Mr. Keith Schaitkin: I would suspect that very few of our stockholders are Canadian.

Ms. Ruby Dhalla: So it's less than 4%?

Mr. Keith Schaitkin: I don't know.

Ms. Ruby Dhalla: You don't know that?

Mr. Keith Schaitkin: No.

Ms. Ruby Dhalla: Okay, so we can't say that Lions Gate—

Mr. Keith Schaitkin: But I don't claim to be Canadian. We are not Canadian; we are American investors, and we have a Cayman Islands investment vehicle for offshore investors who invest—

Ms. Ruby Dhalla: But 4% is better than zero, then.

The Chair: Okay, Ms. Dhalla.

We'll go on now to Madam Lavallée.

[*Translation*]

Mrs. Carole Lavallée: I am not going to pull out a measuring stick to determine which of the two is more Canadian, but I do want to know whether either of you is a Canadian citizen.

Is either of you Canadian?

[*English*]

Are you Canadian?

Mr. Keith Schaitkin: No, I'm not Canadian.

Mrs. Carole Lavallée: You're not either?

Mr. Donald Ross (Legal Counsel, Osler, Hoskin & Harcourt): No, I'm Canadian.

[*Translation*]

Mrs. Carole Lavallée: Are you an employee of Icahn Associates Corp. and Affiliated Companies, Mr. Ross?

[*English*]

Mr. Donald Ross: Ms. Rodal and I are partners in Osler, Hoskin and Harcourt, which is a Canadian law firm. We are employed by Icahn.

[*Translation*]

Mrs. Carole Lavallée: So you are as well, Ms. Rodal. I just want to know who I am speaking to.

I do not want to get into who is Canadian and who is not. In any case, when you consider that this Canadian government deemed Globalive a Canadian company, it would not bother them too much to consider you Canadians in a few minutes, given Mr. Del Mastro's comments.

I want to know something. It is too bad because you are not part of the company. This committee studies heritage issues, and we are interested in the cultural changes that you would make.

In the past ten years, Lionsgate has invested \$800 million in productions filmed in Canada and Quebec. They have produced 48 films and television series in Canada and Quebec. They have generated 20,000 jobs, according to Canadian Film & Television Production Association standards, and they have signed a \$400 million partnership with the Société générale de financement du Québec to support production in Quebec.

What would you do better than them from a business perspective? Why do you want to take over Lionsgate? What cultural changes and improvements would you make? I am not talking about money here.

[*English*]

Mr. Keith Schaitkin: We look at Lions Gate as investors. We bought the company stock. We thought it was undervalued, and we're concerned about the direction that management is heading with the company. They're looking at expending a lot of money on what we consider to be risky acquisitions. We're concerned that management is investing a lot of money in what we consider to be high-cost, celebrity-vehicle films.

What we liked about Lions Gate and what we continue to like about it is the business they have been in and are in traditionally, which is film production and film distribution, much of it in Canada, and television production in Canada and elsewhere.

What we're concerned about is that we've got a management team that's risking the company on swing-for-the-fences kinds of transactions. If you want to try to compare us that way, I think the likelihood of Lions Gate continuing to be a viable, successful company and not taking excessive business risks is greater with us.

We tried, and it's well publicized, that we made a big investment to put a couple of people on the board—

• (1155)

[*Translation*]

Mrs. Carole Lavallée: Forgive me for interrupting.

How much time do I have left?

[*English*]

The Chair: You have about two minutes.

[*Translation*]

Mrs. Carole Lavallée: I apologize for interrupting.

I just wanted to point out that you are giving me the worst possible answer I could get. You are telling me that you are making a cultural investment for money, but the cultural situation, both in Canada and Quebec, is much different than that in the U.S. It may be primarily a matter of money in the U.S., but, here, culture needs the support of the Canadian and Quebec governments in order to grow and flourish.

Furthermore, you do not seem to be aware of the whole cultural development issue and the fact that it is necessary to take risks. If we want Quebec and Canadian productions, we have to take risks because there are not enough people in Canada and Quebec to make every U.S. production viable. We have a completely different situation here.

I asked you about cultural development, and you answered in terms of money. I think you will make a poor investment.

[English]

Mr. Keith Schaitkin: I don't mean to be argumentative, but in order to have successful culture, to have successful films, to have successful distribution, and to have all these things operate, there is ultimately a financial aspect.

All I was saying to you was that Lions Gate can continue to be a successful, stable company. We're concerned that the direction management is taking puts that at risk, and therefore puts the cultural part of it at risk, as well as the business part.

We tried to address that by having Lions Gate allow us, as a large stockholder, to have some board representation so that we could have better communication, but we couldn't get any of that accomplished. Now we're buying more of the stock because we fear for the viability of our investment, which ultimately underlies the viability of all this cultural programming that you're discussing.

The Chair: Thank you very much.

Mr. Angus, please.

Mr. Charlie Angus: Thank you very much for coming today.

I guess the issue we are here to discuss is what the impact will be from the Icahn takeover, so I get back to the question of net benefit. We know what we have with Lions Gate. I mean, you tell us that they're a drop-box in Vancouver and nothing more, but I can look to \$800 million in investments, I can look to television series they've done here, and I can see a film distribution company. I know what they do. I look at the Carl Icahn record and I see what the Icahn record is. I mean, you burn through companies one after the other in hostile takeovers, in many cases forcing them to sell off key parts of their assets, you pump up the stock, and you move on.

So what are you going to give us here today in terms of a net benefit commitment, so we'll know we're leaving this company in good hands?

Mr. Keith Schaitkin: Let me respond to the first part of your question very quickly.

Mr. Icahn owns investments in communications companies and railcar manufacturing companies. We have 10,000 employees in Canada working in our automotive factories through Federal-Mogul, and we have real estate businesses. We have businesses that we've owned for more than 20 years, gaming industries. To say that of the reputation.... Any time we get involved with companies, their managements make those kinds of statements and it tends to be negative. The fact is, with all due respect, that I think if you dig into it a little further, you'll find we have very deep, long-standing investments in many companies that we hold.

In terms of what this investment will do for Canada, net benefit for Canada is really what you're asking me. As I said, there is a privilege issue there. I would say this, as I said in my original statement: we think that what Lions Gate should be doing is focusing on its film distribution, producing niche films and television programming, and that will continue in the way it has, we would think, hopefully successfully. What we are concerned about is where they're moving the company to.

• (1200)

Mr. Charlie Angus: Again, I don't want to contradict you on the record of Icahn industries, but I'm looking at company after company—BA Systems, pushed to sell the company off; Biogen, breaking apart the company; Motorola, pushing them to sell off their mobile business. We see a pattern, and it's about the whole issue of shareholder value—getting that money up, selling pieces off. So you're going to flip Maple Pictures; that's gone. I still don't see what the vision is for the industry, for the commitments that have been made in Canada.

You're talking about the value to the company. What is the value, the net benefit, so we can go back to Parliament and say this is going to be a good purchase for Canada? What is the net benefit?

Mr. Keith Schaitkin: Unfortunately, you keep asking me about net benefit to Canada, and that area is privileged.

Mr. Charlie Angus: Okay, I want to say this clearly. I met with Georgia-Pacific three weeks ago about taking over a Canadian company. They sat down and they told me what their commitments were going to be. They told me how many people were going to be retained. They told me what the operations were going to be.

You tell us this is all privileged. I mean, if you were trying to sell me a house and wouldn't give me any of the details, I certainly wouldn't buy it from you. You can't hide behind this privilege. You either have a plan or you don't. So just tell us what it is.

Mr. Keith Schaitkin: With all due respect, there is a process that's been established by Parliament. It involves speaking to the minister and his representatives. We've done that extensively. We've made ourselves available. We're following that process—

Mr. Charlie Angus: Can't you just tell us one good thing, a couple of ideas, what your vision is? Is that privileged?

Mr. Keith Schaitkin: Well, I think I did tell you that—

Mr. Charlie Angus: I'd feel like a sucker if I were buying into this deal.

Mr. Keith Schaitkin: What I've tried to explain to you is that we are concerned about the viability of this company under this management team. We would have been happy to have a couple of guys on the board of directors who could have helped deal with those issues. That viability underlies all the operations, everything that's being done.

What we're concerned about with Lions Gate isn't the things they've done historically. It isn't the television production they've done in Canada, the distribution, or the film production they've done here and abroad. That's why we invested in Lions Gate. What we're concerned about are the acquisitions they're looking at, things that will involve borrowing substantial amounts of money and putting it into more risky investments. These things raise significant issues.

I will tell you, for example, there's been quite a lot of discussion about Lions Gate borrowing money, issuing a lot of stock, acquiring the library at Miramax. There's a lot of discussion in the investment community about whether film libraries are a viable investment, and you could put the entire company at risk with an investment like that. Now, management may think that's a good idea. We don't. We think it risks the company and would thereby risk all the things you're talking about. That's the best answer I can give you.

We intend to maintain the traditional business that Lions Gate's been involved with. That's our basic understanding. Might there be acquisitions that make sense? Could you get them done at prices that make sense? Perhaps, but we're concerned about where that all goes.

The Chair: Thank you.

Mr. Del Mastro.

Mr. Dean Del Mastro: You made a statement early on that I think is important. You said there would be a strong disincentive to invest in Canada if the investment process required the investor to publicly disclose commercially sensitive information and engage in an open discussion about its future business plans, as this would benefit competitors and could compromise the investment and harm the company in which the investment is being made.

I think the rules are important when you're talking about the market. I know a thing or two about the market. Business is what I studied. I think it's important to follow the rules that Parliament establishes. If we don't, we start to look like a banana republic that nobody wants to invest in. So I will tell you that in my view the rules matter. That's the first statement I would make.

Are you aware of any special privilege given to the 4% Canadian shareholders that would provide them with authority to make sure that the board is inherently Canadian?

•(1205)

Mr. Keith Schaitkin: No. I think the company works like any other company. The Canadian stockholders have their votes like everyone else.

Mr. Dean Del Mastro: Right. So this is an operation of the market, that's the argument that you're making. You should be able to purchase these shares and any company that issues shares, that issues ownership in the company, does so with the knowledge that at some point somebody could buy a controlling interest and would be able to appoint the board. Is that not generally how the market operates?

Mr. Keith Schaitkin: That's right. I think that in this case there is also the overlay, the cultural issue, the film business. This has been dealt with by Parliament. They have set up specific rules and we're following them. So it's not just another acquisition company.

Mr. Dean Del Mastro: It's a separate process.

Mr. Keith Schaitkin: That's right.

Mr. Dean Del Mastro: This is a separate process from whether or not you can buy. Whether we approve it is an entirely different matter. This would require a discussion of net benefit for Canada and what the vision is. If it's to break the company up and hack and slash, that might not be seen as a net benefit to Canada. In that case, it wouldn't be approved.

Essentially, there are two separate issues here. One is that you're actively seeking to buy up enough ownership of the company to replace the board. The other is that this would have to be approved. Correct?

Mr. Keith Schaitkin: That's right.

Mr. Dean Del Mastro: And this is a normal function of the market, isn't it?

Mr. Keith Schaitkin: Yes, that's right.

Mr. Dean Del Mastro: So going back to your first statement where you said there'd be a strong disincentive to invest in Canada, if we don't have rules that govern how investments are made, if we don't respect the rules, if we don't respect the rules passed by Parliament.... A parliamentary committee cannot override legislation that's been passed by Parliament.

Parliament is not just the House of Commons, by the way. It's the executive, the House of Commons, and the Senate. When a bill is passed, a parliamentary committee cannot override it.

I guess I'm suggesting a couple of things. One, I encourage you to make that case of net benefit to Canada. I encourage you to look to Canada, if you are successful in this, as a great place to invest, not a good place to invest but a great place, and a great place to create movies, cultural content, and so forth.

I will also say that as far as I'm concerned, the rules mean something. I will not ask you any of those questions today. I do appreciate that you have clarified the situation you're in, how the market operates, and the fact that right now this is a market process, on the one side, and a process with the federal minister on the other hand that would oversee that process. It's really two situations.

Mr. Keith Schaitkin: Thank you very much.

Mr. Dean Del Mastro: Thank you.

The Chair: I maybe have time for one more question from each person.

Are there any more questions? One quick question.

[*Translation*]

Mr. Pablo Rodriguez: I am trying to wrap my head around something. In the past few years, Lionsgate has proven itself to be a successful company. It used to bill several tens of millions of dollars, and today that number is nearly \$2 billion. Why do you think you can do a better job managing the company than the current team?

[*English*]

Mr. Keith Schaitkin: We invested in the company. We thought their stock was undervalued. We tried to get into a position where we could have a few seats on the board to represent our position. They were very resistant to doing that.

We are concerned that the management team is looking at transactions. We were very concerned when they engaged in the acquisition of *TV Guide* a couple of years ago. We thought they paid too much for it, and they borrowed substantial sums to do it. We were afraid they were putting the health of the company at risk. I think the stock basically has reflected that over the years.

When we came into this stock in.... I'm sorry, you don't want to hear this.

•(1210)

Mr. Pablo Rodriguez: Basically you're saying you know their business better than they do.

Mr. Keith Schaitkin: When we get involved in companies, we don't try to run the business. We're investors. In other words, we're not going to go in and become film executives. What we will do, though, is to find people we think are very capable executives, in the same way we have done at our automotive business, our communications business, and our gaming businesses. We don't run those businesses. We sit on the board. We help to make policy. We look at how they're financing things. And we allow the management teams to run the businesses.

We're not comfortable with this management team, so we think our investment is at risk because of that.

The Chair: Thank you.

Madam Lavallée or Mr. Pomerleau.

[*Translation*]

Mrs. Carole Lavallée: I have a brief comment as a follow-up to what I said earlier. Then you will have a chance to respond.

I tried to explain the uneasy feeling I had when I was listening to you speak. You do not appear to be at all interested in what Lionsgate does, in other words, film and cultural products, both Quebec and Canadian. I know this area well, as a member for Quebec. We are very proud of Quebec's cultural and film industry, and we want it to flourish in every way despite the pitfalls and obstacles in our way.

The way I see it, Lionsgate is a company that promotes cultural development and that cares about Quebec's and Canada's cultural growth. Listening to you speak, I do not get that same sense of concern at all. And that is why I have this uneasy feeling I was talking about.

[*English*]

Mr. Keith Schaitkin: Let me try to respond to that.

I've spoken a lot about business. We're here. This is an investment. It's a business investment. But I don't want you to think that the Icahn Group people aren't interested in other things besides business and money. Mr. Icahn's on the board of the Lincoln Center, where he makes significant contributions. There's a stadium on Randall's Island that provides to the children in the city of New York a wonderful recreational facility. We run charter schools in New York that have been successful and gone into difficult neighbourhoods. So Mr. Icahn has invested in education as a charitable activity, very substantially. We've run a whole series of homeless shelters called Icahn House. We are not insensitive to these sorts of issues.

I'm trying to give you an answer with a little bit about the business side, but obviously people aren't single dimensional, and there are cultural interests and cultural concerns. As an institution, as an individual, and as a philanthropist, Mr. Icahn.... I think if you look into Mr. Icahn's record, you'll see a great deal of that sort of thing.

The Chair: Okay. Thank you.

[*Translation*]

Mrs. Carole Lavallée: Mr. Chair, I have a very quick question.

[*English*]

The Chair: Very little.

[*Translation*]

Mrs. Carole Lavallée: Can you name a Quebec film?

[*English*]

Mr. Keith Schaitkin: No, I couldn't.

[*Translation*]

Mrs. Carole Lavallée: Thank you.

[*English*]

The Chair: Mr. Angus, one short question, please.

Mr. Charlie Angus: Thank you.

I don't want to get involved in discussions with the ministry, but when did they start? Have you had a number of meetings?

Mr. Keith Schaitkin: Yes, we've had discussions over the last few months.

Mr. Charlie Angus: In the media you'd said in March—Mr. Icahn had said so. Did they begin in March?

Mr. Keith Schaitkin: If that's what it said in the media.... I'd have to look back in my notes to really be sure, but it's been a few months, so here we are.

Mr. Charlie Angus: So you've gone through the plan, the business. I don't need the details, but you have been engaged with the officials and had ongoing talks?

Mr. Keith Schaitkin: Yes, we have.

Mr. Charlie Angus: Okay. Thank you very much.

The Chair: Mr. Bruinooge, last question, please.

Mr. Rod Bruinooge (Winnipeg South, CPC): Thank you, Mr. Chair.

I really felt I had the need, as I think probably the only filmmaker here at this committee, to firstly state that many of the filmmakers in Canada appreciate investors. We actually like investment into film vehicles in Canada. So I just want to let you know that Canada is a welcoming country for investment, so investors shouldn't maybe look to the questions that you've received today as necessarily the example of the film industry in Canada. Dollars from abroad are very important to independent films and larger films being made in our country. I just wanted to put that on the record first.

Secondly, there's another thing I'd like to get you to explore a little more. It seems some of the elements of the concern that you had with the management team related primarily to their pursuing large inventories of content from somewhat antiquated firms, like MGM.... I wouldn't say that Miramax is antiquated. Nonetheless, we're talking about content that you feel, as an investor, you can't see long-term valuation on. Maybe you could explain that rationale a bit and then perhaps also highlight what I imagine your answer would be, that all the investments in Canada have generated good cash because we have a great film industry here that tends to operate more cheaply than some of the U.S. studios. I don't know if you could make the allusion between what you are concerned with and then some of the profit generation that is already occurring in Canada. I can't imagine you'd want to see that change.

• (1215)

Mr. Keith Schaitkin: Let me try. As a lawyer, I'll be able to bring as much to bear to it as I can.

I think there is a concern in this. It's not just our concern; it's an industry-wide concern. It involves historic content. Obviously there's value to these libraries, and there may be people buying Blu-ray discs or downloading things. But just as other forms of content have seen their value decrease, the music industry has had problems from Internet sharing and the distribution changes.

So what is the value of film libraries? These people are selling their libraries. What will they be able to get for them, and what would it make sense for one to pay for them? That's a business decision that honestly is beyond what I really could evaluate. That's a financial decision.

We do think that continuing to make good, viable products will be a strong business. You can do it. You can make money, and obviously Canada has a very strong film sector, and it's had a great history of supporting film. There are a lot of films made here. I can't say to you that I know this film was made here or that film was made here. I could talk to you maybe about some films that were about Canada that I enjoyed, but I'm not a film business person.

I think our intention is to continue in the businesses that Lions Gate has been in historically, but to be concerned about acquisitions, be concerned about big-budget films, and be concerned about things that may be vehicles so that people have an opportunity to hang around in a kind of a chi-chi Hollywood environment, as opposed to making films that are viable, that make money, that are interesting, that people want to see, and that don't take big risk with capital.

The Chair: Thank you very much for that. Thanks for your presentation and for answering the questions that were asked of you this morning.

We're going to take a recess for about five minutes so that we can change witnesses.

Thanks again for coming.

• _____ (Pause) _____

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• (1220)

The Chair: We're going to reconvene this meeting.

We welcome, for the second part of our meeting, from the Department of Canadian Heritage, Jean-Pierre Blais, assistant deputy minister, cultural affairs; and Missy Marston-Shmelzer, deputy director, investments.

What I'd like to just say before we have our presentation is that I'd just caution people to keep their questions general, because our witnesses cannot go into great detail and we will respect the ministry when it comes to that.

Go ahead, please, with the presentation.

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

I believe you have a deck or a short presentation that was distributed. You should have it in front of you.

Apart from being assistant deputy minister of cultural affairs, I also wear a second hat as the director of investments under the Investment Canada Act. As you know, the act is administered by both the Department of Industry and ourselves, and there's a parallel structure. So I'm the director of investment pursuant to section 6 of the act, and Missy is my deputy director in that.

As you mentioned, Mr. Chairman, I'm not really here on Lions Gate. I'm here to provide you information of a general nature about the act. I'll try to be as helpful as I can without breaching the obligations I have as a public official, pursuant to the Investment Canada Act.

In providing the information about the act, I would start by reiterating the objective of the Investment Canada Act. There is a purpose clause in that legislation. It's not often that legislation has a purpose clause, but it occurs from time to time and is very helpful in administering the act. You'll see that the act exists to encourage investment, economic growth, and employment opportunities, and to provide for the review of investments in Canada by non-Canadians that could be injurious to national security.

As I mentioned earlier, the minister, Missy, and I are all responsible for what is called cultural business. That's a defined term in section 14.1 of the Investment Canada Act. It deals with the publication of books, magazines, other periodicals and newspapers, whether they're in print or machine-readable form, which is a term we inherited from the early 1980s to reflect digital technologies and computers; film and video production, distribution, sale, and exhibition; music and all its distribution, again in machine-readable form; and broadcasting to the general public, as defined in the Broadcasting Act.

On page four there are rules for when matters are under review and other matters are subject to notification. You'll recall that a couple of years back the government was asked, under the chairmanship of Red Wilson, to look at the Investment Canada Act and other economic issues. When the panel reported, it realized that the specificity of the cultural sector was such that you could have special rules. So there are special rules that apply to culture that aren't the general rules that are applied more broadly to other businesses, as administered by our colleagues over in Industry Canada.

There are two particular differences. Reviews occur at a lower financial threshold in the cultural business. So even at the level of \$5 million of assets, we can review it. The thresholds are much higher on the Industry Canada side of things. We also review what are sometimes called greenfield or new investments, so it's not just a company that already exists, but if somebody wants to set up a company that has never operated in the country.

You'll see on page four that there are automatic reviews the moment you reach an asset, whether it's a direct or indirect investment. An indirect investment is just that there's a holding company when the structure is such that you aren't actually purchasing the operating company; you're purchasing something above in the corporate structure.

There are other things that are merely subject to notification. However, when we are notified of a proposed transaction or investment, it is open to the government through a Governor in Council directive, notwithstanding the fact that it's merely at notification, so we actually trigger a review in exceptional cases. You'll understand that sometimes even something that's less than \$5 million can have significant impact in the ecosystem of the cultural sector. So we look at it.

The crux of the matter as to what is a net benefit is on page five. It's clearly defined in section 20 of the act, to the extent that it provides a very broad set of considerations. So it's not like one of these tests that it's two feet by four feet and you actually know that's the test. It's much more open-textured and discretionary.

One of the first factors we look at is economic activity. We look at employment. To what extent do components of the business create...? If you have a part system, I guess you can look at it in the cultural sector and to what extent we would employ other elements of the ecosystem for creative industries and the exports from Canada.

We also look at the amount of Canadian participation. You can imagine where a foreign national wants to purchase 60% of the company while 40% is still Canadian. So we'll also look at those ventures.

• (1225)

At the top of page six, we look at productivity and innovation. Certainly, as you know, productivity is important for the economic health of Canada, so industrial efficiencies, technological developments, etc, are also factors that weigh in the balance.

Competition is also provided for in section 20 of the act, because we want to promote healthy competition in the Canadian economy.

The next factor is probably of more interest, and there are, on occasion, national policies that provide that as a starting point one would be concerned with investment in a particular area. In the area of culture, there are such policies, particularly in the area of film distribution, but not in the film production sector. In fact we have tax credits that welcome foreigners to come and produce in Canada, so the policy is quite welcoming of foreigners who want to produce films in Canada. There are no specific policies in music, but there are in other areas, such as book publishing. And of course, as you well know, the Broadcasting Act provides that licensees of the broadcasting system must be Canadian-owned and -controlled.

The fact that there would be a policy in place is a factor; it doesn't trump all the others. We have to be concerned about that, because ministers have to exercise their discretion appropriately and cannot fetter themselves with a policy. This is the way I usually explain it, however: if there is a policy in place, there's a slight incline in the hill in the case somebody has to make, and the steepness of the incline depends on the circumstances. The fact that there's a policy in place is not a prohibition. In the recent case of Amazon, notwithstanding the prohibition, the government nevertheless approved the transaction because of all the circumstances. They are not a veto, these policies; they are just one factor—an important factor, but merely one factor.

The last criterion for net benefit is global competitiveness.

On page seven we talk a little bit more about timelines, and I understand you were asking some questions earlier. If it's notification, what happens is that somebody who is required to send notification must send it, obviously, and once it's complete, the government has 21 days to turn around, if it does want to do a review, even though it's below the threshold levels. If it's either one that started off as notification and got converted into a review or one that starts as a review, we then have 45 days to look at it, although the minister can extend that period by 30 days, unilaterally. Beyond that, because sometimes it gets complicated—and these transactions, as you can imagine, are of considerable complexity and there are back-and-forth negotiations—there could be further extensions, but by mutual consent of the investor and the minister, and we negotiate that. We usually can come to terms with that.

Once we're in an approval scenario, there are undertakings in the process that are negotiated. These are firm commitments by the investor that, because they're on the table and because they're firm, help balance and prove that the proposed transaction is of a net benefit to Canada. Those generally, but not necessarily, last for five years. Some of them have been in perpetuity—because someone was wanting to invest in a very, very niche field, they've made undertakings in perpetuity not to grow their business beyond that niche field. And of course Missy and her team do ongoing monitoring; we get annual reports and follow-ups on that as we go forward.

Page nine is interesting. It's there, and I won't spend much time on it; it's about enforcement. We rarely get into enforcement situations merely because the business community generally respects both the notification and the approval process and it's rare that we get that.

Page ten hearkens back to what I was saying at the very beginning in terms of confidentiality. Section 36 is quite strict as to the fact that I, as a public official, can't share any of the information that I or Missy or anyone gathers, and it becomes an offence to do so under section 42. Now it is open to the investors, if they so wish, I guess, to make information public, and sometimes they are even required to—you can imagine a publicly traded company sometimes must make full disclosure because of securities legislation. That may occur, but we and other officials cannot provide information.

•(1230)

I can tell you that even though in my work on Investment Canada I have a direct link to the minister, my deputy is not always aware of the details of the information, and neither are my colleagues at PCO or in other departments. So we protect that. I think the logic behind that is that sometimes an investor will want to have that dialogue with the government, and if it's not of net benefit, or for other reasons, they don't necessarily want it to be in the public domain. In the act, Parliament has chosen to do it this way.

When a decision is made, of course we post it on our website so people know about it. The recent amendment to the act has changed what we put in terms of reasons for it. You'll see that, based on the Red Wilson recommendations, a little bit more information is provided to the public as to the reason an application, for instance, has not been approved, going forward. And sometimes we negotiate with the investor what we could put in a joint press release so that people know what's going on.

Mr. Chairman, that's the presentation. We are both more than willing to answer questions from your colleagues.

•(1235)

The Chair: Thank you very much.

The first questioner is Mr. Rodriguez.

Mr. Pablo Rodriguez: It's Mr. Simms.

Mr. Scott Simms: We're going to split here.

The Chair: Okay.

Mr. Scott Simms: This is an exercise in role-playing for the most part. Let's assume I'm an American investor. I see great value in a company that is here in Canada. I want to take control of it. I'm not using any names, but I think you know where this is leading to. I sit down with you for a meeting. Let's assume that I know nothing here.

What's the first thing you approach me with? Let's say that I'm that American investor who wants that Canadian property.

Mr. Jean-Pierre Blais: Before we get a meeting, there's a lot that happens—

Mr. Scott Simms: Okay, let's assume we've gone past that.

Mr. Jean-Pierre Blais: —because in fact we have a long-standing process. We have informal conversations even before an application can be filed and—

Mr. Scott Simms: In your first informal conversation, what would you ask about what I do?

Mr. Jean-Pierre Blais: Sometimes there are technical questions from the potential investor. Remember, it's the investor who deals with us, and not the target company. So we talk only to the investor and not to the other parties.

Mr. Scott Simms: That's right. That's what I'm saying. I'm the investor.

Mr. Jean-Pierre Blais: We would talk about some challenges. We'd talk about the net benefit test.

Most of the time, these companies are supported by a law firm, by lawyers who are very well versed in the Investment Canada Act. But let's say you had a less sophisticated investor. We'd go through the

net benefit rules. We'd talk about delays in process and what we'd be required to file. We'd go through all the policies.

Mr. Scott Simms: Give me an example of some of the hallmarks you would seek out when you talked to these investors and how you would approach them. Let's assume I'm one of the less sophisticated ones.

Mr. Jean-Pierre Blais: We would go through what's indirectly... And I'm not commenting on any live deals here. The test in section 20 talks about creation of jobs and technology, so we would inquire into whether this was going to bring potentially more investment in technologies, whether this would create new jobs or maintain jobs in Canada, whether it would create synergies, and what percentage of Canadians would maintain ownership of it. We would get to all of those criteria directly and indirectly through it.

And of course, because our area is culture, we'd discuss the cultural policies in place and whether the proposed transaction would be consistent with those policies, and if not, how we were going to address that concern.

Mr. Scott Simms: Can you tell me what the most common speed bump is for some of these American investors? What has been the most common problem in all of the discussions you've had?

Mr. Jean-Pierre Blais: I think it would be overstating it to say we have problems. In fact, most of them are represented by Canadian counsel who are well versed in the act. We have conversations, robust conversations, because of course we're trying to get more, and they're trying to get an approval but with the least amount on the table. So that's the nature of the debate.

[*Translation*]

Mr. Pablo Rodriguez: Given that this is a cultural business, a takeover such as this presents a problem right off the bat. There are obstacles out of the gate. So the onus is on the acquiring company to show—it is prohibited—that there is a net benefit.

Mr. Jean-Pierre Blais: In every case, it is up to the investor to show the tangible benefits.

Mr. Pablo Rodriguez: That is right. The onus is on them.

Mr. Jean-Pierre Blais: It is especially...

Mr. Pablo Rodriguez: It is more rigorous in the cultural sector.

Mr. Jean-Pierre Blais: It is more rigorous when you have policies in place that prevent the takeover.

Mr. Pablo Rodriguez: Fine.

The notion of net benefit is quite broad—you talk about it in your document. It can have a financial aspect, in other words, money. I can understand why a witness, be it him or anyone else, would not want to discuss it. Still, I want to understand the overall principle, not necessarily the one that applies to his testimony, in particular.

Does the so-called “privilege not to talk” apply to everything around the net benefit? Could anyone assert their right not to discuss anything related to the net benefit, by claiming that it could be prejudicial to them? Or does that right extend only to the financial transaction—it would indeed put him at a disadvantage to discuss that aspect—and he could discuss the matter of compatibility with Canada's cultural policies, for example, or some other aspect?

• (1240)

Mr. Jean-Pierre Blais: I think a distinction needs to be made between us, the officials, the department and the other members of the public service on one hand, and the investor, on the other. The restriction applies to us, the officials. There have been transactions in the past where the investors chose to say a bit more, to be more proactive. They are sometimes told there is a collective benefit to discussing the reasons why the department approved the transaction.

The restriction I mentioned earlier applies to us, not the investors. So there is a difference there. The act, which sets out the restriction, applies to all aspects of the transaction. It does not distinguish between the financial aspect and the tangible benefit, or the net benefits of the transaction. Section 36 includes everything.

[English]

The Chair: Okay. Thank you very much.

Mr. Pomerleau, please.

[Translation]

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

Mr. Blais, Ms. Marston-Schmelzer, thank you for being here.

I am not sure how far I will go with my questions. You will decide just how far you will go in your answers.

The Icahn representative we just heard from spent a considerable amount of time trying to show, point by point, that Lionsgate is not Canadian, that it is not Canadian owned or operated and that it does not even have a principal office in Canada. Control cannot be handed over to companies that are not Canadian.

In your opinion, is Lionsgate a Canadian company?

Mr. Jean-Pierre Blais: As you mentioned in the beginning, the questions are never indiscreet, but the answers can be. In this case, I do not think I can respond, as it is too close to...

Mr. Roger Pomerleau: Fine.

How do you determine whether a company is Canadian or not?

Mr. Jean-Pierre Blais: I did not go into that in my presentation, because it is extremely complex. Tests similar to those applied to telecommunications, broadcasting, aviation and transport, in general, are used to determine the indicators of control in fact and in law. In the case of large corporations, we do an analysis. We check first and foremost whether the company is Canadian.

Mr. Roger Pomerleau: Do you check whether it does business in Canada, or whether it has a principal office in Canada?

Mr. Jean-Pierre Blais: Yes, there is a legal test that is quite specific.

Mr. Roger Pomerleau: It can be approached in a number of different ways.

Mr. Jean-Pierre Blais: I can tell you that when a company is not subject to the act, it does not have to file an application. So when someone files an application, they know they are subject to the act.

Mr. Roger Pomerleau: Very well. That partly answers my question.

The Icahn representative who spoke earlier went to a lot of trouble to explain that the company's strong suit was, to a certain extent, that it had better management than the current ones, which gave it somewhat of an advantage in ensuring the financial survival of those companies. Their survival would of course have cultural benefits. If the company left, went bankrupt or did not do well, the cultural sector would suffer tremendously, obviously.

How do you determine whether a takeover is really consistent with Canada's cultural policies?

Mr. Jean-Pierre Blais: I cannot comment on the transaction per se.

Mr. Roger Pomerleau: Fine.

Mr. Jean-Pierre Blais: As I said, cultural policy is one of the criteria. For example, an investor may wish to invest in a company that is in financial trouble. That is one aspect of the situation we could examine. We gather a lot of information on investors. It could be a matter of survival, for instance.

As for cultural policies, specifically, I am also the assistant deputy minister of Cultural Affairs—I have two hats, one head—and with the help of my team, I am perfectly capable of ensuring that investment is in line with public policies. Sometimes, I consult with my team, Missy's colleagues, who are on my cultural program and policy management team. There is also a consultation process with the provinces and territories, as well as with the Competition Bureau and other stakeholders we may need to consult, depending on the issue. In addition, there are agents of the Crown, especially within the federal government, who are experts and whom we may look to for advice. I can assure you we are well aware of what goes on.

• (1245)

Mr. Roger Pomerleau: On the international front, we have seen that with the growing number of international agreements between countries, an effort is being made to give corporate capital as much flexibility as possible. There may be support for that. But that flexibility is often granted under international decisions that may conflict with what countries are doing.

If a Canadian company is denied control over cultural content, further to one of your decisions, can it turn to international bodies to intervene in Canada?

Mr. Jean-Pierre Blais: First of all, before it goes that far, the investor can seek a remedy that already exists internally in cases where the minister decides not to allow a transaction. A final avenue of redress is available to the investor for a period of 30 days.

As for our agreements, especially those with the WTO and such, I do not want to state my position publicly. However, as you know, Canada's policy has always been to provide for a cultural exemption. That is how everything has been set up.

In terms of the cultural sector, when we negotiated the agreement on cultural diversity, we attended an event in Paris with our partner groups, and Marie Laberge gave a talk. She said that in culture, there are two sides to the coin: the business side and the creative side. Sometimes it is a matter of commodities, but in the cultural sector, goods and culture are something else altogether. So you have to consider the issue from both sides.

Mr. Roger Pomerleau: Very well.

[*English*]

The Chair: Thank you.

Mr. Angus.

Mr. Charlie Angus: Thank you for coming. It's always a pleasure to have you at our committee.

I'd like to get a definition. Within the film industry, what is the basic test to determine whether a company is Canadian?

Mr. Jean-Pierre Blais: There is no test that's specific to film, television, or audio-visual production companies. It's the same test that applies throughout the Investment Canada Act.

Mr. Charlie Angus: So it's 50% plus one.

Mr. Jean-Pierre Blais: Right.

Mr. Charlie Angus: But in this case, isn't it a little more loosey-goosey?

Mr. Jean-Pierre Blais: No, but it's both ownership and control one has to look at, and it's a variable dimension, based on circumstances. You've seen other cases we deal with. We sometimes give status opinions on whether a company is or is not Canadian. They're complicated reviews. We're basing our opinion on speculation about what the business arrangements might be over time, using documentary evidence as much as possible.

Mr. Charlie Angus: Clearly, that's the kind of review that would be privileged information. The public doesn't need to know that; competitors don't need to know that.

Mr. Jean-Pierre Blais: It would be privileged if it's not otherwise available in the public domain.

Mr. Charlie Angus: It seems to me the crux of Mr. Schaitkin's presentation this morning was on the issue of whether Lions Gate is truly Canadian or not. He said that the address is just a "mail drop" rather than a Canadian office; that they've been delisted from the Toronto Stock Exchange; that less than 4% of Lions Gate shareholders are currently Canadian; that they don't own or lease any film studios; that they don't appear to have any facilities or offices in Canada at all. Lions Gate is not managed by Canadians. Then on page four they suggest that if Lions Gate were found not to be Canadian, they would have to repay all the tax credits and subsidies to the Canadian government. Is this something your department has looked into?

Mr. Jean-Pierre Blais: To answer that question I'd have to cross a line that I don't think is appropriate for me to do. But be assured that when we do reviews we look widely at the impacts. Remember, some of these areas are directly within my own responsibility. The Canadian Audio-Visual Certification Office is in my sector, as are programs that finance magazines and weekly publications. So we look at all that in the context.

• (1250)

Mr. Charlie Angus: I'm not asking you about the review—

The Chair: I have to interject here just for a minute. We said earlier that our ministry cannot jeopardize itself and we can't talk on specifics—

Mr. Charlie Angus: Certainly, Mr. Chair; however—

The Chair: So let's make sure our questioning does not put our people in jeopardy.

Mr. Charlie Angus: Mr. Schellenberger, as always, you have the wisdom of Solomon, and you know that I back you 100% on pretty much everything you say—

The Chair: Except this.

Mr. Charlie Angus: As I was about to say, I'm not interested in what you're examining with Icahn and Lions Gate behind closed doors. That's different. I'm interested in the question that has been suggested, that this company that has been identified as just a mail-drop has been getting Canadian tax credits.

You guys run a pretty serious operation, as far as I've seen from all our meetings over the years. You'd be pretty much able to verify that the companies that do qualify for tax credits are not just mail-drop boxes and that they actually are companies that are eligible for them. That's the only thing I need to hear from you—yes or no?

Mr. Jean-Pierre Blais: Yes, and I can't tell you in which circumstance, because the Income Tax Act also has a similar provision. So I can't share that. But I certainly would have access to that.

Mr. Charlie Angus: Certainly. How long.... I don't need to know what you discussed, but these discussions have been going on. Mr. Schaitkin said it was extensive, so you've had a number of meetings. Did this begin in March? Has it been ongoing?

Mr. Jean-Pierre Blais: I'm not prepared to answer that, unfortunately, but it is an extensive review.

Mr. Charlie Angus: Extensive review. Thank you very much.

The Chair: Thank you.

Now we go to Mr. Galipeau.

[*Translation*]

Mr. Royal Galipeau (Ottawa—Orléans, CPC): Thank you, Mr. Chair.

I want to continue along the same lines as Mr. Angus, whom I hold in the highest regard, by the way.

Mr. Blais, could you explain the criteria you use in determining what constitutes a Canadian company?

Mr. Jean-Pierre Blais: I think we would run out of time if I were to answer that, since there are only a few minutes left.

The act sets out a very complex definition, with subsections. We have to determine whether it is a corporation, a trust or a joint venture, and we need to examine the nature of the arrangement. We take into account all those details.

As far as administration of the act goes, sometimes people come to us to ask whether the act applies in their case, whether the company is subject to the act or not. Sometimes we debate the issue. Other times, people assume the act applies and they file an application under it. That is another story.

[*English*]

Mr. Royal Galipeau: How would you evaluate whether a takeover would meet Canadian cultural policy?

Mr. Jean-Pierre Blais: As I mentioned, there are explicit policies. There's one in the area of film and there's another one in the area of books. In other cases they are implicit. For instance, there is no explicit written policy with respect to newspapers. However, an implicit policy found in section 19 of the Income Tax Act has a certain tax treatment for newspapers and their advertising. So implicitly there's a policy there. So we would look at the cultural ecosystem more broadly, how would it impact actors, scriptwriters, how would it back authors of books. We look very much at the ecosystem as we know it. We are experts in cultural policy.

[*Translation*]

Mr. Royal Galipeau: Thank you very much.

I will not ask you to name the films made by the likes of Jacques Godbout, Pierre Falardeau or Robert Lepage. Instead I will give the floor over to my colleague, Randy Kamp.

• (1255)

[*English*]

Mr. Randy Kamp (Pitt Meadows—Maple Ridge—Mission, CPC): Thank you.

I have just a couple of quick questions.

Can you give us a sense of what your track record is on this? I assume there are discussions with companies that never make an application, so they maybe find out they don't have to, or things fall apart, and so on. When they get to the application stage, where does it go from there? Is it a 90% success rate, or less, or more?

Mr. Jean-Pierre Blais: The success rate is even higher than that, because since we've been administering the act—in 1999—there have only been three refusals.

Mr. Randy Kamp: Out of how many?

Ms. Missy Marston-Shmelzer (Deputy Director, Investments, Department of Canadian Heritage): We get about a dozen applications a year. We review about a dozen transactions a year.

Mr. Jean-Pierre Blais: Keep in mind that the application that comes in is not necessarily the one we approve, in the sense that there is a dialogue that occurs that improves the application and its approvability.

Ms. Missy Marston-Shmelzer: We also receive numerous notifications, small investments and new investments that just need to file a form and aren't reviewed. So they aren't counted in those numbers, but they'd be approvals too.

Mr. Jean-Pierre Blais: An example of that would be, as I mentioned earlier, production companies in Canada. We have a policy: technically they have to apply, but they're very much fast-tracked.

Mr. Randy Kamp: Thank you very much.

The Chair: One short question, Mr. Bruinooge.

Mr. Rod Bruinooge: Just a quick clarification. When you were talking about when a company engages your department on an application, you said, I think, that you imagine it's because they feel that they are Canadian and that's why they engaged your department.

Mr. Jean-Pierre Blais: I should have said because they believe they're subject to the act.

Mr. Rod Bruinooge: They're subject to the act. But perhaps it could be also—and I'm putting words in your mouth—because their lawyers want to ensure that they're not breaking any laws. They might believe that they're in fact not Canadian.

Mr. Jean-Pierre Blais: Then the appropriate provision in the act is there. There is what is called a status opinion or even a non-status opinion. Status opinion goes directly to the “Canadianness”—they can ask through that process, or they can ask other technical questions, which we can provide advance opinions on. If that's the question, there's a door for that; if there's an application, there's another door for that.

Mr. Rod Bruinooge: That door hasn't been gone through, then.

Mr. Jean-Pierre Blais: I can't comment one way or the other, because that gets into the specifics, but other investors have.

Mr. Rod Bruinooge: Okay. Thank you.

The Chair: Thank you very much.

I must say it's always a pleasure to have you here explaining our laws. Thank you very much for your presentation and your answers.

Mr. Jean-Pierre Blais: It's a pleasure. Thank you very much.

The Chair: The meeting is adjourned.

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