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Chair

Mr. Glenn Thibeault

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• (0905)

[English]

The Chair (Mr. Glenn Thibeault (Sudbury, NDP)): Good morning, members, ladies and gentlemen.

Welcome to the 11th meeting of the Legislative Committee on Bill C-11. I'd like to welcome our officials from yesterday, who will be with us until the end, and I'd like to welcome back all members.

Again, just a friendly reminder that we are televised and that where we left off yesterday when the bells occurred was on clause 35 and we were discussing amendment LIB-10. From what I can recall, the Conservatives were speaking at that time, so I could hand it back to you, Mr. Del Mastro, if you are interested in speaking a little more on Liberal amendment 10.

Mr. Dean Del Mastro (Peterborough, CPC): Mr. Chairman, I wanted to thank the officials for their comprehensive answers to my questions. I'm now satisfied that I can vote against LIB-10. Thank you.

The Chair: Great. Thank you, Mr. Del Mastro.

(Amendment negatived)

The Chair: Moving on to the second amendment, government amendment 5, I want to mention, as I mentioned yesterday, that there is a line conflict with Liberal amendment 11. So if this amendment is adopted, then Liberal 11 cannot be proceeded with.

With that, I'll ask Mr. Lake if he is moving the amendment.

Mr. Mike Lake (Parliamentary Secretary to the Minister of Industry): I am, and I will turn to the officials and have them explain how this impacts the bill.

Mr. Robert DuPelle (Senior Policy Analyst, Copyright and International Intellectual Property Policy Directorate, Department of Industry): This is a series of technical amendments that amend clause 35, which provides safe harbour provisions for Internet service providers.

Specifically, there are three safe harbour provisions: for mere conduit services; for caching services, which is copying done for network efficiency; and for providing hosting services.

The first two technical changes relate to conditions in caching content. Specifically, there is a change in relation to the requirement that the ISP respond to directions from the content provider as to whether to cache the material or not, and we're proposing to change the amendment so it ensures these are in line with industry standards.

A similar amendment is applied in relation to the ISPs' obligation to not interfere with the collection of user data.

The third change has to do with a specific carve-out in relation to those who are liable under the new enabler provision. There was a concern that this carve-out might only apply to the first safe harbour. We're moving that clause so it will now apply to all three safe harbours. As a consequence, there is a re-numbering.

The Chair: Thank you to the officials and to Mr. Lake.

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

(Clause 35 as amended agreed to on division)

(On clause 36)

The Chair: Is there any discussion on clause 36?

Mr. Charlie Angus (Timmins—James Bay, NDP): We have an amendment.

The Chair: You have an amendment, okay.

Mr. Angus, will you be moving it, or will Mr. Benskin?

Mr. Charlie Angus: I'll pass it over to Mr. Benskin.

The Chair: Mr. Benskin, will you be moving NDP-10?

Mr. Tyrone Benskin (Jeanne-Le Ber, NDP): Yes, I will.

As with all of our amendments, this is a really straightforward amendment that we believe everybody can support. What it will do is bring additional clarity to the new rights accorded to Canadians with perceptual disabilities without undermining the core intent of this law or unduly disadvantaging rights holders.

We propose the creation of a specific exemption under clause 36 in BillC-11 to clarify that it does not constitute copyright infringement for an individual with perceptual disabilities or someone working with a recognized non-profit organization on their behalf to break a digital lock for the sole purpose of making the material perceptible to someone with a disability.

The rationale for this proposed change is fairly simple. We've heard from groups like the Alliance for Equality of Blind Canadians, the Canadian National Institute for the Blind, educators working with Canadians with perceptual disabilities, and individual concerned citizens about the potential for this flaw in the legislation to be exploited to wrongly criminalize work done on behalf of Canadians with perceptual disabilities.

The CNIB cogently makes the point that this committee should not be in the practice of enshrining in legislation business models based on technology frameworks that restrict accessibility. We agree and believe that this change can assist Canada in developing a more balanced, inclusive system of content distribution for blind citizens.

This is a relatively simple change that will provide better clarity to people working on behalf of the blind and open new opportunities for them to enjoy a relatively limited field of literature, film, and text adapted to the formats they require. It is our sincere hope, on their behalf, that the government will entertain and accept this modest but important change.

• (0910)

The Chair: Thank you, Mr. Benskin.

There's a small error in the amendment. The first word, "to", does not need to be there because it's in the preceding paragraph, in subsection 32(1). We don't need to say "to" twice.

If you can move that, we can just say that we've removed that extra "to".

Mr. Tyrone Benskin: So moved.

The Chair: Perfect. We'll do it that way.

Is there any further discussion from the New Democrats? Seeing none, I'll move to Mr. Regan.

Mr. Regan, you have the floor for five minutes.

Hon. Geoff Regan (Halifax West, Lib.): Thank you very much, Mr. Chairman.

I agree with this amendment. It seems to me that for a person with a perceptual disability, as we heard from witnesses, they're going to have a tough enough time accessing any material. They'll have a tough enough time accessing the means to circumvent a digital lock. So if they can pass all those hurdles, to say that they still aren't allowed to do it.... To say that it's basically criminal, if they proceed in that fashion in order to be able to access it, makes no sense.

We heard very clearly that for a person in that situation, let alone to be able to access it, to be able to put it back in the condition it was before they circumvented the digital lock is next to impossible.

How many times is that going to happen? I ask my colleagues on the government side if they foresee this being a problem if they don't pass this amendment. Can they describe for us the situation in which they feel that it would be a problem for someone who had managed to circumvent the digital lock because they had a perceptual disability and they couldn't put it back on? What kind of a problem would they see that creating, and how often do they think it's going to happen?

The Chair: Thank you, Mr. Regan.

(Amendment negated)

The Chair: We'll move on to the next amendment, NDP-11. Will this amendment be moved?

Mr. Charlie Angus: Yes. I'll turn it over again to Mr. Benskin.

The Chair: Mr. Benskin.

Mr. Tyrone Benskin: Thank you.

Further to the same point, the issue of accessibility, Canada's official opposition has been clear throughout this process that we believe copyright laws should be fair to all implicated parties, taking special account of the needs of Canadians with disabilities.

At the core of the grievances expressed by Canadians with perceptual disabilities and their advocates is the relative scarcity of materials available in a format that is usable by their community, both at home and abroad.

Mr. Workman, from the Alliance for the Equality of Blind Canadians, on February 27, for example, reminded this committee that less than 10% of published works available in Canada are ever adapted to a format suitable for use by his clients.

This limited availability represents a defining reality of the market for alternative format culture products, which has led to the development of elaborate and mutually beneficial cooperative networks for the production of, sharing, and making available cultural materials across international borders for persons afflicted by perceptual disabilities. For example, Canadians with disabilities benefit tremendously from access to American and British repertoires of translations, adaptations, recordings, and reproduction of materials in formats suitable to their distinct needs.

Our proposed amendment is therefore a simple one: that a specific protection be accorded to Canadians with perceptual disabilities and their legitimate advocates for the practice of importing and adaptation of protected work, which they would have legally been permitted to create had it originated in Canada.

This amendment reflects the stated needs of blind Canadians without opening the system to abuse. It has potential to greatly enhance the availability of adapted material for our citizens here at home and open new markets for adapted Canadian content abroad.

We respectfully ask that our colleagues consider supporting this amendment. .

The Chair: Thank you, Mr. Benskin.

Mr. Regan, the floor is yours for five minutes.

Hon. Geoff Regan: Thank you, Mr. Chairman.

I want to speak in support of this motion as well.

People who are at home and may be hearing this and not watching it may not understand that the last motion was defeated because the Conservatives voted against it. It strikes me that this again is an obvious motion. If we apply some common sense, we can see the need for it.

I hope my colleagues in the Conservative Party, when they signed up to be a Conservative candidate, didn't promise to check their brains at the door and just do whatever they're told. I've certainly seen in past governments when Liberal MPs would in fact oppose what ministers did and ignore what ministers wanted, and proceed to using their common sense. That's the role of members of Parliament.

We have an amendment here that would make it possible for groups like the CNIB to distribute materials to their members. If this motion is defeated, it is because the Conservatives voted against it because they don't agree with ensuring that the CNIB and groups like them can provide these kinds of materials. I find that most unfortunate, if that's their view, Mr. Chairman.

● (0915)

The Chair: Thank you, Mr. Regan.

Mr. Del Mastro.

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

I'll try not to get too offended by the comments by Mr. Regan, as baseless as they were. He's new. He never sat on Bill C-32, and perhaps he's unaware of the features in the bill. But Mr. Regan should know that the bill does very specifically have a carve-out under digital locks, allowing for circumvention for the very individuals he's speaking of.

With that, I'll pass it off to Mr. Lake, who I believe has a question for officials.

Mr. Regan is either knowingly or unknowingly causing confusion and disseminating facts that are in fact incorrect.

The Chair: Thank you, Mr. Del Mastro.

Mr. Lake.

Mr. Mike Lake: This is a fairly quick question, I think.

I think it's clause 18 that refers to this issue already. It seems to me that this particular amendment wouldn't really change the bill at all. It basically says what we say in clause 18.

Could you comment on that?

Mr. Robert DuPelle: Clause 18, specifically proposed new subsection 27(2.1), would provide for greater certainty that a copy made outside Canada does not infringe copyright in terms of secondary infringement “if, had it been made in Canada, it would have been made under a limitation or exception” in the act.

If it could have been made in Canada pursuant to an exception, then it does not infringe by being outside of Canada.

Hon. Geoff Regan: Mr. Chairman, the difficulty, of course—

The Chair: Just one second, Mr. Regan.

Hon. Geoff Regan: The problem remains, right, that you have a situation where a person with a perceptual disability is expected, if they are going to get around a digital lock, to put it back on. I'd like to know how they are going to do that.

The Chair: Thank you, Mr. Regan. I can hand it over to the officials if there is any further comment.

Mr. Robert DuPelle: With respect to digital locks that are applied to material, there is a specific carve-out in relation to persons with perceptual disabilities. I believe it's under section 41.16, under clause 47 of the bill.

The Chair: Okay.

Is there any further discussion?

Mr. Benskin.

Mr. Tyrone Benskin: I'd just like to say that this amendment came about through broad consultation with the perceptual disability community, that this indeed is not as clear as the government would like it to sound. This is responding to what they are saying. They are saying this is not as clear for them as it could be. This is why we are looking for this amendment. It's for the sake of clarity and to make sure there are no grey zones.

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

Mr. Del Mastro.

Mr. Dean Del Mastro: I'll just thank Mr. Benskin for that. It's quite a bit different from what Mr. Regan contended just a few moments ago. I appreciate the clarification.

The Chair: Thank you, Mr. Del Mastro.

(Amendment negated)

The Chair: Moving on to NDP amendment 12, Mr. Angus, will you be moving this?

● (0920)

Mr. Charlie Angus: Yes, we will be moving this. I will turn it over to my colleague Mr. Dionne Labelle.

[*Translation*]

Mr. Pierre Dionne Labelle (Rivière-du-Nord, NDP): Thank you.

If we want Canada and Quebec to be able to benefit from international agreements aimed at giving people with perceptual disabilities better access to cultural products—as moved by the official opposition with Mr. Benskin's amendment—it is equally important that we do the same for our artists, authors and creators by allowing them to expand the cultural content available abroad. This is a matter of reciprocity and international agreements.

Our aim with this bill and with these amendments is to give Canada a place in the international community. It would seem, however, that the Conservatives are more interested in insulating Canada from the international community in a number of areas, including this one. Persons with perceptual disabilities already have a barrier in their way; they cannot see, isn't that right?

As Mr. Angus mentioned, less than 10% of published works in Canada is currently adapted to a format suitable for those with perceptual disabilities. That number is even more unfortunate when you consider French texts, given the size of the Quebec market, which is much smaller. What's more, unilingual material from the U. S. cannot be used. Quebec is a distinct nation, a unique market. Quebeckers and other French speakers across the country with perceptual disabilities benefit greatly from international cooperation agreements, especially those with France but also those with other members of the world's francophone community.

When we don't have access to a specific product, we work with our French-speaking partners to obtain a copy. People with perceptual disabilities in these other countries can and should also have greater access to the wonderful cultural repertoire of written works produced by Quebeckers, Acadians, Franco-Ontarians and Métis people, to name only the biggest component of Canada's vast francophone culture.

Furthermore, Mr. Harper has received numerous books that he has never read, books that were sent to him by our very own Quebec writers. We want blind people to receive better access to literary works, and we have an opportunity to help them with that. As I see it, we have a responsibility to enrich the repertoire of content available to the blind around the world by making it possible to export copyrighted works adapted to people with perceptual disabilities without penalties. We should not be putting a second barrier in their way.

This amendment is a simple one. It is almost identical to the import protection amendment moved by my colleague, Mr. Benskin. This amendment to section 32 of the act would allow for the export of material and reproduced works that do not infringe on copyrights....

The Chair: Mr. Labelle, you are speaking too fast. There is a lot of time left.

Mr. Pierre Dionne Labelle: This amendment would recognize partners that help blind people in other countries. This is a matter of reciprocity with other countries, and we want Canada to have a place in that community of nations.

It is our sincere hope that the other parties will support this minor amendment that helps make Canada a world leader in the sharing of adapted content between organizations serving the blind. This amendment would also respect the reciprocity principle to the benefit of persons with perceptual disabilities, both at home and abroad.

The Chair: Thank you, Mr. Dionne Labelle.

[*English*]

(Amendment negatived)

(Clause 36 agreed to on division)

Hon. Geoff Regan: Mr. Chair.

The Chair: Mr. Regan.

Hon. Geoff Regan: In terms of a possible other amendment, I'd like to move this just in order to have it discussed, because I'd like to hear the response from the officials, if possible. I'm going to ask for consent to—

● (0925)

The Chair: Is it in relation to clause 36?

Hon. Geoff Regan: Well, its relationship is it affects section 32. Clause 36 amends section 32, and this is section 32.2.

I don't know where else to raise this. If there's agreement, I would read the amendment.

The Chair: We would need unanimous consent to revert back to that.

Mr. Mike Lake: I have a quick question. I'm not clear right now, because he's saying it would amend section 32 of the act, not the bill.

It may be that it's a new amendment. Maybe we could get some clarification on whether he's talking about a new amendment or whether he's talking about an amendment to the....

The Chair: I'll hand that over to the clerk.

Mr. Mike MacPherson (Procedural Clerk): The issue is that clause 36 amends section 32.

Mr. Mike Lake: Right.

Mr. Mike MacPherson: And we've just carried clause 36.

Clause 37 deals with section 32.01, so we'd be past section 32.

The Chair: Mr. Regan.

Hon. Geoff Regan: My understanding, Mr. Chairman, is that this would amend subsection 32.2(1) of the act. I'm anxious to hear what the officials have to say, but obviously it requires unanimous consent.

It's the amendment from the Canadian Photographers Coalition.

The Chair: Mr. Regan, if you're talking about section 32.2, then that is under clause 38.

Hon. Geoff Regan: Okay, I'll wait for that. Thank you.

The Chair: Okay. So we have carried clause 36 and now we're moving on to clause 37.

(On clause 37)

The Chair: Is there any discussion on clause 37?

Mr. Lake.

Mr. Mike Lake: I have government amendment G-6. I'll go to the officials for comment on the effect of this amendment to the bill.

Ms. Anne-Marie Monteith (Director, Copyright and International Intellectual Property Policy Directorate, Department of Industry): This would create an exception that would allow a not-for-profit organization to export adapted material for the perceptually disabled as long as the work being adapted is by a Canadian author or a national from the country to which the adapted work is being exported.

For example, if the adapted work is being exported to country X, the author of the work must either be a Canadian or a national of country X. Concerns have been expressed that the nationality of an author may not always be easily determined and that the bill, as currently worded, could leave an organization open to be sued for damages for mistakes that have been made in good faith.

So this amendment would clarify or would allow the courts to take into account good-faith efforts taken by the not-for-profit organization when awarding damages, and copyright owners would then be able to seek only an injunction against the not-for-profit organization rather than damages.

The Chair: Thank you.

Mr. Angus.

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

If anyone has had a relative or a child with perceptual disabilities, they realize they are faced with roadblocks from day one, not just a perceptual disability. Pretty much in every single grade, you will find the institutions of education are very slow at responding to the needs of people with perceptual disabilities. If there's a way around doing something, they will go around it—not all, but it happens. It's institutional. It's difficult.

You find professors who simply will not change their course plans because they don't like to change their course plans. Young people drop out of courses. This is a dramatic reality. If you're blind or you're hard of hearing, course after course, if you get to university—if you can actually get there—you will end up facing professors who say, “Well, I'm not going to accommodate for this, that, or the other reason”. Of course, having a copyright bill that says if you tamper with a lock, you are going to be facing infringement, it's an enormous incentive for institutions to do nothing rather than address the legitimate need and the legitimate human right to be educated.

We've seen with our Conservative counterparts that they've turned down every reasonable amendment to ensure that people with perceptual disabilities are not further punished, in order to protect a corporate business model. We've seen no willingness from the Conservatives to move, realistically or in good faith, on any single good-faith amendment brought forward.

However, as New Democrats, as much as we believe this bill is fundamentally flawed—and it is pursuing a corporate business model over the basic rights of average Canadian citizens and artists—we will accept this amendment because we believe it is important, wherever possible, to amend this bill to ensure the basic rights of Canadians. So here it's the issue of the ability of people to engage in culture, to share culture. Particularly, as my colleague said, in our concern for the francophone communities, where the access to works is a smaller pool than what we have in the larger area of North America, it is essential that we show good faith as parliamentarians.

We haven't seen any sign of that good faith on the other side. They've been a stone wall on every reasonable amendment. However, we are not going to go down that road, because there's a greater issue here, which is to ensure that average people, especially people with perceptual disabilities, those who are the most marginalized in our community, are able to participate fully as active citizens.

In a sign of good faith from our caucus, we will support this amendment.

• (0930)

The Chair: Thank you, Mr. Angus.

Mr. Lake.

Mr. Mike Lake: I think what I just heard Charlie say is that this is a reasonable amendment from this government, by changing an area that needed to be changed.

I do want to comment, though, on his speech about teachers and people in educational institutions who just throw up roadblock after roadblock for people with disabilities. As he knows or might know, I have a 16-year-old with autism. While there are roadblocks—and certainly there are many roadblocks that need to be addressed—our experience with the education system has been fantastic. In our experience, we've met wonderful teachers, wonderful administrators at schools, who have done everything they can do to accommodate Jaden's particular disability.

We're talking about a 16-year-old who doesn't talk, who has a really hard time understanding anything that isn't concrete. Teachers and aides have gone to extraordinary lengths to create a circumstance where he can actually participate in a regular classroom and really

benefit from it in a way that is not only a benefit to him but a benefit to the other kids. So I think this characterization of the educational community as a community that just simply throws up roadblock after roadblock after roadblock for people with disabilities is unfair, quite frankly.

Certainly I agree: there are roadblocks there. In this bill we've actually sought to address some of those.

Maybe what I'll do is just turn to the officials and have them comment again on the bill itself and what the bill does for people with perceptual disabilities, just to bring some balance to the conversation.

Mr. Robert DuPelle: Well, just to recap, I will cover some of the clauses we have already seen. The bill will provide for further amendments to the existing exceptions related to persons with perceptual disabilities. It's an expansion in terms of who can benefit from the exception.

In relation to the new clause that's being proposed in relation to the export of materials, this is a new provision that allows for the export of adapted materials to other countries. Along with the new proposed measures with respect to technological protection measures, there is a specific carve-out in relation to circumventing technological protection measures for persons with perceptual disabilities.

The Chair: Thank you, Mr. DuPelle.

Seeing no further discussion from Mr. Lake, we have Mr. Regan and then Mr. Angus.

Hon. Geoff Regan: Mr. Chair, far be it for me to defend Mr. Angus, who can defend himself quite adequately, I'm sure, but it wasn't my impression that he was trying to denigrate the work of the teachers. He did say that people face obstacles sometimes from some teachers, perhaps.

I don't think he and Mr. Lake disagree on that point. I agree with Mr. Lake. Except for perhaps the grade eight geography teacher who insisted that Bermuda was a Caribbean island, I also had an excellent experience with teachers, both for myself and with my children. They do wonderful work.

I will be supporting the amendment.

The Chair: Thank you, Mr. Regan.

I have Mr. Angus and Mr. McColeman.

• (0935)

Mr. Charlie Angus: Thank you.

I'm very pleased to hear of Mr. Lake's experience. I think we're all very passionate about education because we see it through our children's eyes. I think it's excellent that he has had that experience.

My daughter was born severely deaf, and she had excellent teachers. But institutionally the reason she ended up getting a master's degree in international human rights law was having to fight, pretty much in every course at every level of the way. Her experience was that people with perceptual disabilities often did not want to have to confront because they were left in the situation themselves, especially at university.

This is why the issue of ensuring that it's easy.... You have to make it easy for the institution to do the right thing, because sometimes they'll choose not to. We actually dealt with the issue of copyright numerous times. Copyright was given as an excuse for not accommodating, which actually was a contravention of human rights law. I'm glad that Mr. Lake has had an excellent experience.

My daughter has done very well, but I've seen many young people she knew who had to fight and were impeded by institutions saying that they can't break a digital lock or they can't contravene copyright to accommodate them. That's simply not good enough when it comes to the needs of young people to get an adequate education.

So we're on the same page.

The Chair: Thank you, Mr. Angus.

We're on to Mr. McColeman.

Mr. Phil McColeman (Brant, CPC): I'll just add to the discussion.

Again, as a father of a brain-damaged child, my experience is similar to Mr. Lake's. All accommodation has been made through his life. And I know Mr. Angus has been to my community of Brantford, where we have one of the finest institutions, called the W. Ross Macdonald School for the Blind. It's one of the premier institutions in Canada. Those who need help get help right through to graduate studies from the Canadian Institute for the Blind. There is a huge support group for people with visual disabilities out there.

The Chair: Thank you, Mr. McColeman.

Is there further discussion on this amendment?

Mr. Tyrone Benskin: I have just one point.

I have not had that experience, although my parents are foster parents and we've dealt with young people who have issues.

One thing that was really clear in the witness testimony we had was the issue of inclusion. It's a good thing that there are institutions available for people with perceptual disabilities and so forth, but what they're looking for is inclusion in society, not separation from society.

With these amendments and the ones we've brought forward, we will be supporting the ones from the Conservative side. It really is a step closer to inclusion, and I hope this is just the beginning of that process.

The Chair: Thank you, Mr. Benskin.

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

(Clause 37 as amended agreed to on division)

(On clause 38)

The Chair: We're now moving on to clause 38.

Mr. Angus, go ahead.

Mr. Charlie Angus: We will be moving our motion.

The Chair: Are you're moving amendment NDP-13?

Mr. Charlie Angus: I'll pass it over to Mr. Benskin and Mr. Nantel.

[*Translation*]

Mr. Pierre Nantel (Longueuil—Pierre-Boucher, NDP): Thank you, Mr. Chair.

Our goal with this bill has always been to reflect the reality as closely as possible. And obviously, when we talk about photographs, clear factors come into play in terms of the distinction between commercial and private use.

The New Democratic Party would like clause 38 of Bill C-11 amended in order to clarify the term "personal purposes" by replacing it with the term "private or non-commercial purposes". The amendment is a technical one intended solely to prevent future legal disputes.

The term "personal purposes" makes photographers quite uneasy, as the committee has clearly seen. Even though the bill does indeed clearly establish the notion of photographic property, the term "personal purposes" is much more open to interpretation than the term we are proposing, "private or non-commercial purposes". Replacing the term in question would more clearly define the right to use photographs and copies of them without infringing on copyright. The reason is simple: the definition of "private or non-commercial purposes" allows people to use photographs as they please, so long as that use does not adversely affect the copyright owner's ability to market or sell the photographs in question.

Clause 38 of the bill pertains first and foremost to photographs or portraits commissioned for personal use. So it is appropriate that the use of the work in question pertain strictly to the person who decided to obtain it, as long as that person does not market the photograph for personal gain. This amendment would therefore protect the creator, as we would like to see happen in real life, while allowing the user to derive full enjoyment from the photograph on a personal, not commercial, level.

● (0940)

[*English*]

The Chair: Thank you, Mr. Nantel.

Mr. Benskin.

Mr. Tyrone Benskin: Ultimately the photographers community is very pleased that they've finally gotten inclusion in the Copyright Act. As my colleague said, they're just looking for clarification to make sure that the wording is consistent with the rest of the act.

They don't have any issue with people taking a photograph and putting it up on Facebook for their own personal use, but they want to be able to sell copies of a photograph that they've taken for somebody. For example, in the case where a person is going to be promoted and the company asks them if they have a photograph, normally the company would go to the photographer to ask for a photograph or to ask them to make a photograph. The photographer wants to be able to maintain their right and their ability to sell any photographs that are made.

Again, this is a simple fix to the wording, in line with what's used in the rest of the act, just to clarify the difference between personal use and private use.

[*Translation*]

The Chair: Thank you, Mr. Benskin.

[*English*]

Mr. Lake.

Mr. Mike Lake: I'd actually like to go to the officials on this one, just to give some clarification.

Could you speak first of all to the purpose of the clause within the bill, and then to how this amendment would affect that clause?

Mr. Robert DuPelle: Well, in an earlier clause the government proposed an amendment in relation to the rules currently in place for commissioned photographs. Under the current act, there's special treatment with respect to commissioned photographs in terms of who is the first owner of copyright. There was an amendment in this bill to remove that special treatment in relation to commissioned photographs. In this clause, the bill includes an exception for the purposes of individuals who commission photographs, so that they will be able to use these photographs to a certain extent.

There are two descriptors used in relation to the use of the photograph and the reasons for which the photograph was commissioned. With respect to the use, the terms "private" and "non-commercial" purposes are used to describe the uses that are permitted. In relation to the purpose for which the photograph was commissioned, the descriptor "personal" purposes is described.

Those are the types of commissioned photographs that would be, in a sense, eligible for this exception. Because there are two different descriptors, two unique descriptors are used to describe those things.

The Chair: Thank you, Mr. DuPelle.

Back to you, Mr. Lake. Anything further?

Mr. Mike Lake: I'm good.

The Chair: Is there any further discussion?

Mr. Benskin.

Mr. Tyrone Benskin: I would like to ask if the meaning of "personal purpose" is clear. Where else does it appear in the bill?

Mr. Robert DuPelle: Unfortunately, I don't have that information handy at the moment, in terms of tracking where it may or may not be used elsewhere. I can say that private or non-commercial is certainly different from personal purposes, and to change personal purposes to private or non-commercial would change the meaning of the provision.

Mr. Tyrone Benskin: Can you expand on that, please?

Mr. Robert DuPelle: Private or non-commercial suggests more than one possible purpose for the use. It could be private, or it could be non-commercial.

The intent behind having a photograph commissioned is simply personal. It would have to be a photograph that was commissioned for personal purposes. It doesn't contemplate the notion of non-commercial.

•(0945)

Mr. Tyrone Benskin: Thank you.

The Chair: Thank you, Monsieur DuPelle and Mr. Benskin.

(Amendment negatived)

The Chair: Mr. Regan.

Hon. Geoff Regan: I seek consent to move the following motion. It was originally to replace lines 29 and 30, as the clerk and I discussed.

The Chair: You're good to go now, Mr. Regan.

Hon. Geoff Regan: That's right. I couldn't have changed 29 if theirs had passed.

The motion is that Bill C-11 in clause 38 be amended by replacing lines 29 and 30 on page 38 with the following:

personal purposes and made for valuable consideration, if that use of the photograph or portrait does not have a substantial adverse effect, financial or otherwise, on the exploitation or potential exploitation of the photograph or portrait or copy of them, or an existing or potential market for it, unless the individual and the

The Chair: Thank you, Mr. Regan.

Does Mr. Regan have the consent of the committee to move this amendment? Yes.

Mr. Regan, you have five minutes now if you'd like to talk a little more about your amendment.

Hon. Geoff Regan: This again is a concern of photographers, in terms of clarity about the use of photographs they have sold. We have heard from photographers that someone might get a photograph for a personal purpose but end up distributing it very widely, perhaps not for profit, so it would be non-commercial, yet it would still have an effect on their enjoyment of the photograph or their ability to reproduce it and make a dollar.

That's what they're looking for in this. I'd like to hear from the officials what they feel this would do and what problems they see with it. Apparently they don't favour it.

The Chair: So have you asked that question of the officials, Mr. Regan?

Hon. Geoff Regan: That's what I'm doing now.

The Chair: Mr. DuPelle.

Mr. Robert DuPelle: Can we take a moment?

The Chair: You sure can.

Hon. Geoff Regan: They may want to see it.

The Chair: We will suspend for a few minutes.

- _____ (Pause) _____
-
- (0950)

The Chair: You've had a few minutes, so I'll hand the floor over to you now, Mr. DuPelle.

Mr. Robert DuPelle: I am going to briefly describe the conditions that are already in place in the amendment.

The exception provides that the individual may use the photograph for private or non-commercial purposes. The photograph in question would need to be one that was commissioned by the individual for personal purposes. The exception applies unless the individual and the owner of copyright in the photograph or portrait have agreed otherwise. Those are the existing conditions.

The proposed changes to this amendment do raise new concepts, such as potential market effect. Because of that, they could modify the scope of the exception, and that would have to be taken into consideration.

The Chair: Thank you, Mr. DuPelle.

I'm going back to you, Mr. Regan.

Hon. Geoff Regan: Thank you, Mr. Chairman.

So I've moved the motion and....

The Chair: Okay, thank you very much, Mr. Regan.

Is there any further discussion on the motion?

Mr. Benskin.

Mr. Tyrone Benskin: I'm sorry to harp on this, but I'm still really unclear, and the industry has expressed that they themselves are unclear. First, I've checked with my staff, and we've triple-checked the document, and nowhere else does "personal purpose" show up in the document. Again, because it's the only place that it does show up, it creates in society at large a sense of ambiguity or lack of clarity as to what that means. Quite honestly, I'm wondering if it's a drafting error or if a very specific term was employed and why here and nowhere else.

The Chair: Mr. Peets.

Mr. Gerard Peets (Acting Director General, Marketplace Framework Policy Branch, Strategic Policy Sector, Department of Industry): Mr. Chair, I'm wondering if we are discussing the previous amendment or the current one.

Mr. Tyrone Benskin: The term "personal use" is used in this current amendment as well, is it not?

The Chair: Just one second, please, Mr. Benskin.

Mr. Peets, it does appear in relation to Mr. Regan's amendment, so the question is something that Mr. Benskin brought forward.

If you need a minute or so.... Okay, perfect, back to you, Mr. Peets.

Mr. Gerard Peets: I could reiterate what Rob just mentioned. We can't confirm, but we can take your word for it that it doesn't appear elsewhere in the act. There is a difference between "personal", on the one hand, and "private" or "non-commercial", on the other. One place where that would definitely be apparent is the concept of "non-

commercial" would appear to be much broader than the concept of "personal". And it's "private" or "non-commercial". So switching the words would have the effect of broadening the exception.

- (0955)

The Chair: Do you have any further comment, Mr. Benskin?

Mr. Tyrone Benskin: No.

The Chair: Okay, I'll go to Mr. Regan.

Hon. Geoff Regan: It's my understanding—and I'd like to hear from the officials on this—that the wording you've proposed in this amendment is the wording used in the bill in relation to user-generated content. I wonder if that's accurate, and if you can explain why it would be helpful to have it there, but not here.

The Chair: I'll refer this question to the officials, Mr. Peets or Mr. DuPelle.

Mr. Robert DuPelle: Could we take a moment to compare the language?

The Chair: That's not a problem. You'll have a minute or two to do so.

I'll suspend.

- _____ (Pause) _____
-

The Chair: All right, Mr. DuPelle, you've had a few minutes to review, and I'll hand the floor back to you.

Mr. Robert DuPelle: We've just confirmed that the language is similar to the language that is used in the user-generated-content provision under clause 22. The user-generated-content provision, like other provisions in the bill, has specific conditions, which were prepared given the context of that specific exception. In terms of this clause we're talking about now, to make the proposed changes would add new concepts that are not part of the current amendment. Because of that, it could alter the scope of the amendment.

The Chair: Thank you, Mr. DuPelle and Mr. Regan.

Do we have any further discussion?

Hon. Geoff Regan: If we're talking about the scope of the amendment, does that have an impact? I guess that comment is one I normally expect to hear from the legislative counsel. It's fine, I'm not objecting to the officials saying that. Is that....?

The Chair: It's just the start of the House today, Mr. Regan.

Hon. Geoff Regan: The bells—I know.

The Chair: It's the Pavlovian theory. I know we all start to salivate and want to get up and walk.

Some hon. members: Oh, oh!

- (1000)

Hon. Geoff Regan: No, I wasn't asking about the bells. I wasn't asking about the dog. We're not going to hear from the legislative clerk on whether it's in the scope of this part of the bill.

The Chair: Just give me one second.

We're not breaching any admissibility rules.

Hon. Geoff Regan: Thank you, Mr. Chair. Let's move forward then.

The Chair: Okay, Mr. Regan.

(Amendment negatived)

(Clause 38 agreed to on division)

The Chair: Mr. Del Mastro.

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

I would move that we consider and pass clauses 39 through 45 as a block.

The Chair: Do I have the consent of the committee to move forward with that?

Mr. Charlie Angus: Yes.

(Clauses 39 to 45 inclusive agreed to on division)

(On clause 46)

The Chair: We're now moving to clause 46. I know there is a government amendment, so I will look to Mr. Lake.

Will you be moving that amendment?

Mr. Mike Lake: I will, as I have done in the past, go the officials for comment on how it affects the bill.

The Chair: Mr. Olsen.

Mr. Drew Olsen (Director, Policy and Legislation, Copyright and International Trade Policy Branch, Department of Canadian Heritage): Thank you.

Statutory damages enable courts to award damages to copyright owners in a pre-established range without showing proof of actual damages. Under Bill C-11, copyright owners would be able to seek injunctions, profits, and/or actual damages against enablers, but the option of seeking statutory damages is not available to them.

It has been suggested that statutory damages should be available against enablers. The proposed amendment would make statutory damages available against those who enable copyright infringement.

The Chair: Thank you, Mr. Olsen.

It's back to you, Mr. Lake.

Mr. Mike Lake: I'm happy with that explanation.

The Chair: Thank you, Mr. Lake.

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

(Clause 46 as amended agreed to on division)

(On clause 47)

The Chair: We're now moving to clause 47.

Mr. Angus.

Mr. Charlie Angus: We have a number of amendments to move.

The Chair: I believe the first one you're moving, Mr. Angus, is amendment NDP-14.

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

We've been attempting to work with the government to fix the fundamental flaws of this bill, but we've seen no willingness on their part to address the two great downfalls of this bill. The first is the attack on the royalties and the attack on the creative community that we see throughout this bill. The second is the attack on the rights of average citizens to actually participate in the digital age without worry that they may perhaps be seen as criminalized.

This is on the digital locks provision, because under this bill the digital locks provision allows the corporate interest to override any of the rights that are guaranteed to an ordinary citizen. We're not talking about people who are breaking TPMs, technical protection measures, in order to steal content. We're not talking about undermining legitimate business models. What we're talking about is the ability of a citizen to extract through a TPM work for which they have a legal right to do so. The Conservative position is if you don't like it, don't buy the product. It's not the basis of the rule of law that a corporate algorithm decides if your right is accessible or not.

We had a very good example the other day from the archivist who said if a historic film is on a DVD and they don't know the owner of it, they're not allowed to extract that work because they're technically breaking a digital lock and therefore they're engaged in criminal behaviour. That seems to me a far cry from the legitimate need to ensure that, for example, the gaming industry is protected in terms of its right to make sure that its product isn't being stolen. We're talking about the legitimate legal rights of Canadians here.

Now, the bill does allow exemptions for network research, the interoperability of computer programs for policing and intelligence operations. But we would say the reasonable question is why don't we link the prohibition of breaking digital locks to actual acts of infringement, rather than presuming the criminality of every Canadian who engages in the digital realm?

Our amendment is as simple as it is important. In the first half it's a linking of the criminal penalties for violation of digital locks to copyright infringement, and (a) refers to the access to a work, while (b) refers to the use of the work. This is a crucial reform that has been endorsed by virtually every consumer advocacy group in this country, including several witnesses we've heard from, like the Canadian Consumer Initiative. They have talked about the need to clarify the difference between breaking locks for criminal purposes and for infringement purposes, and the ability to break a lock because you were extracting content for use in research, or for example in the creative community for documentary work.

We've heard from entrepreneurs who fear that a regressive digital locks regime will directly threaten innovation and significantly hamper Canada's ability to compete, and from creator groups warning that flawed lock rules may be as big a threat to their livelihoods as piracy itself. We've learned of the disastrous impact of such imbalanced measures that they've had in the United States. We actually see, even under the deeply flawed American DMCA legislation, they recognize the need that DMCA is not to override certain basic constitutional rights that citizens have in order to extract works.

We therefore say with our colleagues that we can amend this. We can be WIPO-compliant. We can ensure that we are protecting the new business models that are emerging and that rely on TPMs, while not unnecessarily interfering with the legal rights of Canadians and not leaving Canadians exposed as potential criminals through these onerous digital lock provisions.

• (1005)

The Chair: Thank you, Mr. Angus.

Now that amendment NDP-14 has been moved and spoken to, we can only proceed with amendment NDP-14, because it's identical to amendment Lib-12. We will no longer proceed with amendment Lib-12.

Is there any discussion on amendment NDP-14? I have Mr. Del Mastro and then Mr. Regan.

Mr. Del Mastro.

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

In going through the process of listening to witnesses on this bill, one thing remains fundamentally clear to me and to members on the government side. To begin with, we heard from representatives from Music Canada. We heard from representatives from the Canadian film industry and others. We heard from software creators. We heard from gaming creators. We heard from a very broad cross-section that was very clear about the fact that without the ability to protect their work, without the ability to ensure that their work cannot simply be taken without remuneration for that work, technical protection measures are critical.

As we've said many times, we believe that this is a business-to-consumer decision. The market will determine whether or not TPMs are supported.

I raised many times, I believe, on Bill C-32 that I have bought hundreds of CDs and hundreds of DVDs. If I'm not allowed to format-shift them, I just won't buy any more of them. It's up to the companies that have created them to determine whether they want to allow me the ability to format-shift them.

New technologies are coming out all the time. The cloud that's been created by TBD Networks and others has virtually eliminated the need to buy your own copies of works, and people pay a monthly fee for that. The decision to take advantage of that is a decision being made by consumers right across this country.

What we do know, and we know very clearly, is that Music Canada came in and indicated that some \$800 million in revenues has gone missing. That's money that's not going to artists. It's money

that's not being reinvested in the industry. And it's money that is being lost each and every day by the Canadian economy.

We know that the film industry came in and said that for their industry, it has been more than \$1 billion. That's money, again, that's not being invested in Canada. That's jobs that are not being created in Toronto, Montreal, or British Columbia, or in any other of the provinces and regions in this country where great films have been made and where more could in fact be made.

We also know that companies such as Google and ESA and others have indicated that their investment in Canada could grow, and will grow, if we put in place the kinds of protections they need. These protections, under technical protection measures, are critical for enabling the next generation in communications.

Those who have suggested that we can allow folks to simply breach TPMs for non-infringing purposes are being blissfully naive to the reality that this will in fact enable the piracy we have seen in this country, the piracy this bill seeks to put an end to. And frankly, it will cripple what has been an effort to ensure that those who create copyrighted materials are in fact paid for those copyrighted materials.

These amendments being sought by the opposition on this specific clause would render many of the other measures in this bill meaningless. That's why we can't support them.

• (1010)

The Chair: Thank you, Mr. Del Mastro.

Now we go to Mr. Regan.

Hon. Geoff Regan: Thank you, Mr. Chairman.

In view of what Mr. Del Mastro has said, I think it's important to keep in mind that what this amendment would do—and it is identical to the amendment that we proposed, so I will be supporting it—is it would basically say it's okay to circumvent a digital lock if you're doing it for a lawful purpose. If you're doing it for an unlawful purpose—to distribute it, to sell it, to share it with all kinds of friends—that's not okay. But if you bought a movie, and you're a mother and you want to transfer it to your iPod, iPad, or preferably, PlayBook, of course—it being a Canadian product—so that the child can watch it as you're driving to grandma's house, this amendment would enable you to do that. But under the bill as written, you couldn't do that. It would be illegal. You'd be a criminal if you were a mother doing that for your child so they could watch this movie you've paid good money for. The government doesn't feel you should be able to do that.

We also heard from a librarian. I want to remind members of what we heard from Nancy Marrelli, who is from the Canadian Council of Archives. She said:

Let me give you a fictional example of how Bill C-11 might affect archives. An archives holds a copy of a CD on the history of a small Ontario company that built and sold distinctive cast-iron stoves throughout Canada over a period of 150 years. It was the main industry in the small town that grew up around the factory. The CD was created by a small communications group that came together briefly in 1985 as the company was closing its doors.

The CD deposited by the family that owned the factory includes photographs, oral history interviews with the owners and several generations of workers and customers, company catalogues, and some film footage of the factory. Only one copy of the CD remains. The communications group disbanded when a fire destroyed its offices and all the original material it had collected for the project. As the lifespan of this important CD approaches obsolescence, the archives wishes to ensure the important documentary heritage it contains is preserved for posterity in a suitable format.

But the CD is protected with a digital lock and the archives has not succeeded in locating the original creators. If the archives cannot circumvent the digital lock to preserve the unique historical material the CD contains, an important part of our documentary history will be lost as the CD becomes obsolete and the files become unreadable.

Now, what we haven't heard from the government, Mr. Chairman, is an answer to that objection. We haven't heard how on earth archives are going to get around that. We haven't heard how it's not going to be illegal for that young mother to transfer the movie she's paid for onto her PlayBook.

That's why I think this amendment is required. What the government seems to want to do is preserve old models and ignore the fact that we have moved into a digital world. We have services, premium services that are in fact profit-making, succeeding very well. I heard recently from students who work on software, who write software at Carleton University. I met with them last week about their view on this. They know the digital world very well, and they see this bill as trying to stick us with an old model that won't work in the current environment.

I think there is a need for this. My colleague Mr. Del Mastro talked about Music Canada losing \$800 million a year or something. The difficulty with that argument.... Is he really suggesting that with this bill, they will now recover that, they'll get it back? I don't think he's really suggesting they're suddenly going to put digital locks on and therefore get \$800 million in revenue back that they've lost in the last few years. If he is, I'd like to hear his argument about how they—or the film industry, for that matter—are going to suddenly recover all that money because of this bill.

The other thing, of course, is that this seems to be driven by... We've heard, and we've seen evidence of this in WikiLeaks, that this is driven by U.S. corporate interests. The government seems to be succumbing to that. The funny thing is that this would actually take us further than the situation currently in the U.S., in view of court decisions there.

So I will be supporting this amendment.

• (1015)

The Chair: Thank you, Mr. Regan.

Mr. Angus.

Mr. Charlie Angus: Thank you.

I just wanted to clarify something for my colleague, because whenever we talk about the legal rights of Canadians, he thinks it's the Chicken Little amendment and that the whole world is going to collapse. I just want to clarify that we are not talking about a bill that

endorses widespread piracy. We're not talking about undermining the technological protection measure provisions, the infringement provisions, the statutory damage provisions. Those are all still in place.

What we're talking about is the legal right of Canadians to engage in legal acts without being criminalized. If we make that amendment, the sky is not going to fall. I just want to reassure him.

The Chair: Thank you, Mr. Angus.

Any further discussion on NDP amendment 14?

Seeing none, I'll call the question, asking for a show of hands.

Hon. Geoff Regan: Recorded vote, please

(Amendment negated: nays 7; yeas 5)

The Chair: Moving on to NDP amendment 15, Mr. Angus.

Mr. Charlie Angus: I'll turn it over to my colleague Monsieur Labelle.

The Chair: Are you moving the amendment?

Mr. Charlie Angus: Yes.

The Chair: So you're moving the amendment.

Monsieur Dionne Labelle.

[*Translation*]

Mr. Pierre Dionne Labelle: Thank you, Mr. Chair.

This is the second half of our attempt to link the criminal intent to get around a digital lock to the notion of copyright. I am quite partial to this amendment.

It refers to the intent behind the act. In my view and as Mr. Angus so eloquently stated, the digital lock provisions should not be applied blindly. Doing so would be dogmatic and ideological.

Mr. Angus and Mr. Regan gave a number of examples of situations in which regular people breaking digital locks unintentionally or without criminal intent would have the presumption of guilt imposed on them.

That could also harm innovation and competition. Consumers have also pointed to problems.

I want to come back to another side of the digital lock debate. I would point out that the federal government is now dictating how to handle course notes and run a classroom, activities that are the domain of the province.

A number of witnesses have said that, on top of the challenges I just mentioned, the digital lock system again raises constitutional concerns. Even though the federal government is entitled to regulate trade, in accordance with the applicable section of our Constitution, the provinces have exclusive jurisdiction over contractual obligation matters. A serious concern has been raised to the effect that end-user licence and application agreements involving digital locks are indeed contracts pertaining to protection measures or e-commerce rules, which are the exclusive jurisdiction of the province. As a result, they cannot be legitimately regulated by the federal government, whose role in this area is limited strictly to copyright.

Lawyers will have a field day with that debate in court. This bill is going to fuel legal disputes in many areas for years to come, especially in Quebec, whose Civil Code contains unique French-language protection measures. You can't simply cast aside these concerns out of hand. These concerns may be of no importance to a government that did not even have the courtesy to ask a single question in French while this controversial bill was being studied. However, I can assure you that they are extremely important to the members of the Quebec nation, which Parliament recognized. We urge you not to meddle in the province's domain.

• (1020)

The Chair: Thank you, Mr. Dionne Labelle.

[English]

Any further discussion from the New Democrats?

Okay, I'm seeing Mr. Regan. You have discussion, for five minutes.

I should mention, though, before I get to you, Mr. Regan, that NDP-15 is identical to Liberal amendment 13, so since this one has been moved, we will no longer be proceeding with Liberal amendment 13.

Hon. Geoff Regan: You guys are no fun at all.

That keeps happening around here. At least we have the amendment being moved. I will be supporting this amendment, and I certainly encourage my Conservative colleagues to consider it. I know that they have voted against every opposition motion to amend so far. I hope they recognize that I voted for some of their amendments, and I voted for some NDP amendments, because I try to consider which are reasonable, which will improve the bill and which will not.

I recall, in fact, a few weeks ago, when Mr. Rae was speaking in the House on this bill, that Mr. Moore was calling from across the way, saying, "I'll bet you \$10,000 we'll accept significant amendments." I should have taken him up on that bet. I could use that \$10,000. I don't see significant amendments being passed that make substantive changes to this bill. This certainly would be a positive amendment.

I sympathize with my colleagues, considering that I know there's some fear of Mr. O'Connor. I appreciate that. He's a pretty stern guy, and maybe they want to stay on whatever committee they're on, or they feel they're just a short time away from going into cabinet. I should tell them that I appreciate that. The cabinet experience is certainly an interesting one, but it can be very ephemeral. It can be

fleeting. It can last only a short time, if you get there at all, and there's no certainty of getting there in this business.

So I hope they will reconsider their position, and take on their responsibilities as MPs to be here, to think seriously about amendments, and not just vote as they are told by the Prime Minister's Office.

The Chair: Thank you, Mr. Regan.

Is there any further discussion on NDP-15? Seeing none, I will call the question.

Hon. Geoff Regan: I would like a recorded division.

The Chair: A recorded division is called for.

(Amendment negatived: nays 7; yeas 5)

The Chair: Now moving on to amendment NDP-16, Mr. Angus, will this amendment be moved?

Mr. Charlie Angus: Yes, we will be moving this amendment. I'll turn the floor to my colleague, Mr. Cash.

Mr. Andrew Cash (Davenport, NDP): Thank you, Mr. Chair. We'll try this one more time, a third kick at the can here.

We need to be clear here that when we state in our amendment the term "lawful purpose", it does not mean piracy. I want to refer back to something Mr. Del Mastro said about Music Canada losing \$800 million. He didn't say that Music Canada and the music industry lost \$800 million due to piracy.

That's not what you said. But if that's what you meant, it's hard to believe that you would take \$50 million off the table for artists and music stakeholders, if you're so concerned about the music industry. It's hard to believe, sir. This is one of the ironies or hypocrisies—whatever you want to call it—of the government's position as it pertains to artists in this bill.

We've also got a serious concern about users and the blanket criminalization of consumers. This is why over 50,000 people have signed the OpenMedia.ca petition to not lock down the Internet. We're not talking about pirates here. We're talking about regular Canadians and their regular use of the Internet.

The purpose of this amendment is to create a blanket protection under clause 47 for violation breaking or other evasions of a digital lock for any legal purpose.

It is sad, when one reflects, that we've come to such a point that we must propose amendments to clarify that Canadians who aren't breaking the law aren't breaking the law. Nonetheless, the risks of this government's absolute digital locks policy, a policy we know has been tried and failed miserably in the jurisdiction of our largest trading partner and closest ally, the United States, are so great that they warrant this extraordinary effort.

I'll spare everyone further details and examples of how the government's maximal approach is going to harm Canadian users of the Internet. I will simply ask, with the greatest of respect, that our Conservative colleagues take this third, final chance to fix a glaring flaw in this bill on behalf of the 35 million Canadians who look to us for national leadership on this and many other issues.

Thanks.

●(1025)

The Chair: Thank you, Mr. Cash.

Is there any further discussion on this amendment? Seeing none, I will call the question on NDP amendment 16.

Hon. Geoff Regan: A recorded vote, please.

The Chair: A recorded vote called for by Mr. Regan.

(Amendment negatived: nays 7; yeas 5)

The Chair: Moving on to NDP amendment 17, Mr. Angus, will that amendment be moved?

Mr. Charlie Angus: Yes, and I'll turn it over to my colleague, Monsieur Dionne Labelle.

The Chair: Monsieur Dionne Labelle.

[*Translation*]

Mr. Pierre Dionne Labelle: This one? No, we just talked about that. It's not that one, it's the other one.

[*English*]

Mr. Charlie Angus: I'll begin.

The Chair: Mr. Angus, we'll go back to you.

Mr. Charlie Angus: This goes back to our earlier concern about the roadblock this government is putting up in the face of people with perceptual disabilities. Not only do they face numerous obstacles in being able to access works, but now they're having to become computer software geniuses. In fact, if they extract a work so they can actually make use of it, they have to go and then repair the lock. It's kind of a bizarre concept. We're talking about a computer algorithm. I think the Conservatives actually thought they were digital locks, so if you had a lock, once you picked the lock, you could fix the lock. It's like once you unlock a house, someone can go in, and then you should be able to lock it again.

But we're talking about computer software and computer code here, so just for the folks back home, our Conservative colleagues think that blind people or people with hearing disabilities who have to extract a work may be engaged in all kinds of nefarious activities if they don't repair the lock after they've come into the cultural house. It seems to be a bizarre thing.

Our provision is the issue of repairing the TPM if it's been extracted for a legal purpose with a person with perceptual disabilities...just leave it alone. Why are you putting more pressure on people who are already facing numerous incapacities, inability to participate in culture? So this provision on having to be responsible for the lock and the state of the lock I find makes absolutely no sense, and it doesn't even respond to the real world.

Mr. Dionne Labelle, did you want to say anything, or are we content with this?

●(1030)

[*Translation*]

Mr. Pierre Dionne Labelle: Yes, absolutely. To me, this requirement is not in line with the reality. On the one hand, you are granting a right, but on the other hand, you are limiting that right with a provision that needlessly complicates matters for those with perceptual disabilities by making them repair digital locks. You have two opposing sides of the same coin: one side seeks to make things easier, while the other seeks to complicate them. So our amendment is entirely relevant.

That being said, given that not a single amendment intended to make life easier for these people has been accepted, I don't expect much of you, gentlemen.

[*English*]

The Chair: Thank you, Monsieur Dionne Labelle.

Before we move to further discussion, I just need to notify you that Liberal amendment 14 is identical to NDP amendment 17, the one that was just moved, so we will only be proceeding with NDP amendment 17.

With that being said, is there any further discussion on amendment NDP-17?

Go ahead, Mr. Lake.

Mr. Mike Lake: Again, Mr. Angus has a tendency to go way over the top with his comments, believe it or not. He talks about this law throwing roadblocks in the way of people with perceptual disabilities. I'm going to go to the officials, if I could again, to just speak in generalities to what this new bill does for people with perceptual disabilities, and the accommodations made for these people in the new bill.

Mr. Robert DuPelle: As we've seen in some of the previous clauses, there is an expansion in relation to the existing exceptions to copyright infringement for persons with perceptual disabilities in terms of who can benefit from the exception. There is a new provision in the bill with respect to the exportation of adapted materials to other countries for persons with perceptual disabilities. As we see now with this clause, there is a carve-out from the prohibitions in relation to circumventing technological protection measures for the benefit of persons with perceptual disabilities.

The Chair: Thank you, Mr. DuPelle.

Mr. Lake, is there anything further?

Mr. Mike Lake: No.

The Chair: Mr. Angus, you mentioned that you would like to speak.

Mr. Charlie Angus: Certainly.

With all due respect, Mr. DuPelle, I think that answer was lousy. I don't think you answered the question at all.

What we're talking about is an amendment that takes out the words "to the extent that the services, technology, device, or component do not unduly impair the technological protection measure". Are you suggesting that blind people are going to take a hammer to the CD? How is it possible that taking that language out is going to interfere? It seems that "unduly impair", that language... Is the expectation that people with perceptual disabilities are hackers or something? How would taking those three lines out possibly damage a business model? You are putting the onus on them. You are putting roadblocks in the path of people with perceptual disabilities. That's what you are doing.

The Chair: Would you like to answer, Mr. DuPelle?

Mr. Robert DuPelle: With respect, I don't think there was a question for officials to answer.

Mr. Charlie Angus: Well, do you want me to be clearer? Why did you put in that language that they have to be responsible for fixing something and that they can't unduly impair the technological protection measure? We're talking about people with perceptual disabilities. Why is that language in there if you're not looking to put a roadblock in front of them?

Mr. Gerard Peets: That is essentially a policy question that would be more appropriate for the government to answer.

• (1035)

The Chair: Thank you, Mr. Peets.

Mr. Charlie Angus: I don't think that's appropriate at all. They've been using you guys as flacks to cover off everything. You told us about the carve-out—

The Chair: Mr. Angus.

Mr. Charlie Angus: —but you're not telling us about this provision.

The Chair: Mr. Angus, please.

Mr. Charlie Angus: This provision is what I'm asking you about.

The Chair: Mr. Angus, please use appropriate language. Let's be a little bit more respectful. You can disagree, but I would ask you to watch your language.

Mr. Charlie Angus: I certainly agree. Thank you, Mr. Chair. I guess what I find frustrating—

The Chair: Mr. Angus, we're moving on.

Mr. Charlie Angus: —is not getting an answer to the question.

The Chair: Is there any further discussion?

Go ahead, Mr. Moore.

Hon. Rob Moore (Fundy Royal, CPC): I think the onus is on the member bringing the amendment to explain the amendment. Mr. Angus has an amendment, so explain your amendment. Explain the rationale for your amendment, and we'll decide whether we're going to vote for or against it. But there's no point criticizing officials here.

Mr. Charlie Angus: Can I explain it?

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

I have Mr. Regan.

Hon. Geoff Regan: I want to express my appreciation to the officials for being here today in difficult circumstances. I think the

government at times seems to be asking you to give support to their policy position, but you've been very careful to stick to what's actually in the bill, and I appreciate that. And I understand the difficulty you have. I'm sure that all my colleagues would endorse that.

The Chair: Thank you, Mr. Regan.

(Amendment negated)

The Chair: We will move now to amendment G-8.

Go ahead, Mr. Lake.

Mr. Mike Lake: I will move this amendment and turn to the officials for an explanation of how this impacts the piece of legislation before us.

Mr. Robert DuPelle: This motion would relate to several provisions in the bill, the first dealing with the proposed notice-and-notice regime with respect to ISPs. In addition to some consequential amendments with respect to numbering, there is a change with respect to the timeframe by which an ISP would need to forward on a notice that it received to a subscriber.

The modification is to change the language from "without delay" to "as soon as feasible." The objective is to ensure that ISPs have a suitable amount of time in order to comply with the obligation, particularly if there are unforeseen circumstances.

There are also a series of proposed amendments in the motion with respect to the conditions that information location tools, also known as search engines, would need to comply with respect to their caching—in other words, copying—of content in order to provide their search service. It's a very similar amendment to what was proposed in relation to the safe harbour for Internet service providers in relation to the caching of content, and it relates to only having to comply with this obligation in relation to industry standards and industry practices.

The third set of changes proposed in the motion relate to, again, the safe harbour for information location tools. They relate to new conditions and factors with respect to determining the scope of permitted injunctions that are available against an information location tool pursuant to the safe harbour.

The Chair: Thank you, Mr. DuPelle.

It's back to you, Mr. Lake, for any further discussion.

Mr. Mike Lake: No, I do not have any.

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

The Chair: We're now moving to Liberal amendment 15.

Hon. Geoff Regan: Yes, Mr. Chair, I'd like to move this amendment.

The difficulty is that where you have Internet service providers and they have been asked to give notice, you can foresee a situation where they're going to have thousands of requests per day to give notice. If they had a technological problem that means their software is down for a while and therefore a few thousand get by, then it seems to me that these numbers don't make sense any more. You can still have an effective penalty against ISPs that don't do their job properly without having them face a per-incident charge in the numbers we'd be talking about without this kind of amendment.

I don't see a proposal from the government to revise this. I'm a little surprised at that, because I do think that's a legitimate point they've raised, and I certainly look forward to hearing from the officials on what they feel the impact of this provision would be. I'm not going to ask them whether they think it's a good idea or not, because that would be policy.

• (1040)

The Chair: To the officials, are we clear on Mr. Regan's question? If we are, I'll hand the floor to you.

Mr. Gerard Peets: As we understand it, the proposal would remove the government's ability to lower the minimum damages to less than \$5,000.

The Chair: Thank you, Mr. Peets.

It's back to you, Mr. Regan.

Hon. Geoff Regan: Can I have a moment, please, Mr. Chair?

The Chair: You sure can.

Hon. Geoff Regan: Thank you very much.

The Chair: Just very quickly, we'll take a five-minute suspension. We'll come back in five minutes.

• _____ (Pause) _____
•

• (1045)

The Chair: Welcome back.

That was a little more than a moment, Mr. Regan, but that was at the discretion of the chair.

I'll hand it back to you, sir.

Hon. Geoff Regan: Thank you, Mr. Chair.

I realize that this amendment will be defeated by the government in any event, by the Conservatives, but I'm going to be withdrawing it. I withdraw the amendment.

The Chair: I need unanimous consent for that.

Some hon. members: Agreed.

(Amendment withdrawn)

The Chair: Now I will open up discussion on clause 47 as amended. Is there any further discussion on clause 47 as amended?

Mr. Lake.

Mr. Mike Lake: Actually, I have a question for the officials. I just wanted to lead in by saying that it has been an interesting discussion and a lot of things have been said. There has been a lot of debate about this particular clause as it relates to the TPMs.

I would just remind the committee that we did hear from several voices expressing that the provision of TPMs will actually allow for more content, more services to be available in more innovative ways. There were several voices that made reference to this over the course of the committee hearings. We heard from one a couple of weeks ago. I'll quote him; he said:

We often hear these technologies being referred to as "digital locks", but I think that's a total misnomer; we should not think of TPMs as restrictions somehow meant to frustrate consumers but as an essential element of a thriving digital media marketplace. If there's one thing I'd like to accomplish in front of the committee today, it's to get rid of that "digital locks" label and to turn the focus back on what these technologies are and how Canadian copyright should protect them so that we can sustain a vibrant Canadian creative marketplace.

This is an issue where there are voices that have strong positions on both sides. As a committee, we have to make a determination as to the best course of action here.

With the short time I have on this, I do want to go to the officials. The government has the ability to provide new exceptions to TPM provisions through regulation. I know that was one component within the bill. I thought that it might be a good time now, even though that comes in later clauses, to just elaborate on them as they relate to the particular clause we're on.

The Chair: On a point of order, Mr. Regan.

Hon. Geoff Regan: Mr. Chair, just to be clear, my colleague is asking the officials to speculate on what future regulations might exist, by this government or other governments in the future, because of this particular provision—

The Chair: Mr. Regan, I appreciate that this is not really a point of order; it's more like trying to clarify the question from Mr. Lake. I'll turn it back over to Mr. Lake if he'd like to clarify his question in further detail, but it's not really a point of order.

Mr. Mike Lake: First of all, it's not a point of order. Second of all, it's not accurate at all. What I was asking is for the officials to comment on the provisions in clauses that are in the bill and on the government's ability to provide new exceptions to TPM provisions through regulation. I'm not asking them to comment on what those future decisions might be, but on what is actually in the bill.

The Chair: Thank you, Mr. Lake.

I will now hand it over to the officials for comment.

Mr. Drew Olsen: Thank you, Mr. Chairman.

Mr. Lake, what I can do is explain to the committee what is in Bill C-11 in terms of regulation-making powers, if that's okay.

Proposed subsection 41.21(1) grants the Governor in Council the power to make regulations to exclude a TPM or a class of TPMs from the prohibitions that would be established in proposed section 41.1, which is the circumvention of TPMs, the offer of services to circumvent TPMs, and dealing in devices to circumvent TPMs, if it considers that the use of the TPMs in particular circumstances “would unduly restrict competition in the aftermarket” sector.

Proposed paragraph 41.21(2)(a) grants the Governor in Council the power to prescribe when proposed paragraph 41.1(1)(a), prohibition against the circumvention of access control TPMs, would not apply. The factors enumerated in that section must be considered, as well as any other relevant factor. These factors consider the restrictions on the use of protected materials caused by TPMs, and the effect that circumvention of the TPM would have on the market value of that protected material.

Proposed paragraph 41.21(2)(b) addresses the situation where a person who benefits from one of the eight exceptions to circumvent an access control TPM does not have the means to do so. To deal with such an instance, the provision would grant the Governor in Council the power to require a—

•(1050)

The Chair: Mr. Olsen, I'm sorry to interrupt you. You're reading a little too fast for our interpreters.

Mr. Drew Olsen: I'm sorry.

To deal with such an instance, the provision would grant the Governor in Council the power to require a copyright owner of material to which access is controlled by a TPM to provide access to such a person. It states: “The regulations may prescribe the manner in which, and the time within which, access is to be provided, as well as any conditions that the owner of the copyright is to comply with”.

The Chair: Thank you, Mr. Olsen.

We're back to you, Mr. Lake.

Mr. Mike Lake: For those who are watching this—and actually, I think there are probably more people watching this than would normally be watching committee proceedings—maybe you can just give a brief explanation of how regulations work, versus actually having to change the law through another piece of legislation.

The Chair: Mr. Olsen, please be brief, because we're already over time. Thank you.

Mr. Drew Olsen: Regulations are a power of the Governor in Council—the cabinet, in other words. They can pass a regulation rather than having to amend a statute. It would be a cabinet process. There's a consultation process. They are usually gazetted in the *Canada Gazette* ahead of time for Canadians to comment on the proposed regulation. Then they are voted on in cabinet and approved.

The Chair: Thank you, Mr. Olsen and Mr. Lake.

Is there any further discussion? If not, I'll go to Mr. Angus.

Mr. Charlie Angus: Thank you.

To clarify, some of the fundamental philosophical issues we've been dealing with in this bill are the direct attack on artists' payments. We heard from the Conservatives yesterday that they felt

there should be a ceiling in terms of how much the arts community receives on something that's adjudicated under the mechanical royalties rights, and that they would intervene in the market that has already decided the value of a creator's work and limit it. They would create an exception so it would not necessarily have to be paid, even though we heard that would bring us into court proceedings. We're concerned about that.

We're concerned about the digital lock provisions that are an overreach on rights that are guaranteed under Canadian law, which will also bring us into court action. We're certainly concerned since hearing from the Canadian Consumer Initiative's Janet Lo, who was asked the direct question. She felt this would lead directly to lawsuits against Canadians for engaging in legal acts. This is not about piracy. This is not about people stealing and undermining emerging business models. This is about legislation that is setting up provisions that would leave Canadian consumers, Canadian citizens, open to lawsuits.

We have deep concerns about that, Mr. Chair. The fundamental principle about copyright is the right to make a copy. It is the *droit d'auteur*, the right of the author to be remunerated. We have seen again and again that this bill has decided that the marketplace—this mystical hand of the market—will decide, but it's not. The market's being set up by the government to favour one set of players over others. The ones they are setting it up against are average citizens: law-abiding Canadians and the creative community, who are the engine of such innovation in our country. They are being directly attacked in this undermining of their royalty provisions. This is why we have expressed such deep concerns about this bill. That's why we have tried to work with the government on realistic amendments, whether it's on perceptual disabilities....

The government has shown no willingness to work with us. We remain deeply opposed to what we think is a fundamentally flawed bill.

The Chair: Thank you, Mr. Angus.

There are still a few minutes left for any other New Democrats, if they would like to comment. Then we'll move to Mr. Regan.

Mr. Dionne Labelle.

[*Translation*]

Mr. Pierre Dionne Labelle: Thank you, Mr. Chair.

From the outset, we have been saying that we do not oppose digital locks, just when it comes to imposing a lock on copyrights in schools, on creators' rights as they relate to communication and broadcasting, and on the rights of material producers. Obviously, the Conservatives are the ones imposing these locks.

Mr. Lake said something yesterday about royalties paid to creators. He said that this would take \$21 million out of their pockets, that it wasn't much. That attitude shows a total disregard for the reality that artists face in Quebec and Canada. They scrape together whatever they can anywhere they can, and every single penny....

•(1055)

[English]

The Chair: Mr. Lake, you have a point of order?

Mr. Mike Lake: I want to clarify the record: that is not at all what I said.

The Chair: Thank you, Mr. Lake. That's not a point of order.

Moving on, Mr. Dionne Labelle.

[Translation]

Mr. Pierre Dionne Labelle: Numerous provisions in this bill are going to be debated and will likely prove to be unconstitutional. The province's domain is indeed being infringed upon.

The Chair: Thank you, Mr. Dionne Labelle.

Mr. Regan, you have five minutes.

[English]

Hon. Geoff Regan: Thank you very much, Mr. Chairman.

I'm looking at the regulations section, which would be proposed subsections 41.21(1) and 41.21(2) of the bill. I don't see that any of these give the opportunity for the government to correct the major problems I see with technological protection measures, the impacts on the young mother I described, and the fact that people can't format-shift a movie they've legitimately paid for. You have a provision in cases where the Governor in Council feels that the application would unduly restrict competition in the aftermarket. That is not going to help that mother. It's not going to help the librarian.

You have the additional circumstances like where it could adversely affect the use a person may make of a work when that use is authorized. If they said when that use is lawful, it would be entirely different—in other words, if it's a non-infringing purpose where the person was using something they paid for and was just reformatting or what have you. In this case, you can imagine that a person with a disability would have to get the authorization of the company that owned the software, for example. How practical is that? I really don't see that the possible regulations under this act would resolve or overcome the major problems with it.

Thank you.

The Chair: Thank you, Mr. Regan.

(Clause 47 as amended agreed to on division)

(On clause 48)

The Chair: Moving to clause 48, Mr. Lake.

Mr. Mike Lake: I move that we pass clauses 48 through 63 as a block.

The Chair: Do I have the consent of the committee to do so?

Mr. Charlie Angus: Yes.

(Clauses 48 to 63 inclusive agreed to on division)

The Chair: Now we will move to the clauses that were stood.

Clause 1 is the short title. Shall clause 1 carry?

Some hon. members: Agreed.

Mr. Charlie Angus: On division.

The Chair: Shall the preamble carry?

Some hon. members: Agreed.

An hon. member: On division.

The Chair: Shall the title carry?

Some hon. members: Agreed.

Mr. Charlie Angus: On division.

The Chair: Shall the bill, as amended, carry?

Some hon. members: Agreed.

Mr. Charlie Angus: On division.

The Chair: Shall I report the bill, as amended, to the House?

Some hon. members: Agreed.

Mr. Charlie Angus: On division.

The Chair: Shall the committee order a reprint of the bill?

Some hon. members: Agreed.

Mr. Charlie Angus: Yes, we'll agree to that.

Some hon. members: Oh, oh!

The Chair: Well, ladies and gentlemen and members of the committee, I want to thank you for the time and effort you've put into this.

To our officials, I want to thank you for being here. Even though sometimes it can get a little heated with debates, we all appreciate the time and effort you put in.

Members, before we disperse, I think we owe all of the staff a great big thanks and a huge round of applause. They put in a lot of time and effort, and that has helped all of us.

Some hon. members: Hear, hear!

The Chair: I see Mr. Benskin would like to say something.

Mr. Tyrone Benskin: I would like to thank our translators, who did their best to keep up with us.

The Chair: That's true.

Mr. Tyrone Benskin: We appreciate that. Thank you.

The Chair: Thank you, Mr. Benskin.

Mr. Lake.

Mr. Mike Lake: Of course we would be remiss if we didn't take the opportunity to thank you, as the chair. You did a fantastic job on this committee. It went very well, and we appreciate the work you did.

And to our opposition colleagues, I say the same. Thank you. It was a pleasure to work on this committee with all of you. We don't agree on everything, or even anything, on this bill, but the committee handled itself very well, and that's not always the case.

•(1100)

The Chair: Great. Thank you very much, Mr. Lake. We appreciate those comments.

Mr. Regan.

Hon. Geoff Regan: Mr. Chairman, I know you're going to feel very nervous after being complimented by Mr. Lake—

The Chair: I started to get itchy a little bit.

Some hon. members: Oh, oh!

Hon. Geoff Regan: —but I have to concur. Thank you so much.

The Chair: Thank you, Mr. Regan.

Mr. Angus.

Mr. Charlie Angus: I'd like to thank all of my honourable colleagues. We did agree on one thing throughout this debate: Mr.

Lake and I both love the Edmonton Oilers, so that is a huge win for parliamentary democracy.

Mr. Mike Lake: Can we get unanimous consent for that?

Mr. Charlie Angus: Not from my Quebec colleagues, no.

You've done excellent work, Mr. Chair, and we want to thank you.

We'd also like to thank Mr. Brown, who was our previous chair on Bill C-32. We did a lot of prep work for this through the previous committee. That committee did excellent work as well.

The Chair: Great. Thank you, Mr. Angus.

This meeting and this committee are now adjourned.

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