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Chair

Mr. Glenn Thibeault

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● (1535)

[*English*]

The Chair (Mr. Glenn Thibeault (Sudbury, NDP)): Good afternoon, ladies and gentlemen, members of the committee, and our witnesses.

Welcome to the 10th meeting of the Legislative Committee on Bill C-11.

I just want to remind all of the honourable members that this meeting is televised.

I'd like to start off by introducing our witnesses, who will be with us for the duration of the clause-by-clause process.

From the Department of Industry, we have Madame Monteith, Monsieur DuPelle, and Mr. Peets; and from the Department of Canadian Heritage, Mr. Olsen.

Thank you for being with us for the next few weeks.

Before we begin, members, I just want to remind you about a few things.

First, we have routine motions, which are going to guide us on the timing for each of the parties in relation to discussion on the clauses and amendments.

The clerks and I have six timers going in relation to the routine proceedings and the motion that was passed.

So let me read it to you:

> That the Committee begin clause-by-clause consideration of the bill no later than Wednesday, March 14, 2012; that debate be limited to a maximum of five (5) minutes per party, per clause, and five (5) minutes per party per amendment.

That's what we will be doing.

When we start the clause-by-clause process, whoever starts will have five minutes to discuss the clause. When we get to the amendment piece, you have five minutes to discuss the amendment. If there is a subamendment, then you need to introduce that subamendment within the five minutes. You will not be given another five minutes for the subamendment.

Is everyone clear with that? There are five minutes to ensure that you have time to introduce your subamendments, if you have those, but you will not be given an extra five minutes for a subamendment.

Also, it looks as though we will have votes in the near future, so we may have to start this process and then shut it down very quickly, but we will be coming back.

With that, just moving forward, we will obviously be postponing the preamble in clause 1 until the last part of this clause-by-clause process.

Now I will open up for discussion clause 2.

Does anyone have any discussion on clause 2?

Seeing none, shall clause 2 carry?

Some hon. members: On division.

(Clause 2 agreed to on division)

(On clause 3)

The Chair: I shall open up discussion now on clause 3.

Is there any discussion on clause 3?

Mr. Angus, the five minutes for your party is now starting on clause 3.

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

Mr. Chair, as you know, we have raised a number of concerns about the need to modernize copyright to ensure that artists are able to be remunerated in the changing marketplace. One way of doing that would be to introduce the artist's resale right. It may be decided that it's beyond the scope of the bill, but we think it is an important issue.

We have brought an amendment forward on that to clarify the rights of artists who are involved in the art market, with regard to this ability at galleries and other public sales. The resale of their work, that 5% royalty, would provide stability for artists, so we would like to have that added to the bill.

The Chair: Mr. Angus, you spoke to clause 3 for about one minute. You have about three-and-a-half minutes left, if anyone else wants to speak to clause 3.

Mr. Andrew Cash (Davenport, NDP): Sure. I will, Mr. Chair. Thank you so much.

What we have, and what we've been trying to do all along with Bill C-11 is present a balance between the needs and protections of consumers, and the needs of artists to get paid. Here there is an opportunity to extend this resale right to visual artists, which is something that artists in about 30 countries have already.

This is a very specific and limited right. Our proposal is a 5% royalty on public resale of works priced over $1,000, but there is a ceiling. This would just pertain to those works that are sold at auctions. We're not talking about if I had a painting and I wanted to sell it to my friend across the way, Mike Lake; this would be sales that were adjudicated in....

Now if you take, for example, aboriginal artists. Many aboriginal artists sell their work the first time for very little money, and then the next sale of their work is significantly higher.

We have one example. Canadian artist Tony Urquhart sold his painting, *The Earth Returns to Life*, in 1958, for $250. It was resold by an auction house in 2009 for $10,000. By this amendment he would have been able to recoup $500. Now this isn't a huge amount of money, but we've been trying to say all along in this process that the life and business of artists—essentially small businesses and micro-businesses—depend on these small incremental royalty payments.

This is how the small business of the arts and culture industry is practised for many artists in Canada. That's why we think this is a very solid, simple plan. It's one that will see Canada join with about 30 other countries, including the U.K., France, and Germany.

It would enable Canada to enter into reciprocal agreements with those nations to allow an international system of compensating visual artists for the resale of their works. As we know, there are many Canadian artists whose works are selling abroad. We want to be able to create some sort of reciprocity here, so that our artists in Canada get paid.

That's a fundamental foundation of our policy on Bill C-11.

Thank you.

● (1540)

The Chair: Thank you.

I should mention that it sounds like we're speaking about clause 4. We're talking about clause 3 at the moment.

Section 2.4 of the act is amended by adding the following:

> (1.1) For the purposes of this Act, communication of a work or other subject-matter to the public by telecommunication includes making it available to the public by telecommunication in a way that allows a member of the public to have access to it from a place and at a time individually chosen by that member of the public.

That is the clause we are currently discussing. There is still approximately one minute left for the New Democrats.

Seeing that no one is going to take that time, I'll now move over to Mr. Lake, for five minutes on clause 3.

Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC): I won't need five minutes to speak about it. I think this is a new clause that's being put forward by the NDP.

The amendment amounts to a policy change here. Clearly this issue wasn't actually in Bill C-11. If witnesses had wanted to speak to this, they wouldn't have known they would have had an opportunity. When they looked at C-11 and decided they wanted to come, they were coming to speak to what was actually in C-11.

Probably the appropriate way to address the issue, if members are passionate about it, would be to introduce a private member's bill or something like that. It would then have its debate and study at that time.

The Chair: Thank you, Mr. Lake.

Mr. Regan, before you begin, can I try to reel us all in again?

We are discussing an amendment that will be discussed after clause 4. We are now discussing clause 3, which was the one I read. I know Mr. Lake addressed it.

We are on clause 3.

Hon. Geoff Regan (Halifax West, Lib.): Mr. Chairman, I guess you're telling me—and this is a point of order at this stage—that you haven't yet received the motion to amend.

Is that right?

The Chair: Well the amendment will come down the road—

Hon. Geoff Regan: It's not properly before us yet.

The Chair: Right. It's not properly before us yet.

Hon. Geoff Regan: I'll look forward to that time.

The Chair: Awesome. Thank you very much, Mr. Regan.

I'm not trying to take away anyone's time. You do have five minutes to speak to clause 3, if you're interested. If not, we can move forward and ask the question on clause 3.

(Clause 3 agreed to on division)

(On clause 4)

The Chair: Does anyone want discussion on clause 4?

Mr. Angus.

Mr. Charlie Angus: We would like to move our amendment on the artist's resale right, if this is the time, and just to clarify for the record, this was spoken at our committee under Bill C-32. We had a number of people come forward to speak on it, and the policy of Bill C-11 was that we were not going to allow repeat witnesses, so testimony that was given on the issue of the resale right was actually given in the previous Parliament. This is why we felt this was something that should be brought forward because the witnesses spoke on this—

The Chair: For clarification purposes, Mr. Angus, just to let you know, now isn't the time to move that amendment, not just yet. We still have to do clause 4, and then we have to introduce that as amendment 4.1.

Mr. Charlie Angus: I keep getting time on this.

The Chair: I'm giving everyone their five minutes to discuss clause 4, so is there any discussion on clause 4?

(Clause 4 agreed to on division)

The Chair: Now the New Democrats have proposed clause 4.1, which would be a new clause.

Mr. Charlie Angus: We are bringing forward the amendment language to deal with the issue of the resale right because it is about modernizing the Copyright Act, and it is ensuring that, as we move forward, we start looking at other jurisdictions where artists are remunerated for their work—and we find there's a shortfall in Canada. One of the areas where there is a shortfall is on the issue of the resale. This would not affect the market. This is a fair deal for artists, and so we would like to move that amendment now.

The Chair: Thank you, Mr. Angus.

Bill C-11 amends the Copyright Act to update the rights and protections of copyrights owners. The amendment attempts to insert into the bill various rights of resale, including royalties of the original author of a work, and as *House of Commons Procedure and Practice*, second edition, states on page 766, "An amendment to a bill that was referred to a committee *after* second reading is out of order if it is beyond the scope and principle of the bill", it is the opinion of the chair that the introduction of resale rights for original authors of a work is a new concept that is beyond the scope of Bill C-11 and is therefore inadmissible.

With that, there is no further discussion on the amendment.

We have a point of order.

● (1545)

Hon. Geoff Regan: Mr. Chairman, I'd like to indicate that I would have supported this motion, and I regret that it has been decided that it has been termed out of order.

The Chair: That's not a point of order, but thank you for your comments, Mr. Regan.

We will now move on to clause 5. Is there any discussion?

Mr. Mike Lake: Mr. Chair, can I move that we pass clauses 5 through 11 as a block?

The Chair: At the consent of the committee, we can treat them as a block.

Do I have the consent of the committee to move these as a block?

Mr. Mike Lake: There are no amendments until clause 12. We are moving that we vote on clauses 5 to 11 as a block.

An hon. member: I see what you are doing. That makes sense.

(Clauses 5 to 11 inclusive agreed to on division)

(On clause 12)

The Chair: We are now moving to clause 12. Is there any discussion on clause 12?

Mr. Mike Lake: Can we move the amendment now?

I will move the government amendment on—

Mr. Pierre Dionne Labelle (Rivière-du-Nord, NDP): On a point of order, we did not accept those clauses. We voted on division on them.

The Chair: We put on division.

Mr. Pierre Dionne Labelle: Okay.

The Chair: Just for clarification again for everyone, the way it works is that you can speak for five minutes as long as you move the amendment within the five minutes. As soon as you move the amendment, then we start the five-minute discussion on the amendment. Then there would still be the five minutes to discuss the clause.

You have the floor, Mr. Lake. We'll go back to you.

Mr. Mike Lake: Okay, if we could consider the amendment moved, what I am just going to do is go to the officials for an explanation of the impact the amendment would have upon the bill.

Mr. Robert DuPelle (Senior Policy Analyst, Copyright and International Intellectual Property Policy Directorate, Department of Industry): This amendment would ensure that there is no overlap in terms of rights provided in relation to members of the Rome Convention treaty and the WPPT treaty.

Mr. Mike Lake: Okay, I'll leave it at that.

The Chair: Mr. Lake, your party has approximately four more minutes on the amendment.

Seeing no one using that, is there any further discussion on the amendment?

Hon. Geoff Regan: Mr. Chairman, just so I understand it, this really has to do with the cloud. Am I correct about that? I didn't quite hear Mike. As I understand it, this basically is talking about a case where an individual has access at a time and place individually chosen.

I wonder if Mr. Lake could describe what the intent of this is.

Mr. Mike Lake: As the official said, what it does is correct a payment overlap that may occur when copyright owners are from countries that are members of both international treaties. I think, again, we can probably have the officials give a more technical explanation of it if we need it.

Hon. Geoff Regan: I guess the question, Mr. Chairman, is why would you not, for greater clarity—and once I hear the response I'll decide whether I'm going to move a subamendment—say, "provide a service designed or used primarily for the purpose", etc.?

Mr. Mike Lake: I'll let the officials maybe speak to that.

Mr. Robert DuPelle: I'm not sure we're speaking about the same —

Hon. Geoff Regan: I'm looking at G-2.

Mr. Mike Lake: We're on G-1, though.

The Chair: We're on G-1.

Hon. Geoff Regan: Excuse me.

Sorry.

I'll wait till we get to G-2, then. Thank you.

The Chair: Thank you, Mr. Regan. If you still want to speak to the amendment of G-1, you still have a few minutes.

Hon. Geoff Regan: No, that's fine.

The Chair: Is there any further discussion on the amendment G-1? Once, twice. Sold.

I'll then call the question.

Just one second, please. I'm just making sure I have clarification on the speaking times.

I'm calling the question now.

Shall clause 12 carry as amended?

Mr. Charlie Angus: On division.

The Chair: On the amendment first, my apologies.

So the amendment is carried on division.

(Amendment agreed to on division)

The Chair: Now, we will open it up.

Is there any discussion on clause 12 as amended?

Seeing none, I will then ask, shall clause 12 carry as amended?

● (1550)

Mr. Charlie Angus: On division.

The Chair: On division.

(Clause 12 as amended agreed to on division)

The Chair: Clause 13.

Mr. Mike Lake: Mr. Chair, I move that we pass clauses 13 through 17.

The Chair: I would need consent from the committee to move forward on clauses 13 through 17.

All in favour?

Some hon. members: Agreed.

The Chair: All right, clauses 13 through 17 pass.

Mr. Charlie Angus: On division.

The Chair: On division. Thank you.

(Clauses 13 to 17 inclusive agreed to on division)

(On clause 18)

The Chair: Clause 18 is now open for discussion.

Mr. Lake.

Mr. Mike Lake: I will move government amendment 2. Again, I'll go to the officials for an exclamation.... Exclamation, I'm having a tough time—

The Chair: That's funny.

Mr. Mike Lake: —with the word "explanation". I'd ask them for an explanation of the effect of this amendment on the bill.

Mr. Robert DuPelle: This amendment would amend the new liability provision in relation to enablers of copyright infringement. It would amend the current wording so that it removes the terminology around "designed" and would focus on providing a service primarily for the purposes of enabling acts of copyright infringement.

Mr. Mike Lake: Could you maybe elaborate a little bit on testimony from the committee that this amendment seeks to address?

Mr. Robert DuPelle: There have been concerns raised in relation to the use of the term "designed". In order to ensure that there are no misinterpretations of what the policy intent was in relation to use of the term "designed", alternate wording is being used that focuses on the providing of this service primarily for the purpose.

Mr. Mike Lake: Right. Thanks.

The Chair: Is there any further discussion?

Mr. Regan.

Hon. Geoff Regan: Mr. Chairman, the difficulty I have with this is that the word "provide" here—it says "to provide a service primarily for the purpose of enabling acts of copyright infringement", suggests intent. It's a question of how it's offered, as opposed to how it's being used.

Don't you see a possible problem there if, in fact, a site is primarily used for a purpose that is infringing?

Mr. Robert DuPelle: The way the provision is intended to function is that there would be an intent, in relation to providing the service. That the provision of that service would be primarily for the purpose of enabling acts of infringement.

Hon. Geoff Regan: The problem with that, it seems to me, would be if the intent in providing it is not that, but its use ends up being that. Isn't that also what you're trying to avoid here?

Mr. Robert DuPelle: I think, as well, that it's important to keep in mind—as you can see in the factors listed under proposed subsection 2.4 in the same provision—that there is a need, as well, to ensure that entities not targeted by the provision are not caught by the provision. I think that's probably....

Hon. Geoff Regan: Okay, but isn't an entity that is primarily used for the purpose of infringing...? Why would you not want such an entity to be caught by this provision?

Mr. Gerard Peets (Acting Director General, Marketplace Framework Policy Branch, Strategic Policy Sector, Department of Industry): It's difficult for us to comment on these kinds of "why" questions, as they aim at what the government's policy intent was with this....

Hon. Geoff Regan: You would like Mr. Lake to answer it, in other words. Maybe Mr. Lake could explain it.

You're saying that it's really what the government's intent is, as opposed to the development of the wording. I wonder if Mr. Lake can answer the question.

Mr. Mike Lake: Give me the question. You were asking the witnesses questions, and I was looking up something else.

Hon. Geoff Regan: Fair enough.

When you're talking about providing a service primarily for the purpose of enabling and so forth, the problem, it seems to me, is that if the service is primarily used in a way that, in fact, is for infringement, then that escapes it.

What the officials are telling us is that there would be some groups you don't want to catch with this provision, and I understand that. What I don't understand is why, in the case of a site that's primarily used for infringement, you wouldn't want to catch it. He's saying that it's a question of policy. Your colleague seems to know the answer.

● (1555)

Mr. Mike Lake: Go ahead.

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

The amendment moved by my colleague, Mr. Lake, is such that they won't be able to create sites that say, "Hey, great deal on puppies, and by the way, here's a free copy of *Toy Story 3*. Download it here." What it will do is pick up sites that are masquerading as sites whose purpose is not infringement. Because when sites enable infringement, we want that picked up. In fact, we want to make sure that those copyrights are, in fact, protected.

Some of these sites are quite creatively constructed in a fashion that disguises their intent. This amendment will, in fact, eliminate the ability to disguise sites that intend to infringe.

Hon. Geoff Regan: I guess, Mr. Chairman, it seems to me that if you said "to provide a service that is designed or used primarily for the purpose", you would capture that. You would also send it to those sites that you can't prove are provided for that reason.

Use the word "provide", and to me, it is the same as using the word "design", in this case. It's about the intent of the person putting it up. If you can't prove that, you have a problem, it seems to me.

The Chair: For clarification, I'll allow you to speak, Mr. Del Mastro, but we're in your time, sir. You know that you have five minutes.

If you are going to move a subamendment, you have about a minute to do so, just so you're aware. You asked a question back to the government side. I can let them answer, if you choose.

It's your time, Mr. Regan.

Hon. Geoff Regan: Yes. Go ahead. Let him answer.

Mr. Dean Del Mastro: I don't want to eat up all his time, Mr. Chairman. I'd simply say that the amendment, the way we have structured it, is the way the government intends the act to function, so I'd encourage the member to support it. We believe that the amendment, in fact, accomplishes the result we're seeking to accomplish.

Hon. Geoff Regan: I'm not going to push it, Mr. Chairman, with the amendment. Obviously, it's not going to be accepted, in any event. I think there's a mistake here, but let's carry on.

The Chair: You have eight seconds. I'm very impressed, Mr. Regan. Thank you.

Mr. Angus, you would like to speak, so your party now has five minutes on the amendment.

Mr. Charlie Angus: I don't think we're looking at five minutes, probably.

I just want to clarify, because it seems that in the original wording, it was rather vague as to who would be captured or how they'd be captured under this provision. By introducing the words "should have known", there seems to be a threshold you're establishing for the provider of the service. Is the intent to clarify the threshold, or am I misreading this?

The Chair: I'm sorry. I have to interrupt before you answer, unless we want to do this very quickly—hear the answer as a committee—and then go.

Mr. Robert DuPelle: It shouldn't be too long.

The Chair: Okay. So feel free to answer.

Mr. Robert DuPelle: The removal of the "knows or should have known" does clarify in terms of the knowledge element. The knowledge element, in a sense, is incorporated into the notion of the person providing the service primarily for that purpose, rather than having "knows or should have known" expressly provided.

Mr. Charlie Angus: Okay, I see.

The Chair: So is there further discussion on this?

Mr. Charlie Angus: No.

The Chair: We can stop. If you'd like, we can call the question on the amendment and then the clause can go from there, and we can make a decision.

I call the question on the amendment. Shall the amendment carry?

(Amendment agreed to on division)

The Chair: Now moving to—

Mr. Mike Lake: Can I just move that we pass clauses 18 to 20 together?

The Chair: No, because there's an amendment to clause 18.

Is there any discussion on clause 18 as amended?

Shall clause 18 as amended carry?

(Clause 18 as amended agreed to on division)

The Chair: We will now break for the vote, and when we come back, we will start on clause 19.

We'll suspend and be back as soon as we can.

● (1555)

(Pause)

● (1650)

The Chair: Welcome back, everyone.

In an effort to save time we'll jump right back to where we left off.

I believe we had you, Mr. Lake, and we were going to clause 19.

Mr. Mike Lake: I move that we pass clauses 19 and 20.

The Chair: Do I have the consent of the committee to—

Mr. Charlie Angus: Clause 21 should be included.

Mr. Mike Lake: Okay.

The Chair: Shall those clauses carry?

Mr. Charlie Angus: On division.

(Clauses 19 to 21 inclusive agreed to on division)

(On clause 22)

The Chair: I will open up clause 22 for discussion.

Mr. Regan is next for discussion on the clause.

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

I have an amendment to move on clause 22.

The Chair: Mr. Regan, I just got it clarified that if we are moving amendments we have to go in the order that we see here, so we will go to NDP-3 first.

I'm asking for discussion for five minutes on the clause, and I'll go with Mr. Angus.

Mr. Charlie Angus: First Mr. Nantel will speak to the clause, and then we'll talk about the amendment.

The Chair: Mr. Nantel is next on clause 22.

[*Translation*]

(Clause 22)

Mr. Pierre Nantel (Longueuil—Pierre-Boucher, NDP): We've heard many witnesses here in this committee talk about the reality of authors and copyright holders in the cultural arena. We've heard what they had to say, but have the Conservatives listened to them? Is the essential mission of this legislative committee not to ensure that Canada's Copyright Act protects copyright?

Please allow me a few moments of silence.

Have the Conservatives even once clearly shown an attitude toward the authors that has done anything other than view them as spoiled children who are asking for too much support?

[*English*]

Mr. Stephen Woodworth (Kitchener Centre, CPC): I have a point of order.

The Chair: Point of order.

Mr. Stephen Woodworth: I'm afraid, Mr. Chair, I'm getting no translation whatsoever.

The Chair: Perhaps we can have the translator speak, because I was having some difficulty hearing. I'll turn the volume up.

[*Translation*]

Mr. Stephen Woodworth: Thank you very much.

[*English*]

The Chair: Fantastic. Your time wasn't wasted. We shut it down.

[*Translation*]

Mr. Nantel, you have the floor.

Mr. Pierre Nantel: Thank you, Mr. Chair.

With this bill, the Conservative government will have once again shown that it doesn't listen. It is interfering in many areas of the cultural industry, stirring up ill-feelings and breaking up systems that were quite effective. Rather than looking for "made in the U.S.A." methods, as it likes to do, the government should have drawn inspiration from several options that have, so far, created a nice balance in Quebec.

Quebec has a lot to say about the cultural industry, and with good reason. Quebec culture is neither folklore nor heritage; it is avidly consumed every day. We watch it on television, we read it, we listen to it, we see it in the movies. I'm not talking about a virtuous interest stemming from an awareness of the history, but a real living language, a deep and daily identification. What distinguishes the Quebec nation has generated the commitment of businesspeople and tradespeople who are behind these authors. These people have a market-based approach, and they have exchanged and created many links internationally.

It is with much enthusiasm that I will try to contribute to the efforts made by organizations, including the Canadian Conference of the Arts, to create even more links between the cultural stakeholders of Quebec and others across Canada. All of Canadian culture will benefit from the expertise of the Quebec entertainment industry.

The Quebec cultural environment has mobilized because the balance achieved is threatened by Bill C-11 in several ways. Quebec's cultural know-how wasn't considered in either the preparation of the bill nor in the hearings, including those on Bill C-32 and on Bill C-11. Furthermore, I'll note in passing that the Conservative members of this committee have never ever spoken in French!

Once again, this government has slammed the door on Quebec's face. This contempt has very concrete consequences. Bill C-11 doesn't repair the immense loss of revenues related to the technological development of private copying.

● (1655)

In proposed clauses 29.22 and 29.24, the general flow guarantees copying for personal use without framing the legitimacy or providing royalties. We all know that it is legitimate for consumers to digitize a CD they bought in a store so they can listen to it on whatever platform they own, and that if everyone filled their iPods with music from iTunes, as suggested by Apple, there would just be new distribution methods. But this new digital formal has led to an alarming statistic we all know: nearly 90% of the music on an average iPod is pirated.

So I call upon my colleagues from all parties to study in good faith the update of the royalties system on private copying, royalties that belong to the authors. Because the audio cassette and then the CD-R make private copying possible, this system of royalties must take into account new technologies that both facilitate the life of authors and make it easier to steal from them.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Nantel.

[*English*]

Now we go to Mr. Angus.

Mr. Charlie Angus: Thank you.

As indicated by my colleague when he was speaking about this clause and the sections of the clauses that make up this part of the act, our concern is that we are seeing $30 million immediately being removed from the table from artists by not updating the copyright levy that has existed. Plus, as we shall see further on, we're going to lose another $21 million from the broadcast mechanical if the loophole is unclear. That's some $50 million. That's serious money to artists to generate new works to compensate them for the copies.

We find it unfortunate that the government has decided to treat the legitimate payment of artists, who are fuelling so much of our sector, as a tax, as an infringement, when we're seeing that everyone else seems to be making money from this act except the people who create it.

I concur with my honourable colleague. We know that bringing in amendments at this point on this issue would be ruled out of order, but we want it on the record that we are talking about the $30 million that will disappear with the levy not being updated, plus the other $20 million, which we will be speaking about soon enough, around the ephemeral mechanicals.

The Chair: Can you help us and can you clarify? There is amendment NDP-3. Have you moved that amendment?

Mr. Charlie Angus: We were speaking about the general clause —

The Chair: The general clause....

Mr. Charlie Angus: —and then we move to our amendment. Correct?

The Chair: Yes. So are you willing to move that amendment?

Mr. Charlie Angus: If we are ready to move into the amendment we will do that now.

The Chair: I don't think there is any further discussion on the clause. I asked that question twice.

So now we'll move. You're moving that amendment?

Mr. Charlie Angus: Yes, we're going to move on to our amendment NDP-3.

● (1700)

The Chair: Amendment NDP-3, page 9 for those who are following along.

Mr. Charlie Angus: I'll turn it over to my colleagues, Mr. Benskin and Mr. Labelle, to speak.

Mr. Tyrone Benskin (Jeanne-Le Ber, NDP): Thank you, Mr. Chair.

This amendment ensures the protection of artists' moral rights within the user-generated content of mashups. Mashups are a sign of the times, the creation of new work based on the work that other artists have done.

The moral rights of an artist really need to be codified in this bill. The moral rights are that an artist should have the right to say how his or her work is used. They should have the right to say whether or not a song is used in a particular political campaign, as was the case with K'naan asking a Republican candidate to not play his song as part of the candidate's walk-on music. Something that has never really been codified as strongly as it should be is the moral right of a performer.

We're seeing the remuneration of performers being whittled down and we think it's really important that the moral right of a performer be protected and strengthened, especially in terms of mashups. Being able to use a performer's work or a combination of performers' works to generate your own thoughts, positive or negative.... As a performer myself, I should have the right to say, I don't want that to be used in that way.

Basically, this amendment goes to further protection of that in this clause.

I will....

[*Translation*]

Mr. Pierre Dionne Labelle: Ladies and gentlemen, the NDP is committed to protecting the rights of creators. Our party does not want the integrity of moral rights to be affected by the proposed clause 22. The integrity of the work or of copyright is not targeted by this amendment. Having said that, it makes sense for moral rights to remain full and inalienable.

Earlier this year, we saw the perfect example of how moral rights were used and protected during the Republican nomination campaign in the United States, where works are often used for partisan gatherings. The Canadian artist K'Naan refused to let Mitt Romney use his song during a Republican gathering in Florida. It is his right not to want his song to be associated with a right-wing party. I wouldn't want any of my songs to be associated with the Conservatives. The idea was that K'Naan's work was being used for a cause that he thought would taint his reputation, and he won.

Some witnesses also mentioned extreme cases, such as the use of hard rock songs on pro-Nazi Internet sites. Once again, it is completely understandable that our artists and creators don't want to be associated with those types of activities. That is why the protection of moral rights has to be guaranteed by this amendment. It is important that moral rights remain full. It is crucial to protect our creators who do not want their works to be associated with a cause or with people they loathe. Creators' fears are well-founded. The many examples mentioned prove it.

We believe that the amendment that we are introducing can clarify the situation. This amendment provides more certainty to our artists. It enables creators to protect themselves against that type of abuse by stakeholders, political parties and movements. The amendment clarifies the inalienable nature of moral rights. It enables the young and the not so young to communicate through new social networks, while ensuring that the integrity of artists' works is maintained. Those things are important for our young people who like to create mashups from protected works.

The Chair: Thank you. The NDP has 30 seconds left.

[*English*]

Mr. Lake.

The Conservatives can speak now for five minutes to the amendment.

Mr. Mike Lake: This won't be five minutes.

I want to get clarification from the officials of the impact of this amendment.

It seems to me that the amendment might not even be necessary. Could you speak to that?

Mr. Gerard Peets: Moral rights in the original work used in accordance with this exception would not be affected, and could still be exercised and enforced. This is because the user-generated content exception in the bill is an exception to copyright infringement only; it is not an exception to moral rights infringement.

● (1705)

Mr. Mike Lake: I'm done.

The Chair: Okay. Does anyone else want to speak to the amendment?

You do have a few seconds.

Mr. Charlie Angus: I have 30 seconds.

The Chair: Yes.

Mr. Charlie Angus: Thank you. I appreciate that.

We recognize the issue of moral rights being placed in the bill. However, we realized there were going to be so many questions on the user-generated content and how it is applied that it had to be clarified that there is a moral right, so it would save artists from having to engage in litigation down the road.

That's the reason for our amendment at this point.

The Chair: Thank you, Mr. Angus.

Is there any further discussion on the amendment?

(Amendment negatived)

The Chair: Moving on to the next amendment in clause 22.

Mr. Lake, will you be moving your amendment?

Mr. Mike Lake: Yes, I will, and I'll have the officials speak to what impact this amendment will have on the bill.

Ms. Anne-Marie Monteith (Director, Copyright and International Intellectual Property Policy Directorate, Department of Industry): This amendment relates to reproduction for private purposes.

The bill allows for time-shifting and format-shifting for private purposes, subject to limitations. There has been a concern expressed that the wording of the bill could lead to misinterpretation, and that it would permit making copies for other individual's private purposes.

The purpose of this amendment is to clarify that the exception applies only for the private purposes of the individual who owns the music or records the program, and not anybody else's private purposes.

Mr. Mike Lake: Okay, thank you.

The Chair: Thank you, Mr. Lake.

The Conservatives still have approximately four minutes, so if there's no time, I believe that Mr. Regan would like to speak to this amendment.

The floor is yours, for five minutes.

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

I have a question for Mr. Lake, or perhaps, through you, to the officials.

The Chair: Of course, yes. Thank you, Mr. Regan.

Hon. Geoff Regan: Where you're changing it from saying "private" use to the "individual's private" use, what does it mean in a case where an individual uses a personal video recorder, records a television program to watch later, and invites a couple of friends over, and they watch it together?

It's no longer just the individual's private use. Is that then infringement? It seems to me that the intent was to allow the use of things like PVRs and time-shifting in a reasonable way. Doesn't this prevent this from happening? What would happen to that individual? That is what I'm trying to say.

Mr. Robert DuPelle: In terms of the scope of the private purposes, it would be the individual's private purposes, the intent being that within the private sphere of that individual, that individual could use the recorded program. If there were other people within that sphere, they would be able to enjoy it along with them. The concern was in relation to other people using it, in and of themselves, for their private purposes. The concern was that the language allowed for that. That's what we're trying to clarify.

Hon. Geoff Regan: I appreciate that. I applaud what you're trying to do here and your intent here. The question really is whether it is possible that a court could interpret this to mean that it's for the individual only. I don't see why that's not possible, but I'd like your answer on that. As opposed to the individual and his spouse, the individual and the neighbours who come over to visit, why is it not possible that a court could interpret this to mean the individual only?

Mr. Drew Olsen (Director, Policy and Legislation, Copyright and International Trade Policy Branch, Department of Canadian Heritage): I believe that if the recording was shown in an individual's household, that would not be a performance in public, which would not be an infringement of copyright. For a performance in public, if the person who made the recording were there, that would be fine within this amendment.

Hon. Geoff Regan: Thank you.

The Chair: Thank you, Mr. Regan. You still have approximately two and a half minutes.

Is there any further discussion on government amendment 3?

(Amendment agreed to on division)

● (1710)

The Chair: Now we will move on to Mr. Regan's amendment, Liberal amendment 1. Mr. Regan, you're moving it.

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

The present provision would provide that in the case of the use of a PVR, for example, and someone doing time-shifting, they can't give away the recording. This would further strengthen it, in my view, by saying that they cannot sell, distribute, rent out, or give away the recording. I'm a little surprised that it's not already in the bill, but I think it would strengthen the provision.

I move it for the consideration of the committee.

The Chair: Thank you, Mr. Regan.

Is there any further discussion on Mr. Regan's amendment?

(Amendment negatived)

The Chair: Mr. Regan, we'll go once again to you, sir, for Liberal amendment number 2. Will you be moving that?

Hon. Geoff Regan: Yes, Mr. Chairman.

This would replace the phrase “work or other subject-matter” with the word “program”, which I think provides greater clarity. You'll see that the next two amendments I'm going to propose would have the same effect. In fact, the third of those would provide a definition for “program”.

The Chair: Just for clarification, Mr. Regan, amendment LIB-2 would say that Bill C-11, in clause 22, be amended by replacing lines 9 and 10 on page 20 with the following:

> “broadcast” means any transmission of a program by telecommunication

Hon. Geoff Regan: That's correct.

The Chair: Okay. We have that amendment moved.

Mr. Lake, so the Conservatives....

Mr. Mike Lake: It probably shouldn't take five minutes, but I'll be dealing with Liberal amendments 2, 3, and 4 because they kind of work together, I believe. Maybe I'll ask the officials what effect they would actually have on the bill.

Mr. Robert DuPelle: In terms of making clarifications with respect to program, the way the provision operates and the intent of the provision is not necessarily to be limited to a specific program. It could include works within the program.

I expect these changes would modify that in terms of changing or altering the scope of the provision.

Hon. Geoff Regan: Mr. Chair, I note that the third amendment I'm going to propose would provide that “program” means sounds or visual images, or a combination of sounds and visual images, containing more than one work or other subject matter. You have that phrase captured there, but it's a broader, clearer term in my view.

It ensures you capture the various possibilities. I'll read it again:

> “program” means sounds or visual images, or a combination of sounds and visual images, containing more than one work or other subject-matter.

We're not on this, but obviously in terms of interpreting what—

The Chair: Mr. Regan, before we can carry forward, there is a discussion on moving Liberal amendments 2, 3, and 4 together. I would need unanimous consent from the committee to do so. If that has the unanimous consent of the committee, we can have the discussion of all of those. If not, we stick to just your current moved amendment.

Hon. Geoff Regan: That's what I'm doing, Mr. Chair.

On a point of order.

The Chair: Yes.

Hon. Geoff Regan: If we're talking about what “program” means, then it's relevant to consider what it would mean in the context I'm talking about. In that regard, you can't look at the word “program” without considering what I'm proposing it would mean.

The Chair: I just needed to clarify. Thank you.

We're still on motion 2, and you're talking about the word “program” in your amendment.

Hon. Geoff Regan: I guess the question is—I think I answered it, but with what I heard from the officials, I'd like to hear if they still hold the position.

Also, they have the option to move it, I suppose, without the Prime Minister saying so.

● (1715)

Ms. Anne-Marie Monteith: I'll take a minute just to—

The Chair: Sure. We will suspend for a minute for discussion.

● (1715)

(Pause)

● (1715)

The Chair: Are we ready to go?

Mr. Regan, through you, I'll assume the question is still there and hand it back to our witnesses to provide you with the answer.

Mr. Robert DuPelle: The use of the term “program” in the provision is intended to be flexible. It's not defined, and to provide a definition could alter the meaning, or it could at least define those parameters, thereby changing the nature of the provision.

In that sense, it would be a question of policy.

Hon. Geoff Regan: I guess it's hard for me to see what's not captured by defining, as we're talking about here, the word “program” by saying it means sounds or visual images, or a combination of sounds and visual images, containing more than one work or their subject matter, unless we're assuming there are going to be smells, touches, and so forth.

I don't think that's what we're talking about here.

Mr. Mike Lake: Was that the question?

Hon. Geoff Regan: I'd like to ask Mr. Lake what they're trying to achieve with this clause.

The Chair: It's Mr. Lake's time right now.

I'll go back to Mr. Lake if there is no further response.

Mr. Lake, we're still into your time.

Mr. Mike Lake: I'm good.

The Chair: Okay. Do we have any other discussion on the amendment?

We were discussing Liberal amendment 2. I will then call the question. All those in favour, please raise your hands.

Mr. Charlie Angus: On division.

(Amendment negatived on division)

The Chair: There was a discussion about joining Liberal amendment 3 and Liberal amendment 4, and applying the vote from the previous vote, on amendment LIB-2.

Do I have the unanimous consent of the committee to do so?

Hon. Geoff Regan: Yes, Mr. Chair.

The Chair: We will say that LIB-3 and LIB- 4 have been moved by Mr. Regan. The vote is just applied.

(Amendments negatived [See *Minutes of Proceedings*])

The Chair: Now we are on Liberal amendment 5 on page 15.

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

Once again it seems to me that in protecting copyright, the idea that we're simply saying you can't give away a reproduction is insufficient. We ought to be saying that you cannot sell, distribute, rent, or give away the reproduction. I don't know why that wouldn't strengthen this prohibition, but I move LIB-5. I encourage my colleagues to consider the benefits this will have for people who are copyright owners, and artists particularly.

● (1720)

The Chair: Thank you, Mr. Regan.

Just for clarification on the amendments, I'm asking for a show of hands, so they can't be on division. On a show of hands it has to be one or the other. I've just had that stated to me, so I'm asking you to just show hands if you're voting on that.

We're opening up discussion on LIB-5. Is there any discussion on the amendment as presented?

(Amendment negatived)

The Chair: Next is NDP-4.

Mr. Charlie Angus: I'll move it.

The Chair: It is moved by Mr. Angus.

Mr. Charlie Angus: Thank you. We'll be moving this motion, and I'll turn it over to my colleague Mr. Cash to speak to it.

The Chair: Mr. Cash.

Mr. Andrew Cash: This is a small technical amendment for clarity's sake. It will provide assurances to the music sector that this clause will not be misused.

We heard in witnesses' testimony that broadcasters intend to exploit what they see as a loophole in Bill C-11. In fact, not only do they intend to exploit it, they also intend to complain that it's too hard to exploit. We have an interest in ensuring—and we'll have a discussion about this down the road—that this backup in broadcasting amendment will close the loophole that some stakeholders are concerned might be used by broadcasters.

The exceptions stated for the backup copies are not the direct concern of this amendment. The potential exploitation of these exceptions is what concerns us and the official opposition. The clause stipulates that a person is the intended beneficiary of the right to make and possess backup copies. But as I've just mentioned, the committee has seen that we must be clear where possible loopholes exist.

Specifically our intention here is to protect the rights of artists from non-individuals attempting to access these exceptions, namely those in the broadcasting sector. They've been very open and clear that they intend to exploit these loopholes where they can find them. If kept as written, there exists a possibility that broadcasters may try to use these provisions to avoid paying royalties on their ephemeral copies.

The bill and the act deal with the backup copies used for broadcasting purposes in a separate section, and this amendment simply underscores that fact. This is a very simple technical amendment, and we hope that all parties will support it. It shouldn't be a very controversial leap for anyone.

Thank you.

The Chair: Thank you, Mr. Cash.

There are still approximately two minutes for the New Democrats to speak to this amendment. Is there anyone else who chooses to speak? Is there any further discussion?

(Amendment negatived)

The Chair: Shall clause 22 carry as amended?

(Clause 22 as amended agreed to)

The Chair: We'll now turn to clause 23.

● (1725)

Mr. Mike Lake: Can I just move clause 23 through 26?

The Chair: We have the consent of the committee to do so.

Is there any discussion on any of those clauses, clause 23 through to 26?

(Clauses 23 to 26 inclusive agreed to on division)

(On clause 27)

The Chair: On clause 27, we will open it up for discussion on the clause.

Is there any discussion on clause 27?

Mr. Charlie Angus: We will be moving an amendment.

The Chair: Okay.

There is no discussion on the clause, so we can move then to Mr. Angus.

I've been informed that NDP-5 is identical to the Liberal amendment 6. We can only proceed with the first one. If Mr. Angus is moving forward with this amendment—

Mr. Charlie Angus: Yes.

The Chair: —we will then move forward on NDP-5, and there will be no moving of Liberal amendment 6.

Go ahead, Mr. Angus.

Mr. Charlie Angus: Thank you.

This has been a real concern for us since it was first put into the old Bill C-32. A number of concerns have been raised about this, particularly the sense that it's creating a two-tiered set of educational rights—that students who leave a classroom are not frisked for their notes or for their reproductions that might be part of the lesson plan, but if they're taking any kind of online development, they will be obliged to destroy reproductions 30 days after the course ends.

The other day it was raised by our colleagues that if they were watching this as a video—not that I think students watch video anymore, but still if we are going back to old VHS tapes and they're watching the feed—what would happen if they made copies and gave it to their friends? Well, education might break out.

It seems to be an unnecessary intrusion into the affairs of the classroom that if materials are being protected under collective licences and the authors are being paid if exceptions to copyright are being made under educational purposes that would exist in a classroom—for example, if students make a copy when they receive their lesson plan and they take a copy from a PDF that's under copyright and they put it in their notes and then they bring it as part of their final work—that they would have to be responsible for finding what's under the exceptions and what isn't and would have to be destroyed. It seems to be an unnecessary overwrite and interference in the potential of digital learning.

What we think, with the importance of digital learning, is that we have incredible opportunities for Canadian educational institutions. We should have good collective licences in place to ensure that the people who are creating the works are being compensated, but this doesn't seem to address any of the basic needs. So we would be opposed to it.

The Chair: Thank you, Mr. Angus.

[*Translation*]

Mr. Pierre Dionne Labelle: I would like to continue.

[*English*]

The Chair: If he would like to continue then I'll get to you afterwards, Mr. Regan.

Hon. Geoff Regan: That's fine; it's their turn.

[*Translation*]

Mr. Pierre Dionne Labelle: It is not surprising that the government wants to set a deadline for students' use of materials; they set deadlines for everything. Once again, discussions are being shut down this afternoon.

We don't understand the logic behind this provision in the legislation, especially since almost everyone in the student community uses digital materials right now. And now those materials are supposed to be destroyed after 30 days. Gentlemen, this is not the gun registry.

Everyone on this committee is free to have their own political opinion. But one thing is clear. When a number of representatives from universities, colleges and student associations say that this does not make sense, we should perhaps listen to them. We just don't understand why the government is so adamant about having lecture notes, lessons and all other materials destroyed.

Mr. Moore, I just don't understand that.

We hope that they will work with us to improve the bill by removing that provision.

● (1730)

[*English*]

The Chair: There's still time, if other NDP members would like to speak to this.

We will now go to Mr. Regan.

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

Obviously, we had an identical motion. Therefore, I certainly support this motion. I think that, in terms of how students use their course materials, the present provision, as drafted by the government, is an unreasonable one. It says that 30 days after you get your mark, you can't use those materials anymore. In fact, my experience as a student certainly was that you would look back in subsequent years at materials, and they would be useful to you and would be important to have.

I think in terms of the intent of supporting education, the government proposal is going in the wrong direction, and this would resolve that problem.

The Chair: Thank you, Mr. Regan.

Is there any further discussion?

Go ahead, Mr. Lake.

Mr. Mike Lake: Sure.

Just as a quick clarification, nowhere in this legislation does it require that course notes be destroyed, as the member from the NDP said.

The Chair: Thank you, Mr. Lake.

Seeing no further discussion on amendment NDP-5, I will ask for a show of hands.

(Amendment negatived)

The Chair: We'll move on to NDP-6. Again, it is identical to Liberal amendment 7.

Mr. Angus, will you be moving forward with this amendment?

Mr. Charlie Angus: Yes, I will.

Our concern is that it's not just the interference with students. The requirements for educational institutions seem to be overly aggressive. It affects teaching materials such as lesson plans, exams, graphs, images, photos, and quotes. Anything a teacher includes in a lesson could be captured if the authorization for that use is an exception or limitation under the act. It creates impossible practical challenges for teachers, challenges that make it very difficult to make use of the new technologies in the classroom.

We don't think you should have to be an expert on copyright to do your lesson plan. Are teachers supposed to go through their plans and delete these works and not others every year?

We have heard from the Canadian School Boards Association, which clearly expressed the near universal opposition of Canada's provincial education systems to this arbitrary measure and the practical risks they face. A good example of this is if we have a student with perceptual disabilities who's learning online, and the teachers prepare a specific set of lessons for that student. That's an investment that the student in the following years could make use of. Yet under this, those lesson plans would have to be terminated. It seems that we are once again stepping needlessly into the jurisdiction of the classroom.

We believe that we should have a strong system in place so that the creation of the works used in a classroom get remuneration, but simply making them disappear after 30 days is not going to benefit students, teachers, or creators.

The Chair: The New Democratic Party still has approximately three minutes.

[*Translation*]

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

Mr. Angus is absolutely right to be concerned. Furthermore, it is certainly questionable for the federal government to tell the provinces—responsible for education under the Constitution—what to say to their teachers and what to do with notes in educational institutions. In my opinion, that is an approach that does not respect the powers delegated to the provinces to deal with that.

In addition, let me reiterate our deeply held conviction that the committee should respect the concerns of the education community across the country in terms of a new obligation to monitor all teachers and students. Mr. Calandra himself described those measures as completely unrealistic during the testimony. So it is our hope that the government will accept this simple technical amendment, whose purpose is to remove the obligation for educational institutions to destroy documents after an arbitrary 30-day period.

The Chair: Thank you, Mr. Dionne Labelle.

● (1735)

[*English*]

Is there any further discussion on amendment NDP-6?

Mr. Lake.

Mr. Mike Lake: I would just make a clarification, again, that there is no requirement under this bill to destroy all of their material after 30 days.

The Chair: Thank you.

There is still plenty of time for the Conservatives to speak if they so choose in relation to this amendment.

Is there any further discussion?

Mr. Regan, I can talk for another 30 seconds while you chew if you'd like.

Hon. Geoff Regan: That's very kind of you, Mr. Chairman.

The Chair: There you go. Now with that, I'll gladly hand the floor over to you for five minutes.

Hon. Geoff Regan: We find sustenance when we can, around here.

The Chair: You've got it.

Hon. Geoff Regan: Mr. Chairman, obviously this is another motion that I will be supporting, as we have the exact same motion, and for the reasons that have already been elucidated.

Thank you, Mr. Chairman.

The Chair: Thank you, Mr. Regan.

Is there any further discussion?

Seeing none on this, I'll ask for a show of hands.

All those in favour of NDP-6, please raise your hands.

All those opposed.

(Amendment negatived)

The Chair: Seeing no further amendments to clause 27 and none of the amendments were accepted, I will now go back to clause 27.

Mr. Charlie Angus: We have another amendment.

Mr. Mike Lake: A new one?

The Chair: Another amendment to clause 27?

Mr. Charlie Angus: Yes.

The Chair: It's not one that has been presented before, so it would be a new amendment.

Mr. Charlie Angus: Are you accepting movement from the floor for amendments?

The Chair: It's up to the committee.

Then, okay.

Mr. Charlie Angus: This is—

The Chair: I just need it in writing at some point, Mr. Angus.

[*Translation*]

Mr. Charlie Angus: That is it.

[*English*]

Again, in terms of trying to clarify so that we're being fair, we're concerned about the 30-day provision as problematic, and what we would say is that it be amended to, "(a) destroy any publicly available fixation of the lesson within a reasonable time after the conclusion of the course to which the lesson relates". That would allow more flexibility within the educational institution to set some of their standards—that it would be within a reasonable time as opposed to the 30-day provision.

The Chair: Thank you, Mr. Angus.

We will suspend for a brief second so that we can take a look at the amendment.

On the amendment, as presented, is there any further discussion on the amendment?

(Amendment negatived)

The Chair: Are there any further amendments or discussion on clause 27?

(Clause 27 agreed to on division)

The Chair: Is there discussion on clause 28?

(Clause 28 agreed to on division)

(On clause 29)

The Chair: On clause 29, we are opening it up for discussion.

Is there any general discussion on the clause?

Mr. Charlie Angus: We'll be moving a motion.

The Chair: Okay, but right now, we're looking for discussion.

Seeing no discussion on clause 29, we'll move to NDP amendment 7.

Mr. Charlie Angus: Thank you.

We feel that once again the government is overreaching, and that will probably impact the ability of libraries, and the transfer of information and education to develop. We are concerned about the five-day limit provision because it doesn't exist in the analog world.

Let's say I send away to a small library in Red Deer, and ask for someone's memoirs that are on file so I can research them. They make me a copy and send it to me in an analog paper form. I have it for 30 or 40 days to do the work. But if they send me a digital copy, I only have it for five days. I think that's unnecessary and impractical, especially for so many people who are doing their own research now in the areas of law and medicine. If they are getting documents and have only five days to use them, it's pretty much useless.

We're also concerned about the vagueness of the phrase “take measures”, because it could put restrictions on smaller libraries. Every library has a collection of some sort, but not every library has the ability to impose the “take measures” by putting on a technological protection measure to ensure the five days will be met. If there's a technological protection measure, it will just make whatever is transmitted go “poof” after five days. It makes it very difficult to transfer this information without extra added responsibility and potential liability on those who are making the PDF, as opposed to a paper copy.

We believe the issue should be to at least clarify it, and to send a notification that you're not allowed to make extra copies. You're not allowed to make use of the work that is being transmitted, except for the personal study of the person who requested it. This is simply more reasonable and will allow libraries and education to carry on the great work they're doing.

I'll pass it on to Monsieur Nantel.

● (1740)

[*Translation*]

Mr. Pierre Nantel: Yes, the New Democratic Party hopes that libraries and their users can benefit from the advantages the digital world offers to students. The fact that the members opposite want to control the flow of digital information might instead punish them by forcing libraries to make an impossible choice between a huge increase in risk and a huge increase in cost.

Once again, we are painting a bleak picture of a paranoid government that does not trust its people. We see that a number of provisions in this bill, including those requiring teachers and students to destroy documents, as well as the all-too-ambitious control objectives for inter-library loans, are part of a bigger picture that encompasses all the mistrust that we have seen with this bill designed to spy on Internet users.

The provisions on inter-library loans are inconsistent with the role of libraries, just like the people from the Canadian Association of Law Libraries said last week. They said that “libraries are not responsible for ensuring how people use materials”.

The proposed clause 29 will force libraries to take on a major responsibility in terms of preventing borrowers from using copyright protected materials fraudulently. The wording of the bill suggests that libraries will have to take measures to prevent borrowers from reproducing or sharing works with someone else. It also says that libraries have to make sure that borrowers cannot use a digital copy for more than five days.

It seems to me that the Conservatives' response to any type of knowledge exchange is to impose digital locks. Libraries should not be forced to develop digital locks and to put them on the works they lend out. This measure is particularly unjust, given that many of them are facing considerable spending reductions and that they might be forced to redirect resources from other areas to managing digital locks specifically. As a result, libraries could be in breach of the Copyright Act because of violations committed by borrowers. The NDP amendment changes the responsibility of libraries from taking action to “prevent” to taking action to “advise” users of unauthorized uses.

As a result, the responsibility to respect copyright is back where it should be, in the hands of individuals. This amendment removes a responsibility that could be dangerous for libraries. Finally, it eliminates the five-day limit on borrowing digital materials. This arbitrary measure is prohibitive and goes against the needs of students and researchers.

Thank you, Mr. Chair.

[*English*]

The Chair: Thank you, Monsieur Nantel.

Just a reminder that when you're presenting in either official language, take into consideration our interpreters so they can ensure they are getting the right information across.

Before I open this up for further discussion, I need to inform the committee that this amendment now has a line conflict with Liberal amendment 8. So if this amendment is adopted, we cannot proceed with LIB-8.

Is there any further discussion on NDP-7?

Mr. Regan.

● (1745)

Hon. Geoff Regan: Mr. Chairman, in spite of that conflict you've proposed, in the unlikely event that this or the next one passes, I want to indicate my support for this amendment. It's my view and my party's view that the present section in the bill would create significant regulatory and administrative burdens for libraries.

By the way, I'm going to try to help the interpreters by speaking as slowly as I can. I normally speak at about 200 words a minute, with gusts up to 400, so I'll do my best to keep that under control.

The present provision forces you to make a mechanical copy, so it would not in fact be technologically neutral, which is something that otherwise the bill is trying to achieve, I think. The fact is you can still have one copy, but it has to be a paper copy. That makes no sense to me in this digital age.

Also, this five-day rule does not conform to any research schedule, and it would primarily be researchers who would be affected by these provisions.

It seems to me that amending this as proposed would make it better for innovation in Canada.

The Chair: Thank you, Mr. Regan.

Any further discussion?

Mr. Lake.

Mr. Mike Lake: I'll point out that the idea of this is to create an opportunity for libraries. It's about the opportunity. With that opportunity comes some balance that's needed to make sure there's no abuse of copyright through that.

That's what this provision does, so we will not be supporting the amendment.

The Chair: Thank you, Mr. Lake.

Any further discussion on this amendment? I will then call the question.

(Amendment negatived)

The Chair: Now moving on to amendment Liberal 8.

Mr. Regan, you will be moving this amendment?

Hon. Geoff Regan: Yes, Mr. Chairman.

I move this amendment. For the same reason as I stated, it's a bit of a different way of achieving the same objective. I think it would achieve it effectively, so I therefore move it.

The Chair: Thank you, Mr. Regan.

Any further discussion on this amendment?

Mr. Angus.

Mr. Charlie Angus: Thank you. It's similar to ours, so I will support it.

One surprise from the Conservatives is that they're saying they're offering libraries an opportunity. The libraries already have it. The digital realm is being developed. It seems what they're doing is putting a roadblock in front of them and saying that now they have to be responsible.

I don't think I would ever suggest that libraries have been irresponsible. This is about the exchange of information, and it is ongoing. We are adding an arbitrary limitation of five days. It has had no verifiable research to back up why it's five days—not seven days, not ten days, but five days. It would make it virtually useless for anybody doing course studies or real-time research.

I think this is not an opportunity; it's an unnecessary interference.

The Chair: Thank you, Mr. Angus.

There are approximately four minutes for any further discussion from the New Democrats.

Seeing none, any discussion?

I will ask for a show of hands when I call the question.

(Amendment negatived)

The Chair: Moving back to clause 29, is there any further discussion on the clause?

Seeing none, shall clause 29 carry?

Mr. Charlie Angus: On division.

(Clause 29 agreed to on division)

The Chair: Clause 30 is open for discussion. Is there any discussion on clause 30?

Seeing none, shall clause 30 carry?

Mr. Charlie Angus: On division.

(Clause 30 agreed to on division)

(On clause 31)

The Chair: I will now open discussion on clause 31.

Is there any discussion on the clause?

Mr. Mike Lake: There's an amendment.

The Chair: Mr. Lake, you will be moving the amendment?

Mr. Mike Lake: I'll move the amendment as written.

Again, I will have the officials comment on the impact this memo would have on the bill.

● (1750)

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

Mr. Gerard Peets: Bill C-11 contains new exceptions to support activities related to software reverse engineering for interoperability purposes, encryption research, and security testing of computers, networks, and systems. These types of activities may require copying as part of that research or product development process.

A concern has been expressed that these new exceptions could challenge the ability of right owners to deter unethical activity, such as exploiting vulnerabilities in computer networks and mobile device systems. If exceptions were to allow this kind of behaviour, it could put information security at risk. This amendment would add new safeguards to avoid those unintended consequences.

The Chair: Thank you for that information.

It's back to you, Mr. Lake, or the Conservatives. Is there any further discussion on the amendment?

Mr. Braid.

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

Clause 31, I think, provides some very important exceptions in the copyright bill, specifically sections 30.61, 30.62, and 30.63. This amendment is a matter of ensuring that the language reflects the intent, and that the intent is to encourage follow-on innovation in the ICT sector. These are important provisions for many companies within the information and communications technologies sector, but we need to make sure that through this amendment these exceptions cannot be used for malicious purposes.

It cannot be used by computer hackers, by individuals who may wish to attempt to, for example, expose or make public a company's trade secrets. This amendment provides appropriate protections with respect to these exceptions.

The Chair: Mr. Lake.

Mr. Mike Lake: I just wanted to clarify something on this amendment. We were moving so quickly, and I have all the amendments in front of me.

This amendment was supposed to be Mr. Braid's amendment. He was the one that was moving that, and I inadvertently got ahead of myself and moved it, reading my notes. With the committee's indulgence, I want to give credit where credit's due and give Mr. Braid the opportunity to move that.

Hon. Geoff Regan: Put it on the record.

The Chair: All those in favour of changing the mover?

Some hon. members: Agreed.

The Chair: It's implied consent. Mr. Regan, you would like to speak to this amendment? The floor is yours for five minutes, sir, and then we'll go to the New Democrats.

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

You'll be delighted to know that I won't need five minutes, but I do think it is important. Along with the fact that the research needs to be done in terms of dealing with issues of security and so forth, this also allows people who are preparing or creating new kinds of software to make sure that software can interact with other software without having problems.

I think this is needed, and I'll be supporting this amendment.

The Chair: Thank you, Mr. Regan.

Monsieur Dionne Labelle, pour cinq minutes? Non? C'est tout?

Is there any further discussion on this amendment from New Democrats? Seeing none, I will ask for a show of hands.

(Amendment agreed to)

The Chair: I will go back to discussion in relation to the clause. Seeing none, I will call the question.

(Clause 31 as amended agreed to on division)

The Chair: I'm now moving to clause 32. Is there any discussion?

Mr. Lake.

Mr. Mike Lake: I'll move clause 32 and 33 together.

The Chair: Do we have the consent of the committee to move clauses 32 and 33?

Some hon. members: Agreed,

The Chair: Shall those two clauses carry?

Mr. Charlie Angus: On division.

(Clauses 32 and 33 agreed to on division)

(On clause 34)

The Chair: I am now on clause 34. I am opening it up for discussion. Is there any discussion on clause 34?

Would you like to speak to the clause, Mr. Cash?

● (1755)

Mr. Andrew Cash: I'd like to speak to the amendment.

The Chair: I will then move. We have NDP-8. We need someone to move that.

Mr. Charlie Angus: I so move.

The Chair: Mr. Angus is moving NDP-8. The floor is now the New Democrats for five minutes.

Mr. Andrew Cash: Thank you, Mr. Chair.

As I mentioned a little earlier, here on our side we've been trying very hard to balance the needs of consumers with the foundational intention that artists need to get paid for their work.

We have a gaping hole in this section. In that hole is plunging $21 million of artists' royalties. The government side has heard countless testimony from artists and stakeholders in the arts that this is an attack on the small payments many artists receive. We have never really heard a good explanation from the government as to why this loophole is here. We can only assume in good faith that there's a 30-day exemption here for broadcasters, and it is only to be 30 days. This amendment seeks to ensure that broadcasters have a 30-day exemption, and that's it. They can't make multiple copies, as they came to the committee and testified they would do.

We talked about this quite a lot in these committee hearings. The government tried to label artists' royalties as taxes, which is pretty ludicrous. It's also uninformed. There was the sense that the government thought that radio stations paid for the songs, when they don't. They pay royalties on rights, and that's the way the system works.

This amendment will try to close this hole so that artists will get paid. There is a compromise here, and artists and arts stakeholders have made it. They say that a 30-day exemption will cost them millions of dollars, but they are willing to accept it if the government's intention is to have a 30-day window, but no more than 30 days. Unless the government intends to allow broadcasters to drive their buses through this loophole, they should be able to agree on this.

We heard testimony from radio stations that were actually complaining about this loophole because it's too tough. Radio stations have said they will have to hire a full-time employee to make copies, when their royalty is only about $700 or $800 a year anyway. It seems a little ludicrous.

The language in this amendment clarifies the 30 days. It helps the government with their intention all along, which is to allow broadcasters a 30-day exemption. Our side doesn't actually like that in the first instance, but we're willing to go with that as long as it's a 30-day exemption and no more.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Cash.

There is still some remaining time for the New Democrats to speak. You have about a minute and a half.

[*Translation*]

Mr. Pierre Nantel: Basically, this all comes down to a summary of the despicable comments we have heard from the people who are just looking to profit from this exemption. It will mean a loss of $21 million in royalties to artists. To that $21 million, we can of course add the $30 million dollars that, one day, we will try to get back, let's hope, by overhauling the private copying regime.

We have opposed this Conservative bill from the outset. We are always mindful of the interests of artists in Quebec as well as elsewhere in Canada. The Conservatives on the other side of the room speak about balance. I don't think they know what the word “balance” means. We feel that they would have some understanding of what balance is if they had at least found a way to make up for those losses by other means. But that is not the case.

In the Conservatives' bill, there is nothing to make up for that loss. Why? In this committee, the question of where the money taken from the artists' war chest was going to come from has often been asked. The term “war chest” is a very bad choice of words, because we are talking about their income. We have pointed out on a number of occasions that the royalties artists get here and there are their salary. To subtract $21 million dollars that comes from an industry that, for the moment at least, is cashing in on the music handsomely…

● (1800)

The Chair: Thank you, Mr. Nantel.

[*English*]

That was five minutes.

Before I move on, I need to clarify that there is a line conflict with LIB-9 in this amendment. So if amendment NDP-8 is adopted, LIB-9 cannot proceed.

Is there any further discussion in relation to this amendment?

Mr. Regan, you have five minutes.

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

I guess I have a question for the officials about this and about the working of the provision as it's drafted. We heard from a number of people representing radio stations that what they felt they would be forced to do, if the bill goes forward as is, would be to basically erase their whole entire library of music and re-record it every 29 days or less. Are they right about that? If not, why not?

Mr. Drew Olsen: The exception in the act now that provides the 30-day limit says that for broadcasting purposes, radio stations can make temporary copies, and they can keep them for 30 days or less. They have to destroy them after 30 days, unless they're willing to pay the licence fee for them. As long as those copies are temporary copies for broadcasting purposes, they can keep those copies for 30 days.

Hon. Geoff Regan: If they destroy one and make a new copy before that 30 days is up, thereby avoiding that payment—I think we heard them say that this is what they're planning to do—will they succeed?

Mr. Drew Olsen: That ultimately would be a question for a court, I'm sure, if it ever got to that point. What the exception says is that they can make temporary copies and keep those copies for 30 days for broadcasting purposes.

Hon. Geoff Regan: I'd like to know what the government's intent is here. It seems to me that this 30-day provision seems to do nothing for anybody. Maybe Mr. Lake can help me out.

The Chair: It's up to Mr. Lake, if he so chooses to answer. The time is yours, Mr. Regan.

Mr. Mike Lake: Yes, we've had the conversation through committee several times.

First of all, I don't agree with this perception the opposition parties want to portray that somehow there has been a reduction in the amounts paid by broadcasters. Clearly, and it hasn't been contested by the opposition parties, they're paying a lot more money. Even if you were to take the $21 million out, they're paying a lot more money than they were paying 10 years ago. It's very clear. I see Mr. Nantel shaking his head, but you just have to look at the numbers. It's very clear that this is the case.

So I disagree wholeheartedly with the notion that the broadcasters are paying less. In fact, the amount they pay for the performance rights alone is—I can't remember the numbers exactly; I don't have them in front of me—60-some per cent higher than it was 10 years ago. What we heard is that their revenues haven't gone up that much. Certainly, the inflation rate over those years hasn't been up as much either.

The idea the NDP raised that broadcasters don't pay for the music is quite frankly a ridiculous argument. It's not the broadcasters who decide whether they pay for the music; it's the labels themselves. For their own business purposes, they decide to give free copies. The broadcasters still have to pay to play. Maybe you could clarify that. Do broadcasters actually pay to...?

Maybe you want to use some of Mr. Regan's time to answer that question.

The Chair: We're still in Mr. Regan's time. The NDP is out of time.

Hon. Geoff Regan: I don't think I got an answer to my question about what the government's intent was with this 30-day rule and whether it was to do with what the stations have been talking about or something different.

The Chair: Okay. Mr. Regan, we're still on your time, so we can hand it off to....

Mr. Del Mastro.

Mr. Dean Del Mastro: I just point out to Mr. Regan that this actual portion of the act remains unchanged from previous editions of the act, so I think the intent is clear that, in this case, we're moving forward with the status quo. That said, I think Mr. Lake was pretty clear in his response that the amount in royalties paid to the copyright holders has gone up significantly.

We did raise significant concerns, by the way, that in fact, in many cases, broadcasters are paying twice for the same right. That's something we're actually concerned with. However, we are allowing this to remain unchanged—

● (1805)

Mr. Andrew Cash: Point of order.

The Chair: Point of order, Mr. Cash.

Mr. Andrew Cash: Broadcasters aren't paying twice for the same —

The Chair: That's debate, Mr. Cash. I want to thank you for bringing that up, but it's not a point of order.

Mr. Del Mastro, please continue.

Mr. Dean Del Mastro: I think I've answered the question. This part of the act is unchanged and the bottom line is that the intent of putting it in there was so that temporary copies could be stored under the right that broadcasters are already paying for through the Copyright Board. It's well in excess of $60 million. I believe they're paying $64 million in royalties for the rights to play music. It's a partnership that I think benefits broadcasters, labels, and artists, and it's an important relationship. As I said earlier, it's like a marriage. They need each other, and the broadcasters are paying significantly for that right.

The Chair: Order, please.

Thank you.

Mr. Regan, I'll give you the opportunity for one more question, if you so like. The Conservatives might like to give you some of their time, if there is any, because they have five minutes available to discuss this amendment.

If not, I'd like to then call the question on amendment NDP-8.

(Amendment negatived)

The Chair: Now on to Liberal amendment 9.

Mr. Regan, will you be moving this amendment?

Hon. Geoff Regan: Yes, Mr. Chairman.

The intent of this amendment is to help to ensure that artists are paid for their work.

The Chair: Thank you, Mr. Regan.

Now opening it up for discussion, Mr. Angus, for the New Democrats. You have five minutes.

Mr. Charlie Angus: Thank you.

This has been fascinating because we were told by our panel of experts here that temporary reproductions are meant to be temporary only, and it would be a matter for the courts if broadcasters were attempting to use this to not pay the mechanical rights they are obligated to pay under the law. Yet we were told at committee, day after day, that they were intending to use this loophole and they felt the loophole should be done away with altogether so they wouldn't have to pay.

My colleagues across the way feel the government should intervene in the adjudication of the Copyright Board. The Copyright Board sets the rate. The Conservatives don't like the rate. They think it's not nice.

I find it fascinating that these guys are going after little libraries and saying that if they're going to make a PDF of old Mrs. McGrady's memoirs they'd better have them for only five days because they could get out there. But if some of the largest broadcast organizations in Canada decide they want to erase their reproductions after 29 days, they're already paying enough. The message we heard was that it had to be balanced and that we're giving them an opportunity. Well, there is opportunity here. If you have it for 29 days, then pay the royalty. This is what is adjudicated by the Copyright Board, and we're seeing from this government that they believe they have the right to erase royalty payments that are established under a very strict process. They're taking the side of the broadcasters.

We support radio. Radio has done great work in this country, but when we look at the royalty rates that radio has made since 1996 when they had a 1% profit, it's over 20% now.

The Copyright Board felt the mechanical recording was undervalued for many years and that because of the changes and the fact that they don't need nearly as much staff, that this was a fair payment. This was decided by the Copyright Board.

The Conservatives are stepping in. They're deciding they're going to allow this loophole. If this is a mechanical royalty that must be paid, I'll be interested to see, from the testimony we have and from your advice, whether or not this will end up in court if people are attempting to use this to circumvent the act and its intention.

The Chair: I have Mr. Benskin for two and a half minutes, and then if there is time, Mr. Cash.

● (1810)

Mr. Tyrone Benskin: There is a huge disconnect between the Conservative government and the realities of what an artist does. There seems to be this sense that an artist gets paid once, and he or she should be satisfied. There are levels of usage.

The broadcast companies do not pay twice. They pay for the mechanical right. That is a separate right. Then they pay for performance, the same as if you buy a record, you pay for that record, and when it's played, you pay for usage. They're two separate things and should be seen as two separate things.

They need to be two separate things because unlike buying a record or buying the download—which they want to get out of—every time a piece of music is played, a new dollar is made by the broadcaster. If a new dollar is made, the artist should have a share of that new dollar. Every time a song is played, a new dollar is made through advertising, through whatever means, but a new dollar is made to the broadcaster. Why should the artist not have an opportunity to share in that?

There needs to be an understanding of what the artist's world is.

The Chair: There's a minute left to Mr. Cash.

Mr. Andrew Cash: I just wanted to underscore something my colleague, Mr. Nantel, said. These are rights that have been adjudicated by the Copyright Board. It's not that they're paying twice for the same right.

With respect, Mr. Del Mastro, they're paying for two separate rights. That's very important and it does underline just how little the government side understands how artists make a living in this country. In fact, what you've done is, in a backdoor way, taken $21 million out of the pockets of artists, instead of just being up front with Canadians and saying that you're going to cut this right and you're going to let broadcasters, who are already making hundreds of millions of dollars, make $21 million more.

The Chair: There are 20 seconds left, Monsieur Nantel.

[*Translation*]

Mr. Pierre Nantel: Really, I am amazed. Here we are talking about reforming copyright and the only thing we are doing is taking money out the creators' pockets. That's all we are doing. It's pathetic.

If people took the time to learn the facts, they would never come up with garbage like that and they would not be trying to bypass the Copyright Board of Canada, which, in terms of time and context, manages the way in which artists are to be compensated.

The Chair: Thank you, Mr. Nantel.

[*English*]

That is the New Democrats' time on this amendment.

Is there any further discussion on this amendment?

Seeing none, I will then ask for show of hands.

All those in favour of Liberal amendment number 9 please raise your hands.

All those opposed?

(Amendment negatived)

The Chair: We've now moving on to New Democrat amendment number 9.

Will that be moved, Mr. Angus?

Mr. Charlie Angus: Yes, we will move that.

I'll pass it over to Mr. Cash who will speak to this.

The Chair: Mr. Cash.

Mr. Andrew Cash: Thank you, Mr. Chair.

Thank you, colleagues.

This is where the whole problem started, with the deletion of the exemption to the exemption. This is where this whole issue started.

We've got a situation here where the government is saying that artists are getting paid too much money. That's essentially what you're saying here today. You're saying artists are getting paid too much money and broadcasters need a helping hand.

There are small broadcasters out there who do need a helping hand and we understand that, but we're not talking about that because 80% of broadcasting is pretty well locked down by very large corporations that are making significant profits.

I'm wondering if the government side can say whether the intention here is to give broadcasters a 30-day window or is the intention here to let the broadcasters off the hook for the broadcast mechanical? Which is it? Does someone on that side know and, if so, do they want to say?

The Chair: All right.

I'll give some of your time to Mr. Del Mastro, if you'd like to answer?

Mr. Dean Del Mastro: I think the intent is pretty clear, Mr. Chairman, that broadcasters may download and maintain a copy of a work for 30 days without paying the mechanical.

To the members opposite who do seem somewhat confused, what's at issue here is that the broadcasters cannot purchase the music in the format that they actually use it on. They pay a royalty for music in a format that they cannot use and then are subsequently charged a second charge to be able to use it in a format that they can use. It's like charging people to buy music on an eight-track so that they can later get in on their iPod. That's what the opposition doesn't seem to understand.

● (1815)

The Chair: Thank you, Mr. Del Mastro.

We go back to Mr. Cash.

Mr. Andrew Cash: To extend that preposterous analogy, it's like saying that you buy a car, and therefore you should be able to park the car anywhere you want and not have to pay, because you've already paid once for the car. Hey, heck, there should be enough space to park that car anywhere you want.

The parking of the car is a different use, and I think the government is intentionally conflating these uses and obscuring the issue. The issue is the protection of a right that's already been adjudicated by the Copyright Board.

It's also an issue of fairness. It's an issue of fairness for artists.

First of all, we have an arts and culture sector that is a very significant player in the economy of Canada, and you have thousands upon thousands of artists that barely make it to the poverty line. And here you guys are, sitting there comfortably, saying that we need to give broadcasters a break.

It is an issue of fairness. It is surprising to me that no one on that side has given a proper accounting of why this is written the way it is, and our friends over here are essentially saying that it can be decided by the courts.

For musicians, that's just not going to cut it, because of course, there's a huge power imbalance here. Musicians and most artists will not have access to the kinds of resources they would need to properly fight this in court. Broadcasters have all the power in this situation.

Isn't it our job in Parliament to protect the rights of those who are at the bottom end of the scale here? Isn't that the job we're sent here to do?

My goodness, broadcasters have all the power in the world. They have, probably, direct lines to all of your offices.

That's not our job. Our job is to protect the people who need the protection, and that's not happening here, folks. That is absolutely not happening. That's why we support—this is sounding convoluted now—the re-insertion of the exemption to the exemption.

The Chair: We have 30 seconds for the New Democrats.

Monsieur Nantel.

[*Translation*]

Mr. Pierre Nantel: Thank you, Mr. Chair.

Honestly, it is a good thing that my mind has gone blank. I am speechless. Not recognizing that the bill has the wrong title is an incredible affront. It is called An Act to amend the Copyright Act. Clearly, all we are doing here is drying up the rights of artists and creators. I have nothing else to say.

The Chair: Thank you, Mr. Nantel.

[*English*]

Is there any further discussion on this amendment?

We'll have Mr. Lake, for the Conservatives, for five minutes.

Mr. Mike Lake: It won't take me five minutes, again, but I will weigh in on this.

First of all, we have agreement on a few things.

Mr. Cash, arts and culture are a big part of the economy. We agree on that. You made the allegation that we're talking about creators making too much money. No one on this side has actually said that creators make too much money. What we have said is that we need to have an honest discussion about the numbers, so when numbers are presented one way, when the impression is created by some on one side of the issue that creators are getting less money, that needs to be corrected. We have to put the actual numbers on the table to say that it's not true, and that's what we've done.

Quite clearly, what we need is a system that will be balanced so that creators have the opportunity to make money from their creations. To use Mr. Angus's nice story about old Ms. McGrady, I think he said that if old Ms. McGrady wants to make her memoirs available for free, that should be her decision, right? It should be up to her.

Mr. Charlie Angus: If you want to read it for more than five days —

The Chair: Do you want to ask her the question, Mr. Lake?

Voices: Oh, oh!

Mr. Mike Lake: That's fair enough. We don't say that, actually.

If she wants to make them available, she can do that. She has control of her copyright.

Mr. Charlie Angus: She doesn't at the library level.

Mr. Mike Lake: She does.

Mr. Charlie Angus: At the library, they don't.

Mr. Mike Lake: She can make them available for free if she wants to.

Anyway, the point of the matter is that we want a system that makes sense for everybody. We're trying to create a balanced system here. As legislators, it's our responsibility to have an honest debate about things. Sometimes in our passion to portray our side, maybe we reflect the background we come from. Sometimes that gets a little bit fuzzy, Mr. Cash. But in this circumstance, it's quite clear, when you look at the numbers, that the fact of the matter is that there is more compensation being paid today to creators by broadcasters than there was 10 years ago, and it's significantly more.

● (1820)

Mr. Pierre Dionne Labelle: Can you keep it that way? Let's keep it that way.

Mr. Mike Lake: No one's saying whether it's too much or not too much. What we're saying is that there needs to be a system that actually makes some sense, a system everybody can understand that compensates for actual value produced and realized, and in this case —

Mr. Andrew Cash: It sounds like a ceiling for artists.

Mr. Mike Lake: Pardon?

Mr. Andrew Cash: It sounds like what you want is a ceiling for artists—an income ceiling for artists.

Mr. Dean Del Mastro: We're not putting a ceiling on anybody.

Mr. Mike Lake: Not at all. We want to create a situation where creators can get compensated fairly for what they create.

The Chair: Thank you, Mr. Lake.

Mr. Regan, you now have five minutes.

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

I think I heard Mr. Del Mastro say that if you buy something on an eight-track, you should be able to transfer it onto an iPad.

Mr. Dean Del Mastro: No, that's not what I said.

Hon. Geoff Regan: Because clearly you can't do that because there's a digital lock on it. And I thought maybe he wished he hadn't argued against our proposals in that regard to the digital lock section, in view of what he seemed to be saying, because he seems to be saying two different things. He's saying one thing here when it comes to ephemeral rights and radio, and something very different when it comes to digital locks.

Mr. Dean Del Mastro: Mr. Regan is confused again, Mr. Chairman.

Hon. Geoff Regan: And I saw that he looked at his BlackBerry shortly after saying that, so I wondered if PMO had sent him an email to ask him what the heck he was doing.

Mr. Dean Del Mastro: And that's a complete misrepresentation, Mr. Regan.

The Chair: Mr. Del Mastro, the Conservatives still have time, so if you'd like to respond, you're more than welcome to.

Mr. Dean Del Mastro: Sure, I'm happy to.

Mr. Regan is confused, Mr. Chairman, and I'd like to use the time to help clear up the confusion because we can't have people confused at the table.

What I indicated is that people should be able to purchase things in the format they wish to use them in.

Now in this case the radio broadcasters cannot. If Mr. Regan would like to buy a Blu-ray and watch it as a Blu-ray, then he can do that. If Mr. Regan would like to buy a Blu-ray, and hack it and put it onto a video file on his computer, he can't do that, because it has a technical protection measure and we support that because that is a business decision to put a fence around something that they have created.

It may not be popular. People may not choose to purchase something that in fact has a technical protection measure on it, but that is a consumer decision, and the industry, when they put that measure in place, understands this—that the consumer ultimately has the power to purchase or not purchase that specific piece of media. But in this case, the broadcasters know that they need music. That's part of their product. In fact, they pay a lot of money for it. They also contribute to the Canada Music Fund, most handsomely, as a matter of fact, and that goes back and helps Canadian artists as well, through organizations like FACTOR and others.

But what Mr. Regan seems very confused about is the fact that in this case, if consumers wish to purchase something strictly as a digital file, they cannot. Thank you.

The Chair: Thank you, Mr. Del Mastro.

Mr. Regan.

Mr. Pierre Nantel: You seem very confused about the Copyright Board.

The Chair: Mr. Nantel, thanks. Sorry.

Now to Mr. Regan, if you have any further conversation.

All right. Seeing no further discussion, I will call the question on NDP-9.

(Amendment negatived)

The Chair: Moving back to clause 34, any further discussion?

(Clause 34 agreed to on division)

(On clause 35)

The Chair: Clause 35. Is there any discussion on the clause?

There is an amendment, LIB-10.

Mr. Regan, will you be moving this amendment?

Hon. Geoff Regan: Yes, Mr. Chairman.

I move this amendment, which basically says that not only is an ISP protected in the case where there's a contravention of copyright in a work or subject matter, but that providing the service they provide as Internet service providers does not contravene in this way any other provision of the act.

And if there's a problem with this, I'd like to hear about it from the officials.

The Chair: Okay, Mr. Regan, I'll now move to Mr. Del Mastro and the Conservatives. You'll have five minutes.

Mr. Dean Del Mastro: Thank you very much.

To the officials, my understanding is that LIB-10 and LIB-11 in clause 35 deal with the issue of network PVRs, in part. My understanding from previous discussions with officials is that there is nothing in the act that prevents a business-to-business agreement between broadcasters and BDUs to establish network PVRs.

I need an answer that is as clear as you can make it, as to whether or not LIB-10 or LIB-11 are in fact needed for the business relationship to be established between broadcasters and BDUs, to establish network PVRs.

● (1825)

The Chair: Mr. Del Mastro, just before the industry experts provide the testimony, if G-5 is adopted, there is a line conflict that would then not allow LIB-11 to proceed.

Mr. Dean Del Mastro: Okay.

The Chair: So if you want to rephrase the question.... But just so that is out there, if the government amendment passes, LIB-11 can't proceed.

Back to you.

Mr. Dean Del Mastro: Thank you.

Could I get the answer to the question, please?

Mr. Gerard Peets: Could we perhaps confer for a quick second on this one?

The Chair: Sure. I can suspend for a few minutes.

Thank you.

We'll suspend.

● (1825)

(Pause)

● (1825)

The Chair: Welcome back, once again.

I will now hand it back to our witnesses for an answer.

Mr. Gerard Peets: Thanks very much for that moment.

The bill is silent on the NPVR technology. That's the first thing.

If the question is whether there is anything in the bill that prevents a business-to-business relationship to establish a NPVR model, the answer is no, there isn't.

Mr. Dean Del Mastro: Okay. I have been told previously that there's nothing preventing network PVRs from being established. However, my concern goes back to an issue of double payments. What the bill would do right now is to leave BDUs potentially subject to lawsuits over double payments, if these amendments aren't passed. Is that correct?

The BDUs are obviously indicating that they are seeking to establish this. There's no such payment made currently for a PVR, but the idea is that it would be much cheaper, and in fact more efficient, if we moved to a single set-top box that would allow viewers to view programs without having the recording on their own device; it would simply be on a network.

The concern is that without these amendments the BDUs would then be forced to make a double payment on this issue. Can you confirm whether the bill leaves them open to a lawsuit that could see them making a double payment without these amendments?

● (1830)

Mr. Robert DuPelle: There's nothing specific in the bill that would suggest there's a double payment. It would depend on the facts of a given case.

To the extent that an entity providing a service is able to benefit from the hosting safe harbour under clause 35, which would be amended by Liberal 11, they would be sheltered from liability for the activities covered by that hosting safe harbour.

So it really would depend on the facts, in terms of the type of service they're providing, the types of acts they're engaging in, and the involvement in terms of the content, etc.

The Chair: Unfortunately, Mr. Del Mastro, we now have bells. We can do two things. We can vote on the amendment, or we can postpone this for further discussion tomorrow at 9 a.m.

I guess we won't have unanimous consent, so we will move forward with our discussion on Liberal amendment 10 tomorrow morning at 9 a.m., in room 253-D on the Hill.

This meeting is now adjourned until tomorrow.