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## **Standing Committee on Canadian Heritage**

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**EVIDENCE**

**Thursday, November 22, 2018**

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**Chair**

**Ms. Julie Dabrusin**



## Standing Committee on Canadian Heritage

Thursday, November 22, 2018

• (1100)

[Translation]

**The Chair (Ms. Julie Dabrusin (Toronto—Danforth, Lib.)):** I call this 132<sup>nd</sup> meeting of the Standing Committee on Canadian Heritage to order. Today we are resuming our study of remuneration models for artists and creative industries.

I'm very pleased that we have several witnesses today. We welcome Eric Enno Tamm and John Degen from the Writers' Union of Canada, Wendy Therrien and Alan Bell from Universities Canada, and David Swail and Kevin Hanson from the Canadian Publishers' Council.

We will begin with the Writers' Union of Canada.

[English]

**Mr. Eric Enno Tamm (Chair, The Writers' Union of Canada):** Good morning, and thanks for the invitation to present on behalf of The Writers' Union of Canada.

Our organization represents 2,100 professional authors across the country, and we chair the International Authors Forum, with over 700,000 members globally.

Copyright is core to how we as creators earn a living: Erode copyright, and you erode writers' incomes. It's that simple. Earning a living as a writer is difficult at the best of times. It's been immeasurably more difficult in the past decade, as we've seen sweeping digital disruption across the creative industries. We hear that content is king in the digital age, but the creators of that content are being paid and treated like serfs.

In 2012, Canada's authors and publishers were asked by Parliament to trust and respect a new understanding—a new model—around educational copying and fair dealing. What followed was anything but fair for writers. It's been a disaster, and our members have felt it first-hand. A recent survey of Canadian authors received almost 1,500 responses, and here's what they told us.

Authors have suffered a 27% decline in incomes in the past three years alone.

Compared to 20 years ago, we've seen our real incomes decline by 78%.

The average net income from writing is only \$9,400.

Even worse, income from educational copyright royalties has declined on average by 42% in five years as a result of illegal free copying by the education sector.

In 2012, as Parliament was reforming the Copyright Act, writers knew that we faced a difficult road ahead. Not surprisingly, we've been adapting. More of our member authors are self-publishing, and the writers' union has been delivering professional development workshops on self-publishing, book promotion and publicity. Many authors are embracing entrepreneurship, yet writers are now expected to do more for less or, even worse, for nothing.

As our publishing partners can confirm, producing content isn't free. Researching, writing, rewriting, editing, graphic design, layout and distribution all cost money, yet authors are now expected to work for free for the benefit of the education sector. In fact, with recent proposed changes to the Copyright Board of Canada, our serfdom has been confirmed. The reality for Canada's writers is that the copyright board is toothless. We work for it, but it doesn't work for us. We put in the time and effort to get tariffs approved, and when they are approved, the education sector simply ignores them.

We have asked for statutory damages for our tariffs to encourage compliance by the educational institutions, but the government has declined to make that simple change. We are discouraged and disappointed by that decision.

Perhaps we should look to the Europeans on how to balance copyright, privacy and online content in the digital age. The European Parliament recently passed a directive laying out rules for how content is to be protected and paid for by giant tech platforms that have long avoided regulation. The directives require platforms and aggregators online to pay for licences for the use of content snippets.

As well, the directive imposes greater responsibility on the platforms for lawful sharing of content online, a measure that should help in the fight against content piracy and provide a new licensing opportunity to authors for the use of their work online. The Europeans are disrupting the disruptors and telling Silicon Valley that a business model built on others' free labour is unacceptable.

Another disruption from the tech sector itself could also prove valuable to creators. There's increasing talk that a new decentralized technology could allow creators to circumvent centralized platforms and connect directly to readers. The technology, called a distributed ledger or blockchain, has been around for decades and has become famous recently for powering cryptocurrencies like Bitcoin. Blockchain could now disrupt books.

How does the technology work? The platforms of Amazon, Apple, Facebook and Google are essentially gargantuan centralized relational databases. They are intermediaries controlling our relationship to readers and facilitating sales transactions.

• (1105)

In contrast, distributed ledger technology has no centralized authority controlling a database. Instead, transactions are stored on immutable ledgers, which are replicated on many computers across a peer-to-peer network. Since the ledger actually exists in many places, it's really hard to hack.

Transactions can be bundled into what they call digital blocks on a chain, which gives the technology its name of blockchain. For a book, these transaction blocks could be for the authorship, publishing, distribution and ultimately, the reader's purchase. The technology could have several applications for authors. It could guarantee attribution of a digital work to an author or rights holder. Through smart contracts, it could distribute and authenticate copyrighted material to readers, and via a digital wallet, it could automatically distribute royalties, directly and immediately, back to authors.

A number of tech start-ups are already using the technology to distribute content and reward creators, including blockchain publisher Publica.io, Smoogs.io, Po.et, and authorship.com. Access Copyright launched its own start-up, Prescient Innovations Lab, to build and test blockchain technology that is focused on the creator. The Writers' Union supports Access Copyright in this pioneering work.

The Writers' Union of Canada is committed to innovation and to empowering our members to adopt new technology, new skills and new business models to survive. Given the sorry state of our earnings, we have little to lose and a lot to gain.

There is possibly something promising in the new technology on the horizon to help us develop new, innovative remuneration models. However, stronger copyright is key. Fair dealing needs to be fair, not free, for educators, and we need a Copyright Board that's more than a paper tiger. Significant statutory damages will give the Copyright Board some teeth in dealing with those who refuse to pay their tariffs.

If we value culture, then we must value the work of those who produce it. The Writers' Union will submit a brief detailing the ideas I've discussed, and we're happy to take questions.

Thank you.

• (1110)

**The Chair:** We will now go to Universities Canada with Wendy Therrien and Allan Bell, please.

**Ms. Wendy Therrien (Director, External Relations and Research, Universities Canada):** Thank you to the chair and committee members for the invitation to appear on behalf of Universities Canada.

We represent Canada's 96 universities, whose teaching, research and learning mission is key to providing Canadian students with the skills they need for the knowledge economy.

Thank you to each one of you for the vital role that you are playing in the statutory review of Canada's Copyright Act, particularly looking at remuneration models for artists, including writers and creative industries.

Universities across this country play a vital role in supporting Canada's creative communities. From the beautiful new campus at the Emily Carr School of Art and Design to the Purdy Crawford Centre for the Arts on Mount Allison's campus, universities are hubs for Canadian creators.

It is for this reason and based on the importance of a balanced approach to copyright that Universities Canada and its member institutions have been actively engaged in the INDU committee's review of the act, as well as contributing to the Government of Canada's 2016 review of Canadian cultural policy.

I am very pleased to be joined today by Allan Bell, who is the associate librarian for digital programs and services at the University of British Columbia. Like universities across this country, UBC has implemented extensive measures to ensure compliance with copyright law. Mr. Bell would be happy to take any questions that you might have about how copyright compliance works on campuses.

[*Translation*]

Universities are producers, owners and users of protected documents, and advocate for a balanced approach to copyright.

Universities stimulate the creativity of millions of students, allow researchers to give free reign to their intellectual curiosity, and strengthen communities.

Our sector respects copyright and helps artists and emerging and established creative industries to succeed.

We are fully aware of the real financial difficulties experienced by many Canadian artists like musicians and authors. However, we also know that fair use by educational institutions is not the reason for those difficulties.

The reason, rather, lies with the disruption caused by digital technologies, which change the way content is consumed the world over. That is the main problem that needs to be overcome by copyright holders.

When they testified before your committee last November 22, federal officials spoke at length about the impact of the digital disruption on Canadian creative industries. They also recognized that changing the Copyright Act was not the most effective strategy to improve creators' remuneration.

This is also what we observe on campuses across the country.

[*English*]

Universities value copyrighted material and are committed to copyright compliance. Canadian university library expenditures are increasing annually, exceeding \$1 billion over the past three years combined; however, to meet the evolving needs of their communities, libraries are changing what they buy.

Students today are demanding access 24 hours a day across multiple platforms. For example, at the University of British Columbia, the library's digital resources grew from 21% in 2002 to 82% in 2017. That's a 60% shift in just 15 years. Over that same period, the circulation of the library's print collection steadily declined. Nearly 70% of the library's print collection has not been taken off the shelf, let alone signed out, since 2004. That's 70%.

There has also been a sharp increase in the use of e-reserve systems instead of printed course packs. In other words, new platforms for accessing course materials are enhancing educational opportunities offered to students and are making university studies more affordable and accessible.

Unlike printed books, digital content accessed by university libraries generally includes reproduction rights. Contracts control how this content is used and whether fair dealing applies. In most cases, content is shared through links by protected digital locks rather than copied, so that reliance on fair dealing is actually decreasing on campuses across the country. As a result, limiting fair dealing through changes to the Copyright Act would not be an effective tool for subsidizing an industry that, as we have just heard, is trying to adapt to the changing values and consumer patterns of its customer base.

• (1115)

The Supreme Court of Canada has identified fair dealing as a right and has repeatedly recognized the importance of balancing copyright interests. Five landmark decisions made by the court in 2012 transformed the way copyright is being managed, and they were a genesis for a shift in the way the education system is approaching copyright. However, the legal context for fair dealing is continuing to evolve. Several active court cases are still pending. Parliament should allow the courts to continue their work before further legislative intervention.

While limiting fair dealing for education is not the solution, the government can indeed mitigate the impacts of digital disruption on the creative community. We encourage committee members to consider policies and programs that can directly assist individual creators and support industries that help get creators' works to market. For example, federal funding programs and organizations that provide direct support to current creators could increase. This might include organizations like the Canadian Council for the Arts, which manages a program called the public lending right, which provides financial compensation to eligible authors for lost royalties due to public access to their books in Canadian libraries.

On support for industry, such programs as the Canada Book Fund or Creative Export Canada, both managed by the Department of Canadian Heritage, assist publishers and other organizations, including not-for-profits and indigenous governments, in helping Canadian creative content reach local and global markets.

Finally, an expanded investment in work-integrated learning and entrepreneurship for students across all disciplines, including the full scope of fine arts and arts disciplines, will help prepare Canadian graduates for the changing global creative economy. Canada's future prosperity and the success of our creative industries depend on an exchange of ideas and knowledge. Changes to fair dealing would stem this vital flow, hampering the education, research, innovation

and creation that are essential to a vibrant and thriving cultural economy.

Thank you for the opportunity to come and speak with you today. We welcome any questions you might have. That includes Mr. Bell, who will provide further details on how copyright materials are accessed and managed at the institutional level.

[*Translation*]

Thank you very much.

[*English*]

**The Chair:** We'll now go to David Swail and Kevin Hanson, please, from the Canadian Publishers' Council.

**Mr. David Swail (President, Canadian Publishers' Council):** Thank you very much, and good morning, everyone.

We want to first of all thank all of you for the opportunity to appear before the committee, and we certainly appreciate being asked for our perspective on the critical question of creator compensation and copyright in Canada.

My name is David Swail. I am the president of the Canadian Publishers' Council. With me is Kevin Hanson, president of Simon & Schuster Canada and vice-chair of the Canadian Publishers' Council.

This morning I will briefly outline our principal concerns with the state of creator compensation in Canada, and I will also introduce to the committee our solutions, including some legislative amendments and the co-creation of a digital commons for Canadian educators.

First, if you'll allow me, I'll provide you with a little bit of background on the Canadian Publishers' Council and our membership.

Our organization represents 16 of Canada's largest publishers, operating across all segments of our industry, including trade publishing, higher education, K-to-12 and professional.

Our members are a mix of both Canadian-owned firms and Canadian subsidiaries of global publishers, such as Penguin Random House, HarperCollins, Simon & Schuster, Pearson and Scholastic, among many others.

Our members' aggregate revenue in 2017 was \$853 million. Collectively, we directly employ more than 3,000 very highly skilled, knowledge-based workers in this country and many thousands more in freelance and contract capacities as writers, editors, subject matter experts, designers, illustrators, and researchers, and the list goes on. We are all for-profit companies among our members, and most of our members receive no government grants for their undertakings.

We are very proud to be part of a very vibrant and successful industry. I think that point gets lost often in our discussions about the state of the sector.

Canadians are among the most highly literate and supportive reading public in the world, and our authors are celebrated as never before, both in Canada and globally. Our educational publishers are widely recognized for their expertise and are key contributors to global initiatives within their firms across the world. We want to continue building on that success and developing both Canadian writers and Canadian publishers and bringing more Canadian authors to global audiences.

Our members are very heavily involved in creator compensation, as you would expect. In fact, our business very much depends on it. At last count, our members had more than 9,000 Canadian authors in print in Canada. We compensate many thousands of Canadian creators in myriad ways, and I'll just outline them quickly.

First is direct employment. We employ editors, writers and designers directly. We spend about \$226 million every year, and related costs include benefits, pensions, employment insurance, etc. We are big employers; in fact, we are the biggest group of direct employers in the sector.

Contract and freelance is an area where we engage creators on a contract basis, working with artists, photographers, illustrators and subject matter experts across a very wide spectrum of publishing endeavours. In aggregate, our freelance and contractor expenses are in the order of \$15 million annually.

Author royalties and advances are a very important part of what we do. We advance pre-publication royalties to authors and other creators in an amount of approximately \$36 million every year. As you probably all know, much of that total is never really earned out by subsequent book sales. In other words, we essentially subsidize the creation of Canadian creative work and culture by many, many millions of dollars every year as for-profit enterprises. In that process we keep creators employed and engaged along the way.

How has the creator compensation model been affected, in our experience, by copyright modernization, and particularly the fair dealing exception for education?

The first and most obvious way that we have all heard about is in the breakdown of collective licensing in the education sector, outside of Quebec. It's well documented that the near-total collapse of that licensing is costing creators some \$30 million annually, with licensing royalties down about 90% since 2012.

For writers, whose annual compensation, as the Writers' Union has recently publicized, is estimated at about \$9,400 a year, that is a significant hit to their incomes.

There is a major spillover effect as well for our members. Our publishers are finding it increasingly difficult to engage creators in educational publishing projects in particular, as they turn to other, more reliable means of making a living while they see royalty payments shrinking.

A further corollary effect, and perhaps more concerning in the medium and long term, is that investment in Canadian learning resources is dropping. We have had several significant K-to-12 publishers discontinue or exit their publishing program, causing significant job losses, and as I mentioned, these are well-paying, knowledge-based jobs that we believe are critical to the future of this

country and this economy. Oxford University Press, McGraw-Hill and Emond Montgomery have all left the K-to-12 sector in the past few years in response to an environment they feel is no longer commercially viable.

• (1120)

Statistics Canada indicates that the book industry has lost about 3,800 jobs since 2012, and that's a 27% decline. Investment loss has also, as you would expect, reduced the quality and the quantity of Canadian learning resources for K-to-12 students in particular, and this is not just about print textbooks.

Canadian publishers among our members and also among the Canadian firms at the ACP have been world leaders in the development of learning technologies. We've built Canadian solutions and adapted global platforms for Canadian students, and have been embarked on that endeavour for many years with great success. The efforts led to a major redirection of publishing investment, away from print and towards technology that is adaptive to student needs and therefore more efficient, more current and often ultimately less expensive for education customers. That investment and the improvement to learning outcomes that comes with it for students is inherently at risk when the market for compensated content is diluted or eroded. We're also at risk of reducing the Canadian stories and voices that are used in our classrooms as creators and publishers reduce their time and investment in the sector.

To maintain Canada's considerable achievements in education, therefore, we must encourage rather than penalize investment and innovation in Canadian educational resources. It's critical to Canadian student outcomes and their ability to compete in an increasingly global job market.

To summarize, in addition to direct compensation for creators, the areas that are hurt most by what we consider to be very ill-defined legislation in copyright are jobs, investment and innovation. I can't think of any government in the world that would want that track record. Add to that list a diminishment in Canadian culture and a loss of Canadian stories and voices in our classroom and you get a full picture of what ambiguous legislation has brought about for us since 2012.

Let me turn now to solutions, which we're far more interested in talking about.

Alongside the adoption of technology in education, the use of—

• (1125)

**The Chair:** Excuse me. I'll just give you a flag, though, as you launch into that. You're towards the end, so you have about a minute and a bit.

**Mr. David Swail:** I'll go quickly. Thank you.

The use of excerpts will continue to be a solution in classrooms, as shown by the many millions of pages that are copied in classrooms every year. To facilitate access to that content, we propose developing an online portal, which we're naming "the digital commons", that can serve educators and students in a far more efficient manner than the current largely paper-based approach that predominates.

With the Association of Canadian Publishers, we have been conducting initial research into this concept, and we looked to Quebec for a model called "SAMUEL", which we think is a very good starting point. We think it's an important step, this project towards normalizing the commercial use of educational content that has been eroded by lack of clarity in the current legislation.

However, a digital commons alone will not help without change to the legislative language. Many of us in the creative sector have proposed very specific solutions to that language, including as a first step the harmonization of statutory damages, which we've heard about. We would encourage the government to consider looking at those solutions, and we would also be happy to come back to this group with the legislative language we have proposed over the past several months.

In closing, we would ask this committee for a very specific recommendation in your report that compels the Government of Canada to support the publishing industry's call for a solution to our challenges by considering funding for the digital commons initiative and a resolution to the legislative situation that restores the commercial marketplace for educational resources.

Thank you. I'm very happy to take questions when the time comes.

**The Chair:** Thank you.

We will begin with Mr. Hogg for seven minutes.

**Mr. Gordie Hogg (South Surrey—White Rock, Lib.):** Thank you very much to each of you for your diverse perspectives and opinions.

As I was listening, I was wondering, Mr. Tamm, how you would respond to the submissions made by the other two groups this morning.

**Mr. Eric Enno Tamm:** It goes without saying that I think the publishers are our partners in the writing and publishing industry. We also see eye to eye on the educational front.

In terms of the digital commons idea, I think that increasingly writers and publishers are looking for new platforms and ways to distribute their content. It's not something isolated just to the publishing world; we're seeing a lot more direct-to-consumer applications in all sorts of industries broadly.

With regard to some feedback on the educational presentation, I'm going to pass it over to John Degen, our executive director. He's been handling that file for the union.

**Mr. John Degen (Executive Director, The Writers' Union of Canada):** Sure. Thanks.

Yes, clearly we disagree on the issue of fair dealing. To hit a couple of the points I heard, it's true that lots of factors go into the

decline in income for authors and it's true that digital disruption is a large part of that, but we have now tracked a 27% decrease in the last three years alone, and we don't feel it's a coincidence that in those three years we have not received our copyright royalties from the educational sector. We see a direct link there.

There was mention of a movement away from photocopying and towards e-reserves and online course material delivery. To us, e-reserves and online course delivery are just course packs in digital clothing. It is the same thing. If those uses are increasing, then we're talking about an increasing amount of copying. Really, we're losing even more money in that instance.

**Mr. Gordie Hogg:** Mr. Bell, can you respond to those comments?

• (1130)

**Mr. Allan Bell (Associate University Librarian, University of British Columbia, Universities Canada):** Universities in Canada are in a competitive business, but we're not competing with print publishers or the collective rights administrators over royalties. We're competing on an international level to produce the best research and create the best teaching environments. To do that, the best tools....

Frankly, print-based materials are being replaced with enhanced digital content, content that is more than just words on a page, content that is available to our students 24/7, and content that is directly licensed. There is no reprographic need with digital content that we've licensed directly. In our particular case with our e-reserve system, fully 54% of what we provide by our e-reserve system is already licensed by the library. Another 10% is available through open access content. Only 19% is done through the fair dealing analysis. Then we get transactional licences for the rest of them.

That's a fairly common breakdown for most of the universities out there. Really, it is not based on the fair dealing in the Copyright Modernization Act; it's based on the landmark decision in July 2012 wherein the Supreme Court of Canada recognized that teachers are "there to facilitate the students' research and private study". Teachers cannot "be characterized as having the completely separate purpose of 'instruction'". As well, "the teacher's purpose in providing copies [to students] is to enable the students to have the material they need for the purpose of studying". The Supreme Court of Canada characterized teachers as sharing "a symbiotic purpose with the student/user" who is engaged in research and private study.

On this basis, the Supreme Court of Canada has decided that the fair dealing exception allows teachers to make copies of copyrighted works and distribute them to students as part of classroom instruction without a prior request from the student, subject to appropriate conditions, and we have created those appropriate conditions in our e-reserve system. More and more of our faculty are availing themselves of our e-reserve system based on this particular Supreme Court decision.

It's not fair dealing that is actually the problem here. The problem—and I have great sympathy for the authors in this as well—is that because of the digital disruption, we've shifted most of our purchasing into digital licences. For fiscal 2016-17, we spent \$14 million on digital licences. Those digital licences, again, are not subject to an Access Copyright or reprographic licence after the fact.

We had print expenditures of \$1.5 million in book monographs in 2016-17 and \$1.2 million in serials. There are certain areas, such as design, where we still do print, but for most of the journals we get and for many, many of the books we get, we directly license them.

**Mr. Gordie Hogg:** Mr. Bell, can I ask you to back away a little bit from the university perspective? Perhaps you can look at it from the broader perspective that we're trying to deal with. I'm wondering what principles you would see in a society, in a country, in an organization that wants to be equitable—and fair, despite the terminology you have referred to in terms of fair dealing. What principles should we be looking at as we evaluate and make judgments and recommendations with respect to this?

**The Chair:** You have one minute or less.

**Mr. Allan Bell:** The big principle, I would say, is to recognize really that it is the digital disruption. I worked for a—

**Mr. Gordie Hogg:** I saw Mr. Tamm and Mr. Degen discussing as you were going on. Could you help me with principles and comment on that?

**Mr. Eric Enno Tamm:** The one thing I would say is that writers are facing death by a thousand paper cuts, basically. Right now, according to our survey, about 45% of our income comes from traditional royalties, so while the education sector—

**Mr. Gordie Hogg:** What's the principle?

**Mr. Eric Enno Tamm:** The principle is that it's content that has been created—it costs money, and authors and publishers are investing in that—and it's being used by universities in ways that go well beyond fair dealing. The Federal Court has established that and the Copyright Board has established that. The universities are clearly breaking the rules, according to what the courts and the copyright boards have said—

**The Chair:** I'm going to have to end it there.

We will be going to Mr. Shields for seven minutes, please.

**Mr. Martin Shields (Bow River, CPC):** Thank you.

I'll be sharing my time with my colleagues.

I have just one quick question for Mr. Tamm.

When you were talking about legislation and you were referring to the relationship, were you referring to the most recent legislation that's been proposed a few weeks ago? Is that what you were referring to?

•(1135)

**Mr. John Degen:** Are you talking about the Copyright Board?

**Mr. Martin Shields:** Yes.

**Mr. John Degen:** Yes.

**Mr. Martin Shields:** So your reference was your relationship was based on the most recent legislation, which you have real difficulty with.

**Mr. Eric Enno Tamm:** Yes. The Writers' Union has asked for significant statutory damages, and that has not been put into the revision.

**Mr. Martin Shields:** Okay. Thank you.

**Mr. David Yurdiga (Fort McMurray—Cold Lake, CPC):** The biggest concern I have is ever since the digital platform became the platform that everyone wants to be on.... Is it competition that's driving the net income down? What is the mechanism? Why is there such a large drop from 20 years ago to today?

Mr. Tamm, can you add to that?

**Mr. Allan Bell:** We mapped our print materials by year of publication. The upload zenith of print publication was 1989. I was still an undergraduate. When I was an undergraduate, there were photocopy rooms where you would go and photocopy journals and you would photocopy chapters from books, and that was how it worked.

Since then, in this last fiscal year, we are at the same level of print publication in 2017 as we were in about 1957 or 1958. It went up until 1989 and has plummeted. That is what is in the Access Copyright repertoire. That is actually the biggest challenge. The universities certainly have switched from buying print materials to buying digital materials. Those digital materials are provided by publishers through their platforms and they're licensed annually. The reproduction and distribution are actually part of it, and we authenticate our users to be able to use that content in the context of education.

I think that's really the largest thing that's hurting...not necessarily publishers like those here, but small Canadian publishers like Broadview Press. This digital disruption and the fact that we've shifted from buying print books to e-books, from buying print journals to e-journals, has really been the hardest thing, both for the authors and for the publishers, I would argue.

There needs to be some help for the author community and the publisher community to help with that digital shift.

I was about to say that I worked for a company where our sole purpose was to keep it so that academic publishers did not have to sell their journals to large publishers. This is a real thing, and it's been happening in my lifetime.

**The Chair:** We'll go on to Mr. Blaney now.

**Hon. Steven Blaney (Bellechasse—Les Etchemins—Lévis, CPC):** Thank you.

I have one minute, I believe.

[*Translation*]

**The Chair:** You have four minutes, Mr. Blaney.

[*English*]

**Hon. Steven Blaney:** It's four. Okay, fantastic.

Yesterday the government announced they were pouring in millions to create Canadian content, and yet you've just provided an example that could be an easy fix to prevent the loss of 3,800 jobs. You've mentioned that the investment is dropping in educational materials, and also that the quantity and the quality of textbooks is diminishing because of a legislative....



Can you come back to the impact of the fact that you are losing a lot of money now and our students are losing those Canadian textbooks? Can you tell us about the problem and the easy fix that could have been addressed a few weeks ago when Minister Morneau tabled his economic update?

**Mr. David Swail:** First of all, I don't want to leave the impression that any of our members is at death's door. The reality is that digital has been a wonderful opportunity for us, and we're taking full advantage of it and we're engaging, as has been said by my colleagues, in a lot of very meaningful ways, primarily in post-secondary and not so much in K-to-12. I can come back to that.

What's concerning is when the commercial marketplace for those ancillary usages is undermined by certain interpretations of what fair dealing really means. The \$30 million that we're talking about that has gone to creators is not really much in the grand scheme of things in terms of educational funding in this country, but it's a very significant chunk to creators. As a result of that, publishers find it more difficult to engage authors. Certain publishers have made the decision that if the bucket has that many holes in the bottom of it, they'll go and do something else, so they're no longer creating textbooks for that sector.

Our ask is really to restore the commercial viability of the marketplace for the use that used to be made under licence.

To the earlier question around principles, my answer would be that it's the commercial viability of the market that's the key question. I don't believe that the CMA, the Copyright Modernization Act, in 2012 intended to undermine the commercial viability of the market for educational resources, but that is what we have found five or six years in. It's because of a certain interpretation of what fair dealing really means.

• (1140)

**Hon. Steven Blaney:** You're saying it's an unintended consequence of the Copyright Act that it has created huge damage to the Canadian educational content.

**Mr. David Swail:** Absolutely, and our solution, which you also asked about, is to really re-engage with educators to create a digital commons that can answer those needs that have largely been dealt with in photocopy rooms in the K-to-12 sector in particular, and to work collaboratively with that sector to use digital technology to help students, to help educators, and do it in a more meaningful way and demonstrate commercial value and commercial viability in a way that will restore that relationship.

**Hon. Steven Blaney:** In a nutshell, you're asking for a clarification of what you call the fair dealing provision in the Copyright Act so we can restore the market, which is important for creating this content, but not that much in terms of the cost for educational facilities.

Is there any comment from the university on that? You're the ones who are providing those funds and creating this wealth. I believe it is important to support that content within the mission of universities. Why have you interpreted the Copyright Act in such a way that is damaging to our educational textbooks and content?

**The Chair:** You started with four minutes, and now you're out of time.

I see Mr. Nantel is smiling, so he might pursue similar questioning.

Go ahead, Mr. Nantel.

**Mr. Pierre Nantel (Longueuil—Saint-Hubert, NDP):** I will, actually.

[*Translation*]

I think that is an excellent question. That said, I'd like you to provide the briefest possible answers.

Earlier, Ms. Therrien raised the fact that basically, publishers and authors are paying for the new digital economic model, so much so that they are actively looking for income. The market is disrupted thanks to digital technology and the big international platforms.

What do you think of that, Mr. Tamm or Mr. Degen?

[*English*]

**Mr. Eric Enno Tamm:** I'd like to ask the committee not to get distracted by digital disruption. Don't use that to distract you from the fact that the education sector is illegally copying works of authors.

[*Translation*]

**Mr. Pierre Nantel:** Thank you.

[*English*]

**Mr. Eric Enno Tamm:** These are two separate issues. Don't worry about it. Every day, we work as authors and try to earn a living.

[*Translation*]

**Mr. Pierre Nantel:** I understand.

[*English*]

**Mr. Eric Enno Tamm:** It's tough.

[*Translation*]

**Mr. Pierre Nantel:** Mr. Tamm, you know that I am totally on your side. I'm trying hard to be objective, but of course I'm on your side.

All kidding aside, I understand very well what you are saying, and that is why I asked you that question. We've often heard viewpoints expressed here that were a little off-kilter. Those who write scripts for television, for instance, say that they should be the producers, while producers refuse, saying that they are the ones who created the series.

When people see all their money being stolen by international platforms that do not pay tax to Canada and do not respect our quotas, and see the government turning a blind eye and see that things will not change until 2024, they of course doggedly go after the few crumbs that are still on the table.

My question is now addressed to you, Ms. Therrien and Mr. Bell. Is there fair use when it comes to your electricity bills?

**Mrs. Wendy Therrien:** Thank you for that question.

Fair use has been a right since 1921, so it has been around a long time. That principle is interpreted in many different ways according to the context. The issue is, rather, how each university makes sure it follows the rules and decides how it will react if something is not done in compliance with them. I am going to let Mr. Bell reply.

**Mr. Pierre Nantel:** Okay.

[English]

**Ms. Wendy Therrien:** Mr. Bell, could you give the steps that your university takes in terms of ensuring copyright compliance—

[Translation]

**Mr. Pierre Nantel:** Go ahead, Mr. Bell.

[English]

**Ms. Wendy Therrien:** —and also what happens if you find an example of it not working out so well?

• (1145)

**Mr. Allan Bell:** Yes, absolutely. We've done quite a bit to be able to do that. Our goal at the university is to remove the incentives for anyone to do inappropriate copying. We take that responsibility very seriously.

We educate the faculty, staff and students. We provide compliance assistance services, such as the e-reserve system, where trained staff look at the content to make sure that it actually follows the fair dealing guidelines. We negotiate transactional clearances for those. We negotiate the rights to post electronic content onto the LMS and we have policies that clearly require compliance with the law, with consequences if they do not.

**Mr. Pierre Nantel:** Okay. It's very, very—

**Mr. Allan Bell:** The process is outlined in the university policy of scholarly integrity—

**Mr. Pierre Nantel:** It's very intricate and complicated. I was asking where the gas cap on the car is, and you're reading me the full manual.

**Mr. Allan Bell:** We take copyright compliance very seriously. We've invested heavily in it—

**Mr. Pierre Nantel:** Well, unfortunately, Mr. Bell, although I don't want to talk for everyone in this committee, it's becoming quite clear, even for the Conservatives—

**Voices:** Oh, oh!

**Mr. Pierre Nantel:** That's why I was smiling. When Mr. Blaney was asking you about this, the reality is that his predecessor, Peter Van Loan, was under the impression that this fair dealing exception had been abused.

Bizarrely, with collective bargaining—we will be fighting all weekend on collective bargaining and the postal system—collective bargaining is a right in Canada, and the publishers have organized this the best way they could to make this happen. In Quebec, it works, but in the rest of Canada, it doesn't seem to work.

This is why if I ask you if there is any fair dealing for hydro or insurance bills, you're going to tell me, well, it's.... Yes, I understand, but the principle is that they don't get the money anymore. That's it, period. Pfft. They try to make a living. So do the hydro guys and the cafeteria people in the university. That's the point.

I think that as politicians—I've been here seven years—we've heard all the typical lobby talk from everyone: “No, we'll stand on this; this is so important”, etc. The reality is that we'll have to get together and the reality is that we saw five years ago that the fair dealing exception has created big damages. Everyone was well intentioned, I would say, but the reality is that we have to talk and we have to reach a settlement.

On that point of view, if I have some time remaining, I will ask Mr. Hanson and Mr. Swail to tell me more about the K-to-12 nuances that you come here with. There is, of course, paying the copyright, but also, for me, when it's the K-to-12 period, it should be only Canadian literature, period.

**Mr. David Swail:** Absolutely.

**Mr. Pierre Nantel:** Then you evolve, and when you've finished your master's, if you've only read Canadian literature, personally I'm worried.

**Mr. David Swail:** Absolutely.

I won't make this a history lesson, but our sector has evolved very much as a result of moving from a business that was largely based on importing foreign product—American largely, but also British—to today, when not only are we leading in terms of providing the Canadian marketplace with educational resources but we're recognized globally, especially for our creative artists and creative writers, for their work right across the globe. That transition has been a result of our building a sector that tells Canadian stories by Canadian authors with Canadian voices, and it's been just as important in education as it has been with trade publishers, such as Simon & Schuster.

The best example I could probably give is Oxford University Press. When they decided to exit the K-to-12 publishing sector because of concerns over the interpretations of fair dealing, they had a Canadian history manuscript on the books. They shopped it around to the rest of the sector to see if anyone wanted to take that manuscript off their hands for publication, and nobody touched it.

There's a very real example of a Canadian history textbook that died on the vine because of a major leading global publisher having concerns about the integrity of the Canadian marketplace, and voila, we don't have another Canadian history textbook to replace it. That example can roll through almost every discipline you can think of.

Then you think about STEM—science, math, etc.—and how critical it is that our students be competitive in those fields. Our business, again, has been built on creating Canadian examples and Canadian relevance for K-to-12 classrooms, and that's seriously at risk. When something as small as 30 million bucks is taken out of the system.... It's not a highly lucrative, highly profitable business to start with.

Education is different in British Columbia from what it is in Newfoundland. I can build a beautiful textbook for Ontario; I can't sell it in Manitoba. I have to build a whole new one. It's very inefficient to start with; therefore, it's not a highly lucrative, high-margin business. Then when you slap fair dealing interpretations on top of it, it's no wonder firms make the decision to exit. That hurts everybody, but most of all it hurts students.

• (1150)

**The Chair:** On that note—

**Mr. David Swail:** I'm done.

**The Chair:** —I am now going to Mr. Boissonnault, please, for seven minutes.

**Mr. Randy Boissonnault (Edmonton Centre, Lib.):** Thanks, Madam Chair.

I wish I had 17 minutes. I've only been here for three years, and this may be one of the rare times when the Liberals, the New Democrats and the Conservatives are finding some sort of consensus on the matter.

[*Translation*]

I'd just like to clarify one thing. Yesterday we announced an aid package to assist journalists in their creative work, and today we are discussing authors and copyright.

[*English*]

I sympathize with Mr. Blaney and his then-government in 2012, which likely worked really closely with authors, very closely with the copyright officials, and with universities and educational institutions for a bargain. The bargain was to be fair, to respect fair dealing and to respect the 10% rule. I remember copying the chapters, but I remember paying the fee to do so.

Glenn Rollans, who has been here, has said that \$26 would cover off all of Universities Canada's tariffs. That \$26 per student would help to reduce the \$50 million that isn't in the system. Maybe it's \$50 million; I heard \$30 million and \$50 million, but I have documents here that say it's \$50 million.

I'm a proud university grad. I went to the University of Alberta. I went to the University of Oxford. I have represented universities across the country as a student leader. What has happened is that the government, copyright and authors got into what has turned out to be a Faustian bargain with a sector of the economy that I respect greatly. The deal that was made in 2012 has not been respected by universities. Why would you choose to pay lawyers and go to court, and have no risk in doing so, and not just pay authors?

You could go to student leaders and say, "Put two cheap bottles of wine on the table, or a really good one, or put half a video game on the table to make sure the authors who are writing about LGBTQ people, indigenous people, people with disabilities, people of colour, and Canadian stories can have those books on university shelves in courses, digitally or not."

We lead the world in AI. The Chinese are trying to beat us. We're not going to have Canadian textbooks in AI unless you fix this and start respecting the bargain that you made in 2012.

Now we have a similar conundrum in the 2017 review. Why would you choose to go to court, when there is no risk? Let me share this with you, because we can be selective in court judgments, Madam Therrien. At Federal Court in 2017, Justice Michael Phelan wrote, and I quote:

There is no explanation why 10% or a single article or any other limitation is fair.

Qualitatively, the parts copied can be the core of an author's work, even to the extent of 100% of the work.

Equally importantly, listen to this. This is shocking: "allowing universities to copy for free that which they previously paid for" is not fair.

Help me square the circle. Why are you going to court, where you have no risk, instead of mobilizing and getting the \$26 per student so that authors can be paid?

**Ms. Wendy Therrien:** I'll start.

Thank you very much for your question. I really appreciate the passion and the energy that you bring to it. I say that in all seriousness.

This is a question of balance and it is a question of transition. This is a time of transition. It started before 2012, and it has accelerated since then. Back in 2011, did we know where we would end up in 2017? Not exactly.

I think one of the challenges that the committee has before it right now—and that we all have before us as a sector where, as you say, we are interconnected with one another—is to try to predict where we need to be in the future and to set up a business model that would allow us all collectively to make the best use of taxpayer dollars. Let's not forget that education is completely taxpayer-funded in Ontario and Canada, so where are we using those resources, and to what end? To what extent should we be paying for resources?

Of course we should be paying for resources. We continue to pay for resources. We talked about that, so I'm not going to reiterate it, but we do continue to pay to clear copyright.

The business models are changing. We needed to change the way we acquired resources. We needed to change toward digital collections. At the same time, Access Copyright probably needed to change its repertoire. It sounds like there's an evolution that's happening there as well. The publishing companies also changed the way that they do business.

We need to continue to evolve together in a way that works for the Canadian taxpayer, for Canadian students, but that also respects the right for fair dealing.

• (1155)

**Mr. Randy Boissonnault:** I need to pause you there because I want to give Mr. Tamm a minute and a half.

I understand the underfunding at the provincial levels. I come from Alberta. The province now has a big deficit, so some of this is downloading. However, it seems as though we've chosen the authors to run the bus over, and then by going to court it's like driving the bus over them again. That's not fair.

Mr. Tamm, I want to know where the balance of power is between the author, versus payment, versus universities and publishers. Who has the power? Who's the dog and who's the tail?

**Mr. Eric Enno Tamm:** We're definitely not the empowered ones on the author side.

To answer that question about litigation, why would you litigate—

**Mr. Randy Boissonnault:** That's what I'm asking.

**Mr. Eric Enno Tamm:** —especially when the courts are very clear?

The reason is that our advocate is Access Copyright. It collects the royalties and it has cash. We're The Writers' Union of Canada. We're a leading Canadian arts organization. However, we don't have deep pockets. Access Copyright is our advocate, meaning they pay our advocate in court.

I believe that the education sector is out to drain Access Copyright and kill it off. Once Access Copyright is killed off, we've lost our advocate to fight against universities. It's very clear, from my point of view, that it's a game of time and litigation. They can drag this out in the courts even longer and have reduced payments into Access Copyright.

The game plan from my perspective is clear.

**Mr. Randy Boissonnault:** Thank you very much.

That's the first time we've heard the argument that clearly, so thank you for your passion.

**The Chair:** That brings us to the end of this panel. We will be continuing the discussion with our second panel.

We're going to suspend briefly to give us time to get the next set of witnesses set up.

Thank you all for your testimonies today.

• (1155) \_\_\_\_\_ (Pause) \_\_\_\_\_

• (1200)

**The Chair:** We're going to start again.

By video conference, we have William Harnum from the Canadian Copyright Institute.

Also by video conference, we have Paul Verhaegh from the Professional Writers Association of Canada. In person, we have Doreen Pendgracs from the Professional Writers Association of Canada.

• (1205)

[Translation]

We also welcome Mr. Arnaud Foulon and Johanne Guay, from the Association nationale des éditeurs de livres.

We will begin with the witnesses who are presenting via video conference.

[English]

Let's begin with William Harnum from the Canadian Copyright Institute, please.

**Mr. William Harnum (Chair, Canadian Copyright Institute):**

I appear before you today on behalf of the Canadian Copyright Institute, an association of authors, producers, publishers and distributors of copyright works. Founded in 1965, the institute seeks to encourage a better understanding of copyright.

We strongly support two basic models for the remuneration of authors and publishers. The first is the traditional publisher model, in which the publisher holds and manages the rights of professional authors, whose works they edit, design, produce, market, sell and distribute. The second is the exercise and management of some rights by collective societies representing authors and publishers. Both basic models are important, as they support each other. Collective societies engage in experiments to provide educators with convenient sources of copyrighted material, and publishers continue to experiment with new methods of delivery, including new ways of making works available.

Getting permission to make copies of published copyrighted content was onerous prior to the formation in 1988 of Access Copyright, which at the time was known as CANCOPY. This is a collective society that today represents more than 12,000 Canadian authors and 600 publishers and, through agreements with other collectives, countless authors and publishers worldwide.

When Access Copyright's blanket licences became available in the 1990s, the arduous task of clearing individual permissions from individual rights holders was replaced by negotiated collective licences covering most published copyright material. Collective licensing became the norm for copying at schools and other educational institutions. It was easy, efficient and cheap for educators to access content from both Canadian and foreign publications from Access Copyright and Copibec. Authors and publishers were paid by these collective societies.

Today widespread, large-scale, systematic copying of copyrighted content in educational institutions, without compensation, damages the remuneration models I have described and hurts both authors and publishers. Copying substitutes for purchasing books and other publications from publishers and for obtaining licences, mainly from collective societies, to copy excerpts from publications. Emboldened by the 2012 copyright amendment extending fair dealing to include education as a purpose, educators decided that most of what was being copied should not be paid for at all. They promulgated arbitrary fair dealing guidelines permitting, for example, copying of 10% of a work, a chapter from a book, an article from a periodical or newspaper, or an entire poem or artistic work from a publication containing other works.

These guidelines more or less reflect the guidelines in the licences that educators had negotiated with Access Copyright and complied with for over 20 years. The only difference is these new guidelines provide for no revenue. The market for selling and licensing copyrighted material is now badly damaged, both for publishers and for writers. A reduction of revenues in an industry such as ours with narrow profit margins for publishers and low income for writers and authors is significant.

Before moving to our specific recommendations, let me say that we welcome the amendments in the budget bill, Bill C-86, intended to accelerate Copyright Board proceedings, including case management and new timelines. We generally affirm our support for the role of the Copyright Board in setting tariffs and mediating disputes on licensing terms between users and collective societies.

Our recommendations to you today fall into two categories, both essential for the functioning of the two remuneration models we have described. The first recommendations address what may be licensed by collective societies, and the last recommendations concern enforceability and remedies that will deter infringement and encourage users to negotiate seriously with collective societies on the use of copyright material.

First, we recommend that copying for the purpose of education in educational institutions be clarified by clear parameters, either in regulations or in the Copyright Act itself. There are already a number of specific exceptions designed for educational institutions, but fair dealing for the purpose of education is a wide-open door for large-scale infringement.

Australia provides an example of a statutory licence for educational institutions managed by a collective society designated by the Australian government and subject to guidelines. In the United Kingdom, copying of excerpts from a work for the purpose of instruction for non-commercial purposes without a licence is restricted to not more than 5% of any work in any 12-month period, but only to the extent that licences are not available for that copying.

• (1210)

This is a precise exception, not a category of fair dealing.

Copying for the purpose of education in Canada should require permission either from a collective society or a rights holder. For most educational institutions this permission should be a comprehensive or blanket licence, which is either an agreement negotiated by a collective society and users of its repertoire, subject to the oversight of the Copyright Board, or a tariff administered by a collective society requiring the approval of the Copyright Board, usually following a hearing.

Second, we recommend clarification that tariffs approved by the Copyright Board are mandatory. There should be no uncertainty regarding the enforceability of royalties set by the Copyright Board. The education sector is unlikely to pay voluntary tariffs.

Third, we recommend the repeal of a provision inserted into the Copyright Act in 2012 that reduces awards of statutory damages against non-commercial infringers to trivial amounts. Any copyright owner whose work is infringed should be entitled to damages sufficiently high to be a deterrent, whether the infringer had a commercial or non-commercial purpose or whether any other copyright owner has elected to receive damages from the same defendant. Few authors or publishers have the resources to engage in the litigation necessary to prove actual damages. Electing statutory damages avoids the necessity of that much litigation.

Fourth, we recommend harmonizing the statutory damages available to collective societies at a level sufficiently meaningful to ensure better compliance with licences and tariffs approved by the Copyright Board. Currently, performing rights collectives like

SOCAN may opt for an award of statutory damages between three and 10 times the amount of the applicable royalties. This remedy should be available to all collectives, including collectives like Access Copyright. Otherwise, the worst-case scenario for a user is retroactive payment of applicable royalties.

There is no reason musicians and songwriters deserve to be paid for the use of their work while authors and visual artists do not. We recommend that all copyright collectives should be eligible to collect statutory damages between three and 10 times the value of the tariff. This system has worked well for performing rights music collectives for 20 years and should be extended to collectives representing other rights holders.

It is our view that changes to the Copyright Act along the lines we recommend will provide fairer remuneration for authors and publishers and better access to creative works for users, will go a long way towards restoring a functioning marketplace for Canadian content and will benefit all Canadians.

Thank you.

**The Chair:** Thank you.

We will now go to the Professional Writers Association of Canada.

I don't know who will be speaking. Will it be Paul Verhaegh?

**Mr. Paul Verhaegh (Regional Director for the Prairies and the North, Professional Writers Association of Canada):** Yes, if you don't mind.

Thank you, Madam Chair and members of the committee, for inviting me to this meeting. My name is Paul Verhaegh, and I'm the regional director for the Prairies and the north of the Professional Writers Association of Canada, PWAC, a Canadian association for people who have made writing their profession.

Copyright is a crucial instrument for our members. Without copyright they would not have any ownership in what they produce. In such a situation, writing professionally would be an unpaid hobby instead of a way to make a living.

Two issues are of particular concern to our members. First, there is the fair dealing rule in the Copyright Act for educational institutions. It is our opinion that the fair dealing exception for educational institutions has been abused at the expense of both publishers and authors.

We warn that this exception could not be limited to a fair quotation exception. A fair quotation exception would mean that reproducing parts of an existing work is acceptable to support or illustrate a point made in an educational text, and should not constitute the point of such a text. Copying more than a few pages of an existing work, let alone a whole chapter of a book, should be excluded from the exception and should give rise to payment of compensation. Turning copyright into a “right to copy” undermines the publishing industry and destroys the writing profession.

The second point is whether or not to extend the copyright protection from 50 to 70 years after the death of the creator. In many countries this has been done already, but not in Canada—at least, not yet. PWAC tends to favour the extension.

Some will argue that such an extension only benefits the heirs of the creator and not the creator himself or herself. We don't see why that would be a reason not to extend the copyright protection, since in our society it is the rule and not the exception that heirs benefit from what a deceased person created and produced during his or her lifetime.

Last, I would make a remark in general about copyright legislation. We live in times of rapid technological developments, and the pace at which new technologies appear will not slow down. Laws, including copyright laws, will only last if such laws are functional enough to make room for future developments in technology. Therefore, PWAC says: accept and embrace technological change, but do protect the ownership rights of creators.

Thank you very much.

• (1215)

**The Chair:** Thank you.

Did you have anything to add?

**Ms. Doreen Pendgracs (Vice-President, Professional Writers Association of Canada):** Thank you.

My name is Doreen Pendgracs. I'm from Manitoba, and I am the national vice-president of PWAC. We really appreciate the opportunity to participate in the discussion.

I sat in on the hour that preceded us and was happy to see The Writers' Union of Canada participating, because I am also a member of that organization, as I am a hybrid author. I write books and I've been traditionally published and have self-published as well, and I do freelance writing and a number of other things.

The point that I'd really like to make is that most writers nowadays have to do a number of other things to create a significant income on which to live because, as you heard in the last hour's testimony, the average annual income of a freelance author is \$9,400, and I'm sure that's below the poverty level by a considerable amount. This means most writers do have other jobs that they take on to be able to exist and pay their bills.

For me, I earn more money from speaking about the kind of writing that I do than from the actual writing, and that includes sales of books, writing freelance articles and doing other kinds of writing.

Writing has eroded very much since digitization became common. I started freelancing in 1993, and in the 1990s and even into the early

2000s, I could make a very comfortable income from my writing, but when the digital world opened up, it took the rates way down. Now we have a very large segment of the writing community who will write for free, just to get their names out there, because they're told that will give them the exposure they need in order to get published in a more fair-paying market, but that's not true, because once you get yourself in the ghetto of writing for publications and markets that pay very poorly, it's very difficult to make your way up.

As a result, most of us have had to find other ways to create incomes, because we are being driven out. The writers who were making good money and writing for a dollar a word or two dollars a word are now having to settle for 50 cents a word in many cases, because many publications have lowered their rates. Some are paying nothing at all for content and just saying that it's good exposure.

I'm a travel writer, so I enjoy the opportunity to take trips in accordance with a lot of the writing that I do, but there's a big bubble in the population—new retirees—who are doing that kind of writing for free, because they don't care if they get paid. They just want to take a trip.

As professional writers, we're finding we're combatting so many different groups that don't care if they get paid. The biggest ones, I guess, are the content mills that come out of India and Pakistan. Those people will write for nothing or for five dollars for an entire article, because that's what their markets pay.

I was very encouraged by the commentary in the last hour about the fact that some of the members of the committee here understand the importance of Access Copyright and what it has tried to do to protect the rights of writers. I sat on the Access Copyright board for six years as a member of the creative community, and I really valued what we were doing.

Now, unfortunately, Access Copyright is a mere shadow of what it used to be. The incomes have dropped so much there that they've had to get smaller offices and reduce their staff, and they're not able to provide the same kind of service to their members. Plus, as you heard in the commentary earlier, they now have three times as many members as they did before, so people are gravitating there thinking it's going to help them, but in the end, it's really not.

There are so many things that are preventing writers from making a fair living. Somebody said something in the previous hour that I wanted to rebut: the idea that the Canadian Council for the Arts has a public lending rights program that helps authors get income. Those programs do not pay royalties for non-fiction books, such as travel guides or self-help books, and unfortunately for me, my books have never qualified under those programs because they are mostly travel guides. I wrote a book on volunteerism, and they said it was a self-help book and disqualified it.

Those programs do exist, but they mainly help literary writers, and it's the same with the Canada Council grants. As a result, there is a group of us writers out there who are trying to make a living, but it's getting harder and harder.

•(1220)

[Translation]

**The Chair:** We will now hear from the representatives of the Association nationale des éditeurs de livres.

**Mr. Arnaud Foulon (President, Association nationale des éditeurs de livres):** Madam Chair and members of the committee, thank you for the invitation to testify before you today.

I am Arnaud Foulon, vice-president of the HMH Group and president of the Association nationale des éditeurs de livres, or ANEL. I am joined by Johanne Guay, vice-chair of publishing at Groupe Librex and chair of the Copyright Committee and Members' Rights. Our director general, Richard Prieur, is also with us.

ANEL brings together about one hundred Canadian French-language publishing houses of all sizes, in four provinces. These enterprises publish approximately 5,000 titles every year, which range from novels to how-to guides, and include scientific works, school books, art books, poetry and plays.

Historically, ANEL has always advocated for the reaffirmation and strengthening of copyright. In 2009, we presented a brief to Canadian Heritage and Industry Canada on the reform of copyright in the digital age. In 2012 we submitted several amendments in the brief we tabled with the legislative committee studying Bill C-11. None of the amendments we submitted were taken up.

We are here before you again in 2018 to discuss remuneration models for artists, at a time when technology is disrupting traditional models. Let's be clear; we are discussing the value placed today on a work as it compares to the work involved in creating, producing, and disseminating it, and ultimately, to the price the user is willing to pay to have access to it.

We wish to discuss the way in which digital and related technologies continue to change our profession, and also the changes in readers' habits and the use that is made of literary works. To that end, we will briefly touch on a few points. First, we will give you our interpretation of the impact of this law on Canadian publishers and citizens. We will then give an example of what the act did not do. Finally, we will reflect on the trade of publishing in the digital age, and we will conclude with our expectations following this exercise.

We hope that the book sector, and, more broadly, the Canadian cultural sector, will get a better hearing this time, and that your work will again give creators a legal framework that will provide them with the stability needed to innovate in the creation, production and dissemination of Canadian books. Copyright has always been and remains an economic right for the specific purpose of remunerating the work of creators and regulating the market for these products of the mind.

Since its modernization in 2012, The Canadian Copyright Act, much criticized internationally, has become the example of what not to do. This bad reputation is mostly due to the addition of several exceptions, such as the one for education. In addition to not respecting the three-step test of the Berne Convention, of which Canada is a signatory, on the production of literary and artistic works, the act has had and continues to have a significant economic impact on Canadian publishing and its authors.

Over the past five years, Access Copyright royalty distributions have dropped by 80%. In Quebec, Copibec, the collective reproduction rights management organization, has seen the university rights per student decline by 50%, and the amount collected by a rights holder per reproduced page dropped by 23%. The result is that the royalties paid to authors and publishers are in free fall, even though, paradoxically, the student population is increasing.

I will not spend too much time on the loss of income of the management companies, but I do want to mention the opposition to the book sector shown by educational institutions and student associations. That opposition, we need to point out, derives mostly from two Supreme Court decisions from 2004 and 2012. The creation of user rights, confirmed in the broad fair use exceptions in the 2012 act, particularly in education, stifled reflection on the place occupied by creators in the development of culture in our societies. Worse yet, copyright was viewed as a perverse principle that limits access to intellectual works, which is of course completely false. On the contrary, for close to fifty years, the education and publishing worlds collaborated to provide pupils and students with access to school books and a diverse, rich and high-quality national literature.

•(1225)

**Mrs. Johanne Guay (Chair, Copyright Committee and Members' Rights, Association nationale des éditeurs de livres):** I am going to discuss what the 2012 act did not accomplish.

As ANEL mentioned recently in its testimony before the Standing committee on Industry, Science and Technology, that law did not manage to curtail piracy. Not only is it proliferating, but the tools put in place to frighten the offenders are not effective. By leaving the burden of proof with the violated rights holder, by minimizing sanctions and by imposing a simple notification regime, and a requirement of notification for Internet service providers, the legislator did not fulfil its mandate, as shown by the increase in publishers' legal expenses to defend their authors. The government has to tighten the rules to fight piracy, or at the very least, broaden the private copy regime to reading and content-sharing devices.

The legislator must ensure that Canadians are made aware of the need to respect copyright, and of the use they can make of works, especially when they are in digital form. Systematically the terms "accessibility" and "free of charge" are confused. However, even though accessibility is a false problem, the lack of fees is completely illusory: the user purchases an increasing number of electronic devices and software programs, whose short shelf life forces periodic reinvestment, and the user also has to subscribe to an increasing number of online services.

Priorities are shifting from the content to the containers, and the value of goods is moving from the content to the technologies to access that content, and this contributes to the devaluation of cultural goods, and to the loss of income of the rights holders. While the cost of subscribing to these technological services is increasing, the sale of books is decreasing.

The Canada Book Fund data show a decrease in the net sales of Canadian works of more than \$63 million between 2010 and 2017, with an important drop between 2011 and 2013 of more than \$41 million. For the francophone publishing sector alone, there was a decrease of \$30 million. In Quebec, data from the Observatoire de la culture et des communications du Québec indicate a drop of more than \$119 million in the total sale of new books between 2010 and 2017.

I will now address the digital shift in the publishing world.

Today, we publish both paper format and digital works, and we are increasingly exploring the production and commercialization of audio and multimedia books. These new formats require both internal adaptation in our publishing houses, and a financial investment, and this is also the case for the other actors in the book publishing sector.

Publishers note that the digital shift requires reinvestment that is not at all offset by an increase in revenue. Many feel that the part of the value chain that returns to them does not correspond to the amount of work they do. That reinvestment is not only required by the creation of digital books and the development of new skills, but is also due to the new marketing practices for the paper book in the digital world.

You must understand that the financial risk taken by the publisher is assumed by the publisher; the publisher is the one who pays. For a digital production, the average salaries in the cultural sector are a far cry from those in the technological sector. The book industry should not be defined by a format, but judged on the value of its contents and on its capacity to create them; that is our trade.

On that point, I would like to add a word on the will of departments of Education to make schools and other educational institutions increasingly digital.

•(1230)

**The Chair:** I just want to inform you that you are now at the eight-minute mark.

**Mrs. Johanne Guay:** I will jump to our conclusions.

**The Chair:** You could complete your presentation in the answers you give to our questions.

**Mrs. Johanne Guay:** Perfect.

**Mr. Arnaud Foulon:** No problem.

In conclusion, I would simply say that it is urgent that the government call on all of those who benefit from the work of Canadian creators, otherwise we run the risk of having classes that will have the latest in interactive white boards, but without quality content to justify their use for educational purposes.

What do we expect from the legislator? We want him to fulfil the mission to stop counterfeiting, we want the law to have more teeth, and if the legislator cannot put in place even preliminary solutions, that he finally be convinced that private copying is not a tax, but a way to support culture.

We expect the legislator to review the fair use principle for educational purposes by bringing in a narrow definition of education

and restricting the broad interpretations of what constitutes a teaching environment.

We expect the legislator to bring in effective promotion of copyright, and encourage users to respect it, particularly in the field of education.

Finally, the legislator needs to make Internet providers accountable by demanding that they inform their subscribers about copyright, and cooperate in withdrawing access from non-compliers, when the need arises.

On behalf of the vibrant world of Canadian French-language publishing, we thank you for your attention.

**The Chair:** Thank you for your testimony.

We will now have our question and answer period.

Mr. Breton, you have seven minutes.

**Mr. Pierre Breton (Shefford, Lib.):** Thank you very much, Madam Chair.

I thank each of the experts for joining us today.

All testimony is important, and I know, Ms. Guay, that you did not have the opportunity to finish your statement. So I will allow you to complete what you had to tell us for the purposes of our report.

**Mrs. Johanne Guay:** In fact, I was almost done.

**Mr. Pierre Breton:** Go ahead.

**Mrs. Johanne Guay:** I was talking about digital models.

Publishers adapt their commercial models to respond to demand from clients, which is increasingly diversified. That said, let's not kid ourselves: if the future is tending toward more digital works being produced at all levels, we will have to recognize that publishers have professional digital experience. They are content developers. We must make sure that they have funding for that. If that is not done, national school book publishing, notably, which has been experiencing extremely large financial losses since 2012, will have to yield its place to foreign school book publishers.

**Mr. Pierre Breton:** Personally, I like to read. One can read for information, to relax, or for many other reasons. That said, I don't know how the cost of a book is broken down.

Ms. Guay and Mr. Foulon, could you tell us what part of the cost of a book is given to the author, the publisher and the bookstore representative, respectively? There must be data on that.

**Mrs. Johanne Guay:** I'll give you the general basic average. The author receives 10%; the bookstore receives 40%, and the distributor receives between 17% and 20%. As for the remaining 33%, if my calculations are correct, it goes to manufacturing, marketing and employees.

**Mr. Pierre Breton:** Who gets the last 33%?

**Mrs. Johanne Guay:** It goes to production, so to publishing and also marketing. The publisher pays for all that, including printing costs. When the books come back, someone has to pay the bill.

**Mr. Pierre Breton:** The author gets 10%.

**Mrs. Johanne Guay:** Yes.

**Mr. Pierre Breton:** Have things worked this way for long?



**Mrs. Johanne Guay:** Yes, and it is the same mostly everywhere in the country. Sometimes it is only 8%.

**Mr. Pierre Breton:** I am rather surprised. I don't know if my colleagues knew about this. I find that a very small percentage, but it seems to be the established practice.

Mr. Foulon, did you want to add something?

**Mr. Arnaud Foulon:** As my colleague was saying, when we sell international rights, the royalties paid to the authors can even dip below 10%. In some cases, the size of the market seems to have an impact on the percentages paid to the authors, but in Canada and Quebec, the norm is 10%. There is an indexation clause stating that if sales increase, the author's share may reach 12% or 14%, according to the standards that are applied and the actual sales.

•(1235)

**Mr. Pierre Breton:** Ms. Guay, Mr. Foulon, I can't remember which one of you talked about piracy.

**Mrs. Johanne Guay:** I did.

**Mr. Pierre Breton:** This is connected to the new technologies, I assume.

What impact does this have on the income of the members of your industry? What is the scope of that impact at this time?

**Mrs. Johanne Guay:** No investigations have been done on this. However, we receive at least one request a week from authors whose books crop up on files like Torrent. Since I am Kim Thúy's publisher, I know that his novel *Ru* has been pirated repeatedly. When we see that Torrent technology has been used to download, we send a lawyer to let people know that they do not have the right to do that. People feel that our books are free and they download them very openly. We have not witnessed this as such, but one author told us that when we get a Torrent file to shut down somewhere, it reopens elsewhere almost immediately. There is no control over this. In the case of a best seller, this means that hundreds of books are not sold that would be otherwise. And in fact, the sale of digital copies has also declined a great deal in our area.

**Mr. Pierre Breton:** I'd like to ask the other witnesses if they have some idea of the financial scope of this issue. Ms. Guay gave us some examples.

Ms. Pendgracs, do you have some idea of what this represents?  
[English]

**Ms. Doreen Pendgracs:** I think from the writers' perspective, our work is being stolen all the time. It's being pirated and reused, because with the Internet, people can reuse your stuff now and repurpose it. Sometimes writers get charged with plagiarism against their own work because it's reused somewhere else and the words are there. They're their words, but then when the original writer goes to remarket it, they're charged with plagiarism for using their own words.

**Hon. Steven Blaney:** Oh, my.

**Ms. Doreen Pendgracs:** It's very difficult for individual authors to police where their work is being used.

I also wanted to respond about the cost that goes to the writer and what the writer is supposed to contribute. This is on the other topic you asked one of the panellists about.

When I did my first book back in 2001, the publisher did all the marketing and whatnot for the book. Now authors and writers are hired on the basis of their marketability—that is, their author's platform. They have to have thousands of followers on Twitter, Facebook, Instagram or whatever to get a publishing contract, because the publishers no longer provide the manpower to do the marketing.

We're getting less income, but we're also having to put in more effort. We don't just write the book anymore and let it go to the publisher; we have to do all that work along the way, and we get no additional compensation for it in most cases.

[Translation]

**Mr. Pierre Breton:** Thank you very much.

**The Chair:** Mr. Blaney now has the floor.

[English]

**Hon. Steven Blaney:** Thank you.

Just to continue on your idea, Ms. Pendgracs, it seems as if you have to self-market your own product and create your own author's brand.

Mr. Harnum, in your presentation you referred to fair dealing. Are you referring to what we've heard from many witnesses, which is a clarification of the fair dealing provisions related to the education sector? Is that what you were referring to—that the unintended consequence of the last revision of the Copyright Act has just created a huge loss of educational content and a loss of revenue and jobs for this sector at the same time?

**Mr. William Harnum:** Exactly.

**Hon. Steven Blaney:** Then we can add you to the list.

**Mr. William Harnum:** It's a large list. We are all singing from the same songbook, but we are dealing with the same problems. When the copyright law was changed, I well remember the testimony of members of the Canadian Education Association, who said clearly there would be no loss to the publishing sector or the author sector from these extensions.

Exactly the opposite has happened. There has been a massive loss. An entire sector of our industry, the sector that was compensated by Access Copyright, is largely gone.

I don't blame the educators for this; they are very smart. That's why they're in universities and schools. They looked at what the law said and saw a giant hole. They drove everything through, and that's what happened.

•(1240)

**Hon. Steven Blaney:** Thank you, Mr. Harnum. Our analysts are taking your comments into the recommendations. My hope is that the Liberals will listen to the testimony and fix the law. It could be done. This big omnibus bill was brought forward. We would welcome this, and we would expect to see it from the Liberals.

[Translation]

My next questions are for Mr. Foulon.

In your statement, you said that technology was disrupting traditional models. You also referred to the topic I raised with Mr. Harnum, which is the loss of income due to the fair use provision in the educational field. You mentioned before the meeting began the impact this has had on our francophone minorities. Can you acquaint us with the point of view of the education sector?

Also, if you have any time left, I'd like to hear your thoughts on piracy. What do you recommend we add to the Copyright Act to give it more teeth, as you said?

**Mr. Arnaud Foulon:** You asked about a number of things.

To start, I would say our association brings together book publishers all over the country, many being French-language publishers outside Quebec. These publishers are hugely important to Canadian culture, so it's vital that they be listened to, heard and respected.

Now I'll come back to what you said about fair dealing and the drop in revenues it caused, for authors, publishers and copyright holders. Aside from allowing an open-ended definition of the term "fair" and leaving it up to the courts to resolve any disputes that arise, the current approach has not been without cost, to be sure. Publishers in Quebec and other provinces have had to spend money and hire legal advisers to enforce authors' rights.

It's important to understand something. Earlier, we talked about the costs associated with a book. A publisher's first commitment is to the author. Under the contract signed with the author, the publisher endeavours to promote the work and protect related rights. Now, though, the act has given rise to somewhat of a distortion in that the use of fair dealing by some schools has resulted in the work being disseminated outside the scope of the copyright framework we adhere to. We signed an agreement with our authors to make sure those rights are respected.

That's where the decline in revenues comes in. The fair dealing exception is used properly by some, but less so by others. This means that the work is being disseminated in parallel, if you will, mirroring the distribution of works through piracy and other phenomena my colleague Mrs. Guay talked about. We are under no illusions: piracy existed before the digital age. Although the digital world did not create piracy, it greatly amplified the problem.

[English]

**Hon. Steven Blaney:** Okay.

Do you want to jump in?

**Mr. Martin Shields:** Sure.

**Hon. Steven Blaney:** I will share my time.

**Mr. Martin Shields:** Thank you.

I really appreciate the input today. The Canadian Copyright Institute did an excellent job of laying out the issue and recommendations; I really appreciate that.

Here are a couple of things from an old guy. I used to read a book. I haven't actually read a book in years because I read electronic things. I used to have a lot of subscriptions, but I don't have any subscriptions anymore because I find bloggers that I like and I follow them. That's all I have time for, so I read snippets on social

media. When I look at my kids and my grandkids and what they read, I see that they live in a world that was never like mine.

When you talk about this copyright, do you believe that the recommendations are for the future? Will this accommodate where we're going?

• (1245)

**Mr. William Harnum:** Is that for me?

**Mr. Martin Shields:** Yes.

**Mr. William Harnum:** I think our recommendations and the way that Access Copyright and other collectives operate is really content-agnostic. Whether the content is electronic, delivered in print or delivered in another method that we haven't even begun to imagine, it still has to be created and it still has to be transmitted. The creators should be compensated and the users should pay.

I think that's what something like Access Copyright has been able to do for decades and should continue to do. Much of Access Copyright's work now is in obtaining compensation for digital use. Everything can be done, but there's no question that it is a challenge. As you note, there is so much free content available. It's always going to be a challenge, but it's always been a challenge. I've been in this business for 45 years, and we've never really had a good year.

**The Chair:** On that really hopeful note,

[Translation]

we now move on to Mr. Nantel.

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

It certainly isn't easy being in the business of creation, is it?

I experienced the downward spiral of the music industry after 22 or 23 years in the business. True, things have never been as tough as they are now. As you said, however, the situation wasn't exactly optimal to begin with, so it's not that bad.

I think everyone was surprised to learn that authors make just 10% on book sales. I'm not saying that to single out the publishers, but simply to state the reality of the situation. It's standard practice around the world, and Quebec followed suit. The same is true on the music publishing side, where 50% goes to the writer and 50% to the publisher. That is standard practice.

It's inevitable given that we are conducting a study that is constantly bringing new issues to our attention. Mr. Blaney talked about this earlier, and it is now crystal clear to us that you, too, fall under the column of those who believe fair dealing has gone too far. There is no denying that it has done damage.

I think this morning is the first time we've heard someone put a figure on the losses caused by piracy. Kim Thúy lives across the street from me, and I had no idea just how much was being stolen from her on the Internet.

It's been going on for ages in the music world, with the introduction of peer-to-peer file sharing. Legal distribution platforms have come along since, iTunes and others, and so people turn to peer-to-peer file sharing less. However, we have been told that, nowadays, people are able to copy streamed content onto their computers. People steal content from digital streaming services.

In terms of written works, though, how does piracy work? How, for instance, does one of Ms. Thúy's books end up on an illegal platform? Does it work like Napster, through peer-to-peer file sharing?

**Mrs. Johanne Guay:** It can be done in a number of ways.

Sometimes it's shocking. Some of our authors are lawyers, or former lawyers, so they are interested in this kind of thing and we get a lot of information from them.

In some cases, when we publish a book, we wonder whether it hasn't been digitized simultaneously, since both versions come out at the same time. It's crazy.

A young girl who was cleaning my car one day told me that she was a voracious reader, admitting that what she read was pirated.

**Mr. Pierre Nantel:** That's unbelievable.

**Mrs. Johanne Guay:** In situations like that, you wonder what you should do.

**Mr. Pierre Nantel:** You should tell her that you're a book publisher.

**Mrs. Johanne Guay:** I think she knew.

**Mr. Pierre Nantel:** That's unbelievable.

**Mrs. Johanne Guay:** It doesn't seem to be all that difficult.

When you do a Google search, all kinds of things that shouldn't be there show up and you can download them. Sometimes it's slow and, other times, it freezes your computer, but you can find a lot.

I brought up Kim Thúy because she is known in both English-speaking and French-speaking Canada. Novelists are usually the ones whose works are pirated.

**Mr. Pierre Nantel:** That brings me to—

**Mrs. Johanne Guay:** Might I finish my answer, if it's all right?

**Mr. Pierre Nantel:** Yes, of course. Go ahead.

We are gathered to hear what you have to say, not I.

**Mrs. Johanne Guay:** It's important to understand the difference in the percentages. Above 10,000 copies, authors receive more, but bookstores and distributors take a large cut.

• (1250)

**Mr. Pierre Nantel:** Indeed.

**Mrs. Johanne Guay:** It's important, then, to know the difference in the rates.

I understand what Ms. Pendgracs was saying about publishers. She has to do her own marketing.

**Mr. Pierre Nantel:** That's what you do.

**Mrs. Johanne Guay:** We have a marketing team, but I understand what she's saying because it does happen as well.

**Mr. Pierre Nantel:** Certainly.

**Mrs. Johanne Guay:** A publishing company should have a communications team.

**Mr. Pierre Nantel:** Naturally. It's only proper.

**Mrs. Johanne Guay:** We are obligated by contract to do it.

**Mr. Pierre Nantel:** That's right.

Like those who manage artists, you manage books.

**Mrs. Johanne Guay:** Yes, we do a bit of everything.

**Mr. Pierre Nantel:** Indeed.

Those in the music industry have obviously brought up the notice and notice regime involving Internet service providers, as well as the private copying compensation system.

First, I'd like to know whether you've made any such requests in that context. Second, have you received much support from the large and generous corporate citizens that are our Internet service providers?

**Mrs. Johanne Guay:** Go ahead Mr. Foulon.

**Mr. Arnaud Foulon:** As far as Internet service providers go, no.

**Mr. Pierre Nantel:** What a surprise.

**Mr. Arnaud Foulon:** It's surprising, I know.

We mentioned this earlier. Individuals may be on the hook for part of the bill, but currently, they are made to pay on the technology side. Last I heard, the rates companies are charging for Internet data, cell phones and home Internet service aren't exactly plummeting, but they are telling people they will have access to all kinds of things as a result.

That's more or less the problem nowadays. If those people aren't held to account, what happened to Mrs. Guay will continue to happen, and the person at your car wash is going to say that they had the right to access the book on the Internet because it was there.

Just because something is there doesn't give you the right to take it. If the front door to my house is open, you can't just walk in.

**Mr. Pierre Nantel:** Precisely.

**Mr. Arnaud Foulon:** That's a good analogy. We are being forced to bear the burden of not having installed a sophisticated alarm system to prevent people from breaking in. Last I heard, you aren't allowed to walk into someone's house and take what you find just because the door isn't properly locked.

That's where the problem lies. A tremendous amount of awareness-raising is needed as far as students and teachers are concerned. When teachers stand in front of a classroom of students, their minds like sponges, and send them photocopies of photocopies or project copyrighted content onto whiteboards without authorization, how can students—the teachers of tomorrow—possibly understand and pass on the concept of copyright?

**Mr. Pierre Nantel:** You're absolutely right. In fact, the people at the Observatoire de la culture et des communications du Québec showed that today's consumers expect to pay a lot for a device or computer and then have access to everything. Later, they are surprised to find out that they don't have access to everything. You're certainly right that some awareness-raising is needed.

As far as Canada's review of the notice and notice system goes, where do we stand in relation to the notice and takedown regime? Are we behind other countries?

**The Chair:** You have 30 seconds left.

**Mr. Arnaud Foulon:** I can tell you that we're not leading the pack.

**Mr. Pierre Nantel:** That's it for my 30 seconds.

Thank you, Madam Chair.

**The Chair:** It is now over to Mr. Boissonnault for seven minutes.

**Mr. Randy Boissonnault:** Thank you, Madam Chair.

I'd like to begin with a comment. It will be very important to find out whether Mr. Blaney's colleagues on the Standing Committee on Industry, Science and Technology, Mr. Yurdiga and Mr. Shields, share his view on fair dealing. We'll have to see.

[English]

To the Canadian copyright organization, Mr. Harnum, I did some research. I want to know if your crystal ball in 2018 is as good as it was in 2009. I'm reading from the report that your organization submitted to similar committees in advance of the 2012 review. I think you telegraphed what you meant by the fact that the document was called, basically, fair dealing's not a good idea.

Here's what you said:

"Fair use" has been described as an "astonishingly bad" system amounting to little more than "the right to hire a lawyer."

Then it goes on to talk about the United Kingdom, the EU, Australia, and New Zealand rejecting those methods, and how there were lots of ways in Canadian law to protect authors but also let people have access to that material.

Here's what is really interesting for me, from what you said then:

Far from solving copyright problems, adopting fair use would only exacerbate them. Its drawbacks are numerous. Fair use would lead to uncertainty, expensive litigation and leave important public policy decisions to be made by courts instead of Parliament. It would reduce revenues available to the Canadian creative industries; revenues which are vital to their indigenous growth. It would undermine legitimate licensing models including collective licensing of copyrights.

It's a very prescient report from 2009.

We know that there are still good news stories. We know that Canadian creators are exporting content. There's the Frankfurt book fair. We know that Canadian stories are being turned into movies, and people get paid for that.

We hear clearly that the education sector's a mess. We talked about the \$26 tariff for universities earlier today. In K-to-12 it's \$2.41 that the school boards aren't prepared to pay to make sure that authors get their fair share. That's not even a couple of chocolate bars in this country, and it's certainly less than a latte for the teacher, so I don't get it.

What we have now is a regime in which we have the stick, which is the tariff. How do we get back to a carrot so that everybody can just play in this field together, we can have our good stories, you guys can get paid, and the educators can educate? Are there any carrots left, or are we now in a framework where it's only the stick?

Then I'm going to go to your colleagues here around the table, beginning with Mr. Harnum.

●(1255)

**Mr. William Harnum:** Well, at the moment it's all carrot. There is no stick, because, as I said earlier, universities are smart. If you say to universities, "You have a choice: you can pay for content or not", they will largely say, "You know what? We're not going to pay for content", or "We'll put up guidelines and pretend that we're paying for content when we're really not." That's what has happened.

Government has made this problem by making the changes to the Copyright Act that extended fair dealing to education. Government has to fix it. It can't be fixed by the industry. We've tried to negotiate with the educators on these matters and we've been unsuccessful. We've tried litigation. As you know, the York University case, which Access Copyright won, is still under appeal. The fact is that if our industry didn't have Access Copyright and its funds, which are not being distributed to authors and creators but instead are being spent on litigation, we wouldn't be able to do any of this litigation. We couldn't afford it. Individual publishers cannot afford it. Thank goodness we have Access Copyright to do that work for us, but it's up to the government to fix these problems; it's not up to the industry.

**Mr. Randy Boissonnault:** I'm going to pause you there because even in the Copyright Board review, the regulations didn't attack any of these issues.

I'm seized by this issue, and I want to ask Ms. Pendgracs something. What has happened to Access Copyright? How healthy or not healthy is it? How much life does it have left? As a practitioner in the field, what does the future look like for Access Copyright?

**Ms. Doreen Pendgracs:** It looks very scary. When I was on the board there, which I think was from 2003 to 2009, for six years I served as a creative representative on the board. Access Copyright was thriving. It was wonderful. There was so much support in the industry, and there seemed to be consensus on many issues as well when we sat around the table, with publishers and authors sitting around the same table and trying to deal with issues. Then that fair dealing thing came along and created such a rift that I don't know if we can ever fix it.

I think the only way to do it is to get strong-handed and make sure that authors are paid what they're due. I certainly support education and having affordable content for the students, but the writers creating that content need to be paid what they're worth. We have to go back to the way it was, because it's not working the way it is.

**Mr. Randy Boissonnault:** Mr. Verhaegh, are there any other industry solutions, according to you, or is this all on government to fix?

**Mr. Paul Verhaegh:** I think if the law is the problem, then change the law. I'd like to support Ms. Doreen Pendgracs. If writers don't get paid anymore for content that's used in education, then don't be surprised that at a certain point there won't be any content creation anymore for educational reasons, because why would anybody do that?

[Translation]

**Mr. Randy Boissonnault:** Mr. Foulon, what are your thoughts on that?

Is the ball in the government's court? Are there things the industry can still do?

**Mr. Arnaud Foulon:** As I see it, the government needs to step in with much tighter controls so that creators are respected and can continue to enrich Canadian culture.

**Mr. Randy Boissonnault:** Mrs. Guay, what would be your main recommendation to deal with piracy?

**Mrs. Johanne Guay:** First, it should be prohibited and a penalty system should be put in place for those in violation. If nothing is done, it will just go on forever. I don't know whether it can ever be stopped, but doing nothing is disastrous.

• (1300)

**Mr. Randy Boissonnault:** Are you suggesting that people be fined or prosecuted?

**Mrs. Johanne Guay:** Legal proceedings can be effective. That's clear from the Université Laval case.

**Mr. Randy Boissonnault:** Thank you.

**The Chair:** Thank you all for your input.

I will ask the committee members to stay behind, as we have a bit of business to deal with. It'll only take about two minutes, at least I hope so.

Thank you again.

**Mrs. Johanne Guay:** Thank you very much.

[English]

**The Chair:** Now we're going to do a little committee business.

I will start telling you what this is, and perhaps you can share.

We have before us a request for a budget for Bill C-369. Can you please take a look at it? When your friends come back, we can vote on it. Thank you.

Let's do this quickly, because I know people want to move on.

Go ahead, Mr. Shields.

**Mr. Martin Shields:** Thank you.

We have tremendous video technology here, and I really appreciate our witnesses being on video technology. Are you suggesting this long list of people would need to fly here, in person?

**The Chair:** I will pass it on to the clerk to answer the questions about how he organized this budget for Bill C-369.

**The Clerk of the Committee (Mr. Graeme Truelove):** It just gives the authority for that to happen. It doesn't mean that they will. The video conference option is available for them as well. Basically, this just authorizes expenses up to that amount if that's what the committee ends up choosing.

**The Chair:** Go ahead, Mr. Blaney.

**Hon. Steven Blaney:** Madam Chair, I was expecting you to maybe provide us with some explanation for this document in front of us, because at the last meeting we reviewed the list of witnesses and the calendar, and this was not up for business. I'll give you the opportunity to comment about this request that is presented, which I must say does not reflect the conversation we had at the last meeting.

**The Chair:** In fact, we're backdating things a bit, if I understand correctly. This was something we didn't have time to pass on our original part of the study.

Perhaps the clerk can explain to you exactly how he reached these numbers. This is actually a bit of committee business that was put over, and we need to pass it for the people who have been here.

**Hon. Steven Blaney:** It's not the trip.

[Translation]

**Mr. Randy Boissonnault:** No, it's already over.

[English]

We just have to do the business.

**The Chair:** It's for the witnesses' attendance before us, not for us to travel.

**Mr. Randy Boissonnault:** We're paying our *facture après*.

**The Chair:** Wait. Sorry.

[Translation]

Mr. Nantel, you may go ahead.

[English]

**Mr. Pierre Nantel:** It is for those who appeared.

[Translation]

**Ms. Julie Dabrusin:** Yes, they're coming here.

**Mr. Pierre Nantel:** It's already happened.

[English]

This is for what's been done already.

**The Chair:** Let me go back.

None of this involves travelling for us. This is backdated for the travel that's happened. There's also some anticipated, based on what's ahead.

**Mr. Pierre Nantel:** Okay.

**Mr. Randy Boissonnault:** Madam Chair, I agree with Mr. Shields. When witnesses are prepared to come on video, it's great for them and it's great for us. I do like when people are in the room, so if they're prepared to come to Ottawa.... For some people, it's the only time in their life they're going to present to a committee—

**Hon. Steven Blaney:** We like it too when you're in the room.

[Translation]

**Mr. Randy Boissonnault:** Thank you. That was very nice.

[English]

Wow, can I take that clip?

Some people only get one presentation to a parliamentary committee in their lives. If they want to come to Ottawa, we have the money.

**The Chair:** Can I just put this budget to a vote so that we can give it to the clerk?

Is everyone in favour of proposed budget for Bill C-369?

**Some hon. members:** Agreed.

**The Chair:** We will be judicious, I promise.

Thank you. The meeting is adjourned.

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