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## **Standing Committee on Canadian Heritage**

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**EVIDENCE**

**Thursday, November 29, 2018**

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**Chair**

**Ms. Julie Dabrusin**



## Standing Committee on Canadian Heritage

Thursday, November 29, 2018

•(1100)

[English]

**The Chair (Ms. Julie Dabrusin (Toronto—Danforth, Lib.)):** I call the meeting to order.

This marks the beginning of our 134th meeting of the Standing Committee on Canadian Heritage. Today we are continuing our study of remuneration models for artists in creative industries.

We have with us Roanie Levy and Sylvia McNicoll from Access Copyright.

[Translation]

Also with us is Frédérique Couette, from Copibec.

Finally, we have with us Suzanne Aubry and Laurent Dubois, from the Union des écrivaines et des écrivains québécois.

I've spoken to the Access Copyright and Copibec representatives, and they asked that we start with Copibec.

Ms. Couette, you may go ahead.

**Mrs. Frédérique Couette (Executive Director, Copibec):** Thank you for inviting us here today.

My name is Frédérique Couette, and I am the executive director of Copibec, the collective society established by Quebec authors and publishers.

A not-for-profit organization, Copibec grants licences and remits royalties to authors, freelance journalists, creators and publishers. Each year, we manage millions of traditional and digital uses, which would be too complicated to manage individually. Collective administration is the exercise of copyright and related rights by organizations acting in the interest and on behalf of the rights holders.

The Union des écrivaines et des écrivains québécois will tell you about the economic situation of Quebec writers. Only 10% to 15% of them are able to make a living from their writing. In a market as small as ours, copyright revenue from sources other than book sales is particularly important for both authors and their publishers. Compliance with copyright rules is essential to ensure that authors can continue their creative work and that the publishing industry can survive. The \$200 million that Copibec has remitted to authors and publishers during its 20 years of existence has supported the continuity of an innovative cultural sector.

In the review of the Copyright Act that led to the 2012 amendments, we warned MPs and the government about the negative effects of introducing too many exceptions in the act and adding the word “education” to the fair dealing exception. Unfortunately, we can only conclude that our fears were, for the most part, well founded.

Representatives of the education sector stated that it was merely a clarification and that licences would continue to be purchased. Yet, in the month following the enactment of the amendments, Quebec universities asked to renegotiate their licences with Copibec and demanded an 18% reduction in the annual royalty per student. Since then, every renegotiation of agreements with Quebec universities and CEGEPs has resulted in a further decrease in royalties. Consequently, the annual royalty has declined by nearly 50% for each university student—from \$25.50 in 2012 to \$13.50 in 2017—and by 15% for each CEGEP student.

Outside Quebec, universities, colleges and education departments and ministries terminated their licences with Access Copyright in January 2013 and forced rights holders into a spiral of legal actions. The institutions are appropriating the right to free, systematic, institutionalized reproduction of excerpts of creative works for which they previously paid licence fees to the collective society.

In June 2014, Université Laval followed suit and refused to renew its licence with Copibec, forcing rights holders to launch a class action. Fortunately, Copibec and the university recently came to an amicable agreement that provided a favourable outcome for all parties involved.

Over the last five years, there has been a proliferation of lawsuits and a steady erosion of licence revenue due to pressure from the education sector. For example, since 2012, our authors, creators and publishers have seen a 23% drop in the royalty paid for each page copied by the universities, even though Copibec has kept its administration fees unchanged at 15%.

The impact of this steady decline in collective administration revenue is very significant, as nearly 75% of the licence revenue distributed by Copibec comes from the education sector. Quebec's authors, creators and publishers are most affected by this, since the majority of the 72 million copies reported to us annually are copies of excerpts from Québécois works.

Our authors and creators are feeling the brunt of the decrease in collective administration revenue, as their already precarious situation and their financial capacity to do creative work are being further eroded with each dip in revenue from one of the links in the copyright chain. Our publishing houses are also being compromised, since 80% of the annual reports relate to reproductions from books, and the associated revenue accounts for 18% of their net profits, on average.

Collective administration royalties paid by Copibec make a significant contribution to keeping our cultural journals and publishing houses afloat, so that they can continue to tell our stories and provide educational content that meets the specific requirements of our school system.

Let's not kid ourselves: what's at stake here is the dissemination of our culture and our conception of our cultural heritage.

Rights holders have modified their collective society to bring it into line with the new needs of the consumers of creative works. In response to the advent of digital reproduction media, they asked Copibec to manage additional rights for uses such as classroom projection, digitization and instructional platforms.

We also offer users the ability to make copyright payments online and have accelerated the processing of data we receive and payments to rights holders.

- (1105)

In partnership with publishers, we have developed the DONA service, which allows institutions to acquire a work on a digital platform designed to meet the needs of students with perceptual disabilities.

In 2014, Copibec and its partners also created SAMUEL to provide schools and CEGEPs in Quebec as well as francophone communities outside Quebec with access to a wide variety of high-quality French-language content through a digitized content platform.

We continue innovating to promote local culture, make art more accessible, and increase availability and remuneration.

With regard to rights holder remuneration models, collective administration is an integral part of the revenue sources of authors and publishers. It is an efficient, versatile, internationally recognized model that assures cultural diversity and availability. It is part of a drive toward modernity and the future of a society that invests in its culture in the digital era.

In this regard, Quebec's collective administration experience, despite the regrettable decline in royalties, provides an effective model that has evolved in response to users' needs without ever losing sight of the importance of combining availability of works with remuneration for their use. In this model, annual royalties paid for the use of works have always been very affordable. For university students in Quebec, they make up, on average, less than 0.5% of their total annual tuition fees. For universities, they are less than 0.1% of the annual operating budget. Paying royalties for reproducing excerpts of creative works has never jeopardized the Canadian education system or resulted in excessive debt loads for students.

Although reform of the Copyright Board does not fall directly within this committee's purview, I would express our deep disappointment with the fact that the proposed reforms for modernizing the Copyright Board do not deal with the harmonization of damages awarded to collective societies.

The review of the Copyright Act, in which you are participating, will be a lengthy process, and during that time, Quebec's authors and creators are not receiving the royalties to which they are entitled for the extensive use of their works by educational institutions outside Quebec. This situation persists even though tariffs have been certified by the Copyright Board and the Federal Court has handed down a decision clearly establishing that those institutions' copying policies are unfair.

This crucial issue must be resolved with an amendment to the act. In the meantime, we urge the federal government to act now to encourage the restoration of healthy, lasting and necessary relationships between the authors of literary works, through their collective societies, and the education sector.

I conclude my presentation by quoting the following passage from the 2017 *Creative Canada Policy Framework* concerning the Copyright Act: "A well-functioning copyright regime should empower creators to leverage the value of their creative work, while users continue to enjoy access to a wide range of diverse cultural content." Collective administration is perfectly consistent with these objectives and strikes the difficult balance between access and remuneration.

Thank you.

**The Chair:** Thank you.

We will now hear from Roanie Levy and Sylvia McNicoll from Access Copyright.

[English]

**Ms. Roanie Levy (President and Chief Executive Officer, Access Copyright):** Thank you.

Thank you for the invitation to appear today. My name is Roanie Levy and I am president and CEO of Access Copyright, a not-for-profit copyright collective. I will be sharing my time today with professional writer Sylvia McNicoll. She will provide you with a creator's account of the current copyright challenges.

For 30 years, Canadian creators and publishers of trade books, textbooks, journals, newspapers and magazines have licensed the copying of parts of their works through Access Copyright. We manage these rights at Access Copyright in the same way that Copibec does, as just explained by Frédérique.

As explained by Frédérique, collective licensing is a practical and efficient model to administer rights. For a reasonable fee, educators and students have legal access to content, with the assurance that creators and publishers are paid for its use. For over 20 years this model has worked. Access Copyright distributed almost \$450 million to writers, visual artists and publishers.

Unfortunately, changes to the Copyright Act in 2012 have had devastating consequences. The education sector made a unilateral decision to interpret fair dealing as free copying when they decided to stop paying for the use of over 600 million pages a year and instead rely on so-called fair dealing guidelines. That's 600 million pages that creators and publishers are no longer receiving compensation for.

Royalties collected by Access Copyright from the education sector have declined by 89% since 2012. Historically, these royalties represented 20% of the creators' writing income and 16% of publishers' profits. This is an estimated loss of \$30 million a year in licensing royalties to creators and publishers, and notably this amount does not include the loss in primary sales due to the substitution effect of free content copied under the education sector's copying policies.

When we reference the 600 million pages that are copied for free, it's important for the committee to understand what we are referring to. These pages are not, as the education sector would have you believe, licensed scholarly journals. They are not open-access content or material written only by salaried academics. The 600 million copies in question are items like short stories, novels, poems, essays, children's stories and Canadian textbooks, all items that were previously paid for under Access Copyright licences and that continue to be copied today.

In 2017 the Federal Court unequivocally concluded that York University's guidelines and practices are not fair. They are not fair, as the court says, in either their terms or their application. In other words, the words on the page and the way they are used are not fair. York's guidelines are virtually identical to the copying guidelines and practices adopted by educational institutions across Canada outside of Quebec. The court found clear evidence of the substitutive impact of copying and the corresponding direct and adverse effect on creators and publishers.

I must emphasize that this is a matter of public interest. If you believe Canadian culture is important, you must ensure that creators and publishers are fairly compensated when their works are used. Fair compensation does not limit access as the education sector argues. Rather, it ensures that creators can continue to do what they do best: writing, researching, designing and publishing the Canadian stories and texts that are essential to Canadian students at all levels.

• (1110)

Despite these challenges, I remain optimistic, because there are two things that the federal government can do to remedy the situation.

First, clarify that fair dealing does not apply to educational institutions when the work is commercially available. This will ensure creators are justly compensated for the use of their works and reduce costly litigation, the expense of which is largely borne by creators.

Second, harmonize statutory damages. We were disappointed to see the recent reforms to modernizing the Copyright Board did not extend statutory damages to all collectives. Ensuring that all collectives have access to statutory damages through harmonization of the provisions that are already in the act will make the Copyright

Board's certified tariffs meaningful and ensure that writers and visual artists are paid when their works are copied.

There is no rationale that justifies why musicians and songwriters should have the means to ensure that they are paid for the use of their works while authors and visual artists do not.

Ultimately we all share the same goal for all creators: to enable creators to get paid properly and on time.

Thank you.

• (1115)

**Ms. Sylvia McNicoll (Author, Access Copyright):** Thank you, Roanie.

Thank you all for listening.

I've been writing for over 30 years, which coincides with Access Copyright, I guess. I have more than 35 books published, some internationally. I may not be the most famous writer, but I have one of the longest publishing careers in my genre, which is writing for children and young adults.

Funded by a Canada Council arts abroad grant, in October I visited Colombia because grade 7 students study my historical fiction set in Hamilton, Ontario, called *Revenge on the Fly*. I visited 17 different schools, and every one of those children held my book in their hands and cheered. It was wonderful to share our culture with these children.

However, as I told emerging Colombian writers in a Bogotá library talk, the secret of the longevity of my career is, sadly, my ability to accept less money.

Back in 2012, my income was \$45,000. I edited a magazine, worked as an artist in residence, spoke at libraries and schools, and wrote articles for adults as well as novels for kids. Secondary rights, such as public lending rights and copyright licensing, were and are still a crucial part of the writer's earnings, as is selling foreign rights. It's static income. I don't have to work all night to earn it.

This year, with two novels out, school visits, and teaching, and including Canada Council travel expense money, which is considered taxable income, I will earn \$17,000. Writers have always had to struggle to cobble together a livelihood, but never like this.

In 2012, our Canadian government unintentionally granted the education sector free content with the fair dealings clause in their Copyright Modernization Act. The educators believe you said that they could have 10% of my work for free. They don't need a licence at all.

My 2012 Access Copyright payment of \$3,000 dropped to \$300 in 2018. Schools have not paid a licensing fee since 2013 and they're suing Access Copyright for alleged overpayment.

Schools at all levels continue to buy fewer books and copy without licences. Yesterday I visited a Canadian school, grades 3 to 6 in a gym. There were 200 kids. Not one of those children held my book in their hands. None of my novels were on display, nor were they in the library.

Every page I create requires research, writing and rewriting, as well as editing and design. Not one of these pages is free to produce. I love my role of cultural ambassador. I'm proud to do this work, even if I can't live on it, but with the current compensation models for writers and artists, our culture is not sustainable.

I urge you to stand up for it. Support strong copyright laws. As Roanie said, rescind the educational exemption when our work is commercially available and address those statutory damages.

This will not only benefit me and writers—

**The Chair:** Ms. McNicoll, I'm sorry, but it's just because you guys are sharing time. You've already actually gone over time.

**Ms. Sylvia McNicoll:** May I just finish my last sentence?

**The Chair:** Perfect.

**Ms. Sylvia McNicoll:** It would also show the world that culture counts in Canada. Our future depends on it.

Thank you for indulging me in the extra five seconds.

**The Chair:** It was a few minutes.

**Ms. Sylvia McNicoll:** Oh, then the few minutes, Julie. Thank you.

**The Chair:** That's fine.

• (1120)

[*Translation*]

I will now turn the floor over to Suzanne Aubry and Laurent Dubois from the Union des écrivaines et des écrivains québécois.

**Mr. Laurent Dubois (General Manager, Union des écrivaines et des écrivains québécois):** Madam Chair, members of the committee, thank you for the opportunity, this morning, to share with you the reality faced by the 1,600 Quebec writers we represent.

My name is Laurent Dubois, and I am the general manager of the Union des écrivaines et des écrivains québécois, or UNEQ. Joining me today is Suzanne Aubry, a writer and the president of our professional association.

Today, we will demonstrate to the committee just how dire the situation is for professional writers in Quebec and Canada alike. We will also discuss the many risks that come with digital technology in the absence of strong legislation to protect creators and their works.

**Ms. Suzanne Aubry (President, Union des écrivaines et des écrivains québécois):** Are professional writers an endangered species?

In 1998, a Canadian writer earned an average income of \$12,879 from writing. Twenty years later, a survey, conducted by UNEQ in Quebec and The Writers' Union of Canada in the other provinces, reveals that the average income derived from writing now sits at around \$9,000—\$9,169 in Quebec and \$9,380 in the rest of the country—according to 2017 earnings reported by writers. That represents more than a 30% drop in earnings, without adjusting for inflation.

The survey also reveals that nearly 30% of writers report doing more now to earn a living than they did in 2014, and I'm a living example of that.

How does a Canadian writer actually earn their living?

Their primary source of income is still book sales, in other words, royalties from publishers—10% of the list price of the book. Those royalties make up 40% to 45% of the income earned from writing.

The public lending right program and royalties paid by copyright collectives like Copibec account for between 20% and 25% of writers' income.

Public readings, workshops, talks and other such activities represent roughly 20% of their income.

Finally, some writers engage in freelance work or publish in literary magazines. Others are able to obtain grants and prizes, but not many.

A patchwork of sources make up a writer's income. By piecing together different sources of income, an author may have a shot at earning a decent living.

Let's not forget, writers are self-employed workers with precarious jobs who do not enjoy the same minimum labour standards as salaried workers. Nor do writers benefit from the protections afforded by a framework or collective agreement.

**Mr. Laurent Dubois:** Now let's discuss the threats posed by the digital world.

Nowadays, anyone can appropriate a work online without too much trouble. Every single day, we see people breaking copyright rules, whether for commercial or educational use. Here are some examples.

Day in and day out, teachers and educational institutions across Canada take advantage of the fair dealing exception for the purposes of education or training, set out in the 2012 Copyright Act, to avoid paying royalties for using and copying works. Creators earn that much less.

Worldwide Facebook groups facilitate the sharing of digital books, similar to a member-based service. Creators earn that much less.

A website in France provides access to book summaries for those who don't have time to read the book. The site does not pay a single royalty to the author of the actual book, claiming that its service encourages readers to discover new writers. Creators earn that much less.

YouTube tutorials on how to download books for free in 2018 show viewers the process step by step. Creators earn that much less.

We also want to tell you about a phenomenon called controlled digital lending.

California company Internet Archive, which manages the website [openlibrary.org](http://openlibrary.org), is trying to show public libraries and Canadian university libraries that they can legally engage in the widespread public lending of works without having to pay a single royalty. The practice is known as controlled digital lending.

On May 31, at the ABC Copyright Conference, held in Vancouver and organized by a number of British Columbia colleges and universities and sponsored by the University of Alberta and the Canadian Association of University Teachers, Internet Archive representatives and universities promoted the practice of controlled digital lending. Under the guise of a digital library, these platforms provide universal access to books, whether or not they are in the public domain, without regard for the basic principles of moral rights or fair compensation for the use of works.

Ariel Katz, associate professor in the faculty of law at the University of Toronto, gave a presentation shockingly titled “Make Canadian Libraries Great Again”. In it, he maintained that the fair dealing exception in the Copyright Act was vague enough to allow controlled digital lending. He reassured the audience that the exceptions in the act opened the door to numerous possibilities without any legal risk:

We can do anything we want with regards to works unless the Copyright Act says otherwise.... Copyright owners always have the choice to speak to Parliament, who will listen and make amendments as appropriate.... Until then, [controlled digital lending] is permissible.

Will the government allow these kinds of abusive practices to take hold in defiance of copyright? Will the government tolerate Canadian universities partnering with commercial organizations to take maximum advantage of the exceptions set out in the act? Will the government stand idly by as companies impoverish creators by depriving them of the income they are owed?

This situation illustrates the bad faith of some in the educational sector and their desire to trample upon creators' rights in the name of open access. We find that shameful. It's hard to believe not only that private companies are basing their business models on the weaknesses in Canada's Copyright Act, but also that they have found a receptive audience in our very own universities.

• (1125)

**Ms. Suzanne Aubry:** At the international level, it's interesting to note that some countries are making real progress in protecting rights holders from digital dangers and lawless, ruthless multinational companies.

This summer the European Union, with some difficulty, passed a directive whose general political orientation deserves to be examined. The principle of this reform is to incite platforms like YouTube, that belong to Google, to provide better compensation to the artists and creators who contribute content, and see to it that these platforms not allow copyright-protected content to be downloaded.

The European MPs had to face a barrage of lobbyists advocating free-of-charge access in the name of innovation and freedom of expression, the very essence of the Web, according to them. Despite that, the members from 28 European countries held firm and finally passed that directive, which represents an unprecedented step forward in the protection of copyright in the digital age.

In the Netherlands, an agreement has just been concluded between the government and the public libraries to regulate the lending of digital material by establishing fair compensation to be divided 50-50 between the authors and publishers, based on the “one copy, one user” model. Under that model, a digital book can only be lent to one reader at a time. An embargo concept was also added, so that there

will be a period of 6 to 12 months between the publication of a book and the possibility of borrowing a digital version of that book. The point being that when a book has just been published, it is important for the author that he or she be able to sell some. If the book can be borrowed in digital form immediately, he will lose revenue.

These are our recommendations.

We ask that you review the notion of fair use in the copyright act, and that the term “education” be better defined in section 29.

We recommend that the other exceptions be defined and circumscribed according to the principle that any exception should only exist when access to the works is impossible otherwise. An exception must remain exceptional.

A model of fair remuneration for offers must be put in place and be made mandatory as regards digital loans in educational field libraries by imposing the “one copy one user” model.

Furthermore, we must give management companies the means to collect on fees that are due without having to go down the legal path.

Finally, we must oblige digital platforms to put in place—as some of them already have—a detection system to prevent copyrighted content from being placed online as is done in the European model.

On behalf of Quebec authors, we thank you for your attention.

[*English*]

**The Chair:** Now we will begin our question-and-answer period. We will begin with Mr. Long for seven minutes, please.

**Mr. Wayne Long (Saint John—Rothesay, Lib.):** Thank you, Madam Chair.

Good morning to everybody. Thank you to our witnesses this morning.

My first questions will be for you, Ms. Levy, Access Copyright.

At the last meeting we had Michael Geist in. He had some opinions on obviously many things. I'm going to read some of his quotes. I'm looking for a response. It reads:

Access Copyright's response to the Copyright Board that the legislative change merely codifies the Supreme Court's jurisprudence is surely wrong given that the legislation received royal assent on June 29, 2012, two weeks before the Supreme Court of Canada's *Alberta v. Access Copyright* ruling. Moreover, since those decisions were based on the research and private study purposes, the addition of education must have meant something more than what was already found in the law. The inclusion of education as a fair dealing purpose was better viewed evolutionary rather than revolutionary, representing a compromise between those calling for a full fair use provision and those seeking to further restrain fair dealing.

Can you give me a response to his comment?

•(1130)

**Ms. Roanie Levy:** Sure. I think the most important thing to assess, whether the purposes have been expanded as a result of education being added to the Copyright Act or something that the Supreme Court has done, is whether the end use that is being done by the education sector is fair. Ultimately, that's what's important.

The Federal Court, in its 2017 decision examining York University's fair dealing guidelines, concluded unequivocally that the interpretation of the guidelines being made by the education sector is simply not fair. It's having a detrimental impact on writers and publishers.

Importantly, in the 2012 changes there were changes to fair dealing, but there were also changes made to statutory damages under the general regime. Statutory damages are an important remedy that is available when people infringe copyright. The changes to the statutory damages have led to a situation of educational institutions having very little risk for what I'll call pushing the envelope. We have seen that even after we get a court decision concluding that the guidelines are not fair in their terms or their application, not a single university has actually adjusted or come back to the table to negotiate a licence.

**Mr. Wayne Long:** Okay. Thank you for that.

I'm going to give you another one, and I'm quoting Professor Geist. He wrote:

Given Access Copyright's position before the Copyright Board, the claims that current fair dealing practices are the result of the 2012 reforms are misleading. Canadian fair dealing practices over the past five years have involved increased licensing and copying practices that are largely the result of technological change, new digital licensing alternatives, and court rulings, not the 2012 reforms, as Access Copyright and its supporters now claim in an effort to convince the committee to backtrack on the earlier amendments.

Do you have a comment?

**Ms. Roanie Levy:** Again, I think the only survey that was done of copying, and the only determination of whether it is licensed or unlicensed, is the survey that was done in the York case. The claim that York University was already licensing the content or that it was digital disruption that was having an impact on writers and publishers was presented by York University as well, in very similar terms and using the same arguments that you've just quoted from Professor Geist.

The court spent four weeks examining that testimony and that evidence, and again concluded unequivocally that the copying was by and large not licensed, and that it was done. We're not talking about some other things that they may also be doing in a digital world. They are copying and they are not paying. It was mass and systematic, so the volume is significant, and it's having an adverse impact on creators and publishers.

**Mr. Wayne Long:** Thank you very much.

My next question will be for the whole panel. Professor Geist asserts that tax incentives are a more effective means than regulation or cross-subsidization to support Canadian journalists. Do you share this view?

[Translation]

**Ms. Suzanne Aubry:** No.

We don't cover journalists. Although certain writers may also be journalists, we only cover the literary activities of writers. It might be preferable that Copibec provide an answer.

[English]

**Mr. Wayne Long:** Ms. Couette, would you comment?

•(1135)

[Translation]

**Mrs. Frédérique Couette:** We do not share that point of view. We don't consider that allocating government subsidies or funds is the best source of income for authors or publishers. It is always difficult, random and complicated for an author whether a journalist or a writer, to obtain those subsidies.

There is a system collective management which functions very well and is recognized and used worldwide. Canada, however, is not following what the rest of the world is doing on this point. We receive fees for the reproduction of works outside of Canada. However, we receive nothing for the reproduction of Quebec works by Canadian users outside Quebec and that is not normal.

[English]

**Mr. Wayne Long:** Thank you.

Ms. Levy, would you comment?

**The Chair:** Wayne, I'd just point out that you have 20 seconds.

**Ms. Roanie Levy:** The only thing I will add is that what benefits creators, publishers and Canadians generally is a functioning marketplace, not handouts.

**Mr. Wayne Long:** Thank you very much, everyone.

[Translation]

**The Chair:** We will continue with Ms. Boucher for seven minutes.

**Mrs. Sylvie Boucher (Beauport—Côte-de-Beaupré—Île d'Orléans—Charlevoix, CPC):** Thank you very much, Madam Chair.

This is very interesting. I feel like I've gone back 10 years into the past when I was part of the previous government. Copyright was already being studied at the time and nothing has really changed, which is aberrant.

I'm particularly concerned by the rapid evolution of new technologies, which sometimes outpace us as legislators. Indeed, as soon as we have drafted the new Copyright Act, there could be some new technology that will cancel out the effects we were after.

How has the Union des écrivaines et des écrivains québécois and Copibec adapted to these new models and technologies? We all know someone in our environment who will use some work without paying a fee and without the author's knowledge.

What would you like the legislator to do to help you as much as possible while knowing that technology often now evolves faster than humans?

**Mr. Laurent Dubois:** I can try to answer.



In reality, I don't know if we have adapted. I think that for the moment, we are being hit by the disadvantages. Of course, we try to adapt.

There are two possibilities. The first is legislation and that is why we are here this morning. We think that strong laws will allow us to avoid abuse. The second avenue is education and raising the awareness of the population so that people realize that it isn't normal to use works for free. I don't know which of these two battles would be easiest and I will not prognosticate.

This morning, we are asking that the law take that evolution into account. You are correct when you say that the legislator is probably slower than the technology. That is normal. At least, here we are discussing the issue. Unfortunately, the commercial companies we refer to are not concerned about this debate; they act, they act quickly and they grab market shares. I think there are very clear elements in our recommendations that would easily apply.

**Mrs. Sylvie Boucher:** Ms. Aubry, did you want to speak?

**Ms. Suzanne Aubry:** I'd like to add that the free-of-charge concept has unfortunately made a lot more progress than the idea of copyright over these past few years.

**Mrs. Sylvie Boucher:** Indeed.

**Ms. Suzanne Aubry:** That is a very important issue. We have to educate people and teach them the opposite of what is being done, that is to say, not advocate for the free use of works. The population and educational institutions must instead understand that it takes writers a long time to create and that it requires an incredible investment of their life and talent, and that the profession will wind up disappearing if they don't receive fees and that will mean the end of works and Canadian content. It's very important that that be understood. It's all well and good to say that you want to use all of the works and that they should be free and accessible, however, in the final analysis, that free access will destroy creativity and creators. So, it's important to think about educating people about that.

Also, as Mr. Dubois was saying to you, our recommendations on digital are very clear. There are legislative ways of taking the bull by the horns and preventing this type of unfair use of the works.

• (1140)

**Mrs. Sylvie Boucher:** Thank you.

[*English*]

**Ms. Sylvia McNicoll:** May I say something?

I just want to say that I'm more familiar with the K-12 sector, and all this stuff about new technology really isn't filtering down to schools. We want real books in their hands, but instead I have nine grandchildren, and they come home with photocopied segments of stories—Canadian stories, Canadian-written, Canadian-illustrated—and not only that, they don't like reading. It is sloppy, crooked, crappy content. Our kids deserve more, and the licensing is easy. Technology has evolved in licensing also.

Thank you.

[*Translation*]

**Mrs. Frédérique Couette:** I'd like to add something. As Mr. Dubois was saying, it's always difficult to adapt to new digital technologies because they change very quickly.

At Copibec, we have tried to take certain steps through SAMUEL, for instance, a mostly French platform that allows teachers and educational establishments to find online content from Quebec publishers and authors, as well as visual arts and song lyrics and music content. The objective is to give users a tool that provides easy and quick access to francophone Canada's works, stories and authors, all of it being overseen by licences rather than having people look for things for free on Google and find content and works. Each of the documents offered by SAMUEL mentions copyright and each student sees it on the paper or digital version of the document. That is important because this way we raise the awareness of young people by making them aware of the need, even in school, to obtain authorization to use a work and pay the rights holders.

**Mrs. Sylvie Boucher:** Thank you.

[*English*]

**Ms. Roanie Levy:** May I comment?

**Mrs. Sylvie Boucher:** Yes.

**Ms. Roanie Levy:** If I may add as well, there's no doubt that there is digital disruption. Every industry, every business, is going through digital disruption, and it will never end, but what is really important in the context that we are dealing with and why we are here today is not to be distracted by claims that digital is what is causing the ailment for the writers or publishers.

The fact is that content is being used, on paper and digitally, without compensation, and competing for free against your own works being used for free is something that should not have to be added on top of everything else.

**Mrs. Sylvie Boucher:** Yes. Thank you.

[*Translation*]

**The Chair:** Mr. Nantel now has the floor for seven minutes.

**Mr. Pierre Nantel (Longueuil—Saint-Hubert, NDP):** Thank you, Madam Chair.

Thank you everyone for being here with us.

It's extremely concerning to hear to what extent your current situation is precarious. I'd like to remind everyone that the former vice-chair Conservative of the Standing Committee on Canadian Heritage, Mr. Van Loan, had clearly expressed his impression that the educational field was abusing the exception it was given by the law. His observation was very definite and to give Mr. Van Loan his due, he was very rigorous when it came to procedure. This may explain the broad offensive launched by universities; they now have to fight to maintain that interpretation which had until then been so advantageous for them.

Ms. Aubry and Mr. Dubois, you said that the educational exception was certainly the biggest problem. I also heard Ms. Levy say that we should not let digital and Internet issues distract us. It is true that they have an adverse effect on a large number of creators, including in the music and audiovisual fields.

Are there international standards we should adhere to so that our weakness in this regard will stop encouraging the piracy of Quebec or Canadian works?

• (1145)

**Mr. Laurent Dubois:** Yes. There is the European directive on copyright; the European Parliament decided to begin negotiations on it in September. Of course, there are measures in place to protect copyright.

**Mr. Pierre Nantel:** And we could draw inspiration from those measures, could we not?

**Mr. Laurent Dubois:** We could most certainly draw a lot of inspiration from them.

I'm thinking, for instance, about the current tools to systematically monitor content before it is posted online, which certain platforms use. Youtube is already doing that for music. Not everyone does this but those tools exist. So, there has to be a law to put these tools in place in an official way.

**Mr. Pierre Nantel:** We have to send a strong signal by saying that stealing content to the detriment of copyright is theft.

**Ms. Suzanne Aubry:** With your permission, I will complete what Mr. Dubois just said.

At this time, Canada's reputation with regard to copyright is very bad. In foreign countries, publishers and creators associations believe that the changes made to the law in 2012 were to be disadvantage of creators and gave users disproportionate advantages.

I think that Canada must provide an example. The revision we are doing will give us the opportunity of making some simple changes which would have enormous positive outcomes for creators in Canada.

**Mr. Pierre Nantel:** Thank you very much. You are quite correct.

I have a question for Ms. Levy.

When they testified, the representatives from the education sector said that copyright expenditures were higher than ever for them. We also hear that the reverse is true and I would tend to believe you.

How do you explain that people have the nerve to tell us the opposite? Is someone lying? Are the figures being interpreted differently?

**Ms. Roanie Levy:** The expenses are mostly for the licences university libraries must purchase. That claim that the educational field has already paid for reproductions through those licences, was also raised by your university during the hearings before the judge.

In the case of York University, a study was done and it showed that the works that were being used in its learning management systems and the works that were used in printed course documents, involved reproductions that were made under the fair use regime. We had to compare the licences with the reproductions that were made free of charge. The judge had to admit, like York University, that it

was impossible to match up the licences with what the university was reproducing.

What is provided to students under these licences are mostly research tools. What is used in classes are teaching tools.

[English]

They're for research purposes, instructional purposes. By and large, the content, which is licensed, is not the same content that is being reproduced on learning management systems and in course packs.

[Translation]

**Mr. Pierre Nantel:** Thank you very much, Ms. Levy. What you are saying is very important. We hear others saying the opposite and so I thank you for having cleared that up in this very precise way.

Ms. Couette, you mentioned that Quebec authors received fees from other countries but they receive nothing from English Canada. You also referred to the Supreme Court judgment. According to what I understand from Ms. Levy's explanation, Mr. Geist presented the same arguments before the Supreme Court. In other words, these are very intelligent people, clearly, but they are almost suggesting that the Supreme Court ruling was erroneous. Obviously, that is what was raised.

As you also said, statutory damages are ridiculous. They only correspond to the fees that should be paid. Do you see a connection? Even if it is applied, the Supreme Court ruling only leads to statutory damages, which is equivalent to paying the fee for use initial.

**Mrs. Frédérique Couette:** In fact, statutory damages can be at two levels. First, there are the ones we referred to in the framework of a fee as for access copyright. In fact, the only thing our management corporation could claim if it went that route, is that the universities should have paid. Of course, it is in their interest to wait indefinitely and try to drain us financially.

**Mr. Pierre Nantel:** Of course.

**Mrs. Frédérique Couette:** It's a fact that financially our pockets are not as deep as those of the universities, clearly. We saw that.

• (1150)

**Mr. Pierre Nantel:** It's very sad to see public money that should be used for education, being spent by universities defending themselves in court.

**Mrs. Frédérique Couette:** Absolutely. That money should be used for the licences. You have to understand that the universities are spending much more than those licences would cost them. As I said, it's 0.1% of their annual budget. They can easily absorb the cost of licences, there is no doubt of that.

Also, statutory damages are imposed for counterfitting. That is an amount of \$5,000 for all uses and all authors and creators. We are blocked at a certain level on that as well in that we cannot even recover costs. It is of no interest to launch court proceedings.

That is why we chose class action. However, that option was not possible everywhere. In Quebec, there is a way of doing that but it is not automatically used in other provinces. That creates a real concern.

In fact, our recourses with universities are very limited. This means that they have all leeway, once again, to do whatever they like.

**Mr. Pierre Nantel:** Is my speaking time already finished?

**The Chair:** Yes, you had seven minutes, and it's over.

We'll now continue with Ms. Dhillon for seven minutes.

**Ms. Anju Dhillon (Dorval—Lachine—LaSalle, Lib.):** Thank you, Madam Chair. I'll share my speaking time with member of Parliament Ms. Lambropoulos.

I'll start with Ms. Aubry and Mr. Dubois.

You spoke briefly about the poor remuneration rate for writers in Canada. Are writers better paid in other countries? If so, what can we do to improve the situation of writers in Canada?

**Ms. Suzanne Aubry:** Thank you. That's a very good question.

Today, we're focusing on the situation in Quebec and Canada. However, some countries, in particular the Scandinavian countries and the Netherlands, which I mentioned earlier, have regimes that enable writers to live on their literary income. These countries also have a social safety net. In Quebec, there aren't any framework agreements with publishers, since publishers aren't required to negotiate with us. That said, this doesn't concern the Copyright Act. The lack of a social safety net is part of the issue faced by writers, since they don't have any protection. In other countries, writers not only have a good copyright regime, but they also have a social safety net. If you would like, we can send you more specific data in this regard.

When we talk about copyright, we're indeed talking about rights. It's ironic that we've needed to fight for these rights for a number of years, even though the goal of the Copyright Act was to protect the rights holders and authors.

**Ms. Anju Dhillon:** If you could send this information to the committee, that would be very helpful.

**Ms. Suzanne Aubry:** Okay, I'll make a note.

[English]

**Ms. Anju Dhillon:** My next question is for Ms. McNicoll.

We all listened to your testimony very carefully. It's always sad to hear that you don't get remunerated for the value of your work.

Has it always been like this? Have you seen a change in the past years regarding this? Has the Canada book fund been helpful to you?

**Ms. Sylvia McNicoll:** It has always been a struggle to earn a living. Hemingway had to work for newspapers until he sold movie rights. Now we can't really do part-time work with newspapers.

The key is the 2012 legislation. The licensing fee always acted kind of like a speed limit. On the 401, you're allowed to do 100 kilometres per hour, although you might do 110 or 115 if you think you can get away with it. Enter the exception for education. Now

you've made it the autobahn. There is no speed limit. You can photocopy anything.

It isn't just that speed limit: It's the disrespect that's ingrained. It's also the idea that content is free, that a book should be free. Yesterday that school expected me to give them free books. Children came up to me and asked me if I could give them a free book. Yes, I can. I can go into further debt if they would like me to.

Thank you.

**Ms. Anju Dhillon:** Thank you very much.

Have your books been subjected to piracy?

**Ms. Sylvia McNicoll:** Yes, they have—always. I was telling the story of this reform school. They had a little bit of difficulty. I imagine they didn't try very hard. They photocopied the whole book for these grade 9 criminal offenders.

These are hard-working teachers. I respect them. I know they're trying to get the content for the cheapest possible amount. Imagine that you had a choice of parking for \$30 a day and there was no parking fine. Would you not roll the dice and not pay the \$30?

Maybe in this room we're all honest, but if that saves your budget for your children to have something else, wouldn't you do it?

• (1155)

**Ms. Anju Dhillon:** That's perfect. Thank you.

I'm going to pass the mike over to my colleague.

**Ms. Emmanuella Lambropoulos (Saint-Laurent, Lib.):** As you've referenced, in education sometimes teachers don't necessarily have too many options. There are certain budgets that they're allowed from their principals and school boards. Once they or other teachers have reached that limit, they may not have access to those funds. In some cases, even if it's not entire books, they may photocopy certain chapters or certain sections in order to give this education to the children, because it's the only option they have left.

Obviously, it's not ideal for authors. We realize the importance of protecting creators and the work they do. Without the work they do, these kids wouldn't have the education and the richness they have access to.

Do you see a middle ground somewhere? In what ways can we protect you, but also give a proper education to the kids in public sectors where they don't pay much money to go to school and where there is limited funding because of the fact that it's public? Obviously, private schools are in a totally different category. What would you suggest?

**Ms. Sylvia McNicoll:** I think it's just obvious that immediately tariffs have to be enforced. That was never a compromise, to say that you could have an educational exemption and not pay anything. That's full-handed giving them free....

This has been going on for close to five years. Different schools opted out at different times. They believe now that they are entitled. It will be very difficult. They have no knowledge of ever paying for photocopying or for digitally reproducing materials.

We need to get the fines, the tariffs, in place, and then we need to rein in this exemption.

**Ms. Roanie Levy:** If I could add something, the system of collective licensing was created precisely so that the entire book doesn't have to be bought all the time. It provides that means of accessing without having to pay the full price of all books all the time for every student.

It's also important to keep in mind—because I think that because of all of the noise we hear about this and all of the efforts that are made to evade having to pay—that we have the sense we're talking about incredible sums. In the elementary and secondary sector, we're talking about \$2.41 per student per year. Then they could do the copying of their chapters and their 10% to their heart's content. It's \$2.41 per child per year, and the ministers are still not paying.

In post-secondary, at most we are talking about \$26 per student per year. It's the price of a pizza. In college, we are talking about \$10 per student per year. We're not talking about sums that would bankrupt anyone, that would add any true additional burden on students whatsoever.

**Ms. Sylvia McNicoll:** May I add that while it's just a pizza for them, it's my mortgage, my groceries, and it's my car payment. Right now, it's my dental bill.

**Mrs. Frédérique Couette:** May I add something?

[Translation]

**The Chair:** You have a few seconds. In fact, we've already exceeded the allotted time.

**Mrs. Frédérique Couette:** Nothing is happening in the rest of Canada. However, take the example of Quebec. The Quebec education system isn't at risk because of licences. The Ministère de l'Éducation et de l'Enseignement supérieur pays \$4.29 per student per year to have the right to reproduce the material. This works very well. The SAMUEL system can also be used. This system works perfectly. There's no reason for the departments of education, universities and colleges outside Quebec to not use this system.

[English]

**The Chair:** Thank you to all of you for your testimony today. It was helpful and really grounded the issues for all the questions from the committee. I appreciate your time.

We are going to suspend right now so that we can switch to our next panel.

[Translation]

Thank you, everyone.

•(1155) \_\_\_\_\_ (Pause) \_\_\_\_\_

•(1205)

[English]

**The Chair:** Let's get started with our second panel.

We have with us Emily Harris, from the Canadian Association of Film Distributors and Exporters; and Brad Danks, from OUTtv Network Inc.

We will begin with Emily Harris, please.

**Ms. Emily Harris (President, Canadian Association of Film Distributors and Exporters):** Good morning, Chair and members. Thank you for having me here today.

My name is Emily Harris. I'm president of the Canadian Association of Film Distributors and Exporters, or CAFDE, which represents the Canadian film distribution industry and its members on matters of national interest. We're pleased to be here today to present to this committee on its work related to supporting our artists and creatives, who are the backbone of the Canadian film industry.

CAFDE is a non-profit trade organization that serves to represent a variety of businesses, from small independent film distributors to large global media organizations. Our current members include CropGlass; D Films; Elevation Pictures; Entertainment One and Les Films Séville, which is the company I work for; KinoSmith; Métropole Films; Mongrel Media; Pacific Northwest Pictures; levelFilm; LaRue Entertainment; and mk2 Mile End. It's a diverse membership that represents independent films as well as large-budget features.

CAFDE members provide Canadians with the vast majority of theatrically released films in Canada, two and a half times more theatrical releases than the six major Hollywood studios combined. Our activities include government consultation, outreach and engagement, with an aim to bring attention to the challenges facing the film distribution industry and the cultural, social and economic repercussions of our changing landscape.

As it relates specifically to artists and creatives, my remarks that follow will focus on the essential role that we believe Canadian film distributors play in maintaining the current Canadian film ecosystem. It is CAFDE's perspective that without the regulatory framework that has existed for decades, the Canadian feature film industry would not be what it is today. Artists and creatives can only thrive and grow if their work is seen and discovered. The work of our members tries to bring that to the forefront.

Canadian films, as I'm sure you know, attract audiences at home and abroad. Canadian creatives are celebrated on the international stage. Most importantly, the Canadian film industry provides a unique platform for Canadian creatives to share Canadian stories. All Canadians benefit from a system that showcases and supports this diverse and important work.

The Canadian film distribution industry provides consumers with access to feature films. Our industry as a whole contributed \$1.9 billion in revenues in 2017. However, in order to demonstrate the dominance of non-Canadian ownership in our industry, we need look no further than current box-office numbers. In 2017 box-office revenue was over \$999 million, but of that amount, 87% of the market share went to non-Canadian distributors.

The industry includes 464 Canadian enterprises involved in Canadian film distribution, with profits of over \$330 million and contributions of over \$162 million to wages. The industry also employs over 1,300 Canadians across the country. However, all of these figures are a drop in the bucket compared with what non-Canadian companies are taking out of the industry. To maintain these jobs and opportunities and to retain talent in Canada, there is a need for a revived regulatory framework that deals with modernization of the film industry in light of digital changes and the declining commissions of Canadian content in our broadcast ecosystem. Without strong Canadian film distribution companies, we posit that there would be no Canadian feature films, which would impact all facets of the industry, including artists and creatives.

To that end, there are three key pillars that we think are essential to ensuring that the film industry in Canada is positioned to employ, empower and fund our feature film creatives—modernization of the existing film distribution industry policy, creation of a fair playing field for all parties, and specific film mechanisms included in our broadcast regulations.

In respect of the first pillar, the existing Canadian film distribution policy has established and allowed the film sector in Canada to thrive, which is essential for creatives to work and thrive in Canada. In 1988 the Canadian government attempted to put in place protections for the Canadian film distribution sector for fostering and growing the Canadian film industry in the face of foreign competition. To do so, it announced the creation of the film distribution policy. Until recently, this policy framework protected the 13% of the Canadian theatrical marketplace not controlled by Hollywood. For the most part, this policy was adhered to, but as technological shifts impact the industry, unfortunately this is less and less true.

You may be asking why it is important for artists and creatives to maintain this 13% ownership. Ensuring that the Canadian distribution sector exists ensures that funds remain within our cultural ecosystem. It keeps revenues inside Canada, with companies that contribute to funding and programming, and supports the systems that allow Canadian content and Canadian content creators to thrive. With this revenue, Canadian distributors are able to invest in and fund Canadian feature films and ensure that homegrown jobs for creatives continue to exist.

● (1210)

It is CAFDE's opinion that we must formalize and modernize the existing policy framework. In the absence of legislation, it has been difficult to enforce the stated intent of the policy, leaving the door open to circumventions of that policy.

To preserve the long-term viability of the Canadian film distribution sector and ensure jobs and funding for creatives, it is crucial that the government prioritize and promote the policies that

have existed to date and have built the feature film industry. These Canadian-owned taxpaying companies reinvest in Canadian production and content, ensure the public's access to Canadian films and employ Canadians.

The second pillar, levelling the playing field, relates to the regulation of OTTs. If the development, production and distribution in Canada's ecosystem and the creative sector jobs associated with it are to be maintained and grown, we need to ensure that our regulatory framework provides a level playing field for all participants. Non-Canadian broadcast undertakings, like foreign-owned over-the-top players, need to be required to contribute to the cultural ecosystem to ensure Canadian content is discoverable by Canadians. As the vertical integration of our broadcast system intensifies and new digital platforms emerge, the government must take steps to ensure that a diverse representation of Canadian content continues to be commissioned and acquired by all entities exploiting content within our borders.

CAFDE recommends that the OTTs, which increasingly make up the services Canadians are using to consume culture, commit to buying and streaming Canadian content, and in particular, Canadian feature films. We are also looking forward to the results of the broadcast and telecom act reviews to see whether there is broad support for companies that act as BDUs, broadcasting distribution undertakings, with more than 2,000 subscribers to contribute a percentage of revenue into the ecosystem, as is currently required of our Canadian-owned broadcasters.

The third pillar is that Canada has long supported the tool kit that prioritizes exhibition of Canadian content, both within Canada and around the world, and we need specific mechanisms to support film on broadcast. Content creators and distributors require broadcaster support to ensure Canadians can access films beyond the traditional theatrical window. I would note the theatrical window is becoming more limited with respect to the digital era. Unfortunately, support of Canadian feature films by broadcasters has been eroding over time.

Specifically, in both pay and free television, our members have seen a substantially reduced commitment to Canadian films by Canadian broadcasters over the last five broadcast seasons. This trend has been consistent across all broadcasters and appears to represent a change in strategic direction, with a direct impact on content creators and distributors in this country who focus on feature film.

To reverse the trends of decreased commitment to Canadian film and to strengthen the ecosystem for Canadian cultural productions, CAFDE recommends the government continue to create a home for Canadian feature films on television by reinforcing existing mechanisms that encourage the exhibition in prime time of feature films made in Canada.

This can be accomplished by mandating that Canadian broadcasters devote a given amount of their schedules and thus part of their required CPE, or Canadian program expenditures, spend to a new specific category 7(d) that is earmarked for Canadian theatrical feature films. To date, broadcasters have had the latitude to program within this category as a whole, and without any specific requirements for feature films, we have seen films get less airtime than television series.

CAFDE also proposes that the Canadian Broadcasting Corporation, CBC, as the national broadcaster, update its commitment to Canadian feature film and reaffirm a commitment to licensing a minimum number of Canadian theatrical feature films. Ideally, this would be at least one new film monthly, aired during prime time, for Canadians to discover and enjoy.

On the whole, we also urge this committee to ensure that the certainty inherent in existing copyright legislation be maintained. The ability to set budgets and have structure around residual and profit payments ensures stability for distributors in a vastly changing landscape.

Thank you again for having me here today and for considering CAFDE's recommendations, which will not only benefit Canadian creators, Canadian film distributors and the economy but will also ensure Canadian content is seen widely, here at home and around the world.

Thank you.

• (1215)

**The Chair:** Thank you.

We will now go to Brad Danks of OUTtv Network.

**Mr. Brad Danks (Chief Executive Officer, OUTtv Network Inc.):** Thank you, Chair and everyone, for having me here.

By the way, I feel very good that we've just completed a deal with Emily's company. We have acquired at least as many theatricals as she wants. I'm here with clean hands as far as she's concerned.

**Voices:** Oh, oh!

**Mr. Brad Danks:** I want to talk about the opportunities portion of why you're here, because we have a bit of a different situation in what we've done. While I don't disagree with the notion of protection and things that we need to do within the Canadian marketplace, there are some things we've learned over the last few years that are very fundamental, I think, for the future and are things to talk about. Then I will talk about the artists' component of what you're dealing with.

Our channel is a small niche channel in Canada, but we were the first LGBTQ channel launched in the world, and we are now the most successful brand on the planet in our particular area, which is I think in some respects unique to Canadian broadcasting.

One of the things we've noticed over the last few years with digitalization is—and this is very important—that content markets are moving from vertical to horizontal. What I mean by this is that they're moving from national to international. Sadly, most of the Canadian strategies to deal with this have been to strengthen the vertical side of our business, not the horizontal side. In fact, the broadcasting system is in a crisis right now, primarily because of its strong verticalization. We created what I like to call the Maginot line of the digital world, and the digital went right around it, just like the Maginot line before World War II. That's what we're trying to deal with right now.

The other thing we're seeing is the rise of global platforms. Netflix was the first. They began to change the world, with Amazon, Hulu, Apple and others. A lot of U.S. studios will not be selling content through Canadian broadcasters after 2020. The world is going to change very quickly over the next few years. This is not just a Canadian phenomenon, although in many respects we're the canary in the coal mine due to our proximity to the U.S. and our dependence on U.S. programming by our major broadcasters.

What we've seen around the world is that there is a movement among strong local players, many of whom we have good relationships with, to fight back, and this is an opportunity for Canadians. I want to talk about that.

When we first saw the change in the landscape, we did three things that I think all Canadian broadcasters should do.

First, we developed a direct-to-consumer platform. It's called OUTtvGo. We launched it in 2016. It's the gay Netflix, as you might want to call it or do call it, and it's done well. I won't get into the subscriber numbers, but to give you some idea in terms of revenue, after the three big cable companies, it's our fourth-highest revenue per month within the Canadian system. It should be third within the next year.

That said, direct-to-consumer is very difficult. It's increasingly difficult when the technology is so strongly set by the high players—the Netflixes, the Amazons and so on—and in fact we feel direct-to-consumer works better for us in territories that we can't get into otherwise.

The second approach, of course, is the technology platforms themselves. I think everybody knows that Amazon is coming to Canada in a big way this following year. This will have fundamental impacts on the BDU structure in Canada and the Canadian system. OUTtvGo, our direct-to-consumer platform, is the type of thing that would sit well within those types of platforms. We've been platform agnostics in doing deals with all the major technology companies, which are, quite candidly, much easier to deal with than the Canadian BDUs for a Canadian channel.

The other thing we've done is that we've looked around the world and have said that there are the same phenomena going on, so there have to be opportunities abroad. We developed what I call the Goldilocks strategy, which is the strategy of not too hot and not too cold for us. "Too hot" would be the U.S. and the U.K., where content is expensive for us to launch into, but "too cold" would be Russia, where the politics just aren't quite right for us.

The three countries we targeted were Australia, New Zealand and South Africa. With the Commonwealth connections, we felt that co-production agreements and other similar situations would make sense. We've done that, and we've done well. We've launched in New Zealand with TV New Zealand, which is the largest player—sort of the CBC of New Zealand—and really the largest company. We're on their platform selling Canadian content.

In our first two months on TV New Zealand, of the top 20 titles that we sold in our branded platform, 15 are Canadian content, with 14 of those financed by the CMF. By the way, one of them is a French-language original with English subtitles. That was number two on our platform one month, which is telling you that there are opportunities even for French language shows. By the way, this is a show that would not get distribution in those countries without little OUTtv doing it for them.

- (1220)

It was the same thing in Australia—we ended up launching with the largest broadcaster in Australia, Channel 7. That would be roughly the CTV of Australia. We've done another deal with another broadcasting group, and a third with another one already.

Last month we did a month of preview with DSTV in South Africa. DSTV is the largest player in all of Africa. They are larger than Bell, Shaw and Rogers combined. They launched us in Africa for one month free. Their distribution is all of Africa up to the end of the sub-Sahara, because north Africa is part of the middle eastern buy in the television business.

It was a phenomenal experience. They did not launch us outside South Africa—we were warned by their partners to maybe hold off—but to launch an LGBTQ channel in South Africa, I can tell you, was something. It was really quite amazing. The response was overwhelmingly positive, and we're in the process of figuring out how to come back.

In all three situations, the strong backbone of Canadian content is being distributed into those territories, and the story is really simple: If you're in New Zealand, Australia, South Africa and 20 other countries that we're talking to right now, you're seeing a retreat of American content.

You're also seeing the premium content prices go up dramatically. The world of intermediating foreign content as a primary strategy is over. It is going to end really quickly over the next two to three years. It's going to leave a lot of the business models that we have in this country in trouble. The faster we change our model and move it around, the better.

This is an enormous opportunity for Canada. We have one of the best ecosystems, one of the best industrial complexes of producers and filmmakers and so on in the world. I live in Vancouver, which is

the world's third-largest production centre. Toronto is the fourth; Montreal is very high.

When you're sitting in Johannesburg or Sydney or Auckland or Stockholm and you're talking to people there, they envy Canada's opportunity. We spend too much time looking at the United States, saying we have to be just like them. There is enormous opportunity if we're just us and we get this right.

I did want to address some of the issues before you in regard to what Canadians need in content and creative, and then what we need in protecting our artists.

We have taken a different path with our model. We partner with a lot of our producers, and by "partner" I usually say to them I have good news and bad news for you—the good news is you're our business partner; the bad news is you're our business partner.

What that means for us is that we share risk with the producers, but we also provide them with transparent reporting on things. We pay them very quickly, and we also show them what is going on in the markets and the revenue values.

I was an entertainment lawyer for 12 years, and I used to always say to my clients to never do a revenue share and never do net profit, because you never get paid. However, what has emerged over the last number of years is a change within the digital world.

I have one minute. I'll go through the rest quickly.

What do we need? We need access to markets and assistance. We need to build global service providers. We need to provide accurate reporting for artists, direct payments, and transparency, and one of the things we really have to look at is some of the changing technology.

Free is not a business model, and for anybody who has been sitting here and listening to it, free is great if you're an Internet giant and you have a complementary business—if you're Google on search or Facebook on social—but it will never be a business model for artists. It doesn't make sense.

There are new emerging models. For example, Amazon in the U.S. would have 12¢ an hour for your video payments. On one of our shows, we almost got the budget back just on that pricing. It doesn't sound like much, but it will add up with a lot of views. Micropayments and such will emerge.

One of the best developments is in blockchain technology for video. Blockchain technology will allow the tracking and transparency of video content and how it goes around the world and how things perform. As we develop that, we'll be able to develop more business models for artists out there. If we can do one thing, it's to encourage the development of those technologies for artists and understand that a micropayment structure in the future is a whole lot better than free.

Thank you.

•(1225)

**The Chair:** Thank you.

We are now going to the question-and-answer period.

We are beginning with Mr. Boissonnault for seven minutes, please.

**Mr. Randy Boissonnault (Edmonton Centre, Lib.):** Thank you very much, Madam Chair and colleagues.

Thank you both for your presentations.

Brad, as an openly gay member of Parliament, the first elected to this Parliament from Alberta, I thank you for taking a struggling asset as an ally and using your business acumen to turn it into the top four—soon to be top three—niche player in the industry against some giants who, I will say and you can confirm, probably didn't want you in the market when you were starting out. It would have been easier for them to eat your lunch, but you're now dining at the same table.

Thank you for exporting the best content. I think if some of my people were here they would say thank you for bringing *RuPaul's Drag Race* to Canada and allowing people to watch it on their devices, because it's fabulous. That includes all our allies.

You have a long career of taking the CRTC to court and winning. That may be another study for another day on our side. I know there is the tyranny of the CMF and the big players and how we could create more access, but I see you as a visionary who sees the models before the rest of us see the models.

What do we have to get right in copyright, from the perspective of the artists? You can talk to the indie people who are going to defend the industry, but what do we have to get right in copyright to make sure that the writers, the screenwriters, the creators—all the creatives who help you develop that talent and the creative content that's going to go to South Africa and New Zealand and Australia—get their fair share to make sure their mortgages and their groceries are paid, and they can keep creating?

**Mr. Brad Danks:** Accurate reporting.

**Mr. Randy Boissonnault:** Meaning what?

**Mr. Brad Danks:** First and foremost, all of the digital platforms that are emerging have to provide you with exact and precise information on what's actually happening on the platform.

Most of what we've done in the past is.... I know we've created these barriers in scale in terms of things like terms of trade and other stuff. That makes sense in a world that doesn't exist anymore, but we really need to focus on figuring out what the ultimate values of content are.

I walked here and I passed a construction site, and if I asked anyone who worked on that site how much the condo units sell for, they would know. There's transparency in that market. They know if the prices go down, their wages go down, if they go up, they go up. Artists have no idea what the ultimate value of the content is, and it's as if that should be the case. It's not, so we need to work on structures that develop that. We have to work on helping invest in technology.

I mean little things. In a broadcasting system the set-top box information is...I don't have it. Apparently Corus does, but I don't have it. I could use that information to determine what Canadian content is doing better and where to make our investments.

The biggest problem we have is it's not what we can afford; it's what can we monetize.

**Mr. Randy Boissonnault:** Could the government compel Corus to share that information with you?

**Mr. Brad Danks:** It's the BDUs.

**Mr. Randy Boissonnault:** Pardon?

**Mr. Brad Danks:** The BDUs. They'll give it to Corus, apparently, but they don't give it to us.

I would like to see what's being seen the most, but I get Nielsen's ratings, which is in one in 1,000 homes. That information is available, but the CRTC is moving at.... They have a two-year set-top box, and these things move very slowly.

The battle in something like that is always the same. It's one side wants the data because they want to be able to charge addressable advertising and stuff. The other side wants to see what they can do in terms of content. The data side has been winning now for a decade, because somewhere out there we came to believe when the Internet was launched that there was a business model, and free, and there were books on it and all of that. It's not true. There will never be a business model around free, except potentially for companies that are reselling the data, and I don't know how long that world's going to last either.

We need to work harder to get back to the point where we figure out how we measure things and then how we build business models on those measurements.

•(1230)

**Mr. Randy Boissonnault:** I'll say it: I'm here on the side of the artists and the creators. I've said it many times and I'll keep saying it. This committee has heard a lot of doom and gloom and we've heard a lot of pain and suffering because of the changing models. You have painted a slightly rosier picture, maybe even a rainbow picture, about the future in terms of opportunity. What is the opportunity if we get this right for Canadian content? Do people like our stories? Do they like our diversity? What is it about Canadian productions that the world likes so much?

**Mr. Brad Danks:** We forget that we function on such a high level. You talked about my career. I met 16-year old Ryan Gosling on a show. I knew Nelly Furtado when she was 18. You work with a DOP, a director of production, like Greg Middleton who does independent shows in Vancouver. Last year he was the DOP on *Game of Thrones*, the largest series in the world, a Vancouver guy.

**Mr. Randy Boissonnault:** Right.

**Mr. Brad Danks:** We forget how much talent we have in this country. We have done everything possible to destroy the innovative side in the last decade in order to try to protect what we had and keep us more insular. We need to open up and say, "You know what? We can play really well."



It's like the Olympics. I'd be pretty happy if I won a bronze medal in the Olympics. You don't have to be the number one country, but world content markets are enormous. It may be the biggest business opportunity in the world. We keep acting like we have to keep it more insular. We can't. The world doesn't work that way anymore, not in the digital environment, but if we create a strong base for Canadian artists at home, then we can export from there, and that's going to be the opportunity.

Canadians can do it. We have great co-production agreements with countries around the world. We have a great reputation. We have incredible talent. We just have to think in that direction, instead of trying to worry about what little bit we can keep, the scraps on the table now.

**Mr. Randy Boissonnault:** It's a good day for metaphors. I liked your reference to the Maginot Line.

I've got about a minute and a half left. What should we know at the heritage committee about tweaks to the CMF to allow niche players like you to actually continue to punch above their weight?

**Mr. Brad Danks:** The CMF has to be, I believe, realigned—by the way, I was in front of them this morning. They have to be realigned to fit with the government's goals, which are around export and creating these opportunities.

Right now the way to increase your CMF envelope is to replay Canadian content over and over and over again on the 20 or so channels you have that nobody watches. That's not really good for Canadian content. That's not the way it should be.

Canadian producers are screaming about a lack of commissions, but we have zero in our CMF envelope. We'd be more than happy to commission that full amount. I think Corus this year had more money left in their development fund that they didn't spend than OUTtv has had since 2001; it's the same amount, just to give you some idea.

I would be able to spend that money really well, but we've been concentrating it. I know there's a lot of pressure from the BDUs, particularly those that put money into the system, to get that money back out through their companies, but that's not what the CMF was designed for. I think if more independent broadcasters had a larger amount, something significant—more than \$50,000 or something like that, a base number to start from, based on exports or based on these types of things—then I think we'd see a real movement in that direction.

**Mr. Randy Boissonnault:** You would take that money, develop it and it would have a multiplier effect, as opposed to it sitting in an account not being used?

**Mr. Brad Danks:** Yes. It would also go to all kinds of different producers instead of two or three of the top ones in the country all the time.

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

**The Chair:** Thank you.

We will now go to Mr. Yurdiga, please.

**Mr. David Yurdiga (Fort McMurray—Cold Lake, CPC):** Thank you, Madam Chair, and thank you to the witnesses for coming in today.

When I was growing up, I waited for my show to come on. It would come on once a week and I marked it on my calendar. I didn't have a calendar, I just remembered it. Back then we didn't have calendars—not digital ones, anyway.

Everything's changing. We upgraded to cable, then to satellite, and now we stream everything. We don't have a cable package. My children don't have a cable package or satellite. It's all streaming. They have very busy lives and so forth.

The business model is changing at a rapid pace—faster than ever before. Mr. Danks, I'm glad to hear that you're trying to be global instead of just concentrating on one market, which is the Canadian market. In your opinion, is a lot of the Canadian market just trying too hard to be in the Canadian market, or are they trying to expand into the global market?

• (1235)

**Mr. Brad Danks:** I can give you two answers. If you're at the international markets—in MIPCOM and such, as I was in October—there are a lot of Canadian producers. Most people would say that Canada punches above its weight, from a global perspective.

On the other hand, there wasn't anyone there from Bell Media. There was no one there from Rogers Media. I think there were a couple of people from Corus. The problem with the vertical integration of our system was that the companies that control it are mostly Internet and mobile companies—or at least they were with Shaw and Corus. Their focus is primarily within Canada. That's really been the problem. We created a production model that inverted production. You produced in order to maintain your monopoly status. The actual value of the show wasn't based on what was happening in the marketplace.

We introduced a novel concept: we actually make shows and then sell them and try and make money on the programming. I'm being a bit facetious there, but that is ultimately where the business needs to go. We work with Emily's company, and they have great international reach. They've got a lot of power and ability. We have Canadian companies that can do this, but we need more.

The CRTC are now calling broadcasters “service providers”. To be honest, I really like it because it says more about what we should be doing. We should be going out and negotiating deals across the world.

I met with the new head of Telefilm yesterday. She asked me how we get into these countries. I told her that she can do it. We can do it, but we can't put 10 producers on a plane and send them to some place to try and get a deal. We need companies that can do those deals for the producers and then bring them in and do that.

I think we've been at cross-purposes for too long. We've been trying to maintain the fiction that we're still a market that exists without the outside world. That's now over. The first thing we have to do is throw out that idea and say that's never going to work. Let's start now and say, okay, now that we know the world is global, how do we play? Canada is in an extraordinary position to take advantage of that, but the mindset shift needs to happen, and happen now.

**Mr. David Yurdiga:** Thank you.

Emily, in your experience, are you finding that people prefer on-demand services and...the ability for Canadian content to be on that on-demand service? I know for myself, I have Netflix because it's easy access and everything else. My grandson is 10 years old and he's YouTube all the way.

How do we promote Canadian content on these platforms? As I said earlier, people are using cable less and less. The new generation doesn't want to actually wait for a show at a certain time; they want it now. How do we get into that Netflix and YouTube sort of mindset, where you're outside and all of a sudden you want to watch something, and it's on your phone? How we transition into that to try to get more Canadian content?

**Ms. Emily Harris:** I think it's a great question.

As Brad indicated, the direct-to-consumer model and the on-demand model are more and more a function of every licence that we're doing. It's very rare now that you do a deal where they aren't looking for some sort of an on-demand capacity.

I also really liked what Brad said, that free isn't a model. There needs to be proper value associated with the grant of that on-demand right. As we move forward, I think we have to be flexible about what rights we are granting, what partners we're working with.

When we talk about a level playing field, Netflix is both friend and foe. It is a client of a lot of content producers. However, we need to make sure that the value we are getting from it and the value that it's bringing into the ecosystem, which are two separate things—the licence fees it's paying for its content and any contributions it's making to the ecosystem—are equivalent with what we're asking Brad to do.

Right now, we have been a little slow to ask Netflixes and the YouTubes and the Amazons of the world to pay into the system the way that Brad has to and the way that our BDUs have to, and that's unfair. We are incentivizing foreign-owned companies to work in our sandbox, and to syphon profits out without contributing in.

Each different client will potentially have a different business model. We're interested to see how the broadcast act review and the telecom act review play into that.

There needs to be an approach that recognizes that Netflix is the same service. You may be watching Netflix and someone else may be watching OUTtv, but they're doing the same thing for the consumer. To have left them unregulated for so long has created this inconsistency and lack of equivalency between our Canadian-owned BDUs and these foreign-owned players.

The other point I would make is that we have to be ahead of these things. To do that—and I think Brad's company is a great example—success at home is important, and then we need to incentivize people

to grow. We want to make sure that we don't throw the baby out with the bathwater, in terms of the regulations that have existed which have allowed companies like OUTtv to grow and thrive.

What we don't want to have is a regulatory framework whereby a Canadian-grown company hits a wall and is now disincentivized vis-à-vis its foreign-owned companies. We need to create a structure where we're protected at home, so Brad can grow and get his direct-to-consumer platform and then launch globally.

I think it's that second step where we're not seeing the same protections that we have vis-à-vis the foreign-owned companies.

• (1240)

**Mr. David Yurdiga:** Thank you.

[*Translation*]

**The Chair:** We'll now move on to Mr. Nantel, please.

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

Ms. Harris, we've already met.

Mr. Danks, I'm pleased to meet you. You think outside the box. I believe that Mr. Boissonnault clearly identified a number of points regarding the fresh nature of your presentation and business approach.

Ms. Harris, you mentioned that, obviously, we can't let Netflix fail to contribute to the system. I also know that this is the government's official line. If players want to be part of the system, they must contribute to the system. That's a good thing. Let's hope that this will be done. I'm worried about the slowness of the process. I'm concerned that many players will run out of steam.

You brought up the idea of making important players contribute to Canadian content, but there were also two other points in your presentation. Can you remind me of those points, please?

[*English*]

**Ms. Emily Harris:** Yes, absolutely. The Netflix point was one. The other one was the film distribution policy.

Our existing film distribution framework is based on a 1988 policy, which was obviously created before the Internet was a twinkle in anyone's eye. That policy outlines that Canadian-owned companies should distribute feature films in Canada. There was one exception made: It was to the six existing Hollywood studios that had proprietary rights worldwide in content.

What we've seen to date is that structure worked until the digital companies became more prevalent. What we're seeing now is more and more erosion of foreign-owned players—Netflix being one, but other U.S. companies being others—that are directly distributing feature film in Canada, contrary to the provisions of this policy.

CAFDE feels very strongly that the requirement for Canadian-owned companies to distribute them in Canada is what's built our distribution sector. Without that protection, it's very difficult to build a vibrant Canadian film industry. Our members need the funding from a wide swath of investment to ensure we have resources to invest in Canadian feature films.

**Mr. Pierre Nantel:** Yes, we can be reminded that in France, the equivalent to the Canada Media Fund is actually nourished by movie theatres, by the way, as a special contribution.

I want to just make sure of your presentation on the first point.  
[Translation]

You mentioned that you're distributing 2.5 times as many films, because obviously there are more independent productions.

[English]

**Ms. Emily Harris:** Yes.

[Translation]

**Mr. Pierre Nantel:** Do you have fewer theatres? Can you provide figures? This may be calculated based on the number of weeks of screening availability.

[English]

**Ms. Emily Harris:** Yes, right.

**Mr. Pierre Nantel:** You see the question.

**Ms. Emily Harris:** No. Can you just repeat the question?

**Mr. Pierre Nantel:** The question I'm asking you is if you distribute 2.5 times more feature films than the majors do, how much less access to viewers do you have?

**Ms. Emily Harris:** What we find, especially in respect of English-language Canadian productions, is that we may be able to receive exhibition space for one week or for two weeks with the theatrical exhibitors but we're up against the behemoths of the Marvel movies and the superhero success stories. It's very difficult to carve screen time out for smaller-scale Canadian theatrical features.

**Mr. Pierre Nantel:** If ever you have any numbers on this, even though it's a little off topic, I'm sure everyone would be interested to see, for example, that you have 2.5 more things to distribute and you actually have access to 95% less viewing time for somebody in the room.

• (1245)

**Ms. Emily Harris:** Yes, we're happy you raised that.

**Mr. Pierre Nantel:** Very quickly, what was the third point?

**Ms. Emily Harris:** The third point was about carving out space for feature films within the broadcast requirements for Canadian content.

**Mr. Pierre Nantel:** Absolutely. I agree.

**Ms. Emily Harris:** What we find currently is that the CPE or the exhibition requirements that are on Canadian broadcasters—which, I would note, are on only Canadian broadcasters, and not on foreign players—

**Mr. Pierre Nantel:** Yes.

**Ms. Emily Harris:** —represent a broad requirement to air Canadian content, and there's no special head for theatrical feature films.

**Mr. Pierre Nantel:** Oh, okay.

**Ms. Emily Harris:** We're finding that with the consolidation in the marketplace, we have good partners like Brad who are continuing to buy CanCon feature films, but other broadcasters are more focused on television series, which means it's harder and harder to get television broadcast eyeballs for feature films.

We advocate having a special head that's for feature film only within the CRTC mandate for exhibition of Canadian content.

**Mr. Pierre Nantel:** Yes.

For example, if on CBC there's no more hockey night, there could be movie night in Canada.

**Ms. Emily Harris:** Absolutely. We're very supportive of that.

**Mr. Pierre Nantel:** Mr. Danks, you mentioned something that intrigued me a lot. You said that the distribution model was going to be gone in two or three years. Maybe it was not the distribution, and that's what I'm interested in. You said that some things we rely on now will be gone in two or three years.

**Mr. Brad Danks:** It's intermediation, really, which means acquiring premium American content and then reselling it in Canada, which is the primary business model of the major over-the-air broadcasters in Canada—CTV, Citytv and Global.

The supply of content is gradually getting choked off. The American studios are going to hold on to that for their own offerings. That means it will be more challenging for those networks to get the premium shows, the top shows, that they've always had in the past.

**Mr. Pierre Nantel:** Oh.

**Mr. Brad Danks:** In May every year, they go to the screenings in L.A. and they buy the best shows. I go there as well, and every year there are fewer and fewer products available. They're already gone. Such-and-such has already gone to so-and-so. It means that the premium aspect of those business models will be challenged.

What I'm really saying is that in 10 years, it's going to be almost extinct. There's a transition period we're going through right now, and it's going to cause a lot of stress.

**Mr. Pierre Nantel:** How does your analysis differ? I'm sure it does. But what is your perspective on the very distinct television market in Quebec? Do you have the impression that some producers, some broadcasters like you share your points of view?

**Mr. Brad Danks:** I absolutely think they do. It's interesting, because we work with some Quebec producers and we do some shows in Montreal. They do have the advantage of the second language. This is something that you see globally when you go into.... I was just in the Czech Republic, and they're not as worried about things in certain areas of Eastern Europe because the language is such. It's the English language that really sets the speed at which markets are penetrated by this, but it's coming everywhere. That's partly why we picked English-language markets for export, because we knew they would be the ones in the most trouble. You don't have the same.... Everyone talks about it. I was talking to someone in the Netherlands, where the English language level is very high in terms of speaking, and it's accelerating there faster than, say, in Italy, where it's not as high.

I think that's part of.... It's coming to Quebec, but it's going to be slower, and Quebec has a different system that will withstand a little more of this in terms of speed.

[Translation]

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

[English]

**The Chair:** Thank you.

[Translation]

We'll now move on to Mr. Breton.

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

I want to thank the witnesses for joining us today.

Ms. Harris, my first question is for you.

I don't know much about the distribution and export of films. How are film distributors and exporters remunerated for their work? Is it a fixed fee or remuneration? Is it based on film revenue? Can you please explain this?

[English]

**Ms. Emily Harris:** The way the remuneration models currently work is that we partner with the producer of the film, who has entered into agreement with the creators, location managers and the like, and we are delivered a finished film or presented with a script and promised delivery of a finished film.

Our members review that film's prospects and come up with an amount they think they can guarantee the film will earn. The analogy we've used is that it's as if we were a real estate agent who has agreed to sell your house. We know the best buyers for your house and we know how best to market it; however, we will also guarantee you at least a certain amount for your home, and we put our revenue on the line as a starting point to guarantee that return.

The producer is then able to take the amount that has been guaranteed and go to a bank, funding agency or private equity funder and say, "We have interest in the Canadian market to the tune of this amount." That's how the producer secures the remainder of the funding for the film's budget.

When the film is delivered, we are then responsible for taking it out to the market, approaching the theatrical exhibitors and the Amazons, Netflixes, Bells, Coruses and OUTtvs of the world and

earning licence fees, revenue splits or transactional amounts for the exploitation of that film.

As those funds come back in, we recoup some percentage of the fee for ourselves. We recoup the expenses we incurred so doing, and the guaranteed amount as promised. All remaining funds, for the most part, will be paid back to the producer to then go back to their profit participants, however that has been negotiated.

We ask for a little as a middleman, but a middleman with financial risk associated with our investments. It's that risk that then allows Telefilm or whatever funding agency is involved to feel that, yes, there is market interest for this feature film, and their equity investments will be recouped.

● (1250)

[Translation]

**Mr. Pierre Breton:** That's very interesting, thank you. You clearly explained how this works. It's certainly not easy for everyone to understand. I don't know whether other people knew how this was done.

I don't know whether I have much speaking time left, but I have one final question.

Many people have spoken to us about piracy. We spoke very briefly about it today after you arrived. Ms. Harris and Mr. Danks, how would you describe the current situation? I imagine that the situation has worsened, but I want to know your opinion on the matter.

[English]

**Mr. Brad Danks:** In my opinion, it's an ongoing problem. It's something that falls out of the realm of what we talk about, but it is really a huge issue.

The notion that "free" is a business model has leaked into the idea that you should be able to stream stuff. We can't calculate what we lose every year, but we know that some of our premium shows are up online.

For example, we have one show that was mentioned, *RuPaul's Drag Race*. Probably 10 or 12 sites will have a new episode of that show on YouTube within about an hour of it being released, so you have to write to YouTube and have them take it down.

It's a very real problem for the whole industry. If there's one thing we can all agree on, it's that piracy is a problem and we are bleeding a lot more money than we should. Also, we're not correcting that problem around getting content for free. We should be working at coming up with micropayment models and things that begin to fill that hole.

It started in music, with iTunes and so on. We need to explore that more and make it easier for micropayment models to emerge. That will help stem the piracy as well.

**Ms. Emily Harris:** I completely agree. We were very supportive of the FairPlay application that was made to the CRTC, because as Brad indicated, it can be very expensive to try to rid the Internet of something that is made available on a myriad of sites. The challenge of the current structure is that you have to go site by site to take down whatever is listed. It's very expensive; it's very time-consuming, and if you are successful, it's like Whac-A-Mole. It will pop up in another area.

We were supportive of some sort of streamlined structure that would create a system by which someone who is a content owner, content distributor or licensee of content has an easy way to apply to help protect that content within the Canadian system. We were disappointed that it wasn't what the CRTC accepted, but we think there needs to be some solution for piracy, because the impact reaches everyone—creators, performers, broadcasters and distributors—and we're not doing enough to stem that tide.

[Translation]

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

Mr. Boissonnault will use the rest of my allotted speaking time.

• (1255)

**The Chair:** Okay.

[English]

**Mr. Randy Boissonnault:** I like this idea of micropayments, and maybe you could give us a sense of that. I don't have a lot of screen time left—maybe on my journey back home—but I started tracking and going to the premium shows, because they're on iTunes, and they're on other...

I pay for the episodes now. Sometimes I buy the whole season. I track my spending, and even when I pay per show for the whole season, for the shows that I want to watch, it's still less than what the cable would cost me per month. I get to pick my own menu. It's not free content, and I don't stream.

How can we as a government encourage the regulators and industry to make these micropayments more accessible?

**Mr. Brad Danks:** I think there are two issues. We need to develop the technology better and bring it in, but we also have to open ourselves up to more price discrimination.

The problem in the broadcasting system, for example, is that you negotiate your fee with a BDU; you don't negotiate with a consumer. It's a real problem. Every show has its price discrimination.

You mentioned *RuPaul's Drag Race*. When it comes out in a few weeks, it will be the number one show in Canada on iTunes for at least one month. It will be the number one show for us on broadcast, and the number one show on our OTT.

Consumers are very platform-first. You were talking about platforms. They start at their platform, and then they go and find the content that they need. Access is number one on the content side. I think that if Let's Talk TV were really consumer driven, they would have opened up the wholesale market and given consumers more content but would have changed the pricing structure so that it wasn't done at the negotiating place.

If somebody looks at a package of 10 channels they've just spent \$10 for, they think they're paying \$1 per channel, but really they're paying \$9.50 for one channel—probably owned by the BDU—and everybody else gets about 5¢. That's not seen by the consumer.

It's about breaking that barrier down and creating pricing models. You have shows where people will pay transactionally, where they'll pay in a bundle under a subscription, and they'll pay in advertising. Our job as broadcasters is to find the price that works for each consumer and to do it as quickly as possible. The more the system is congealed the way it is right now, the harder it is to break out and create new pricing models that make sense for the consumer.

**The Chair:** That's the note we're going to have to leave this on.

Thank you to both of you. That was really interesting, and there were a lot of questions generated.

That will bring this meeting to an end.

The meeting is adjourned.

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