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Chair

Mr. Dan Ruimy

Standing Committee on Industry, Science and Technology

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● (1530)

[*English*]

The Chair (Mr. Dan Ruimy (Pitt Meadows—Maple Ridge, Lib.)): Good afternoon, everybody, and welcome to another exciting day of the statutory review of the Copyright Act. Today, from the Canadian Dance Assembly, we have Kate Cornell, Executive Director; from Copyright Visual Arts, we have David Yazbeck, Administrator; and from the Playwrights Guild of Canada, we have Robin Sokoloski, Executive Director.

[*Translation*]

We also welcome Elisabeth Schlittler, from the Société des auteurs et compositeurs dramatiques. She is the

[*English*]

General Delegate for Canada; and Patrick Lowe, Scriptwriter and Member of the Authors' Committee.

I want to confirm with our vice-chairs that we will be saving half an hour to do Mr. Albas' motion towards the end.

Mr. Dan Albas (Central Okanagan—Similkameen—Nicola, CPC): Thank you.

The Chair: We will start with Kate Cornell.

Ms. Kate Cornell (Executive Director, Canadian Dance Assembly): Thank you so much for the opportunity to speak today on behalf of the Canadian Dance Assembly.

I represent the Canadian Dance Assembly, a national service organization, and we partner with 10 provincial dance organizations to serve the dance sector, which includes hundreds of companies, schools and individual dancers across the country.

As a member of the Focus on Creators group, I am here today to add my voice to the call for fair remuneration for Canadian artists, regardless of artistic discipline. I will conclude my presentation today with two recommendations.

Copyright is a key pillar of the creative economy and an essential policy tool for the federal government. It upholds the intellectual property rights of producers and creators while allowing Canadians ready access to the content they rely on for work, entertainment and, most notably, education.

Minister Joly has stated that Canada requires a copyright framework that works well in our fast-paced digital world and provides creators with opportunities to get fair value for their work.

Choreography is mentioned once in the Copyright Act under the definitions. I'm very grateful that it is mentioned at all, to be honest. This definition of choreographic work is dated, however, and could include references to choreography for the stage, choreography for site-specific works and choreography on digital platforms, as some examples.

Notably, there have been debates in the media about the use of dance in video games such as *Fortnite*. Therefore, it is imperative to ensure that definitions in the Copyright Act are relevant and current. After talking with several colleagues in the dance sector, I understand that copyright of choreography and royalties for subsequent performances is dealt with at the contract level. To my knowledge, there have not been any cases brought forward to the Copyright Board about choreographic works. Unfortunately, the Canadian dance sector is not currently large enough to see multiple performances and remounts of choreography. Therefore, royalties are rarely considered.

Remarkably, there have been global discussions about whether or not you can even copyright a movement. In 2011, superstar Beyoncé was accused of borrowing liberally from Belgian choreographer Anne Teresa De Keersmaeker in Beyoncé's music video*Countdown*. In The Guardian, writer Luke Jennings asserted that it would be a hard case to make for plagiarism, because works of art reference other works of art.

I am here today not to talk about royalties related to choreography, but instead, I want to talk primarily about the use of music in dance.

Dance is usually performed in venues with live or recorded music. Live music is very expensive, and I would say the majority of my members use recorded music. Large dance companies are paying royalties to composers regularly for recorded music and are very aware of their obligations, but small dance companies are often ignorant and are therefore non-compliant.

Our colleagues at Re:Sound, whom you've heard from already in this study, are aware of the administrative burden on small companies for compliance and are willing to work with dance service organizations like the Canadian Dance Assembly on webinars to educate our members. The Canadian Dance Assembly is working with its provincial colleagues and Re:Sound to increase understanding and thereby increase compliance.

In July 2017, the federal government announced its intention to reform the Copyright Board. The Canadian Dance Assembly fully supports the review and reform of the Copyright Board. The board plays an important role in ensuring creators and publishers are remunerated for the use of their work when the terms of licences cannot be reached through negotiation. Additionally, the Copyright Board has an obligation to consult sectors affected by tariffs. This consultation is what I want to talk about.

In dance, the Copyright Board administers agreements between dance schools and Re:Sound for the use of recorded music in dance instruction, which is tariff 6.B. They also administer agreements with Re:Sound for the use of recorded music at venues, which is tariff 5. K. There are also agreements with SOCAN, but I want to talk about Re:Sound today.

My colleagues at the provincial service organizations who work directly with dance studios across the country are very concerned about tariff 6.B, the “settlement tariff”. The tariff was negotiated in March 2014 between the Fitness Industry Council of Canada, GoodLife Fitness and Re:Sound.

● (1535)

Please note there is no dance organization among the negotiators in that list, but the tariff applies to dance instruction. The settlement tariff, certified by the Copyright Board in March 2015, is based on a per class basis, while the original tariff was based on a per venue basis. This change, combined with a significant increase in the base rate, resulted in a settlement tariff being multiple times higher for dance schools than the original tariff. For example, the studio that my four-year-old daughter studies at used to pay $25 for a venue permit under the original tariff and now, because they have 44 classes a week, it pays $1,100 in a tariff. What is frustrating about that is the fact that in those negotiations, dance organizations didn't really have a representative at the table during the Copyright Board's review.

The settlement tariff is also notably for recreational instruction not educational instruction. The majority of dance schools in this country focus their instruction on school-aged children, therefore the clarification of the definition of what is an educational institute, in comparison to what is recreational instruction, could have a significant impact on the fees paid by dance schools.

Notably, the Copyright Board supposed in March 2015 that the Fitness Industry Council of Canada could speak to dance instruction when, of course, there are several trade organizations, dance service organizations, that could speak to dance. In January 2018, when tariff 6.B was re-examined, there was one provincial dance group that was at the table briefly, from the Canadian Dance Teachers Association, but it could not afford to continue in the full proceedings.

I absolutely recognize that the actions of the Copyright Board are not the purview of this standing committee, but I bring up the lack of representation of dance here, so that it is in the public record.

On behalf of the Canadian Dance Assembly I want to encourage the committee to focus on the fair remuneration of artists in its review.

To conclude, the Canadian Dance Assembly recommends that the Standing Committee on Industry, Science and Technology amend the Copyright Act in these two ways: one, refine the definition of choreography, so as to reflect the reality of the profession of dance in 2018, and two, re-examine the definition of educational institute to considered non-governmental training institutes such as dance schools.

Thank you very much for your consideration.

The Chair: Thank you very much.

We're going to move to Copyright Visual Arts, Mr. Yazbeck. You have up to seven minutes.

Mr. David Yazbeck (Administrator, Copyright Visual Arts): Thank you very much, Mr. Chair.

Thank you to you and the members of the committee for enabling me to take this opportunity to make a presentation to you this afternoon.

I'm a labour lawyer and a human rights lawyer here in Ottawa, which I say under my breath somewhat. I've been doing a lot of work with visual artists over the last decade or so, and recently I've become a board member of Copyright Visual Arts, so I'm here in that capacity.

We are a non-profit, artist-run, copyright licensing agency. We have submitted a brief to the committee with three recommendations that, in our opinion, will directly and significantly affect the livelihood of visual artists in Canada. I'm going to touch on those three recommendations right now. Of course, when everyone's done I'd be open to any questions you might have.

The three recommendations concern fair dealing, the exhibition right and the artist's resale right.

First of all, I will talk about fair dealing. You will have already heard earlier this summer from Access Copyright and other groups representing writing and publishing that the 2012 amendments to the act introduced an education exemption under fair dealing, but the act does not specifically define the scope of this exemption. Since then, educational institutions have established their own fair dealing guidelines, which are problematic for visual artists, and they have stopped renewing collective licences with Access Copyright under the guise of fair dealing. Although individual payments to visual artists are modest, artists rely on them as a regular source of income. Years ago, an artist could pay a month's rent with their annual royalty. Now they're receiving an average of $50 each a year. Over the last four years, royalties that artists collectively received from Access Copyright declined by 66%, from well over $500,000 to less than $200,000. In other places like the U.K., Australia and Scandinavia, limitations on fair dealing have been written into law that balances the rights of users and creators where artists' livelihoods are not at stake. We recommend that similar wording be used here that does not interfere with collective licensing. Our brief has further details on this, and of course I commend to you the Access Copyright brief submitted in the summer, which also has a detailed analysis.

The second issue concerns the exhibition right and 1988. As you all know, the act includes an exhibition right that allows artists to require payment for the exhibition of their works if the works are not offered for sale or hire. However, public museums and galleries are not legally required to pay artists if their work was made before June 8, 1988. That was the date on which the exhibition right was enacted and came into force. This date limitation has led to discrimination against senior artists and the estates of deceased artists. Some museums do choose to pay artists for earlier works, but most do not. Without stronger legal rights, senior artists are often excluded from payment, while their younger counterparts do not face these issues. In our opinion there are strong arguments that this discrimination could be a violation of the Canadian Charter of Rights and Freedoms. We therefore recommend that the 1988 date be dropped and that the exhibition right be extended to include all works subject to copyright, that is the life of the artist plus 50 years.

The final recommendation relates to the artist's resale right. The artist's resale right is a proposed royalty that a visual artist should receive each time their work is resold publicly through an auction house or a commercial gallery. If an artist sells or donates their work, and then it is later offered for sale again, we are asking that visual artists or their estates receive 5% of that sale price. It's a fairly nominal amount. Currently Canadian artists only get paid on the first sale of their artwork. This royalty would contribute significantly to the financial sustainability of an artist's practice. A writer or a composer gets paid as long as people buy their books or their songs; visual artists should also be paid if their artworks continue to re-enter the market and are sold again because they retain intellectual property in their work. The resale right is not a new phenomenon. It exists in over 90 countries around the world. The World Intellectual Property Organization, WIPO, is making efforts to make mandatory international adoption of the right. Currently it is voluntary for members of the Berne Convention Last year CIAGP, which represents visual arts copyright collectives internationally, passed a motion calling on Minister Bains and Minister Joly, when she was still Minister of Canadian Heritage, to adopt the artist's resale right and to support the adoption of a universal treaty at WIPO.

● (1540)

We urge you to join an international community that supports artists by adopting the artist's resale right.

I should note that in 2011, this committee was supportive of our efforts in this regard and encouraged us to pursue enactment of the artist's resale right through a private member's bill, which we attempted to do in 2013 but ultimately were not successful.

Thank you for your time. I'll be happy to try to answer any questions you have later.

The Chair: Thank you very much.

We're going to move to the Playwrights Guild of Canada, Ms. Sokoloski.

Ms. Robin Sokoloski (Executive Director, Playwrights Guild of Canada): Thank you for the invitation to come and speak.

My name is Robin Sokoloski. I'm the executive director of Playwrights Guild of Canada, an organization that for 46 years has worked to protect and promote playwrights. As someone who has worked for the last 10 years at Playwrights Guild of Canada, I know how challenging it is to both protect the work of Canadian artistic creators and ensure that the work of our artists is made accessible.

I appreciate your investment of time and consideration on the complexity of copyright, especially within this rapidly changing landscape.

I'm here today to provide insight on how artistic content, from the perspective of my members—over 900 Canadian playwrights—is impacted by what is currently in place in our copyright legislation. I'll do what my members do best, and start with a story.

About a year ago, one of Playwrights Guild of Canada's most prominent members, David Craig, was invited into a classroom to discuss his work. David writes plays specifically for young audiences, a genre of theatre that, when skilfully crafted, can create an enormous amount of positive change within a young person, amongst those characteristics being a greater sense of empathy and respect for others. You can imagine David's dismay when he walked into that classroom to see each student with a photocopy of his entire play in front of them, a play that is published by a Canadian publisher, Playwrights Canada Press, and a play that we at Playwrights Guild of Canada received government funding for to make sure it is readily available to the public.

I share this example with you today to articulate, as clearly as I can, the inefficiencies that have erupted given the ambiguity contained with our current Copyright Act, namely, the uncertainty revolving around one word, education.

Education was not defined when it was added as a purpose for fair dealing under the Copyright Modernization Act. This led to the education sector unilaterally adopting their own copyright guidelines. These copying guidelines were recently ruled as unfair, in both their terms and their application, by the Federal Court of Canada. However, the copying practices of the education sector clearly continue to persist. I know you are all well aware of these accounts, but what it means to Canadian playwrights is this. Since 2011, Playwrights Canada Press, the publisher of this book, has seen a decrease in revenue that it receives from Access Copyright of 86%. That's $28,000 in 2012 to $4,000 in 2017. This is a revenue source that is utilized to publish more Canadian plays.

Individually, my members have reported to me that a drop in income from book royalties has been catastrophic, an 85% reduction over five years, resulting in a loss of income of thousands of dollars. These real-life examples speak to the numbers you've been hearing repeatedly, such as the 600-million pages of copyright-protected content that is being copied for free each year by the education sector. This number does not include content licence through academic libraries or made available under open access licences. The 600-million pages that you keep hearing about resemble the pages in this book.

We all need to do our best possible job in educating the public on the value of the arts and our artists in this country. At Playwrights Guild of Canada, we administer amateur rights licences to schools that wish to perform our members' plays on their stages. We are finding more and more that we are having to chase down schools that have neglected to seek permission in advance of production. As soon as this is drawn to their attention, schools fulfill contracts retroactively without any difficulty. This is because copyright law gives Playwrights Guild of Canada the ability to ensure its members are paid for the use of their work.

However, I bring this to your attention, as copyright is clearly slipping from the forefront of people's minds when utilizing the intellectual property of others. There are a number of things that need to be done to generate a thriving environment for both artists and students in this country, many which I feel obligated, as the executive director of the Playwrights Guild of Canada, to see through. There are some recommendations—just two—that I bring forward to you to assist in fostering a healthier environment in which to create and learn.

First, Playwrights Guild of Canada believes the education category of fair dealing should be removed from the Copyright Act. Leaving this word up for interpretation has led to misuse. The trial judge on the York decision concluded that there is clear evidence that free copying under the education sector's copying policy substituted for the sale of works. Despite the ruling of the court, the behaviour of the education sector remains unchanged. There is simply no justification for treating Canada's artists as uncompensated suppliers. Removing this word “education” saves all parties involved from what seems like the endless litigation that is currently taking place.

● (1545)

Our second recommendation would be to promote the return of licensing through collective management organizations such as Access Copyright.

As I'm sure you've been made aware, after the act was amended in 2012, the education sector throughout Canada, with the exception of Quebec, abandoned collective licences and stopped paying mandatory tariffs. To put it plainly, as a national organization, my members' work continues to be licensed by the education sector in Quebec, while members' work in the rest of Canada is almost completely unlicensed.

Creating a solution that provides simple, inexpensive access to copyright-protected works while fairly compensating artists already exists in collectives such as Access Copyright. This solution can easily be promoted by you by harmonizing the statutory damages available to collectives.

Right now, only two copyright collectives, SOCAN and Re: Sound, can seek statutory damages between three times to 10 times the value of the tariff. Collectives such as Access Copyright, which is the collective that is set up to distribute royalties to my members, can now only collect the price of the tariff.

Making this change will have a huge impact, as it will deter infringement, encourage settlement and increase judicial efficiencies by reducing the endless litigation that I previously mentioned.

The measurement of good policy is the well-being of the community. The divisiveness that has been augmented by the changes made to the Copyright Act in 2012 does not make for a healthy community to work, live and learn in. The recommendations that I bring forward to you today are a win-win for both the artistic creators in this country and the students they inspire.

Thank you.

● (1550)

The Chair: Thank you very much.

[*Translation*]

We now move to the Société des auteurs et compositeurs dramatiques.

Mrs. Schlittler, the floor is yours for seven minutes.

Mrs. Elisabeth Schlittler (General Delegate for Canada, Société des auteurs et compositeurs dramatiques): Thank you.

Mr. Chair, ladies and gentlemen, thank you for inviting us to be part of your review of the Copyright Act.

My name is Elisabeth Schlittler. I am the General Delegate for Canada with the Société des auteurs et compositeurs dramatiques or SACD, and for the Civil Society of Multimedia Authors. You may howl with laughter at the acronym in French, which is SCAM. But since I have been saying and writing SCAM for 30 years, I am going to continue to do so. Joining me today is Patrick Lowe, a scriptwriter and a member of the authors' committee.

SACD and SCAM have had offices in Montreal for more than 30 years. The two associations manage the rights of their members, in Canada and abroad, over a vast repertoire of dramatic and documentary works, hence the two associations. The member authors have given them the mandate to negotiate, collect and distribute the royalties paid by the users of works from their audiovisual, radio and stage repertoires. They are both collective societies within the meaning of the Copyright Act.

SACD members create dramatic works; they are scriptwriters and directors. We also represent playwrights, choreographers, composers and stage directors.

SCAM represents the scriptwriters and directors of documentaries.

Together, SACD and SCAM represent more than 2,000 Canadian authors, both francophone and anglophone. They are the screenwriters and directors of television series, feature films, animations, shorts, online and radio series, together with playwrights and choreographers.

By becoming members of SACD or SCAM, these authors bring us their right to communicate their works to the public via telecommunications. For example, SACD's film repertoire includes features like Denys Arcand's *The Fall of the American Empire* and series like Luc Dionne's *District 31*. SCAM's repertoire is made of documentaries like Benoît Pilon's *Roger Toupin, épicier variété* and Pascal Gélinas' *Un pont entre deux mondes*.

In addition to the income it provides from royalties, SACD-SCAM negotiates on their behalf the conditions of the licences it will provide to television networks and digital platforms in order to use our repertoires.

In Canada, SACD-SCAM has negotiated licences for six traditional networks, 20 specialty channels, one pay-per-view channel, five digital platforms, one radio network, and an agreement for cable rights.

Because of the contracts that SACD-SCAM has negotiated with television networks in France, Belgium, Luxembourg and Monaco, with digital platforms like YouTube and Netflix, and because of its agreements with authors' associations in countries like Switzerland, Italy, Spain and Poland, our members are assured of receiving the royalties they are due for the use of their works in those countries.

SACD-SCAM's principle governing remuneration, specifically in the French-speaking countries of Europe, and also in Quebec, is very simple: authors must be associated with the entire duration of their works' economic life and they must be compensated for all the ways in which the work is used.

As a result, collective rights management continues to be essential, particularly in the digital age. The current review of the Copyright Act should encourage both the creation of works and fair compensation for authors, by providing collective societies with more appropriate tools.

It is time to counteract the effect of the many exceptions adopted in 2012 and to recall that the act is supposed to protect authors.

The government must put a stop to the theft of the intellectual assets that stem from the authors' work. It must send a clear message that all work must be paid for and that not everything can be obtained for free.

You will find our recommendations in detail in the brief we submitted in May. Here is a brief overview.

First, we recommend that the legal uncertainties surrounding the issue of the ownership of rights for cinematic works—actually, audiovisual works in general—be clarified. In our view, we need a specific acknowledgement that this is a collaboration between a number of co-authors, and a presumption of ownership on the part of scriptwriters and directors. That clarification will allow us to negotiate with Canadian networks and platforms for compensation on behalf of our member directors, who have been deprived of it up to now.

● (1555)

Like the majority of countries with a private copying system, we recommend that the private copying system in Canada be extended to audiovisual works and that it apply to all media that consumers use to reproduce them. Extending the system to audiovisual work would correct a situation that is impossible to justify, both to the authors and to our sister societies with whom we have agreements based on reciprocity.

Like the European Parliament, we recommend that all digital intermediaries contribute to the funding of cultural content, since they profit by streaming it, or providing access to it, for their subscribers.

We applaud the initiative by the Minister of Finance to find tax solutions for e-commerce. But we are asking that all the taxes paid by national companies also be paid by foreign companies, and a part of the money raised be set aside to fund Canadian culture.

Finally, we are delighted that, in the United States-Mexico-Canada Agreement, Canada is at last committed to extending copyright in Canada to 70 years. This reflects the extended use of the works and it harmonizes Canadian legislation with modern legislation abroad.

On behalf of the members of SACD-SCAM, we thank you for your attention. We are ready to answer your questions.

Thank you.

The Chair: Thank you very much.

[*English*]

We're going to go right into questions, and we're going to start off with Ms. Caesar-Chavannes.

You have seven minutes.

Mrs. Celina Caesar-Chavannes (Whitby, Lib.): Thank you very much.

I'd like to start off with Ms. Cornell. You started off by saying that you're going to focus on the music component of dance and not so much on the choreography component.

I want to help you increase the word count of choreography in the act, so I'm going to focus on that part of it.

I'm not aware of the Beyoncé example. I'm going to use an example from September 2018, a Forbes article that focused on video games and Epic video games. I will just quote the article:

> According to Chance the Rapper, one of the first artists to speak on the issue, Fortnite

—which uses dances in its video games—

> is unfairly profiting off of already named and recognizable dances without giving credit or compensation to creators. “Fortnite should put the actual rap songs behind the dances that make so much money as Emotes,” he stated.... “Black creatives created and popularized these dances but never monetized them. Imagine the money people are spending on these Emotes being shared with the artists that made them.”

Of course, as many of us know, “Epic Games [made] over $1 billion...from Fortnite since [it went online] in September of last year.” It's free to play, so they make most of their money through these emotes, which I'm sure my son knows about, but I don't quite know what they are.

You spoke about the definition being dated. How would we update the definition of “choreography” to fit this digital context, the Beyoncé example, and how would you amend or change the Copyright Act to correct what I've just described for dancers and choreographers, particularly in the digital context?

Ms. Kate Cornell: I think that by broadening the definition of dance to include digital platforms and possibly referencing video games, you could get at this specificity that you're talking about. I'm so glad that you brought it up because there is definitely attention to the fact that this is falling on racial lines and that choreographers from the black community are not getting recognition for this work.

Right now there are American choreographers in Fortnite. Again, I don't know much about the game, but people are spending, on average, $87 on movements to use in the game. That's money that should be recognized to choreographers.

The challenge in it is that currently you can copyright a piece of dance, a full choreographic work, but you can't copyright a movement. So, the question is this: When is it a dance, when is it a full entity, and when is it just a movement? That clarification would need to be addressed within the definition.

● (1600)

Mrs. Celina Caesar-Chavannes: Excellent.

I'm going to split my time, Mr. Chair.

My second question is for Mr. Yazbeck.

You spoke about the resale right, and you made good arguments for the resale right. How do you respond to the counter-argument that resale is unnecessary because artists can benefit from increased value of previous works by raising the price for subsequent work?

Mr. David Yazbeck: The short answer to that is that it's like the exhibition right: 1988 is a cut-off date and artists generally don't benefit from being paid for the exhibition of their works prior to then, except for a few organizations that do it voluntarily. And so it is with the resale right: unless there's a law that requires this, then artists will not benefit. The fact of the matter is that organizations that are out there engaged in reselling works of art are not interested in paying this, and so they need to be compelled to do that. Remember, it's 5%. It's actually a very nominal amount. If you look at the total cost of some of these exchanges, it's very minimal, and yet it has a huge impact on the life of an artist, particularly a financial impact.

Mrs. Celina Caesar-Chavannes: Thank you.

The Chair: Mr. Jowhari.

Mr. Majid Jowhari (Richmond Hill, Lib.): Thank you to the witnesses.

I'm going to focus the remaining three minutes or so on Mr. Yazbeck.

I have a question on the impact of the digital era we are going through and the impact it has on visual arts.

You may have heard of the recent unveiling of the new Rembrandt portrait created by a combination of facial recognition software, a machine-learning algorithm and 3-D printing, which has now created new artwork through artificial intelligence. What do you think is the impact? Who really is the owner or the author or the creator? Is it the machine? Is it the person who wrote the algorithm? Is it the 3-D printer? Who's going to own it?

Mr. David Yazbeck: I'm sure there are half a dozen Ph.D. students writing a thesis on that subject right now. I don't mean to be facetious. It's a very complex issue. I'm not sure that I'm in a position to give you a full response to that point right now. I think that certainly one of the challenges we face with the digital reproduction of art is tracking the ownership and tracking how people get paid, etc. I think a lot of organizations are working on improving that. But beyond that, there's blockchain technology that might assist in that regard. Frankly, I've heard the term, but I couldn't give you a very—

Mr. Majid Jowhari: In your opinion, should such art or such work even enter the public domain if the question of who the creator or who the owner is is still being discussed?

Mr. David Yazbeck: That's a good question. I'd want to think about that and get back to you on that.

Mr. Majid Jowhari: Okay.

Does anybody on the panel have some comments?

No? Okay. I'll give you 40 seconds back.

The Chair: Thanks. I will take those 40 seconds and will store them for later.

Mr. Albas, you have seven minutes.

Mr. Dan Albas: I'd like to thank all of our witnesses for being here today and specifically for sharing some of their viewpoints.

Ms. Cornell, I want to thank you for your analysis. I actually used to run a martial arts school, and next door was a ballet school. You commented on tariffs and the lack of representation. I do think having representation in the discussion around tariff 6.B is necessary, because the model that ballet schools operate under is much different from that offered by a commercial gym, particularly if you look at one like GoodLife Fitness, just with regard to the scale of differences and how they deal with things. Your points are very well taken on that.

With regard to choreography, I do realize there's a very valid point when you have an artist like Beyoncé, and work is being utilized without the artist being given due credit. Of course, that does come out in the wash so to speak, because with the Internet now we can analyze something and judge for ourselves.

As someone with a martial arts background, I know that martial arts instructors are very keen to commercialize where they can. We're taking ancient disciplines, repackaging them, and then calling them our own. There's some copyright that's available in terms of trademarks and whatnot to ensure that someone can market their so-called new discipline in a new way, but by the same token, you're taking movements that have been around for thousands of years. How do you repackage and repurpose, and then claim royalties on them? We've seen in martial arts how now people from right across the world can compare different techniques. If we started allowing people to copyright movements for dance routines, I'm pretty sure we would soon see people starting to claim copyright for their own martial art disciplines. What do you have to say in regard to that concern?

● (1605)

Ms. Kate Cornell: Again, as I said to Ms. Caesar-Chavannes, it's about the line between a movement—and I used the example of jazz hands—and an actual complete work of art with a recognized author attached to it.

I'm not necessarily saying we need to copyright individual movements and give royalties to individual movements, but there needs to be a recognition of—particularly in the case of Canadians—the work that they're doing. If their work is being appropriated, I'm not saying that they need to necessarily be paid for that, but they need to be acknowledged as being involved in part of this creation. As was mentioned in The Guardian, artists borrow from artists all the time, that's the nature of creativity.

Mr. Dan Albas: In many cases, there are certain styles that are taught, and someone will say that's been incorporated by someone else. The question is, “Where does it end?”

Ms. Kate Cornell: Exactly.

Mr. Dan Albas: We sometimes need to look at what we operate. I'm sure people in the dance movement would say that various artists at various times inspired them, but their work is new, and many other people would say you're just adding your own flourishes to it. I see that as a very dangerous slope—

Ms. Kate Cornell: It's very subjective.

Mr. Dan Albas: —because again, it's the human body. It's art in the moment, and I don't think anyone should be able to say that movement is mine, or that series of movements is mine, because that's basically martial arts, to a large extent.

We've heard some testimony that groups of artists would like extensions of copyright for works used in films and movies. Sound recordings that are used in those properties have repeat broadcasts and require repeat royalties. That's what some people have said.

Right now, for sound recordings, they're paid once for the actual work, and then, if it's rebroadcast in a movie theatre or streamed on a platform, that's separate.

A representative of the Movie Theatre Association, who was opposed to that, warned this could extend to dance performances, as well. He said that, currently, a producer pays a fee up front, and the choreographer is not permitted to exercise remuneration when the work is incorporated into a film. In essence, once the creators sell that work for a film, they're not entitled to more royalties later.

Would your association support changes to the law to require royalties to be paid to choreographers when that work is broadcast?

Ms. Kate Cornell: Yes, but I would really like to hear Patrick's and Elizabeth's opinion on this, because this is certainly not my area of expertise.

[*Translation*]

Mrs. Elisabeth Schlittler: For us at the SCAD, it is very simple: every form in which a work is used is subject to a payment for copyright. It matters little whether it is used once, twice or three times. Copyright must be paid for each time.

Take the example of a film that is first shown in theatres. As soon as it is subsequently shown on television, the author must be paid. Then, as soon as it is made available to the users of a digital platform, it is our position that the author should receive a royalty payment once more.

That is how we see things. Since I have an author with me, you can ask him and see what his answer is.

[*English*]

Mr. Dan Albas: Does any other jurisdiction offer that? I'm concerned about the complexity of tracking that, and also that it may push away a lot of legitimate activity that is being filmed here in Canada where you have artists, dancers, composers and sound producers who are compensated for that work.

However, if directors and producers feel there is going to be an ongoing, what they would consider a liability—and I do recognize many of you represent that as work that you've done—that's not how the current act reads, and that's not how the practice is in the community. People are remunerated for the original work not for the rebroadcasted work.

Is that something we're looking at here, as well? To me, that's where the complexity comes in. When things get too complex, oftentimes people make business decisions that aren't good for the ecosystem long term.

● (1610)

Mr. Patrick Lowe (Scriptwriter and Member, Authors' Committee, Société des auteurs et compositeurs dramatiques): There's no problem in Quebec with respect to all the rights paid by the channel.

[*Translation*]

It works in Quebec, whoever is showing a work. We have contracts in which it is set out. Our rights are reserved. SACD is healthy and is very good at negotiating very good deals with the owners of TV networks. Everyone agrees with the system, which is why the system works.

[*English*]

Mr. Dan Albas: I guess that works in that specific case.

However, what we've heard from many witnesses is that in their space, where they're operating outside of Quebec, in some cases they may write into the contract between the company and the person who is producing the work, whether it be a choreographer or a sound producer, for them to be paid.

Again, we're talking about the status quo right across the country. That's why I'm asking that, if we make it mandatory every time something is streamed on a platform like Netflix or CraveTV, there is going to be an extra cost, that may make a decision for future work to not be done in Canada. Those are questions that I have as well, because then we don't have an ecosystem where people can find work.

I appreciate that there seems to be a different way of doing it in Quebec, but we're talking about right now, right across the country.

Ms. Robin Sokoloski: Well—

The Chair: I'm sorry. We are quite over time. We can come back to that.

We're going to move to Mr. Masse.

You have seven minutes.

Mr. Brian Masse (Windsor West, NDP): You can finish the answer.

Ms. Robin Sokoloski: I was going to add that at Playwrights Guild of Canada, in terms of ensuring access, we're being proactive in terms of our work being done on a digital platform. What's happening now is that a lot of playwrights are having their work filmed to make it more accessible beyond the stage. We went ahead and talked to a lot of agents and different organizations on an international scale, to have that conversation to ensure that when a play is filmed and it's distributed in a different way that the playwrights continue to be paid.

I think we all need to work together a little better to ensure that we're putting the tools in place to ensure we can make the work accessible. I think it has more to do with ensuring that the copyright can be obtained, the licences can be obtained, and not necessarily the cost of it.

Thank you.

Mr. Brian Masse: I play Fortnite, so I'm familiar with emotes, on that and other games. It's an interesting thing that's emerged.

If you're not familiar with emotes, they usually take two to five seconds, depending upon which game you're playing. However, they're not usually germane to the game. They're part of an expression component, which people use to play online among themselves, often in standby rooms or in waiting period times before the game; or, it's activity to express yourself during the gameplay. It's not only Fortnite there are hundreds of games that have emotes.

The question that I have is, where is the line drawn for any of these things? They are purchasable, but often it's game credits. With some of those game credits—and we ran into a problem to some degree and it was cleaned up by Battlefront—it almost became like a lottery. It was criticized for loot boxes, and other things like that, when you purchase upgrades for weaponry, for costumes, for emotes.

Some of the emotes are dance moves, and others are expressions or talking. There are phrases that are very common in pop culture, whether they be from movies or other types of things that have become generally acceptable in terms of use.

Do you have any idea as to where the line would be drawn on that and how the compensation would take place? Again, you don't have to spend money to get emotes. You can play the game and you get online credit currencies for that.

How would you compensate for that? If it is a three- to five-second thing that's also done in the social context of using the game —not the gameplay itself—how do you restrict that? In a virtual world, in these rooms and elements where the emotes are used most prolifically, it's the same as if we were in the room here and you did a thumbs-up.

There are everything from dance moves that go back to cultural expressions, whether it be Slavic or Russian and other types of eastern European kicking out your feet type of things, to skateboarding things that came about in the heyday of Tony Hawk and the types of moves they did with regard to the emergence of that culture.

How do you quantify these, and would you distinguish the difference between using them, again in a virtual setting, before the game, which is when you're communicating and you're part of that culture where you know that all your expressions are monitored and shared? That would be no different from the real world.

● (1615)

Ms. Kate Cornell: To my knowledge, no jurisdiction is currently offering royalties on these movements, these emotes that are happening in video games. The point I was trying to make is that the definition of choreographic work needs to be a little more flexible and not so much focused on narrative ballet in the Copyright Act, so that five or 10 or 50 years from now, there is the potential to have this conversation when Drake creates a phenomenal dance sensation and suddenly copyrights it and then we go down this slippery slope.

We're not there yet.

Mr. Brian Masse: I don't know how I would think about it, but there are ones like the rocket rodeo, where the guy is riding a rocket. It reminds me of an older movie from the 1950s or 1960s, where the actor gets on the nuclear bomb and rides it. Somebody might remember it.

That's what we're talking about. For me, the emotes triggered the memory of that movie. At the same time, how do you quantify that emote, if it is recognizable? That might lead to the musician or the choreographer or the artist who did it, and that might lead to the purchasing of their song or their dance or whatever.

How do you square that process? I'm just curious. What's the thought from the industry itself?

Ms. Kate Cornell: When Beyoncé liberally borrowed from De Keersmaeker, the industry celebrated. There was a lot of attention on esoteric contemporary dance, more interest and probably exactly what you said; more tickets purchased and more focus on that artist.

Mr. Brian Masse: It really is new. I think in the video game industry, there's a bigger.... Once again, these packages are part of Loot Crate, part of a social identity that you create online. It's everything from the weapons you use, to the clothes you wear, to the expressions you have.

The Chair: Thank you very much.

I have a strange urge to go out and play a game now. I feel I'm being left out.

We're going to move to Mr. Longfield. You have seven minutes, please.

Mr. Lloyd Longfield (Guelph, Lib.): Thanks for all the presentations today.

Ms. Cornell, the Guelph Dance Festival just had their 20th year. It's part of the Fab 5 festivals in Guelph where we celebrate different arts and cultures.

I think of the small festivals like that and the performers within those festivals; how would they normally go about copyrighting what they've created and what they're putting on public display? Is it through doing a video of themselves? What's the mechanism for protecting their works?

Ms. Kate Cornell: There isn't much currently, to be honest. I absolutely adore the Guelph contemporary dance festival. I lived in Guelph for a couple of years so I'm really glad you brought it up.

A contemporary dance artist, choreographer or company would go into a contract with the festival, for example, to present the work. If the work becomes a success—and in Canadian dance that means we get to see maybe five shows in two different cities, we're really talking about small scale here—that means that everything is decided on a contract basis with that presenter. If another presenter wants to purchase it and, let's say, it's going to be performed by different dancers in maybe a slightly different context, there is a very small chance that a royalty could be paid, but really we're only seeing royalties being paid 99% of the time in ballet.

That example in contemporary dance doesn't happen very much.

● (1620)

Mr. Lloyd Longfield: You might have just answered my follow-up question, which is indigenous dance, and whether indigenous people are able to protect what they've had for centuries.

Ms. Kate Cornell: To my knowledge, and I am certainly not an expert in indigenous dance, that is more of a verbal passing on of the legacy of the dance—

Mr. Lloyd Longfield: Sure. It's their tradition.

Ms. Kate Cornell: —and there are knowledge keepers who keep those dances. It's quite a different system.

Mr. Lloyd Longfield: That's great. Thank you.

I'm sharing my time with Mr. Lametti.

Ms. Sokoloski, on your website you talk about the three lenses you use; promotion, protection and pluralism. The protection piece is what we're talking about today, and developing mechanisms.

Is there an example of a mechanism that you've developed that is being used, or an area that legislation could help to cover, other than what you've mentioned in your presentation today?

Ms. Robin Sokoloski: Playwrights Guild of Canada's core activity is a triennial contract with the Professional Association of Canadian Theatres. The foundation, and the reason that this contract and those standard agreements continue to hold any weight, is because of the copyright legislation that is currently enacted. We've been able to negotiate a royalty of 10% of the box office for any time that a play is produced on stage, which is envied by other countries.

Mr. Lloyd Longfield: That protects the smaller people, again, who might not otherwise have access to getting the protection.

Ms. Robin Sokoloski: Yes.

Mr. Lloyd Longfield: We heard in a previous testimony that this is one of the big issues out there.

Ms. Schlittler, on the European side, we've talked a bit in a previous meeting about the EU standard that's coming through, chapter 13. It sounds like you have more experience with the EU. Do we have more to learn from them? Are they doing something we should be looking into in more depth?

[*Translation*]

Mrs. Elisabeth Schlittler: I have to disappoint you and tell you that I deal mainly with Canada and Quebec. I have a family relationship, if you will, with SACD in France, but I am not really able to tell you what is happening in Europe. I know the broad strokes, but my bailiwick and my concern is what is happening in Canada.

[*English*]

Mr. Lloyd Longfield: Okay. Very good.

[*Translation*]

Mrs. Elisabeth Schlittler: I can tell you about the decisions that were made about digital, and you know about them anyway. But I have no idea how those decisions will be implemented. In any event, the agreement has to be ratified in January.

[*English*]

Mr. Lloyd Longfield: Terrific.

[*Translation*]

Mrs. Elisabeth Schlittler: I can talk to you about the situation in Quebec, but not really about the situation in Europe.

[*English*]

Mr. Lloyd Longfield: Okay. Thank you.

Let's move over to Mr. Lametti.

Mr. David Lametti (LaSalle—Émard—Verdun, Lib.): My question is for Ms. Sokoloski. In your initial example, of your playwright going in, do you know the school board in question?

Ms. Robin Sokoloski: TDSB.

Mr. David Lametti: I have seen a number of the fair dealing policies in a variety of school boards, universities and colleges across Canada. I don't think there's a single one that says you can copy a whole work.

Ms. Robin Sokoloski: No.

Mr. David Lametti: The example you've given is probably at least a copyright violation—

Ms. Robin Sokoloski: Yes.

Mr. David Lametti: —and most school boards and universities will put into a place a group that works with teachers. It's also quite possible that they actually will pay the fee, and your author won't know until the end of the year when he or she gets a cheque from the collective society, because it won't be itemized.

I want to say, for the record, that there actually is a fair bit of certainty with respect to the various standards for educational fair dealing. In fact, it was Copibec and Access Copyright that put forward these guidelines in the 1990s and 2000s in the posters that they had about photocopying machines. In fact, they're quite similar to what you now see in the university, college and school board fair dealing policies.

Ms. Robin Sokoloski: I brought that example forward for a couple of reasons, firstly to share what we feel is the current atmosphere within the education sector. It's a slippery slope.

● (1625)

Mr. David Lametti: Is that not misleading to use that example? The example led us to believe that you could copy a whole work under fair dealing policies, and that's actually not the case in any institutional organization across Canada.

Ms. Robin Sokoloski: That's very true. Under the education copying guidelines, it's 10%, or a whole chapter. But if this play was in an anthology, they could potentially photocopy the entire thing. Under the guidelines created by the education sector, they could indeed copy the entire play.

Mr. David Lametti: And Access Copyright did have a role in formulating and developing those guidelines—

Ms. Robin Sokoloski: Absolutely. That is why I—

Mr. David Lametti: In that sense, they were templates.

Ms. Robin Sokoloski: Yes, but the fact that the tariff is currently not being paid excludes the fact that all of a sudden, those rights holders are not being paid for the use of their work, because the tariff is not currently being paid because the work is being copied under those copying guidelines that have been created by the education sector.

Mr. David Lametti: But the education sector is purchasing, as you know, a variety of other kinds of materials, including, in all likelihood, copies of that play in question.

Ms. Robin Sokoloski: Certainly. Yes, they are purchasing it. The Playwrights Guild of Canada has a bookstore called the Canadian Play Outlet and they will purchase one copy of the play digitally and then won't purchase any preceding licences for additional copies of that play.

Mr. David Lametti: If they purchase a digital copy of the play they're probably purchasing a licence to use the play.

Ms. Robin Sokoloski: No, they're purchasing one copy of the play. There is definitely an option to buy several copies from us to license it for photocopy. They are not doing that. That is what's happening right now.

Mr. David Lametti: Okay, thank you.

The Chair: We're going to move on to Mr. Chong.

You have five minutes.

Hon. Michael Chong (Wellington—Halton Hills, CPC): Thank you, Mr. Chair.

I want to talk about the whole issue of textbooks, Madam Sokoloski. It is clear that there has been a precipitous drop-off in educational publishing revenues, both from the evidence I've read in witness testimony heard by this committee and from research our analysts have done. It's pretty shocking how much the educational publishing sector has been affected by the 2012 copyright law. You mentioned 600 million pages being copied without remuneration for authors. There has been the court decision with York University that still has to be put into effect. You combine all those things and it paints a clear picture that the 2012 changes that included education under fair dealing have had a profound impact on the industry.

Your recommendations and those of other witnesses are clear: Remove education from the fair-dealing provisions in the law.

I want to dig a little deeper into what's going on. I was shocked to find out that our local school board no longer purchases textbooks for high schools. I was completely floored. I don't know how you go through high school without a textbook. I have three young children in school. In primary school they received handouts, and they end up at home at the bottom of their backpacks combined with the dribbles of drink boxes, running shoes, sweaty gym clothes and all that stuff. Trying to make sense of it all sometimes is frustrating.

I went through school with textbooks and those were the core of how I learned, so I was astounded—apparently it's not restricted to our local school board. It's many school boards across the province that no longer purchase textbooks. Then I come to this committee and find out about including education under fair dealing and about the precipitous decline. I have been thinking about this for a number of weeks.

Are the secondary and post-secondary sectors not purchasing textbooks because of the costs, or is this a new fad they are embarking on? Obviously the loophole or the change to the 2012 law allowed them—and their interpretation thereof allowed them—to not purchase as many textbooks as they did prior to the 2012 change. Setting aside that change in law, what is driving this precipitous decline in the purchasing of textbooks in high schools and universities? Is it to reduce costs for students and the system, or is it because of a fad that we don't need textbooks and we'll just assembly multimedia online materials and that's how we'll educate students?

Ms. Robin Sokoloski: I don't want to speak on behalf of educators because I'm not one, but I would certainly say that if you go through a course pack, you will find several Canadian authors included who have not been compensated, and haven't received any royalties for their work in those course packs.

Hon. Michael Chong: I went to U of T and we got course packs for certain courses that were provided by the professor. You'd go to the bookstore at St. George and College Street, or one of the local photocopy shops and you would get this course pack. At that time, were the authors of those articles remunerated for those course packs?

● (1630)

Ms. Robin Sokoloski: Yes.

Hon. Michael Chong: Are they today?

Ms. Robin Sokoloski: In our opinion and based on the research that has been done, no.

Hon. Michael Chong: What do you think is driving this precipitous decline in revenues?

Is it cost savings or is it a new fad in education, where people are moving away from textbooks and using online materials and other multimedia materials to educate?

Ms. Robin Sokoloski: It boggles my mind as well. At this level of education, I think that we should be encouraging the growth of knowledge, otherwise it's going to be on a steady decline, in terms of the quality of the work that is being provided to our students.

I don't have an answer for you because I'm not coming from that perspective.

I would say that there is also certainly something that is happening that I am concerned about, as a representative for artists. There is an entitlement for free content and that everyone should have access to it. Access doesn't necessarily mean free. I think we just need to all work together better, to find ways to ensure that access is available, so that those rights can be obtained.

I would like to think that it's not a matter of cost. I think the model of iTunes proves the fact that if you make something available that's quick, so that you can just click a button, people are willing to pay for it. The optimistic side of myself hopes for that.

The Chair: We're going to move on to Mr. Sheehan. You have five minutes.

Mr. Terry Sheehan (Sault Ste. Marie, Lib.): Thank you very much.

Mr. Longfield began to ask a question that I was going to ask about first nation dances, as we pursue how we deal with first nations' copyright. We haven't done a good job of it in the past. We're trying to wrap our heads around it. We know that there were some examples of various groups that are more susceptible to issues and one of them would be the first nations.

If you think about, back in the black and white TV days, there were a lot of first nations dances being used in various westerns. There would have been absolutely no compensation or permission asked for it, as well.

I appreciate your comments as we delve into that. We do have some really good dance people, as well. Richard Kim in Sault Ste. Marie is world renowned and Tanya Kim is his sister. There are a lot of other artists.

We talked about different forms of technology that have been thrust upon us in different situations. We were discussing the photocopier before it could be utilized in a way to photocopy entire volumes of works. That used to be a new technology for a grey-haired guy like me. It was never possible before. We saw a lot of that happening in the past. I think there are more policies, items and laws associated with that nowadays.

There are new technologies, like Spotify, Google, a number of other Apple products and whatnot. Could you describe how they have affected your organizations? Is it better now or is it worse compensation for your particular group?

Does anyone want to start?

● (1635)

Mr. Patrick Lowe: I am in Quebec. Are you talking about iTunes and Netflix especially?

Mr. Terry Sheehan: Any one of those new platforms that are on the Internet, yes.

[*Translation*]

Mrs. Elisabeth Schlittler: I can help Mr. Lowe a little.

For a management society, the technology in itself is not the problem. The real question is the need for legislation that allows us to negotiate with the owners of the technology. In Europe, to go back to that example, we have agreements with Netflix and with other platforms, including iTunes. The technology is not the problem. We need a legal lever that allows us to negotiate with all the owners or inventors of new technologies. With a level of that kind, the sky is the limit for us.

We were talking earlier about the new platforms that are using or distributing works. For a collective society, it is always possible to go looking for royalties. For us, that is not a problem. I may sound a little smug in saying so, but we really believe it. Everything is possible if we are given the possibility of doing what we have to do.

[*English*]

Mr. Terry Sheehan: Would anyone else like to comment on that?

David, I have a specific question for you. You mentioned there was a charter challenge that was in place based upon senior artists, as you called them. Where is that charter challenge? Is it just being thought of? Is it in the process? What are you basing your argument on?

Mr. David Yazbeck: There's no actual legal challenge on the go. It's just a thought or a consideration or an analysis. The essence is that the legislation clearly draws a distinction between artists whose works predate 1988 and artists whose works don't. That on its face may not be considered discriminatory, but the fact of the matter is that it is highly likely and it's logical that works created before 1988 are more likely going to be works of older visual artists.

As a result, this is an arbitrary line. Lawyers don't like to be absolute like this, but it's probably one of the most arbitrary lines you can draw. There's a date that's fixed in 1988 and if you created something before that, you're out of luck. Most of those people are likely to be older. Or it will be their estates that are losing out on that benefit as well.

Mr. Terry Sheehan: Thank you very much.

Mr. Albas, you have five minutes.

Mr. Dan Albas: Thank you, Mr. Chair.

I'll actually pick up with Mr. Yazbeck on exactly that, this artist resale right. It's not a new idea. Earlier in your presentation you did talk about the exemption being arbitrary. You just mentioned that picking a date in the 1980s was simply drawing a line in the sand, and that there are some intergenerational issues.

My thinking is that you're asking to put through an artist resale. First of all, it's almost impossible to authenticate a piece of art made 100 years ago. I guess we would apply the 70 years past the life of someone to say that they would receive some remuneration on it. You'd still have issues with authentication, with determining who actually created a piece of art, and with who the money should go to if they don't have an estate or any living children. Wouldn't we have the same intergenerational issues that you have right now with this other issue? It seems to me that this is the only way the government could say, with respect to a resale, that from this point on we will then make sure that 5%—or whatever the number ends up being—will go to the artist, their estate or their family.

How are we going to avoid the same issue?

Mr. David Yazbeck: There are a bunch of pieces in there. First of all, the question of authentication is a practical issue, and it could be a difficult issue, but to me it's a different issue. It's not an issue of principle that we're talking about here.

Second, in my opinion, the absence of the artist resale right also tends to have a negative impact on older artists. I will give you an example. In a lot of cases, as artists' careers develop, they become more well-known and their art becomes more valuable. Yet even though their art is more well-known and more valuable, they do not benefit from that because it was sold 30 years ago for $20 and now it's selling for $50,000. There are many examples in our brief.

I don't see that as resulting in discrimination because the resale right does not take into account how old you are, and at what point you created the artwork. According to our proposal, when it gets resold at some point down the road, we will gain something from that.

● (1640)

Mr. Dan Albas: I have a family member who has passed away, and I still have his artwork at my office. Your argument sounds very attractive, but then again, how does government institute something that is fair to everyone? Being practical is not a side issue.

If you cannot practically say that this person created this piece of art at this time, and then be able to trace that back so the person is compensated, we are going to have the same issues we see with this other issue. You're claiming there's an intergenerational unfairness when someone exhibits work that was created before the 1988 line versus after.

Mr. David Yazbeck: I don't see that as being a discriminatory problem. You're correct to point out that it would seem to me that the older a piece of art is, the greater the difficulty with authenticating it. I understand that, but when I was talking about the exhibition right, that's a very bright line, that date in 1988. Here we're talking about a whole host of other factors that might affect the authenticity of a piece of a work of art. It's not according to a bright line in a statute that Parliament has passed. It's according to those other factors. That's why I don't see that as being a charter-offensive problem. It could still be a problem, but it's not charter-offensive.

You referred to the government getting involved in assessing this and determining authenticity. The proposal that we've made is for the government to not be involved. It would be a copyright collective that would administer this system.

Mr. Dan Albas: I would suggest that CRA has had issues where people donated wonderful pieces of art, had them priced and whatnot, and then there were all sorts of issues with authenticating whether or not that was the correct price. Ultimately, you're asking government to actually enforce a policy that will benefit the artist, so I do think it's important to know the mechanics of how this will work.

With regard to the issue of resale, how are people supposed to track this? For example, if I were an artist and I sold a piece to Mr. Lametti—with his great sense of artistic talent—and then in 20 years he passes away and one of his descendants has that piece of art, which they then sell privately, how then am I supposed to benefit from that? Again, it doesn't go through a brokerage house.

We're placing the onus on the individuals who receive it. Sometimes they don't know what to do with it—just like some people who have a grandfather or grandmother who passes away with a whole gun collection. They don't know where it came from and now they have all these laws and requirements they're supposed to follow.

Can you explain to me how government is supposed to keep your proposal consistent with its intent, but carry it out in a practical way?

Mr. David Yazbeck: To be clear, the proposal that we've made is that government is not involved in the actual operation of the artist resale right. Secondly, the proposal that we made does not apply to private transactions like you just mentioned. It only applies to public transactions through an auction house or a commercial gallery.

The third point is that on Wednesday representatives of CARFAC and RAAV—which together represent visual artists across this country; CARFAC being outside of Quebec and RAAV being within Quebec—are making a presentation. I would encourage you to ask the same questions of them, particularly April Britski who is the executive director of CARFAC. She will be in a better position to respond to them than I am, being relatively new to this.

● (1645)

Mr. Dan Albas: I do realize that, but you come to a parliamentary committee with a suggestion, so I would hope that you would be able to speak to some of these things.

It will be the government that will have to enforce this resale right between different brokerages and different auction houses. I will tell you, there are a lot of issues relating to FINTRAC and to all these other things—onerous rules that are thrown onto people with the best of intentions that are not always done. Many of these federal rules are probably being circumvented right now, in large part because of the difficulty of keeping up with them.

I respect the fact that you can't speak to some of these practical concerns. I will ask some of those questions, but it's really incumbent upon a proponent to come forward and answer these practical questions if they want to see their proposal taken seriously.

Mr. David Yazbeck: I appreciate that. I'll go back to the first point I made in response, which was that, in my opinion, the inherent validity and importance of the artist resale rights is a distinct issue from the practical problems of implementing it. We're here to advocate for artists and the resale right.

The Chair: Thank you very much.

We're going to move to Mr. Lametti. You have five minutes.

Mr. David Lametti: Thank you.

Mr. Yazbeck, help us define the parameters of potential resale rights. Is it only works of visual art? You're not extending it to books, for example, or things like that.

Mr. David Yazbeck: No.

Mr. David Lametti: Will it apply to traditional format or also digital?

Mr. David Yazbeck: I know we had a brief discussion about that not long ago. That's a question that one of your colleagues here mentioned. I apologize, but I'm not in a position to respond to that in any detail. I would think that it would be applicable. Practically speaking, I would defer to my colleague, Ms. Britski, who will be here on Wednesday.

Mr. David Lametti: Okay, we'll remember that. Do try to give it some thought, though.

Mr. David Yazbeck: Yes, I will.

Mr. David Lametti: Is there also potential again to respond to some of Mr. Albas's concerns? According to the Berne Convention, you don't currently need any formal requirement for copyright. For the traditional right, which is exhausted on first sale, we could probably live with that—no registration requirement. That being said, we do have an easy place to register—in CIPO, the Canadian Intellectual Property Office. Might it be part of the solution to register an artistic work in order to benefit from the right of resale?

Mr. David Yazbeck: It may be. That's something that I would certainly want to give some thought to.

Mr. David Lametti: I'll go back to Ms. Sokoloski.

You're well aware that the Supreme Court of Canada had pronounced on fair dealing with a 9-0 decision in 2004. This made it immediately clear to the whole educational sector that it was quite likely that the collective societies—Access Copyright and Copibec—were actually charging for a portion of work that they didn't have a right to charge for because it fell within the right of fair dealing. That was settled in 2012 before the act came into place, in which using research and private study under fair dealing.... The Supreme Court of Canada held virtually all of the copying—and Access Copyright also agreed in much of the settled part of the claim moving up to the Supreme Court of Canada—that was happening in the K-to-12 sector was, in fact, fair dealing.

Even if we were to eliminate the word “education” from the fair dealing act, what should we do with the Supreme Court decision?

Ms. Robin Sokoloski: I think the two recommendations that I brought forward go hand in hand. If we did exclude education from fair dealing, then I think we would need to go back to how it was with the collective. We would need to create a better mechanism, which we had before 2012 with Access Copyright and other collectives, to have Access Copyright work with the arts community to define what that needs to look like.

Mr. David Lametti: And to work with the educational sector, which is something that Access Copyright and Copibec never wanted to do before.

Ms. Robin Sokoloski: Everything I recommended is basically urging everyone to come back to the table.

Mr. David Lametti: What do you think we should do with the very legitimate purpose of fair dealing, which is to make certain small amounts of copying available for the educational sector? There's a fair argument to say that we're just working that out. Over the course of a number of Supreme Court of Canada judgments plus the 2012 changes to the Copyright Act, we finally have come to terms with what fair dealing means. This is in fact part of the spirit of the Anglo-American copyright system that we have in place in Canada. The most creative countries in the world, like the United States, Israel, South Korea and Singapore, all have regimes that are wider than fair dealing. They have fair use.

● (1650)

Ms. Robin Sokoloski: Yes.

Mr. David Lametti: I'd take fair use in a minute, if truth be told. There's a good argument to say that now we finally have a position such that the educational sector and artists can actually work this out in good faith moving forward, perhaps even forcing some of the collectives to come along with them, and along those same terms, and let's just see how it works out. It's too early to tell. There was overcharging before. There's been a reaction now. Let's see how it goes moving forward.

Ms. Robin Sokoloski: Because Access Copyright represents our members, we work very closely with them. There is another side to the work they're doing, on the innovation side with blockchain technology, to ensure that there is authentication with the work so that the resale right could potentially move forward, and there are ways to ensure that that kind of information is put in place. As I said, all of these recommendations I put forward are for all of us to come together around the table and to have these conversations so that we can work together around innovation to decide how best we can move forward. Right now there's so much divisiveness that it's impossible. That's what's creating the real problem, I think.

Mr. David Lametti: Okay. Thank you.

The Chair: For the final two minutes, Mr. Masse, go ahead, please.

Mr. Brian Masse: Thank you to our witnesses.

I'm still stuck on emotes. I'm thinking of copyrighting for question period the facepalm, rolling eyes and righteous indignation. I think I could make a lot of money with those copyrights if I could.

I'm concerned about the timelines the committee has with regard to us issuing a report, it getting to the minister, the minister getting back to us, and then a potential suggested change of legislation, as you've mentioned, which would require another process, and then it would have to go to the Senate.

Maybe quickly with the minute you have left, can you tell us if there is anything in between to be done? For example, the Copyright Board has been one of those things. What's low-hanging fruit to get at right away, that wouldn't take a year plus, something that we could get done?

Ms. Robin Sokoloski: I think something that could easily be done is the harmonization of statutory damages. As I mentioned in my presentation, currently other collectives such as Access Copyright can only collect the tariff. There are already other collective organizations, such as Re:Sound and SOCAN, that have the ability to collect three to 10 times more. I think that could be a quick change.

Mr. Brian Masse: Okay. Thank you.

The Chair: On that note, I want to extend a gracious thank you to the panel for coming in.

[*Translation*]

Thank you very much for your presentations.

[*English*]

They were great. They have given us lots of stuff to think about as we've been going through this for the last year.

We're going to suspend for a quick two minutes. Then when we come back, we'll stay public and we'll go through your motion.

We'll suspend for a quick two minutes.

● _____ (Pause) _____ ●

● (1655)

The Chair: I have a couple of housekeeping pieces. This Wednesday there will be a room change. We'll be in room 430.

Second, I need a motion that the deadline for the receipt of briefs in relation to the statutory review of the Copyright Act be December 10, 2018.

Some hon. members: Agreed.

The Chair: Excellent.

Mr. Albas, the floor is yours.

Mr. Dan Albas: Thank you, Mr. Chair.

Just again, for the people who are watching this, the motion is specific. It says:

> That to assist in the review of the Copyright Act, the Standing Committee on Industry, Science and Technology requests Ministers Freeland and Bains, alongside officials, to come before the committee and explain the impacts of the United-States-Mexico-Canada Agreement (USMCA) on the intellectual property and copyright regimes in Canada.

This is an opportunity for the government to discuss its negotiations. Obviously, this does directly impact much of the work because it commits the country to certain legislative changes at some point, so it certainly should be factored in with our discussions on copyright. There's no time written into this, although it obviously would behoove the committee to hear it so we can include or make reference to the testimony of the ministers and the officials in the report.

I hope that members across the way find this a reasonable suggestion. There are a number of different changes directly to our work, and this would allow the incorporation of that, and to have some accountability too, and some learning. If there is a movement or a particular policy that's good for Canada, it gives the opportunity to government to be able to say why, and for us as parliamentarians who are doing a very labourious, intensive study to be able to incorporate some of that knowledge.

The Chair: Thank you very much.

Mr. Longfield.

Mr. Lloyd Longfield: The intention of the motion for us to understand what's being negotiated or has been negotiated to date definitely has merit, but I think, in terms of the deal, we now have to see what the Americans are going to come back with in terms of ratification. They're going through their mid-terms and their 21-day review. I think there could be some impact on intellectual property and copyright as we're going through our study.

The timing for bringing some officials in for a technical briefing would have to be after we know what it is that we're talking about in terms of the deal. So far, we're still going through ratification.

I'd also be interested in the CPTPP, which is going back to the Senate after we vote a little bit later on this week—and we have CETA.

I think the intention of seeing what the international impacts will be, especially with the United States, is good, but I don't think we're ready. I think we should be plowing through this study we're doing until the end of the year, as the committee had already planned.

● (1700)

The Chair: Thank you.

Mr. Masse.

Mr. Brian Masse: I think the motion's extremely reasonable and very fair. First of all, I can clear up a couple of things that Mr. Longfield mentioned. I was in Washington the day the tentative deal was done. I was asked Mr. Easter, for the Canada-U.S. parliamentary association, to be there with Mr. MacDonald as part of a bipartisan group, the Canada delegation for the Border Trade Alliance meetings. It was an interesting time to be there.

The U.S. decided to table its text immediately. It usually has 30 days to table its text, to clean it up, and that's why some of the text had some errors in it, where Mexico and Canada were reversed a bit and so forth, but they did that so they could get into their public discussions, and that's what's going to go before Congress.

That's what's in the process right now, but that's separate and independent from us. Nothing can change in that process for the final deal. They will present reports to Congress and the Senate will look at it too, but nothing can change at all about the deal. The deal is exactly how it's been tabled in the U.S. There can be some amendments to some grammar and so forth, but nothing changes to the substance of it whatsoever.

Even with all the hearings that are happening—you saw most recently the Governor of Kentucky expressing some concern—those are so they get feedback from the public so that Congress members have an understanding when they vote. That's the vetting that they have for it. I would say that what we would do here would be similar to that. Their parliamentary process for vetting is that different committees will come back to Congress, whereas for us the minister comes forward. Having a meeting on that certainly would be helpful because it would also eliminate some of the confusion around some of the clauses that we have to decide upon in Parliament.

I would think this is a very reasonable approach. I think it's almost unreasonable for us to continue the study without having this discussion. It gets to the point where we are reporting on something where the rules have already changed without us even having a commentary about that. It would be, quite frankly, absurd for us to pretend that we just are going to spend a year and a half and all this public money and time on a study about something that our number one trading partner...and our relationship is so germane. Even before this we've had testimony here from people talking about what the U. S. law is and the consequences to Canadian artists, cultural industries and so forth, whether we get a deal or not. And then the deal itself may not go through this particular Congress. We don't know.

What we do know right now is that we're being asked to do a report based upon the things that are in front of us, and one of them is now this potential deal between Canada and the United States. I think it's reasonable to have a meeting with the minister to get a lay of the land and have our report have a bit of commentary on that.

If we're going to have some commentary on it, I'd rather include the minister and I think it would probably provide a great opportunity for some of those questions to be clarified.

I know this doesn't include, for example, automotive but because we're doing this study it's very germane. I think that's why it gives it a little more merit in terms of their seeming to be so concerned about the politics behind this. I think we should have a separate meeting for automotive on it. I've gone through it and I've had trade lawyers go through it and there's a whole list of qualifiers in the automotive, which is very complex. But that doesn't have anything to do with what we're having right now. We're not doing an automotive study right now. We are doing the copyright review, and we just entered into an agreement that's going to change that. I think it would be a great opportunity for that to be part of what we submit. Sorry to go on, but I think it is important.

We're going to submit something to the minister but he's going to then have to respond and get something back to us and maybe do something before the Parliament ends. The timeline is constrained on that, so I think having that element as part of it would be most beneficial.

Having it without it, I assume would be odd. I think it would be the first thing that somebody would say. How did you actually do all this and then pretend that the United States deal didn't happen? It's worse than ignoring the elephant in the room. It's basically the elephant dies in the room and you walk over it and through it and it sits in the room and rots. Meanwhile, you have a deal going on. You keep talking. You keep going forward, and the stink gets worse.

● (1705)

I think one meeting would be great and that's enough.

The Chair: Mr. Albas.

Mr. Dan Albas: To reiterate some of the things my colleague has said, there has been an agreement in principle. We can't say when ratification will come from our end or the American end. However, we've made an agreement in principle with our largest trading partner and ally. We operate more in a North American ecosystem when it comes to creativity, copyright and whatnot.

This is going to have major impacts. Our report needs to take those things into account. Again, our recommendations are going to have to skate around this. Let's find out what the rationale was. Again, there is no date put on this for a reason. It's a reasonable request for our study.

I would encourage members to allow it. I'm happy to give it to the chair. He can work with the ministers. If he wants to arrange half a meeting with one minister, and another half with another, that's fine. I do think, though, it's important to have both. Ultimately Minister Bains is going to be reading our report, but Minister Freeland will actually know the rationale for those changes being given. Let's do our jobs. We're doing a great job consulting with industry. Why would we not want to consult our own government?

The Chair: Seeing no further debate, I'll put it to a vote.

Mr. Brian Masse: I would like a recorded vote, please.

(Motion negatived: nays 5; yeas 4)

The Chair: Is there any other business?

Thank you very much. The meeting is adjourned.

We'll see you on Wednesday.