HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Industry, Science and Technology

INDU • NUMBER 136 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Monday, November 5, 2018

Chair

Mr. Dan Ruimy

Standing Committee on Industry, Science and Technology

Monday, November 5, 2018

● (1530)

[*English*]

The Chair (Mr. Dan Ruimy (Pitt Meadows—Maple Ridge, Lib.)): Welcome, everybody, to meeting 136, as we continue our statutory review of the Copyright Act. Is there a hockey player with the number 136? No, there are no hockey players with the number 136—too bad.

Today we have with us, from the Business Coalition for Balanced Copyright, Gerald Kerr-Wilson, partner, Fasken Martineau DuMoulin LLP. We have, from the Canadian Chamber of Commerce, Scott Smith, senior director, intellectual property and innovation policy.

It's good to see you again, sir.

We have, from the Canadian Internet Policy and Public Interest Clinic, David Fewer, director. Finally, from the Public Interest Advocacy Centre, we have John Lawford, executive director and general counsel.

We will start. You'll each have up to seven minutes. We'll do a round of questions, and I believe we'll be leaving some time at the end for debating a motion that will be on the floor. That should leave us about half an hour to debate the motion, and we'll go from there.

Why don't we start with you, Mr. Wilson? You have up to seven minutes.

Mr. Gerald Kerr-Wilson (Partner, Fasken Martineau DuMoulin LLP, Business Coalition for Balanced Copyright): Thank you very much, Mr. Chairman.

Good afternoon, members of the committee.

My name is Jay Kerr-Wilson. I'm a partner with Fasken Martineau and am appearing today on behalf of the Business Coalition for Balanced Copyright, or BCBC.

The members of BCBC include Bell Canada, Rogers, Shaw, Telus, Cogeco, Vidéotron and the Canadian Communication Systems Alliance. BCBC's members support a copyright regime that rewards and protects creators, facilitates access to creative content, encourages investment in technology and supports education and research.

The exceptions that were added to the Copyright Act in 2012 were necessary to eliminate uncertainty that would restrict or inhibit the development of innovative new products and services. Reducing or eliminating these exceptions will put at risk hundreds of millions of dollars in investments. It will cause disruptions in the rollout of legitimate new services that would otherwise provide copyright owners more opportunity to earn revenue by giving Canadians more access to more content.

The coalition does not believe that new copyright levies should be imposed on ISPs or other intermediaries in an attempt to create new sources of revenue for Canadian creators and artists.

First, requiring ISPs to make content-specific payments is a clear violation of the principle of network neutrality.

Second, and more important, the Copyright Act is not the appropriate statute for promoting Canadian cultural industries. Canada's obligations under international treaties require that any benefit that is granted to Canadian copyright owners must also be provided to non-Canadians when their works are used in Canada. As a result, most of the money collected from Canadians would go to the U.S.

Third, copyright owners are already paid for lawful online activities through commercial licence agreements, and in the case of SOCAN, tariffs approved by the Copyright Board. Forcing Canadians to pay another fee for receiving these same lawful services is a form of double-dipping, a practice that was rejected by the Supreme Court in ESA v. SOCAN.

The government has other, far more appropriate policy tools at its disposal to promote Canadian cultural content and Canadian creators. Using these tools enables measures to be specifically targeted to Canadian creators in a way that the Copyright Act cannot.

The BCBC supports the addition of a new exception for information analytics. A human being can access and read a document without having to make a new copy or reproduction. Automated processes need to make technical copies in order to read and analyze the content of documents. Just as Parliament recognized the need in 2012 to create exceptions to apply to the reproductions that are required to operate the Internet, the BCBC believes that a new exception is required to eliminate any uncertainty regarding the making of reproductions for automated information analysis.

The BCBC recommends an additional improvement to the existing “notice and notice” regime. In Bill C-86, the budget implementation act, the government introduced amendments to prohibit the inclusion of settlement demands and infringement notices. The BCBC strongly supports this proposal but believes additional amendments are necessary to protect consumers and to give ISPs the tools they need to stop these settlement notices.

Bill C-86 makes clear that ISPs are not required to forward settlement demands to subscribers; however, it contains no useful deterrent to dissuade rights holders or other claimants from including settlement demands in copyright notices. We believe the onus for excluding settlement demands from copyright notices must rest solely with the rights owner, not the ISPs, who currently face liability for failing to forward compliant notices.

The other needed change is to adopt regulations establishing a common standard for infringement notices. Canadian ISPs and the motion picture industry co-operated on the development of a standard format known as the Automated Copyright Notice System, or ACNS, which is freely available at no charge and reflects Canadian requirements. The government should enact regulations establishing the form and content of notices based on ACNS.

The BCBC is aware that the ministers have written to this committee and the heritage committee with respect to the changes to the Copyright Board and collective management of copyright. The BCBC supports many of the changes that have been introduced to improve the efficiency of Copyright Board proceedings.

The coalition is concerned that some of the changes will eliminate important protections for licensees and could result in monopoly copyright licensing practices that are no longer transparent or subject to regulatory oversight.

● (1535)

The coalition strongly supports amendments that will make it easier for copyright owners to effectively enforce their rights. The act should allow for injunctive relief against all of the intermediaries that form part of the online infrastructure distributing infringing content. For example, it should be explicit that courts can issue a blocking order requiring an ISP to disable access to infringing content available on preloaded set-top boxes or an order prohibiting credit card companies from processing payments for infringing services.

The BCBC recommends that the Copyright Act be amended to eliminate a potential conflict between a court order for ISPs to block access to infringing services and the CRTC, using its authority under section 36 of the Telecommunications Act, to prohibit that blocking.

The BCBC finds it unacceptable that an Internet service provider could be ordered by a court to block access to an infringing Internet service and prohibited by the CRTC from complying with that court order. This conflict must be resolved in favour of the court order.

Finally, the BCBC warns the committee against unfounded claims of a value gap between the music industry and Internet services. The claims made by the music industry and the amendment they're demanding ignore how rights are cleared through commercial transactions. If adopted, these measures would disrupt well-established commercial relationships and would ultimately result in substantial net outflow of money from Canadians to U.S. record companies. For example, the music industry wants the definition of "sound recording" revised so that record companies and performers get paid public performance royalties when sound recordings are used in soundtracks in film and television programs.

The music industry appears to suggest performers and record labels aren't paid for the use of recorded performances in soundtracks. This is simply false.

Record companies are free to negotiate the terms of using recorded music and soundtracks with the movie producer. Performers have to agree to the use of their performances in soundtracks and are entitled to demand payment through their agreements with the record labels. Furthermore, the Copyright Act already provides detailed provisions protecting the rights of performers to be paid for the use of their performances. Revising the definition of "sound recording" as suggested would result in record labels and performers getting paid twice for the same use.

If the committee is concerned about improving the financial fortune of performers, it could recommend that the division of royalties between record companies and performers in subsection 19 (3) be adjusted. The simple change would immediately put more money in the pocket of every performer who's performance is played on the radio, streamed online, or played in bars and restaurants.

Thank you. Those are my comments. I look forward to your questions.

● (1540)

The Chair: Thank you very much.

We're going to move right to the Chamber of Commerce. Scott Smith, you have up to seven minutes.

Mr. Scott Smith (Senior Director, Intellectual Property and Innovation Policy, Canadian Chamber of Commerce): Thank you very much, Mr. Chair, and members of the committee, for the opportunity to address you today.

I'm actually here for the Canadian intellectual property council, which is a special council within the Canadian Chamber of Commerce—the national voice of business, representing over 200,000 businesses across Canada.

The CIPC is dedicated to improving the intellectual property rights regime in Canada and has broad-based participation from a variety of industries, including manufacturers, the entertainment industry, information and communications technologies companies, telecommunications and logistics firms, legal professions, retailers, importers and exporters, pharmaceutical and life science companies, and business associations.

The leaders of the CIPC are senior executives from corporations and associations who have a strong understanding of their industries' challenges and recognize the need for the protection of IPR in Canada. The mandate of the council is to promote an improved environment in Canada for businesses interested in innovation and intellectual property, by raising the profile of IPR among key policy-makers in the government and the general public.

I'd like to start by thanking the government for efforts to recognize the link between innovation and intellectual property rights in its intellectual property strategy.

Our counterparts at the Global Innovation Policy Center, GIPC, undertake a systematic evaluation of the strength of the IPR regimes in 45 economies. This year, Canada ranked 18, but the score has improved from previous years. Measures such as digital rights management and the enablement provisions introduced in the last update of the Copyright Act are important tools to help protect the significant investments made by creators in Canada. We would like to see those measures preserved going forward.

I'd also note that we are pleased to see that many of the suggestions put forward by the CIPC regarding changes to the Copyright Board have been reflected in Bill C-86, announced last week.

We believe it's important to have a consistent, timely and predictable board, and one that supports and encourages new and existing businesses operating in Canada's cultural industries, through a more efficient and productive tariff-setting process; through provisions to enact reforms by way of regulation, particularly as it pertains to delays; through the provision to support independently negotiated tariffs; and through the adoption of clear decision-making criteria.

We look forward to seeing these provisions come into force in the spring of 2019.

I'd like to focus the balance of my comments today on two issues: addressing online piracy, and keeping the door open to research and innovation for artificial intelligence.

I'll start with a pervasive problem: the significant threat of online piracy that now includes new forms that were not dominant the last time the Copyright Act was reviewed. This includes the commercial operation of illegal online streaming platforms and set-top boxes preloaded with illegal add-ons that provide users with unauthorized access to entertainment content.

According to the MUSO piracy insight report, Canada is now one of the highest consumers of global web streaming piracy. In fact, this same report finds that Canada has moved up to eighth in the global country rank by piracy visits, totalling 1.88 billion visits to all piracy sites in 2016. That web streaming is now the most popular type of piracy in Canada.

In the Government of Canada's own study on online consumption of copyrighted content that was issued in May 2018, one quarter of all Canadians self-reported as having consumed illegal content online. Sandvine also estimates that 10% of Canadian households use illegal subscription services.

The economic harm caused by online piracy is all too real. According to research by Frontier Economics, the commercial value of digital piracy of film in 2015 alone was estimated at $160 billion worldwide. In Canada, where the film and television industry alone accounted for over 170,000 jobs in 2016 and 2017, and generated $12 billion in GDP for the Canadian economy, the impact of online piracy is significant.

Unfortunately, the current tools available in the Copyright Act are insufficient to deal with these new threats. While there is no single solution to piracy, the Copyright Act should be modernized and leverage tools proven to be effective in helping to reduce online piracy, including those available in Europe.

CIPC encourages the government to enact provisions that expressly allow rights holders to obtain injunctive relief from competent authorities, such as site blocking and de-indexing orders against intermediaries whose services are used to infringe copyright.

● (1545)

Illegal content is accessed through Internet intermediaries, and they are best placed to reduce the harm caused by online piracy. This principle has long been recognized throughout Europe where article 8(3) of the EU copyright directive has provided the foundation for copyright owners to obtain injunctive relief against intermediaries whose services are used by third parties to infringe copyright.

The need for modern and effective tools to help address online piracy has been supported by the broadest range of Canadian stakeholders, including Canada's largest Internet service providers, all of whom have recognized the harm caused by international piracy sites that harm Canada's creative economy.

Even the CRTC has acknowledged the harms caused by piracy in considering the application filed by the FairPlay Canada coalition earlier this year, but ultimately pointed to the current review of the Copyright Act as the appropriate forum to address this pressing issue. Building on precedents that already exist in Canada, the Copyright Act should be amended to expressly allow rights holders to obtain injunctive relief against intermediaries by site blocking and de-indexing orders of infringing sites.

I'll conclude with preserving an opportunity, and I'm going back to data here. Data, and the techniques and technologies employed to collect and analyze it, will allow Canada and the world to solve some of the world's most pressing economic, social and environmental problems. Data is now the engine of economic growth and prosperity. Countries that promote data's availability and use for society's good and economic development will lead the fourth industrial revolution and give their citizens a better quality of life.

Machine-learning frequently necessitates the use of incidental copying of copyrighted works that have been lawfully acquired. Works are used, analyzed for patterns, facts and insights, and those copies are used for data verification. To avoid the risk of blocking this activity, we suggest that any legislation that deals with the applicability of copyright infringement liability rules should examine carefully how these rules apply to all stakeholders in the digital network environment as part of ensuring the overall effectiveness of a copyright protection framework.

Thank you for the opportunity to present to you today.

The Chair: Thank you very much.

Before we move on, you mentioned in your opening statement the MUSO piracy insight report. Would you be able to submit that to the clerk?

Mr. Scott Smith: Yes, I certainly can.

The Chair: That would be great. Thank you very much.

We're going to move on to the Canadian Internet Policy and Public Interest Clinic and David Fewer.

Mr. David Fewer (Director, Canadian Internet Policy and Public Interest Clinic): Thank you, Mr. Chair.

Good afternoon, members of the committee. My name is David Fewer. I'm the director of CIPPIC, which is the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic at the centre for law, technology and society at the University of Ottawa.

We are Canada's first and only public interest technology law clinic. We're based in the university. We essentially bring lawyers with expertise in technology law issues together with students to advocate on behalf of the public interest on technology law issues.

Our work resides at the heart of Canada's innovation policy agenda. We work on everything from privacy to data governance and artificial intelligence, network neutrality, state surveillance, smart cities policies and, of course, copyright policy. Our work essentially is to ensure respect for Canadians' rights on technology policy, as governments and courts respond to Canadians' use of ever-changing, new technologies.

I want to start with two background comments with respect to approaching copyright policy. Number one is the concept of balance. It's been long settled now in Canadian copyright policy that balance is essential to the overall scheme and objective of the act. That means Canadian copyright policy must be directed towards achieving a balance between providing a just reward for creators and owners of copyright works and the public interest in the dissemination of works more broadly. This guiding principle is basically the touchstone of copyright policy and should be central to any review of the Copyright Act.

That brings me to my second background point, which is the USMCA. The recent conclusion of the renegotiated NAFTA agreement upsets the balance in Canadian copyright law policy. This is not the place to go through an extensive review of the changes to copyright law that will be required by the legislation, but three that jump out to me were a copyright term extension, the enhanced digital lock provisions which were further unsettling a troubling area of Canadian copyright policy, and the new customs enforcement rights, revamping an area of law that we had just within the last two years upgraded.

These are just some of the benefits to copyright owners that are promised in this trade agreement. We would ask the committee to engage in these hearings with a view to resolving or restoring the balance that's at the heart of Canadian copyright policy.

Substantively, I want to talk about three specific points. One is digital locks. To the extent that this can be done by Canadian copyright policy, we should be looking to roll back the over-protection of the digital lock provisions. There's an incredible imbalance between the rights that copyright owners enjoy with respect to digital locks versus the rights they enjoy with respect to the content itself. The content itself respects a healthy balance. It has a nod towards future creativity and innovation policies. The digital lock provisions do not.

Many provisions of the Canadian Copyright Act intended to benefit future creators and innovators are locked out where a digital lock is used, and it's difficult to justify that on any kind of reasoned analysis of Canadian copyright policy.

We would ask that the USMCA provisions be studied with a view to determining how best to maintain fair and flexible dealings with content in the face of digital locks. Essentially we say that draconian digital lock provisions deter and undermine Canadian innovation policy, and they undermine digital security. This is not just a user issue. It's an innovation issue. Creators such as documentary filmmakers and new forms of artists—appropriation artists, for example—encounter difficulties in the face of digital locks. That content is beyond their reach.

We would also ask that we look to the extent to which we can restrict criminal circumvention to commercial activity because of the tremendous disincentive of criminal prosecution for innovation and artistic work in the face of digital locks.

● (1550)

Second, I want to turn to fair dealing. CIPPIC has long asked that Canada look to make the list of fair-dealing purposes illustrative, rather than exhaustive. If the dealing is fair, it ought to be legal. That's the bottom line. Failing that, CIPPIC would support extending fair dealing to transformative dealings, to recognize different kinds of authors, such as appropriation artists and documentary film-makers. Transformative dealings aren't covered well, within the existing fair dealing paradigm.

We would also echo the repeated calls that this committee has heard to extend fair dealing to what I'll call AI activities. We would look for a specific exception for informational analysis.

Finally, related to fair dealing, CIPPIC would call for no contractual overrides of fair dealing. We've talked about privacy already. Our privacy rights have a very difficult time with terms of use, which have privacy policies that no consumer or user ever sees, thereby stripping our privacy rights away. Copyright, which is an innovation policy, should not suffer from the same burden.

Other jurisdictions have done this, particularly within the context of the data mining exception, in jurisdictions such as Britain. Canada should be looking to this too.

Finally, I have a brief comment on the notice and notice system. CIPPIC supports the changes to the system that were recently tabled in Bill C-86 to curb abuses of that system, but we would actually echo Mr. Kerr-Wilson's comments about the need for adverse consequences for reckless or deliberate misuse of that system.

Thank you.

The Chair: Thank you very much.

Finally, from the Public Interest Advocacy Centre, John Lawford. You have up to seven minutes, sir.

Mr. John Lawford (Executive Director and General Counsel, Public Interest Advocacy Centre): Thank you, Mr. Chair. Thank you very much for having me, committee members.

The Public Interest Advocacy Centre is a national non-profit organization and registered charity that provides legal and research services on behalf of consumer interests, in particular vulnerable consumer interests, concerning the provision of important public services.

PIAC has been active on copyright, from a consumer perspective, since the mid-2000s. In particular, we were heavily involved in the creation of the balance between creator and public rights achieved in the major overhaul that led to the Copyright Modernization Act.

Our message today is simple. The present Copyright Act has generally helped Canadian consumers to enjoy copyrighted works, as they should, without excessive strictures that do not align with the realities of how consumers watch, listen to or interact with copyrighted works.

Shaw Communications, when they appeared before this committee, said:

> Overall, our Copyright Act already strikes an effective balance, subject to a few provisions that would benefit from targeted amendments. Extensive changes are neither necessary nor in the public interest. They would upset Canada's carefully balanced regime, and jeopardize policy objectives of other acts of Parliament that coexist with copyright as part of a broader framework that includes the Broadcasting Act and the Telecommunications Act.

We agree.

However, the FairPlay coalition application recently brought in CRTC, and now brought to this committee by several vertically integrated media and telecommunications companies, substantially misrepresents the context in which this committee's report must be made.

In reality, first, expedient judicial relief is available against intermediaries. Secondly, administrative censorship is not common around the world. Third, little online copyright infringement may actually be occurring. Fourth, online copyright infringement appears to be declining. Fifth, Canada's broadcasting industry is profitable and growing. Sixth, blocking is not very effective at reducing privacy. Seventh, blocking piracy services generates little additional revenue for broadcasters; pirated programming is predominantly not Canadian. Next, increased revenues for broadcasters may not necessarily increase the quantity or quality of content produced and finally the proposed regime will result in the blocking of legal sites.

PIAC believes that the committee should not recommend the implementation of FairPlay-type proposals. The courts are better positioned to enforce copyright, and balance enforcement against the public interest in freedom of expression, innovation and competition, and net neutrality. Secondly, technical protection measures already exist and are available to protect the interest of content owners. Lastly, the blessing of any Internet censorship in this domain will likely spread to other areas of government activity. These considerations, we feel, weigh strongly against implementing the proposed regime.

As noted above, judicial relief is already available against intermediaries under the Copyright Act, and it's actually subsections 27(2.3) and (2.4). They address the enablement of copyright infringement “by means of the Internet or another digital network”.

In other words, the FairPlay coalition members wish to replace the present judicial enforcement regime with an additional administrative regime. What matters about an administrative process, besides its duplicative nature, is that the process would be handled likely by the CRTC, which the FairPlay coalition members apparently hope through its general jurisdiction over telecom would be able to use a blanket blocking order on many alleged infringing sites on all telecommunications service providers, not just providing the right of one ISP to block one website. That is why they are so keen on enshrining this belt-and-suspenders type of remedy.

To move to fair dealing, PIAC believes that fair dealing exemptions in the Copyright Act generally have facilitated fair use by the public that benefit the public interest. We would resist calls to reduce this, whether in the educational field or elsewhere. Ideally, Canadian fair dealing should also encompass transformative uses, such as remixes of songs and other creative endeavours, including documentary filmmaking. However, we recognize that this was not in the previous act revision.

The iPod or smartphone levy has also been proposed by some in this committee, and has been rightly rejected as inappropriate on many occasions, including in the Federal Court. This recycled idea is no better today. It denies the use of such devices' full capabilities, raises prices on a staple of consumerism and makes the person who uses only licensed content pay twice: once for a licensed copy of the content, and again for others who are presumed to violate the act. This unfairness should be obvious and conclusive.

● (1555)

Lastly, PIAC also opposes the idea of an ISP levy or Internet tax. Such an idea does violence to the very concept of common carriage by telecommunications providers and very likely would raise prices for Internet service. This is a bad idea when Canadians, and in particular low-income Canadians, are struggling to afford broadband Internet for economic and social purposes.

PIAC thanks the committee very much. I look forward to your questions.

● (1600)

The Chair: Thank you all very much for your presentations.

We're going to move to Mr. Longfield.

Mr. Lloyd Longfield (Guelph, Lib.): Thanks, Mr. Chair, and thanks, everybody, for coming today.

I'm trying to put myself in the position of a small business person. I'm going to start with the Chamber of Commerce. I'm thinking about the mining of artificial intelligence to try to develop a business.

Thanks, by the way, for involving me in the recent meetings with the Canadian Chamber of Commerce, where I was able to talk to a lot of your members who were involved in digital technology and digital businesses. I left that meeting thinking that these people could give other businesses a lot of intelligence.

In respect of getting access to the information through AI and protections or payments for AI services, does the Chamber of Commerce have a position on how the legislation should compensate for the use of AI when you're drilling into copyrighted material?

Mr. Scott Smith: I think our position is fairly straightforward. Any material that is copyrighted needs to be legally acquired first, so you have to pay the appropriate fees, royalties or what have you. Once it moves beyond that, and there is a requirement to have copies for verification and machine learning, there would be an exception within the Copyright Act.

Mr. Lloyd Longfield: Right, so we're looking at a new series of exceptions around data for AI.

Mr. Scott Smith: I would keep that fairly narrow. This is one new exception.

Mr. Lloyd Longfield: Things are already changing. By the time this act comes back around for review, I'm sure we will be looking back at this and realizing that we're just getting started in the AI adventure, especially when you look at quantum computing and how the Copyright Act might interact with manufacturers or other creators.

Mr. Scott Smith: I think it's incumbent on this committee to be somewhat prescient, to figure out what the world is going to look like and keep this technology as neutral as possible.

Mr. Lloyd Longfield: Right. That is what we're trying to do.

Let me stick with you on this. A few years ago, you introduced us to the American chamber of commerce, which came up and made some presentations to some of us. Are you seeing a difference between how Canadians and Americans are approaching this? They have an intellectual property group there. Are they studying some of the same things around digital copyright? Is there anything we can learn from the American chamber of commerce?

Mr. Scott Smith: I think the U.S. focuses more on some of the issues around piracy and infringement, and they are more aggressive in how they approach the infringements. There's more in the way of criminal proceedings that go along with that. They have a “notice and take down” regime. There are questions as to whether that's a sufficient approach. I think the “notice and notice” regime in Canada is effective as a public awareness tool and an education tool. Some refer to it now as “notice and keep down” regime, looking at the market accounts of infringing content and going after the market accounts as opposed to the websites, which are very difficult to stay on top of. It's very easy to create a new website.

I think looking at the financial “follow the money” is probably a more appropriate approach.

Mr. Lloyd Longfield: Good. Thank you.

Mr. Fewer, regarding “notice and notice”, “notice and take down”, two words that came through all of the witnesses today were “balance” and “piracy”. Hearing that Canada's at the top of the charts in piracy, is that something that the Canadian Internet Policy and Public Interest Clinic has looked at in terms of what makes Canada more susceptible to piracy and what we might do to combat it?

Mr. David Fewer: We're always skeptical about claims that Canada is unique or is at the top of the charts in accessing illegal content. I always look at the source. I'm sorry, but I haven't seen the report that Mr. Smith brought to your attention.

Mr. Lloyd Longfield: Okay.

Mr. David Fewer: Other times when we have done that, we've found that things aren't always what the report claims.

In looking at piracy in general, our take is that the best way to address piracy issues is with a good marketplace framework: a regulatory environment that allows services to come to consumers and that will make piracy unattractive and difficult. Piracy is work. It's hard to do. It does cost. You have to pay for your Internet, you have to pay for your computing and you have to put the resources into finding unlawful content and acquiring it. We always think that a healthy marketplace is the best deterrent to piracy.

● (1605)

Mr. Lloyd Longfield: Right.

In terms of a healthy marketplace, you mentioned regulatory issues. The act is what it is. It's a legislative framework. When it comes to regulatory issues, is Canada responsive in terms of developing regulations for a digital marketplace or is that somewhere we need to look, apart from the act, in looking at our regulatory regime?

Mr. David Fewer: That's a good question. The law always lags behind technological developments. It's just a feature and it's probably right. We wouldn't want to be sprinting ahead in trying to constrain or direct innovation in a particular way. We want the marketplace to react as it will and we want innovators to innovate. The law I think has to look at what's happening in the marketplace, at how rights holders are reacting and how users are getting access to content, and respond in that way.

Where does Canada stand on this? I think, to be honest, we're not that bad. We have a pretty good regulatory framework in place. There was a great deal of criticism of Canada for being slow to respond to the WIPO treaties and bringing about the changes that ultimately came to pass six years ago now, but the reality is that they did a pretty good job. Had we rushed in, we probably would not have done as good a job. I think Canada should give itself a bit of credit for how it did respond to the emergence of digital issues in the early part of the century.

Mr. Lloyd Longfield: Thank you.

Seven minutes goes by very quickly. I have more questions, but I appreciate your comments.

The Chair: You counted it down pretty good.

We're going to move to you, Mr. Albas, for seven minutes, please.

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

Also, thank you for all the expertise that is here today and for some very educated briefs.

I'll start with you, Mr. Fewer. Your group has stood against the FairPlay website-blocking proposal, in part by arguing that the CRTC lacked the authority to undertake such a program. Would your group be opposed to a transparent legal procedure such as using the Federal Court, where a rights holder could attain a site-blocking order if they demonstrate that copyright infringement is occurring?

Mr. David Fewer: Our position is that the Federal Court is the place for copyright to be enforced—the Federal Court or the provincial courts. We're highly skeptical of the efficacy and the "strategic-ness", let's call it, of any kind of site-blocking mechanism to really address these kinds of issues.

We already have significant provisions in the Copyright Act to allow copyright owners to go after businesses that are predicated upon copyright infringement, and we would encourage copyright owners to use those mechanisms.

Mr. Dan Albas: We've had a number of groups here saying that they have no recourse when these situations happen. What would your group advocate that they use, then?

Mr. David Fewer: When you say, "no recourse", I think the challenge is jurisdictional issues. Is that what's being implied? That these places are in other jurisdictions...? It's true that they're in other jurisdictions, but the truth is that those other jurisdictions have copyright laws as well.

Part of the grand vision of copyright policy, which was true 15 years ago—when I first came to the clinic and started to talk about copyright policy—and is true today is to push unlawful content to the dark corners of the Internet, the dark corners of the world.

Fifteen years ago, we would have said that Canada should not be a site or a host for businesses intent on infringing copyright and built upon those kinds of destructive capacities, and that to the extent that those businesses exist, they should be offshore. They should be elsewhere. I think the recourse really is to bring pressure to bear internationally on the countries that are hosting these businesses to go after them and enforce copyright laws in those jurisdictions.

● (1610)

Mr. Dan Albas: We've heard some suggestions by testimony. I believe the lawyer for Shaw said that some clarification regarding what the Federal Court and its authority is in these kinds of matters would be important. Do you feel that the Federal Court has, right now...? Is it absolutely clear that they can hear these cases and order remedial action?

Mr. David Fewer: Is it absolutely clear? I mean, the court has very broad remedial discretion under the Copyright Act. Considering their injunctive powers under equitable remedies, they have very broad powers. I would like to see the failure of these provisions before we go in and say that they're inadequate to the task. I think we need to give them a shot.

I'm highly skeptical, in any event, that filtering solutions are going to address this. It's just too easy to circumvent filtering. Filtering is always both overinclusive and underinclusive, so I'm skeptical.

Mr. Dan Albas: Thank you very much.

I'm going to go over to Mr. Lawford.

Mr. Lawford, you claim in your brief that the cultural industries are thriving. We've heard testimony and seen data that, while overall spending in some sectors is up, creators and artists are suffering.

Are you aware of this information? What do you think the problem is?

Mr. John Lawford: Not to split hairs, but I didn't say that creators were doing better. I said that the broadcast industry is doing better. The question that raises is how artists are being compensated and what the deal is among broadcasters, broadcasting distributors and artists. We encourage you to look at whether those sorts of deals need to be regulated or not, if Canadian culture industries are truly being starved.

The industries themselves are doing very well. All of the sectors are growing. The only place where you have some contraction is in BDU services where they have pay television channels that may be having slight audience reductions.

Overall, the industry is growing and the pie is getting larger. Whether it's trickling down to creators is a different question.

Mr. Dan Albas: Your brief specifically referenced something called “second window” rights. Can you elaborate on that concept, please?

Mr. John Lawford: I'm not sure where that is in our brief, but second window rights would be when the first blush goes through and you sell your content to whatever platform it is. Then that either leaves space for another windowing, or after that time, you can then pass it on to another platform and it will show up later in time.

If you're referring perhaps to something that we wrote in another submission, I think at one point we were suggesting that Canadian content could be second window free, and that would be a way to get Canadian content to Canadians without having to make them pay for it. That might be a good place to have more Canadian content supported. Finding money for that would be a different question.

Mr. Dan Albas: Again, I'd like to know a little bit more about the second window, but it may have been another.... When you read these things, they kind of blur together.

You also refer to expanding Canadian content rules to online services. We've heard the concern that if we put CanCon rules on streaming services, they won't add Canadian content. They'll just remove other content until the ratio is reached. This doesn't help, obviously, Canadian creators and ultimately doesn't give consumers choice.

Is this a concern that's shared by your group?

Mr. John Lawford: I'm not sure we've gotten that deeply into the analysis of it.

We've recently revised our position so that we would consider changing the Canadian ownership directive so that Netflix and Amazon Prime and these sorts of things could have to contribute Canadian content. That would be in place of an ISP levy.

● (1615)

The Chair: Mr. Masse, you have seven minutes.

Mr. Brian Masse (Windsor West, NDP): I'll start with the Copyright Board. Does anybody have any positions on the Copyright Board in terms of the current situation?

If you check—I did this really quickly to update myself—they call it “What's New”. There are two appointments in September on their website. They have a couple of hearings that they mention. One of them is in 2019, and another one is in 2020.

We have heard something about the Copyright Board's speed and support. Does anyone have any comments about the Copyright Board?

It's one of the things that can be done without legislative changes.

Mr. Gerald Kerr-Wilson: I'll start. I do spend quite a bit of time appearing before the Copyright Board.

Speed and retroactivity of decisions were a large concern for a number of users of the Copyright Board, on both the collective side and the licensee side. The measures put in place, or proposed in Bill C-86, the budget implementation act, go a long way. They certainly give the government the tools to set deadlines for the Copyright Board to issue decisions. They make it clear that tariffs have to be proposed further in advance and for a greater number of years. If all these measures are acted upon and regulations are put in place, we could actually dramatically reduce the problems we've seen in the past with the timeliness of decisions and long retroactivity.

Mr. Brian Masse: I'm getting the sense that some people will like the fact that they get a quicker decision. Some people may not like the decision, or whatever, but at least, whatever it is, there seems to be pent up interest to get to the result sooner rather than later, as opposed to lurking about in limbo for long periods of time.

Mr. Gerald Kerr-Wilson: That was an issue where there was almost unanimity amongst users of the Copyright Board. In every decision, you're going to have someone who's happier than someone else, but everyone agreed that decisions had to get out more quickly.

We were dealing with situations where the board was setting prices to be paid for music five years ago. No one knew what the price to be paid today was. If the government follows through on the regulatory authority that it's proposing under Bill C-86, that problem, at least, will be substantially resolved.

Mr. Brian Masse: Mr. Smith, do you have any comments on that?

Mr. Scott Smith: I'll echo those comments. I'll also add that having the clear decision-making criteria was important, but also the ability to negotiate tariffs independently, basically taking a contractual approach that the Copyright Board would not intervene in those cases.

Mr. Brian Masse: Mr. Fewer.

Mr. David Fewer: I'd echo those comments as well. Speed and efficiency were a huge concern with the Copyright Board.

One thing that I would raise that runs slightly contrary to that is the inability of interveners to participate before the Copyright Board. We found it a problem. Our organization spends a good deal of its time sticking its nose into copyright and other matters at the Supreme Court of Canada, where we're a productive participant whose participation is valued by the members of the court.

I'd like to think we could offer a similar role to the Copyright Board, a different perspective on a narrow issue. However, there is no way for us to do that before the Copyright Board.

Mr. Brian Masse: I didn't know that. Then you'll be locked out of the process at the Copyright Board, but regarding the decision that the Copyright Board can make, obviously we've had them in the Supreme Court and that's when you'd find your participation, at that point in time, as opposed to before.

Mr. David Fewer: That's exactly it.

We've acted for parties who were properly participants before the Copyright Board as well. Their objective was to be interveners, to bring in a nuanced perspective, a unique perspective different from that of the other participants before the board, but they were told they had to be objectors.

You're either all in with the interrogatories...and let's be frank, they're fairly expensive. It's very expensive to participate at the Copyright Board.

Mr. Brian Masse: Yes.

Mr. David Fewer: With the interrogatories, you're either all in or you're out.

Mr. Brian Masse: Really...?

Mr. David Fewer: They were in long enough to make their point, and then they had to get out, because these organizations are not funded to be battlers before the Copyright Board. Nonetheless, they had valid perspectives, important things to say. They wanted to say things that the board was not going to hear otherwise, so there ought to have a been a mechanism to allow them to participate.

Mr. Brian Masse: Mr. Lawford.

Mr. John Lawford: I'd echo David's concerns that perhaps this committee could even get quite creative and say there should be a cost regime such as we have in the CRTC and the Ontario Energy Board, to allow public interest intervenors to participate in major policy proceedings.

That's all I want to say on that matter.

● (1620)

Mr. Brian Masse: Thank you.

Mr. Smith, one of the distinguishing things is that there's a balance that you hear in terms of piracy. In Windsor, where I'm from, we had a lot of piracy in the past over DirecTV. It was an American provision of service, but it was so easy to hack it, it became what they called a “football card”.

In an assembly line, you could buy a little box and then you would just reprogram the card. That's what they did at all the different plants. That's why I said assembly line, at whatever plant. It was reprogrammed and they got DirecTV for free. Finally, they had a small innovation and eliminated all that.

Where are we in terms of direct streaming? Is it still almost too easy? Is there any control we can do here, whether it's in terms of innovation or whether we have to go directly to the Internet service providers?

It's not an excuse, but when there's almost no barrier, when it becomes so easy, it becomes easier to get it than it is to sign up for some of the actual services.

Mr. Scott Smith: It's a fair point and an interesting analogy. It's certainly more difficult to put technological locks on websites that are producing this material.

I want to go back to some of the questions that were asked earlier in this session around whether or not Canada should have some kind of tool to be able to block sites—de-indexing and what have you. What we often lose sight of is that we live in an international community. Online is everywhere. It's global. If we are going to do something about pirated websites, very often they are offshore, but we can have a tool domestically that can deal with those offshore sites. We don't necessarily need to go through the courts in the backwaters of the world. We can deal with it right here through our court system and allow our ISPs, which direct the traffic of the Internet, to manage that problem on our behalf.

Mr. Brian Masse: Thank you. Good.

The Chair: Mr. Graham, you have seven minutes, please.

Mr. David de Burgh Graham (Laurentides—Labelle, Lib.): Okay. I'll use them.

Mr. Kerr-Wilson, were you here on the 26th of September for Shaw at the time?

Mr. Gerald Kerr-Wilson: Yes, I was.

Mr. David de Burgh Graham: Okay. Just for clarity, because your name tag said Gerald starting with a “J”, last time. I just want to make it clear for the record that you're the same person.

Mr. Gerald Kerr-Wilson: My name is Gerald. I often go by Jay, and I'm known as Jay, so it's sort of a Stephen-Steve issue.

Mr. David de Burgh Graham: No worries...just so you're on the record as the same person. I'm just trying to make sure of that.

Mr. Gerald Kerr-Wilson: Yes.

Mr. David de Burgh Graham: Do you have any differences in your position today versus under that client?

Mr. Gerald Kerr-Wilson: No. Shaw is a member of the BCBC. Shaw's position was Shaw's position in this. I'm here for BCBC, but there are no differences.

Mr. David de Burgh Graham: Thank you. That's all I need to know from there.

Mr. Smith, you talked a lot about piracy, or privacy, as we've discussed a bit today. You talk about $160 billion in consumer-pirated content around the world. I'm going to assume that is based on everything pirated having full market value. How fluffed are those numbers?

Mr. Scott Smith: You're asking me to comment on the veracity of a report that has come out, and I don't have the background to be able to pronounce on that. I'm quoting a study.

Mr. David de Burgh Graham: Would you agree that those numbers tend to be based on the full market value or full consumer price for each product that was pirated?

Mr. Scott Smith: I expect that there was an analysis done that likely looked at what the market value was in various jurisdictions, and came up with a number. I can't tell you off the top of my head. I don't know.

Mr. David de Burgh Graham: Understood. Have we done a lot of studying of why people pirate in the first place?

Mr. Scott Smith: I think that's somewhat self-explanatory. There's certainly a lot of literature in the marketplace about why people buy counterfeits, or why people pirate goods.

Mr. David de Burgh Graham: But in the case of content, at least in the Canadian example.... We're hearing that Canada has a higher rate of piracy than other countries, but it also has, I heard somebody say, a lower rate of consumer-available content. There's a lot of Canadian-made content that you can't get in Canada. I've heard this point a number of times before. Is that a cause of piracy? Is that something we can address?

Mr. Scott Smith: I would say that's an element of it, but I would also say that accessibility is. If you can get it for free, why would you pay for it?

● (1625)

Mr. David de Burgh Graham: Sure.

Do you support FairPlay?

Mr. Scott Smith: We did have a submission supporting FairPlay, yes.

Mr. David de Burgh Graham: I have one final question. This is a general question really, for everybody.

Should copyright be proactively registered by copyright holders, or should everything that is copyrightable be automatically copyrighted?

Mr. Scott Smith: I think you're asking to change—

Mr. David de Burgh Graham: It's a philosophical question.

Mr. Scott Smith: —centuries of jurisprudence by changing that, and enforcing any idea that you would have to register copyright. There is an advantage to doing so, but, no, I don't think that you would need to register copyright in order to have it in force.

Mr. David de Burgh Graham: Okay.

Now I'll move on to Mr. Fewer for a few minutes.

You talked about rolling back overprotection on digital locks, which is an interesting point. Have we ever defined exactly what the limit of a digital lock is?

Mr. David Fewer: I beg your pardon. What a—?

Mr. David de Burgh Graham: What is the limit of a digital lock? If I have an iPad in front of me and I have to unlock it to use it, everything on there is, technically, digitally locked. Where is the limit of what is digitally locked and what isn't?

Mr. David Fewer: We've had a little bit of judicial interpretation of the provisions, one of which was absolutely horrific, where a court, a lower-level court, thankfully, said that merely getting content that is behind a paywall for a third party—say John is a subscriber and I ask John to shoot me a copy of an article about me—is a circumvention of a digital lock.

We would say that plainly is not a circumvention of a digital lock. How you ought to be incurring liability within any circumvention provisions is by defeating them, tackling the technology and defeating the technology to access the content. That was the intent, plainly.

It may be that there is room for clarifying the legislation in that direction. We would also suggest looking at all the exceptions that are permissible under the trade agreement, and saying, what are the interpretations available to us and how can we craft those interpretations in a way that will safeguard Canadian innovation and creators who need to access this content to create?

Mr. David de Burgh Graham: A couple of days ago, we had witnesses representing the blind. They indicated that, while the TPM circumvention rules permit them to circumvent for the purpose of accessibility, the fact that the TPMs are there make it a practical impossibility. Do you have any comments on that?

Mr. David Fewer: Yes, I will share those.

I'll put my cards on the table. I have constitutional concerns with the anti-circumvention provisions. I've written about this for 25 years. Copyright attaches to expression. It's built into the law. You don't get a copyright on ideas. You get a copyright on expression. Expression is also, obviously, the domain of freedom of expression, subsection 2(b) of the charter. Any kind of limitation on accessing that content, accessing expression, has to be demonstrably justifiable in a free and democratic society.

How on earth current versions of the anti-circumvention laws meet that test is beyond me. I think in the appropriate case, perhaps the sort of case you're talking about, we'll see a court agree with my view of the constitutionality of those provisions, but it's going to take us a while to get there. I think it's open to this committee to take a look at those provisions and see what we can do before we force those organizations to go to court.

Mr. David de Burgh Graham: Fair enough.

You mentioned appropriate consequences for misuse of notice and notice. I guess we could call that “notice and notice and notice”. What would those consequences be, in your summation? What would actually work?

Mr. David Fewer: We've seen in the United States, with the notice and take down system, which was kind of the first of these sorts of systems in the United States, that consequences, basically penalties, lie for being reckless or knowingly misusing the system. We don't have that in Canada. My organization had asked for such consequences in the legislation when it was initially drafted, but we did not get that. I think we've seen that, in how the system has been misused, it might help.

Mr. David de Burgh Graham: I have 10 seconds or something like that.

Mr. Lawford, here's a very quick question for you.

If a device levy—we talked about this a lot—were to be brought in, would that not legitimize piracy? If we're charging someone a piracy charge for their device, doesn't that mean all your anti-piracy activities then have to cease because we've now legitimized the piracy actions?

Mr. John Lawford: I think if you're a reasonable consumer, you could come to that reasonable conclusion, yes.

Mr. David de Burgh Graham: Thank you.

The Chair: We're going to move to Mr. Lloyd.

You have five minutes.

Mr. Dane Lloyd (Sturgeon River—Parkland, CPC): Thank you.

I guess I'm going to pick on you, Mr. Fewer, because everyone seems to be doing that today.

You noted in your testimony that, if the marketplace is operating properly, then there shouldn't be a problem with piracy. I was wondering if you could illustrate what that healthy marketplace would be. It seems the content would have to be free for people to not pirate it. What is a healthy marketplace where it's not free, in your mind?

● (1630)

Mr. David Fewer: We live in a free and democratic society, so there's always going to be a little bit of background unlawfulness. We still have the Criminal Code despite living in a free and democratic society. It's the same with copyright. There's always going to be copyright infringement unless we change the laws in such a draconian way that—

Mr. Dane Lloyd: How do we change the marketplace to be more adaptive?

Mr. David Fewer: First of all, you have to have the structures in place that incentivize platforms, that incentivize content to engage in those platforms, so that there is confidence that if you go that way, if you offer innovative digital services, you'll be able to make a return. I think it's always useful to take a look at what's actually going on in the content industry. Are they making money, or is this an industry where people are going bankrupt and nobody will invest in them, where nobody invests in them in the stock market because they get below-average returns and they're unable to turn a profit?

I think it's fair to say that's not the case. The content industry is a profitable industry. They do not suffer from low returns. What is their return on investment? It still seems to be attractive. Bell is still a cornerstone company in lots of very conservative holdings. That's a good thing to look at: When the content industry is saying that they can't make money, is that true?

Mr. Dane Lloyd: Thank you.

You said that you don't believe that fair dealing should be exhaustive; it should be illustrative. I was wondering if you could unpack that idea a little further.

Mr. David Fewer: The way fair dealing is structured, before you even get into any analysis of whether a dealing is fair, it has to be for one of the enumerated purposes in the act. I would have said this was a real problem 20 years ago when courts narrowly construed exceptions as basically derogations from a grant.

That approach has been turned on its head. We now understand that the exceptions fulfill a purpose. They're there to fulfill a policy purpose of Parliament. They're remedial in nature, and they should be given the generous interpretation that remedial legislation deserves. That's the approach the court has taken. That has done a good deal to cover lots of useful, innovative and creative dealings that in past would not have occurred because of the fear of infringement.

Mr. Dane Lloyd: I appreciate that. Thank you.

My next question is for Mr. Smith. In your capacity, are there any recommendations from other countries on how they've dealt with the issues that you've raised today? Would you have any recommendations from what you've seen abroad, in terms of what has been effective at protecting your stakeholders?

Mr. Scott Smith: I refer to it in my testimony, so you can go back and look at those specific reports. I think the European Union and Australia are both good examples of where the site blocking and the de-indexing approach have had some success.

I wouldn't want to limit the idea that we only need one tool in the quiver. I think there are multiple approaches to this. Having as many tools as possible to manage the problem is what's going to solve the problem.

Mr. Dane Lloyd: One of the other recommendations was opening up the CRTC for more people to be involved. What's your view on opening up the CRTC? Do you think that would be harmful or helpful for the process?

Mr. Wilson, you can also jump in on that if you want.

Mr. Scott Smith: In terms of how we've approached this, the FairPlay submission asked the CRTC to be an arbitrator of online content. That was rejected and has moved back to this forum.

We're suggesting a competent authority now. Obviously, that is the courts.

Mr. Gerald Kerr-Wilson: Can I get some clarification? Do you mean opening up the Copyright Board process?

Mr. Dane Lloyd: Yes, I mean opening it up to more litigants and groups like public interest groups.

Mr. Gerald Kerr-Wilson: I think the challenge is that the Copyright Board was conceived as a replacement for market negotiations. You have a monopoly. You can't have a market negotiation, so you bring the buyer and the seller together in a regulated price. There really wasn't any room for public interest intervenors in what was really a buyer-to-seller transaction, because the board wasn't supposed to do policy. It was just an economic rate-setting tribunal.

I think we've seen that the board now does policy. It is the tribunal first instance for a lot of important copyright questions.

I actually agree with David. I think there is a role for more input from a broader range of groups on issues of public policy. I don't think you necessarily want to have groups weighing in on every price-setting mechanism—on whether the price per square foot for background music is fair or unfair—but where the board's interpreting copyright law for the first time, other perspectives are useful.

● (1635)

Mr. Dane Lloyd: I appreciate that. Thank you.

The Chair: Mr. Jowhari, you have five minutes.

Mr. Majid Jowhari (Richmond Hill, Lib.): Thank you, Mr. Chair.

Thank you to the witnesses. It's good to see some of you coming back here, and welcome to the rest.

I'm going to start with Mr. Smith. In your testimony you talked about piracy site-blocking tools available that could deal with some of these offshore sites. You talked about multiple approaches.

Can you share one of those leading approaches that's being used to effectively deal with piracy through site blocking?

Mr. Scott Smith: Do you mean one with site blocking that is working? Australia's a good example.

Mr. Majid Jowhari: What is the tool, specifically?

Mr. Scott Smith: Essentially, where there is an order going to an ISP to block a site coming through their systems....

Mr. Majid Jowhari: Is that order through legislation? What is the criteria for the ISP to—

Mr. Scott Smith: It's a demand order.

Mr. Majid Jowhari: Is that demand order given through the legislation?

Mr. Scott Smith: I think it's an injunction through the courts.

Mr. Majid Jowhari: Someone makes the complaint to the court. The court gives an injunction to the ISP provider and the ISP provider blocks it.

Mr. Scott Smith: The ISP executes it.

Mr. Majid Jowhari: Let me go to Mr. Lawford. What are your thoughts on that one? I understand you object to site blocking.

Mr. John Lawford: Right.

You could do what you're suggesting in the Federal Court. You could have a site-blocking order. I think the reason it was brought into CRTC was that there was this idea that if they did it in CRTC, the CRTC could issue an order to block all ISPs, whether that ISP came and asked to be able to block or not. In Canada, if Bell comes and asks to block, you can be pretty sure TekSavvy's going to not want to come and block.

Do we want that blanket regime—which I think is what is being proposed, although I'm not quite sure from what people are saying today—or do we want to have it in court? In court, generally, you can't get that kind of across-the-industry order. I think what's going on with this administrative version is that they want to have a wide net. That's my theory.

You could do it. It is being done in other countries where there is a blocking order. I know they tried to institute it in the U.K. and backed off from it. Now they just use the copyright law.

Mr. Majid Jowhari: In general, how long does it take to get a blocking order?

Mr. John Lawford: I don't know exactly how long it takes to get a blocking order. I've seen that there are a couple of cases where Bell Canada has gotten them in Canada. I believe one of the witnesses came and said it took two years in one case. I think that would be on the long end.

Mr. Majid Jowhari: Mr. Lawford, in your testimony you suggested that piracy is being driven by broadcasting market power. Can you expand on that?

Mr. John Lawford: Sure. The theory is that if content on the traditional platforms is priced at a fairly high level because the companies are vertically integrated and there's not much competition, Canadians are just frankly fed up with paying so much. That makes it more tempting to cut some of your costs by pirating a bit here and there. I believe some Canadians fall into that group. They're paying prices that are probably due to market power in that sector, and they may be too high and it's their protest vote, if you will.

Mr. Majid Jowhari: It's interesting you talked about vertical integration. A number of our ISP providers are vertically integrated, so are you suggesting, or am I reading, that because of their vertical integration they have a lot more flexibility to be able to charge extra?

Mr. John Lawford: Yes, I think that's fair.

Mr. Majid Jowhari: Okay.

This is my last question. Back to you, Mr. Lawford, you suggested that the evidence suggests online piracy is very small and shrinking. Could you submit that evidence to the committee? I think Mr. Smith was saying it's a big issue and it's growing.

Mr. John Lawford: Absolutely, and it is probably easiest for me to submit to the committee afterwards.

● (1640)

Mr. Majid Jowhari: Yes, I'd appreciate it if both Mr. Smith and Mr. Lawford could submit, if you want to make any further comments.

Mr. John Lawford: Sure. My information is coming from our submission in the FairPlay before CRTC. We went through the MUSO study and found certain assumptions in there. The MUSO study is based on site visits and that may not reflect actual downloading. There are many site visits, but you may not be spending enough time there to download something, so it's a proxy. That's a weakness.

The same thing with the Sandvine report. There are certain weaknesses in it, and also Sandvine stands to make money, of course. If you pass a similar law to what's being proposed, they are going to sell the blocking equipment.

I'd like to submit that to the committee. These arguments were fairly technical and they were in the CRTC—

Mr. Majid Jowhari: Thank you.

I think my time is up.

The Chair: Thank you very much.

Back to you, Mr. Albas. You have five minutes.

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

Mr. Lawford, just to confirm, it does say on page 3 of the brief that you or your organization submitted to the committee that PIAC is "concerned about the affordability of Canadian content". Specifically, PIAC believes that Canada should—and your first recommendation is—"Task the Canada Media Fund with acquiring 'second-window rights' to compelling Canadian content for free distribution, so that everyone who is interested in that content can access it on the platform of their choice."

Mr. John Lawford: Right.

Mr. Dan Albas: Maybe it wasn't top of mind before, so could you elaborate a little more on that concept, specifically to this recommendation?

Mr. John Lawford: Sure. I recall it was in the written brief in either June or July.

Mr. Dan Albas: Yes.

Mr. John Lawford: The idea is that you get, as a copyright owner, first chance to make money from your Canadian content, by running it on CTV or whatever, but because it's Canadian content and because it's funded by the Canada Media Fund, which is really a proxy for taxing Canadians to produce Canadian content, it would be fair for those Canadians who wanted to see the content because of the national cohesiveness value of it, to get a chance to see it even if they could not afford a BDU subscription, for example.

Mr. Dan Albas: Thank you very much. I just wanted to get that on the record.

Mr. John Lawford: Thank you for the question.

Mr. Dan Albas: I'd like to go to the Business Coalition for Balanced Copyright.

Some members have come to this committee and there was a demonstration on the Hill a little while ago about how some of these infringing technologies work, the Kodi boxes. They showed us a box that had links to web servers' content for rights holders. Clearly it's organized theft and it's a problem we need to look at.

I'd like your thoughts on what constitutes a market failure or a legal or government failure, especially in terms of what Mr. Fewer said. The significant amount of content they showed us was in a huge number of languages from all over the world, and much of that content is legally unavailable in Canada. In their brief the Public Interest Advocacy Centre referred to expanding the definition of piracy so that it covers accessibility and foreign language content.

Should content that is not legally available be considered pirated content? Obviously, for many consumers who want to have access to those stations in the language of their choice, that's their only option. Could you give us your group's opinion on it?

Mr. Gerald Kerr-Wilson: Sure, and I think the first response is that if there's no Canadian licensee for the content, then there's no Canadian plaintiff to bring an infringement action. If programming is produced in a third country, it's entitled to copyright protection in Canada and the copyright owner can always bring an action in Canadian courts for Canadian infringements, but if no one in Canada has licensed the rights to that programming, it's not going to result in any infringement proceedings, anyway.

What we're talking about is—

Mr. Dan Albas: It's a bit of a grey area. Are you talking about a situation where someone is pirating content, such as the latest *Game of Thrones*, through a Kodi box and isn't actually paying to receive that service by legal means?

Mr. Gerald Kerr-Wilson: That's correct.

The problem we have is that these boxes are very sophisticated, so many consumers will see an interface that looks very professional. It looks like the menu from a legitimate service and they enter their credit card information. They can be misled into thinking they're actually subscribing to a lawful service. These things are promoted as free programming, even though they're not free because you still have to pay for the box and the service.

It's just where Canadian rights are being infringed, and Canadian creators or licensees are being deprived of that economic activity, that a Canadian court action would result.

Mr. Dan Albas: I'd like to go back to Mr. Fewer's earlier statement that the best defence against piracy is having a competitive environment where consumers can that with reasonable costs. I didn't paraphrase your statement very well, sir.

If you go to the United States, you can get HBO's streaming service for $20 U.S.—no, $15 U.S. Bell has just recently announced that you can get it through their CraveTV but you have to get the addition to it, so it's $20 Canadian. Even then, you can only use a low-definition format, unlike in the U.S.

How do Canadian consumers take that? My understanding is that *Game of Thrones* is one of the most pirated shows around. Do you feel that's more of a market failure? Are we not allowing a proper venue in Canada for consumers to pay for their content?

● (1645)

Mr. Gerald Kerr-Wilson: I would be very cautious about defining a market that includes unauthorized and illegal sources as part of that market, because you're distorting—

Mr. Dan Albas: No, what I'm saying, sir, is that if the only way that someone who's paid $3,000 for a high-definition television can get *Game of Thrones* in high-definition is by utilizing illegal content, or through a Kodi box or whatnot, can you see how some people are going to say, "Well, if they won't give me the option here in Canada legally, I'll continue to do this until they give me that option"?

Mr. Gerald Kerr-Wilson: I disagree with the premise, because *Game of Thrones* is available in Canada from a Canadian licensee.

The entire market of content, whether it's Canadian content or foreign content, is—

Mr. Dan Albas: You can get it if you go through the full cable service, or whatnot, and Bell has recently just launched an offer where you can get it on their streaming service through CraveTV, but again, at an additional price, and again, at a lower definition than is available in most places.

Do you understand what I mean?

Mr. Gerald Kerr-Wilson: I guess. Could you restate the question?

Mr. Dan Albas: The question is this: Are we encouraging, by not having.... Is it a market failure, that we are...because we are driving people to seek the content they want in the format they want, but it's not available unless they apply for these other services.

Mr. Gerald Kerr-Wilson: I think players operating in a legitimate market, without unauthorized and illegal alternatives or competitors, will have to respond to consumer demand. Any licensee will have to respond to consumer demand or they risk not getting a return. If you can't sell enough subscriptions or sign up enough subscribers, then you're not going to get a return, and you have to rethink your marketing, but if every product and every service is marketed based on that supply and demand mechanism, what's the alternative?

You don't artificially constrain a pricing system because there's unauthorized or illegal alternatives in the market. That's a distortion.

Mr. Dan Albas: I think the music industry certainly has.... If you look at piracy, that's no longer an issue, because they've easily—

The Chair: We're going to move on.

Mr. Dan Albas: That was a seven-minute one.

The Chair: We're really over time on that one. Amazing how that happens.

Mr. Sheehan, you have somewhere in the neighbourhood of five minutes.

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

I appreciate the testimony, and it's great going towards the end because we have an opportunity to discuss some things that perhaps we haven't discussed.

The first question will be for the Chamber of Commerce. I'm from Sault Ste. Marie and we have a very large chamber of commerce, with a diversity of membership and cultural mediums of every kind. We have the IT players and there's always a great discussion around copyright. One of the discussions—and it's poured into this committee and also into the heritage committee—is about compensating those in the cultural trade in our community. In particular, I think of the visual works of art and resale rights that would allow creators to receive a percentage of subsequent sales of their work.

Do you have any comments or a perspective on that? Let's say a painter sells a painting once, and then the painting is resold but the original artist does not receive compensation. In other cultural industries, they do receive some sort of royalty or compensation. Have you guys explored that?

Mr. Scott Smith: We don't have very many members in the visual arts space, so it's a difficult one for me to comment on, other than if there were contractual arrangements when the artist sold the painting, for instance, that any future copies made of that painting...and copyright should follow the work. If there are prints made of it in the future, yes, there should be some kind of royalty for that.

● (1650)

Mr. Terry Sheehan: Some other things were brought up, like a revisionary right that would bring the copyright holder's work back to an artist after a set amount of time, regardless of any contracts to the contrary. Then, of course, there's granting journalists a remuneration right for the use of their works on digital platforms, such as news aggregators. Have you guys explored any of those changes to copyright that would be able to compensate those creators?

Mr. Scott Smith: Compensating journalists for...?

Mr. Terry Sheehan: It's something that has come up over a few testimonies. We heard it in Vancouver. We heard it in different places. It's granting journalists a remuneration right for the use of their works on digital platforms, such as news aggregators. Are you familiar with any of that?

Mr. Scott Smith: We haven't explored that at all.

Mr. Terry Sheehan: Overall, though, in a general sense, I'm trying to figure out how you feel. How do we balance Canada's innovation agenda, which is encouraging people to explore and use new technologies in the marketplace, versus people—and we've heard from both sides—from the cultural community who want to see fair and just compensation? Any suggestions on how we deal with that or strike that balance, whether a copyright law or something outside of the copyright regime?

Mr. Scott Smith: I think a lot of that balance already exists in copyright law. I know the last round has addressed a number of concerns that you're referencing. In terms of compensation back to rights holders and the ability to enforce their rights against infringement, it has much more to do with the relationship between businesses and consumers than it does with researchers. The fair dealing in Canada is fairly robust in terms of the ability for researchers to access the material they need.

Mr. Terry Sheehan: To Mr. Fewer, you were talking about it during your testimony. You felt that subjecting digital locks to the fair dealing regime would be a sufficient balancing of rights and user rights. Could you comment on that?

Mr. David Fewer: It would be a sufficient balancing. Looking at the anti-circumvention provisions themselves, I think it's useful. Is it sufficient? Probably not.

If you take a look at the legislation, there are ample, specific exemptions for libraries, archives, museums. These are institutions. They are not piracy sites. These are organizations that operate in the public interest, by definition, and they rely on fair dealing, but they also have other exemptions built into the act that benefit them to deal with their specific issues.

Why should those be stripped away in the digital context, merely because the content is distributed on a DVD with regional coding?

Mr. Terry Sheehan: Referring to some of the comments that were made in questions earlier about piracy, most of us around the table remember when Napster and BearShare were there. There was a lot of piracy. With the new platforms out there, whether it's Spotify or Netflix, have we seen a decline in piracy as a result of these new platforms?

Mr. David Fewer: Both privacy and piracy, I would say both. Was that question for me?

I'll answer quickly, and I'll refer to John's submissions that he has promised to give the committee on the FairPlay proceedings. Yes, it makes sense. Provide consumers with useful, affordable services that give them the content they want, and they'll pay for it. It's common sense.

Mr. John Lawford: The evidence that we have isn't conclusive that we're in this top category of infringers and that Canadians are using this to the extent it's being alleged, either in the reports or by the coalition, whichever coalition it is. That's the first thing for the committee to consider. What's really the hard evidence? That's hard to get.

Honestly, a reality check, of course, is that some people will always pirate. The goal is to keep it to a very low background noise.

● (1655)

The Chair: You're way over. Thank you.

Mr. Masse, you have the final round.

Mr. Brian Masse: I know we've been talking about piracy. It reminds me of the 10 years that I've spent trying to get single-event sports betting to this country. On this phone, I can bet on a legal game, right here, yet our government practices here provide all the barriers necessary to keep it as an organized criminal activity. Basically, the technology that we have and that's out there, I mean, we have to look to close the gaps.

I don't really have any questions at the end of it, I just wanted to prove a point, though. When we look at these issues, we have to start looking at what's really out there, at least. Aside from the fact that we seem to be an outlier still on this, the government's almost irrelevant in this debate and organized crime and others benefit from it.

I would say they are the same thing, when you look at piracy and other types of activities with it. There's some type of a balance somewhere in there, but the technology's changed and that requires us to do something different from before.

At any rate, I'll leave it at that.

The Chair: Okay.

That takes us to the end of our session. I'd like to extend a thank you to our panellists for giving us many things to think about, as we continue on this journey.

We're going to suspend for one quick minute. You could say your hellos and then we're going to get back into what we were doing.

● (1655)

(Pause)

● (1655)

The Chair: At the last meeting, we were prepared to continue the debate on this motion. Unfortunately, we got held up by votes, so here's where we are today.

● (1700)

Mr. Dan Albas: Okay. Thank you, Mr. Chair. Now that it's been received, I'm sure the clerk will find it in order, so we can have a debate on this.

> That the Standing Committee on Industry, Science and Technology study Statistics Canada's plans to collect "individual-level financial transactions data" to develop a "new institutional personal information bank" and invite Statistics Canada officials, the Privacy Commissioner, representatives of the Canadian Bankers Association among other witnesses and report its findings to the House of Commons and that the Government provide a response to the report.

I so move.

The Chair: Go ahead, David.

Mr. David de Burgh Graham: I don't really object to the motion, which might surprise you, but I would like to propose an amendment, if I could.

I don't know the right way.... If I wanted to delete two discrete clauses, what's the best way of moving that amendment?

The Chair: Sorry, can you say that again?

Mr. David de Burgh Graham: If I wanted to delete two discrete clauses, what's the best way of proposing that? To reread it, changing the words after that or to say what I'm....

The Chair: Why don't you read it out first and then we'll see how complicated it is?

Mr. David de Burgh Graham: It's me, so it's complicated. Trust me.

In that case, I'll read the motion, as I would amend it, so just follow along. I can read it again slowly, if you need me to. It's that the Standing Committee on Industry, Science and Technology invite the chief statistician of Statistics Canada to appear before the committee to discuss the financial pilot project for one hour and that the meeting be televised.

In order to get it in a form that can be used, how would you like me to do that?

The Chair: Hold on a second, I just want to get my clerk back here.

Did you have a question?

Mr. Brian Masse: That sounds like a major substantive change, so we just need a ruling on that.

The Chair: First of all, regarding the amendment, I don't know if it's exactly what you want to say, so it's a debate right now on the potential amendment.

At this point, it's hard for me to rule because I don't know what your side is saying versus what they're saying.

Mr. Brian Masse: It called for a one-hour.... At any rate, it's up for you to decide, but it called for a one-hour witness testimony and that's it. I would just question whether that's a substantive or not substantive amendment. I would say that's substantive, personally, so that determines whether it's in order or not.

The Chair: What we have here is the original motion to study Statistics Canada's plan to collect individual-level financial transactions data to develop a new institutional personal information bank, and invite Statistics Canada officials. You also have the Privacy Commissioner, representatives of the Canadian Bankers, among others.

I don't see it at this point as a substantive change because it is inviting one witness versus a few other witnesses, so far. That's how I'm seeing it right now.

You're next, Mr. Chong.

Hon. Michael Chong (Wellington—Halton Hills, CPC): On a point of order, first, what is the amendment?

The Clerk of the Committee (Mr. Michel Marcotte): I'll try to explain it as I see it.

We keep the first line, “That the Standing Committee on Industry, Science and Technology”. We stop at “study”. We skip about three lines and we keep “invite the chief statistician of Statistics Canada”. There's a new end. The end would say, “to appear before the committee to discuss the financial data pilot project.”

Basically, it removes the title of the Privacy Commissioner and all the other witnesses, but keeps the beginning, the middle and the idea.

Hon. Michael Chong: Mr. Chair, would you please read out the amendment in its entirety so I understand. I still don't know what the amendment is.

The Chair: From what I can see, it reads that the Standing Committee on Industry, Science and Technology invite the chief statistician of Statistics Canada to appear before the committee to discuss the financial data pilot project for one hour, and that the meeting be televised.

Hon. Michael Chong: In my view, that's a complete change to the motion, because the original motion is worded as compelling the committee to study, which is a very specific parliamentary word.

The amendment would replace the word “study” with “invite” and would strike the word “study” entirely from the motion. Now, unless I'm misunderstanding the amendment, replacing a study with an invitation to appear are two very different rubrics of a committee.

That's my view, if I understand the amendment correctly.

● (1705)

The Chair: Okay, I see hands all over the place.

Before we jump to that, I just want to go back to David.

You can respond to that, please.

Mr. David de Burgh Graham: The objective of both the motion and the amendment is to invite the chief statistician to testify for the reasons we're all familiar with, and this seems to achieve that. Let's get him in here. We can get him in here as early as Wednesday.

Hon. Michael Chong: On the same point of order, I respectfully disagree, Mr. Chair.

A study allows a committee to issue a report and recommendations that can be tabled in the House of Commons. A motion that does not mention the word “study” and simply mentions an invitation for a witness will not allow the committee, as I understand it, to issue a report with recommendations in the House of Commons.

The Chair: Just give me one moment, please.

Mr. Masse is next on the list, but right now I am trying to speak to the point of order that Michael has put forward.

Mr. Dan Albas: I also have a comment on the exact same point of order.

The Chair: Then that's not going to change anything right now.

Mr. Dan Albas: It's on the substance of the motion and whether you can view it as in order or not. I think that's the discussion you're having with the clerk, and I'd like to make sure my voice is heard on this.

The Chair: Okay, go ahead.

Mr. Dan Albas: I submitted this last week, or even before then. Mr. Chong has said that “study” is very important, but there was no mention even by the government of a pilot project until last Friday, so this gives exactly what we'd be asking questions on. It also says that we want to actually study, table something and report its findings to the House of Commons, and then have the government respond to it. That has been effectively taken out.

Not only that, there would be only one person, who wasn't even listed originally in my motion, the chief statistician. I asked for Statistics Canada officials, but I also asked for the Privacy Commissioner, representatives of the Canadian Bankers Association, and other witnesses.

I would imagine that if he had made a motion to maybe delete one or to add another, that would be fine. But to actually be saying that this committee will just invite and have one done in an hour, with no report and no response from the government, I think is a substantial change, Mr. Chair.

I understand Mr. Graham has things that he wants to do, but then he should propose his own motion, versus making major changes to the structure of this one.

The Chair: We're going to stick to that point of order.

Do you want to speak to that point of order?

● (1710)

Mr. Brian Masse: Yes, just really quickly. They don't even have "chief statistician" in the original motion. He's suggesting somebody come who is not even in the original motion, and Michael is right with regard to the issue of "study" and so forth. At any rate, whether it can be in order or not, we've had a lot of time with this motion before today. It's been in our packages for over a week. We're talking about one hour with somebody who's not even in the original motion. I don't even know how it gets on the floor.

The Chair: Does anybody else want to speak to the point of order that's been put forward?

Mr. Lloyd Longfield: I'm trying to make sure it's on the point of order. There were substantial changes. If we're looking at two different things, I think what we're trying to get on the table is what Statistics Canada is doing, and, right now, they're working on something with the Privacy Commissioner, from what I've heard in the House, regarding what form this pilot would take, when it would be initiated and all of that.

I'm not sure that a study would get to that if it's something that's currently in process. I don't think we're in a position to do a study on something that hasn't been brought back to us yet.

The Chair: Okay.

With the motion you submitted and what you've put forward, it is probably a little bit of a stretch in that. I understand that you're trying to find that compromise, but given the challenge of trying to amend the motion so that it works, it doesn't seem to work here. At this point, I don't think I can rule in favour of your amendment because it is a bit of a substantial change.

Michael.

Hon. Michael Chong: Are you done with the point of order?

The Chair: Having said that, I rule the amendment out of order at that point. Thank you.

It's your turn.

Hon. Michael Chong: Mr. Chair, thank you.

I'd like to move an amendment to the motion that after the word "invite" would add the words "the chief statistician".

The Chair: The chief statistician is not in there. Do you want to add it in?

Hon. Michael Chong: Yes, add "the chief statistician", so that the first part of the amendment would be to add those three words after the word "invite". After the comma, after the word "officials", add "former Ontario privacy commissioner Ann Cavoukian". The third part of the amendment would be to add, in front of the words "the chief statistician and", "Minister Bains". It would read, "invite Minister Bains, the chief statistician and Statistics Canada officials, and former Ontario privacy commissioner Ann Cavoukian".

That's my amendment, Mr. Chair.

The Chair: Is there any debate on this proposed amendment?

Mr. Dan Albas: I just want to show my support for it simply because, if you look at it, among other witnesses, he's just added someone who has been active on this. I think you mean Ms. Cavoukian from Ryerson. Is that right? She's been speaking out quite publicly on this, and there's a lot of interest in this.

I would hope that all members would support this, not just our role in terms of accountability by having the minister in but also in terms of the concerns that are out there in the public that should be addressed. This committee is uniquely positioned to do that. I hope all members will vote in favour. I've received a number of phone calls and emails from people who are very concerned about this project.

● (1715)

The Chair: Is there any further debate on the amendment?

Brian.

Mr. Brian Masse: I am supporting it in the main motion. The amendment is important because it does bridge the intent of what was made earlier and it makes a lot of sense.

Other witnesses as well would be the former chief statisticians and others who would be germane to this, so it is a great opportunity for us to get something to the House.

Thank you.

The Chair: Okay.

Is there any further debate?

The vote is on the amendment first.

Mr. Dan Albas: I'd like a recorded vote.

(Amendment negatived: nays 5; yeas 4)

The Chair: The amendment is defeated, and we're now back to the original motion.

Is there any debate on the original motion?

Mr. Dan Albas: I just would encourage all members. There are a lot of people, I'm sure, in each of our ridings who are concerned. This is a way for us to carry out our parliamentary functions.

It's obviously too bad that we're not inviting the minister, because I know from his attention to this in the House that this is something I'm sure he would love to speak to. That being said, the witness list that we have here is still consistent and would bring forward a number of voices that need to be heard.

The Chair: Celina.

Mrs. Celina Caesar-Chavannes (Whitby, Lib.): With that said, there are still ongoing conversations with the Privacy Commissioner and Statistics Canada, and I totally understand the level of interest in this particular file from all of our constituents. However, in this course of studying a particular initiative that's happening, we should let the process run its course with the Privacy Commissioner and Statistics Canada before we go ahead with anything further.

That sums up where I'm going.

The Chair: Brian.

Mr. Brian Masse: We would abdicate our responsibility if we didn't look at it. If the same logic applied, then we would fold our tent on our copyright study, because the USMCA has been signed, and it has compromised our copyright review.

As well, the minister has pronounced some changes to the Copyright Board, so we have things that are in the mix of our process that we're currently doing right now. Having the motion in front of us is a reasonable approach to dealing with some of the things that have changed. We saw legislation that was passed three years ago that mandated a different way of data collection. That was some of the debate that took place with regard to the bill, and it's coming home to roost right now, because what was debated quite earnestly at that time was the fact that Shared Services Canada was going to do some of the data collection and, in that process, use third party agreements, including from the banks, as part of the changes that took place with Statistics Canada.

What's happening now is that the process of moving from the long-form census problems with the previous government in terms of its response rate diminishing and the changes that have been brought about for data collection through the digital age have required a better oversight process. This motion only brings light to all those different issues.

One of two things will happen. Either Canadians will be further enlightened about the current situation, and they'll have officials from Statistics Canada and others who would come forth, and they would also have privacy ones who can sort out the changes that have taken place.

We have legislation that really is just coming into the moving parts of its body right now that shocked Canadians, and that's the bottom line. It's something that's appropriate for this committee to do.

The committee can do one of two things at this point in time. We can almost self-declare our irrelevancy. We've kind of been doing that in the last little bit by defeating motions that had to do with emergency preparedness, the CRTC and other things we've had that are quite reasonable. They haven't been long. They haven't been ways we could define or destroy the work we are doing on copyright.

Again, this is a reasonable approach to try to get to some answers. I don't think there is any reason not to do this.

● (1720)

The Chair: Thank you.

Mr. Jowhari.

Mr. Majid Jowhari: Thanks, Mr. Chair.

I'm going to go back to the spirit that I understood from the point that Mr. Graham brought. This is trying to get an understanding of what this initiative, whether it's called a pilot project or study, is all about. This is why, I think, if we actually ask the chief statistician to come and explain to us what was behind this, then we're going to be in a much better position to go back to Mr. Albas's motion. We would be able to make sure that, now that we understand what the scope or the intent is, we could then say these are the extra witnesses we want, and now we want to study, and the study should be *x* number of sessions, etc.

Honestly, I don't want to reject this, but what I also need, as a member, to make sure I'm doing the job that I need to do for my constituents, is to try to understand what it is that drove Statistics Canada to initiate this initiative, whether it's a pilot or whether it came on a Friday afternoon. What is the driver behind it? Once we understand that, then it's most logical for us to go back to this study and say, “Let's do a study for that.” That's all I wanted to add to the record.

The Chair: Thank you.

Is there any further debate? If there's no further debate, then we will vote.

A voice: Are we in camera?

The Chair: No, we are public.

Mr. David de Burgh Graham: In that case, I'd like to be on the record for one second.

The Chair: Did you want to add something?

Mr. David de Burgh Graham: Yes, just very quickly, I'll put this motion on notice right now while I'm here.

I'll do that right now so that it's taken care of. I can give it orally.

The Chair: Okay, you can give notice.

Mr. David de Burgh Graham: As I've already given it, as I've already read it, do you want me to read it again?

A voice: No.

The Chair: Mr. Albas.

Mr. Dan Albas: Don't we have to finish this business first before we proceed with other business, Mr. Chair?

Mr. David de Burgh Graham: If we're in committee business we can move it right away. If we're only at a specific motion, I have to wait for two more days.

The Chair: We are public, and you can put a notice of motion through. I mean, I've never stopped you guys from putting a notice of motion through. If you want to do that, then I suggest you put it through quickly so we can go on to our vote.

Hon. Michael Chong: On a point of order, just to clarify, there's nothing untoward about giving a notice of motion, but the motion that Mr. Albas moved is still live on the floor, notwithstanding the notice of motion.

Mr. David de Burgh Graham: Yes, absolutely. That's true. It doesn't in any way pre-empt it. It's just saying that once we get past that, then we can discuss this other point.

Mr. Dan Albas: You're not going to discuss it. You're going to give notice of motion.

Mr. David de Burgh Graham: I'm giving notice of motion, and then the next time we can discuss it.

The Chair: He wants to give his notice of motion right now, and he's entitled to do that. We're running out of time, so please, let's go ahead.

Read it.

Mr. David de Burgh Graham: Okay. You've already heard it, so I'll read it quickly. I will be putting on notice the motion that the Standing Committee on Industry, Science and Technology invite the chief statistician of Statistics Canada to appear before the committee to discuss the financial data pilot project for one hour, and that the meeting be televised.

That's it.

The Chair: Can we just remove the words “pilot project”? I don't know that it's an official term.

● (1725)

Mr. Majid Jowhari: That's what I had proposed.

Mr. David de Burgh Graham: Sure, if it makes it easier. What do you want to call it, then?

The Chair: It would be, “to discuss the financial”...exactly what's in there.

All right, thank you. Notice has been received. We're going to go to the vote on the motion.

(Motion negatived: nays 5; yeas 4)

The Chair: I just want to do one more quick thing before we go.

Wednesday is the official apology for the MS *St. Louis* in the House. The committee is not cancelled. We will still have our committee meeting. We'll still have our witnesses. I just want to let you guys know that's where we stand. For the *St. Louis* apology, the Prime Minister is doing a speech. I would imagine all the leaders are as well, so that's going to take about 45 minutes, but we will still have committee.

Mr. Dan Albas: Will we have the committee meeting after the apology?

The Chair: No, it will be during the apology. We won't postpone our committee, because we do have some witnesses here and housekeeping to do.

Mr. Brian Masse: We don't have the motion in front of us and I just want to make it clear, for the record. We don't have the motion in front of us and it's not in both official languages—

The Chair: That's not what we were just talking about. He read it into the record, and it will get translated and what have you.

I'm talking about Wednesday's meeting.

Mr. Brian Masse: Okay, I thought his motion was for Wednesday's meeting too. Sorry, I apologize.

The Chair: No. Wednesday's meeting is during the *St. Louis* apology. We are not cancelling our committee.

Michael.

Hon. Michael Chong: Mr. Chair, through you, maybe we could be informed by Mr. de Burgh Graham when he intends to move his motion?

Mr. David de Burgh Graham: At the next non-interrupting opportunity, I'll put it that way. I don't know. I don't think it will take very long.

Michael, let's try this.

Do we have unanimous consent right now to invite him for one hour at the earliest opportunity?

The Chair: Seeing as how I'm the chair....

Thank you. If we have unanimous support, we could extend an invitation to the chief statistician to appear in the second hour on Wednesday.

Mr. David de Burgh Graham: It would be for one hour, televised.

Some hon. members: Agreed.

Mr. David de Burgh Graham: My motion is now moved, so thank you.

The Chair: No, your motion's not moved.

What we'll do is, on Wednesday, again, because we have the apology, we will not be interrupted. We'll have an hour with our first witnesses, and I will be keeping special time to make sure that we don't fall behind, because I think we all want a full hour with the chief statistician. If there's a desire to extend it, I understand that we will need to get out of here at 5:30 p.m. because there will be another meeting being set up. We'll have to keep it tight.

All right, I'm glad to see we're all cordial and working together.

Thank you. We're adjourned.