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Chair

Mr. Dan Ruimy

Standing Committee on Industry, Science and Technology

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● (1610)

[*English*]

The Chair (Mr. Dan Ruimy (Pitt Meadows—Maple Ridge, Lib.)): Welcome, everybody, to meeting 124 of the Standing Committee on Industry, Science and Technology, as we continue our five-year review of the Copyright Act.

I'd like to welcome our new member Mr. Mike Lake as well as Mr. Pierre Nantel to our committee.

Before we get started, Mr. Jeneroux, you have a quick notice of motion?

Mr. Matt Jeneroux (Edmonton Riverbend, CPC): I sure do, and thank you, Mr. Chair. I'll be as quick as I can here.

We're not moving the motion today, just the notice of motion. The notice says:

> Given that the Minister of Innovation, Science and Economic Development has been explicitly tasked in his mandate letter from the Prime Minister to "work closely with the Minister of International Trade to help Canadian firms compete successfully in export markets," and given that the International Monetary Fund (IMF) has raised concerns over Canada's ability to compete with changes in the United States' tax regime, that the Committee undertake a study of four meetings to review, among other things: i) the impact of any U.S.-imposed trade restrictions on the affected industries, ii) the impact of Canada's tax regime on Canadian companies' ability to compete with foreign-owned companies in Canada and abroad, and iii) the state of private sector investor confidence in Canada.

This is also rather timely today, Mr. Chair, due to the comments by the President of the United States. I hope to move this motion in the future.

Thank you.

The Chair: Thank you very much.

We have received your notice of motion, and we are going to move on.

We have very tight time today, but we have some witnesses. From the Canadian Musical Reproduction Rights Agency, we have Caroline Rioux, President. From the Motion Picture Association - Canada, we have Wendy Noss, President of the Starship Enterprise, apparently. From the Writers Guild of Canada, we have Maureen Parker, Executive Director; and Neal McDougall, Director of Policy. From the Society for Reproduction Rights of Authors, Composers and Publishers in Canada, we have Alain Lauzon, General Manager; and Martin Lavallée, Director of Licensing and Legal Affairs. Finally, from Canadian Media Producers Association, we have Erin Finlay, Chief Legal Officer; and Stephen Stohn, President of SkyStone Media.

We're going to get started with Caroline Rioux.

You have five minutes. Go ahead, please.

Ms. Caroline Rioux (President, Canadian Musical Reproduction Rights Agency Ltd.): Good afternoon. My name is Caroline Rioux. I am President of the Canadian Musical Reproduction Rights Agency, CMRRA. I thank the committee for the opportunity to share our experiences and recommendations for amendments to the Copyright Act. I have prepared a few brief slides to assist you in following my presentation.

CMRRA is a collective that licenses the reproduction of musical works on behalf of more than 6,000 music publisher and songwriter clients. Together they represent more than 80,000 music catalogues, which comprise a large majority of the songs sold, broadcast, and streamed in Canada. CMRRA grants licences to authorize the copying of these songs to record companies that release sound recordings on the marketplace, such as CDs; online music services, such as iTunes, Spotify, and YouTube; and Canadian radio and television broadcasters.

Reproductions of musical works may be licensed under a tariff certified by the Copyright Board or by direct agreement with users. Pursuant to those licences, CMRRA collects and distributes royalties to rights holders after having carefully matched the usage data received from those users to the copyright ownership information in our database.

I am here today to talk to you about certain exceptions to copyright liability that were introduced in 2012. In the interests of time, I will describe the impact of only two of these exceptions. Unfortunately, there is insufficient time to cover the third item from my initial presentation, technological neutrality and the impact of the most recent Copyright Board decision on the rates applicable to online streaming services. This issue will nonetheless be covered in our written submission, because it is of critical importance to us.

With regard to backup copies, in 2012 a broad exception for backup copies was introduced. As a result, in 2016 the Copyright Board applied a large blanket discount on the established rate, reducing royalties payable since 2012 by 23.31%. In doing so, the board effectively took an estimated $5.6 million away from rights holders to subsidize already profitable radio stations. We firmly believe that rights holders should be compensated for these valuable copies. CMRRA recommends that the Copyright Act be amended to clarify that the exception for backup copies should be limited to copies made for non-commercial purposes only, consistent with other exceptions under the act, such as for user-generated content and time-shifting.

The second exception is “ephemeral copies”. Radio stations make copies of musical works for many purposes. Copies intended to exist for no more than 30 days are known as ephemeral copies. Until 2012 the ephemeral copies exception effectively addressed the concerns of both rights holders and broadcasters. Rights holders rightly wanted to be compensated for the reproduction of their works, while broadcasters wanted to minimize the onerous task of seeking licences from countless individual rights holders. Crucially, the exception did not apply where the right was otherwise available via a collective licence.

Following lobbying by broadcasters, the collective exception clause was repealed in 2012, giving the exception very broad application—but only to broadcasters. As a result, the Copyright Board reduced the royalties payable by up to an additional 27.8%, worth up to $7 million per year, provided that broadcasters could somehow prove they met the conditions of the exception. Ironically, the exercise of proving or disproving which reproductions actually qualify for the exception has introduced a significant administrative and enforcement burden on rights holders, resulting in the further erosion of the value of the right.

There is no reason why commercial broadcasters should not compensate rights holders when they themselves benefit so greatly from the copies at hand. CMRRA recommends that subsection 30.9 (6) be reintroduced, in keeping with the original intention. That one user group or technology should benefit from an exception over another is not technologically neutral, and represents an unfair advantage to broadcasters.

In conclusion, given the ongoing difficulties caused by the exceptions introduced in 2012, we ask Parliament to refrain from introducing any further exceptions to copyright, but instead focus on addressing the erosion of copyright that has been caused by the existing exceptions. Traditional revenue streams have declined, but a robust copyright law protects against the pace of change by adhering to a principle of technological neutrality.

The exceptions outlined in this submission compromise that principle, and in so doing further erode the value of music and the value of creation. In addition to these recommendations, CMRRA asks that you improve the efficiency of the Copyright Board. We recognize that this has already been identified as a priority, and we appreciate Minister Bains' recently announced innovation strategy.

● (1615)

We also ask that you make the private copying regime technologically neutral, address the value gap by amending the hosting services exception, and extend the term of copyright for musical works to life plus 70.

Thank you.

● (1620)

The Chair: Thank you very much. We're going to move to Ms. Wendy Noss.

You have five minutes.

Ms. Wendy Noss (President, Motion Picture Association-Canada): Thank you.

I'm Wendy Noss, with the Motion Picture Association-Canada. We are the voice of the major producers and distributors of movies, home entertainment, and television who are members of the MPAA. The studios we represent, including Disney, Paramount, Sony, Fox, Universal, and Warner Bros., are significant investors in the Canadian economy, supporting creators, talent and technical artists, and businesses large and small across the country.

We bring jobs and economic opportunity and create compelling entertainment in Canada that is enjoyed by audiences around the world. Last year, film and television producers spent over $8.3 billion in total in Canada and supported over 171,000 jobs. Over $3.75 billion of that total was generated by production projects from foreign producers, of which our American producers represented the vast majority.

From *Suits* to *Star Trek*, from *X-Men* in Montreal to *Deadpool* in Pitt Meadows, and from the inflatable green screen technology that created the *Planet of the Apes* to the lines of code used to simulate the flight of the Millennium Falcon, our studios support the development of talent and provide good middle-class jobs for tens of thousands of Canadians.

We appreciate the opportunity to appear before you, as the study before this committee is essential to both future creation in Canada and the innovative distribution models that deliver content to consumers on the device they want, at the time they want, and the way they want.

We have a range of concerns that touch upon fundamental copyright issues: the term of protection itself, as you've heard from many others, and the need for Canada to provide copyright owners with the same global standard that already exists in more than 90 countries. Given the limited time we have, our focus today is on a single priority: the need for modernizing the act to address the most significant threats of online piracy, including those that were not dominant at the last round of Copyright Act amendments.

You've already heard from others about the research that quantifies the piracy problem. While measurements of different aspects may vary, the one constant is that piracy causes loss to legitimate businesses and is a threat to the Canadians whose livelihoods depend upon a healthy film and television industry.

We propose two primary amendments.

First, allow rights holders to obtain injunctive relief against online intermediary service providers. Internet intermediaries that facilitate access to illegal content are best placed to reduce the harm caused by online piracy.

This principle has been long 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. Building upon precedents that already exist in Canada in the physical world, the act should be amended to expressly allow copyright owners to obtain injunctions, including site-blocking and de-indexing orders, against intermediaries whose services are used to infringe copyright.

This recommendation is supported by an overwhelming consensus on the need for site-blocking from the broadest range of Canadian stakeholders—French and English, and, notably, even ISPs themselves. Moreover, there is now more than a decade of experience in over 40 countries around the world that demonstrates site-blocking is a significant, proven, and effective tool to reduce online piracy.

Second, narrow the scope of the safe harbour provisions. The Copyright Act contains safe harbour provisions that shield intermediary service providers from liability, even when those intermediaries knowingly have their systems used for infringing purposes.

In every other sector of the economy, the public rightfully expects companies to behave responsibly and to undertake reasonable efforts to prevent foreseeable harms associated with their products and services. For two decades, the Internet has lived under a different set of rules and expectations, stemming largely from immunities and safe harbours put in place when the Internet was in its infancy and looked nothing like it does today.

The act should therefore be amended in a manner consistent with the European Union to ensure that safe harbours only apply where the service provider is acting in a passive or neutral manner, and that overly broad exceptions do not shield intermediaries when they have knowledge that their systems are being used for infringing purposes but take no steps to stop it. While there is no single solution to piracy, there is a new public dialogue about restoring accountability on the Internet, and in Canada there is a need for modern, common-sense policy solutions in line with proven international best practices.

We are grateful for the work of the committee in your consideration of these important issues and would be pleased to address your questions.

● (1625)

The Chair: Thank you very much.

We're going to move to Maureen Parker from the Writers Guild of Canada. You have five minutes.

Ms. Maureen Parker (Executive Director, Writers Guild of Canada): Good afternoon, Mr. Chair, vice-chairs, and members of the committee.

My name is Maureen Parker, and I am the Executive Director of the Writers Guild of Canada. With me today is my colleague Neal McDougall, the WGC's Director of Policy. We would like to thank the committee for the invitation to appear today.

The Writers Guild of Canada is the national association representing over 2,200 professional screenwriters working in English language film, television, animation, radio, and digital media production. These WGC members are the creative force behind Canada's successful TV shows, movies, and web series.

Every powerful show, movie, or web series requires an equally powerful script, and every powerful script requires a skilful and talented screenwriter. They start with a blank page and end up creating an entire world. WGC members Mark Ellis and Stephanie Morgenstern developed an idea about a police squad sniper into a prime time TV hit called *Flashpoint*. They started with a concept and created an entire world. That's what authors do.

Our request today is for a simple clarification in the Copyright Act. We ask that the act be amended to clarify that screenwriters and directors are jointly the authors of the cinematographic work.

Authorship is a central concept in the Canadian Copyright Act. The act acknowledges that authors generally create copyrightable works and states the general rule that the author of a work shall be the first owner of the copyright therein. The authors of the cinematographic works are jointly the screenwriter and director. Screenwriters and directors are the individuals who exercise the skill and judgment that result in the expression of cinematographic works in material form. They start with the blank page or screen, respectively, and a world of possibilities from which they make countless creative choices. Screenwriters create a world, choose the specific place and time in that world to begin and end the story, set the mood and themes, create characters with histories and personalities, write dialogue, and map out the plot. Directors direct actors, choose shots and camera positions, and make choices that determine tone, style, rhythm, and meaning as rendered in a film or television production.

Producers are not authors. Producers are the people with the financial and administrative responsibility for a production, but while raising financing and arranging for distribution are important aspects of filmmaking, it is not creative in the artistic sense and it is not authorship. Moreover, copyright protects the expression of ideas, not the ideas themselves, so while producers may on occasion provide screenwriters and directors with ideas and concepts, it is screenwriters and directors who in turn express these ideas and concepts in a copyrightable form.

A Canadian court has already determined that the joint screenwriter and director were the authors of a film. The court held that the individual producer could not be considered to be the author of the film since the role was not creative. Other international jurisdictions already recognize screenwriters and directors as authors of audiovisual works. The U.S. is the primary anomaly, something that is partly explained by their studio system, which is not the international or Canadian model. As such, our proposal does not change the law or the reality in Canada; it simply clarifies it. Why is this important?

For one thing, the act defines the term of copyright based on the life of the author. If the life of the author is uncertain, then the term of copyright is uncertain, and therefore, there can be uncertainty about whether a given work is still under copyright protection or is in the public domain.

Further, recognizing screenwriters and directors as joint authors provides support for creators and the role they play in the Canadian creative economy. It gives them a strong position in which to bargain and enter into contracts with others in the content value chain. Since this clarification would not alter the legal reality in Canada, it poses no threat to existing business models.

Producers and others seeking to engage creators for their work would simply contract for the rights in that work, the same as they always have. Nobody argues that novelists are not the authors of their novels or composers are not the authors of their music, and certainly no one argues that publishers somehow can't sell books or recording companies can't sell music because these authors are the first owners of their works. Indeed, nobody argues that screenwriters aren't the authors of their screenplays, and producers already contract for the rights to adapt those screenplays into a production as a matter of course. This is not a disturbance of the business status quo; it is the business status quo.

● (1630)

Finally, in this fast-changing environment, in which disruption is the rule and not the exception, clarifying screenwriters' and directors' positions as authors offers the potential for further tools, such as equitable remuneration as is available in other jurisdictions like Europe, if and when that policy option needs to be considered.

Thank you for your time. We look forward to any questions you may have.

The Chair: Thank you very much.

We're going to move to the Society for Reproduction Rights of Authors, Composers and Publishers.

[*Translation*]

Mr. Lauzon, you have five minutes.

Mr. Alain Lauzon (General Manager, Society for Reproduction Rights of Authors, Composers and Publishers in Canada): We are before you today on behalf of SODRAC, a collective rights organization that manages its members' reproduction rights and copyrights. Our members are creators of artistic works: authors, composers and music publishers. We make it easier for users to use our repertoire of works on all streaming platforms, in order to fairly compensate our members for their work.

Our main recommendation to the committee is to introduce the droit de suite in Canada for creators of visual arts and crafts. However, we are speaking to you today on behalf of our members who are authors, composers and music publishers. As such, we are representing their songs and audiovisual works.

Users need two rights to use music: the right to the work and the right to the sound recording. We represent the right to reproduce the work.

Our organization has been managing collective rights for more than 33 years. We issue transactional licences and blanket licences to users doing business in Canada, or with Canadian consumers. We collect royalties from these licences, and we redistribute them, as soon as possible, to our members and to collective rights organizations outside Canada.

SODRAC is a member of BIEM and CISAC. The latter is the world's largest network of authors' and composers' societies.

We firmly believe that the Copyright Act should allow all rights holders to monitor the economic life of their works, no matter how they are used, and to benefit from the potential economic gains that ensue from the use of their work. We are against contracting practices that require paying lump sums, because they undermine the notion of property and dispossess creators, which goes against the fundamental principles of copyright.

In parallel with your review of the act, we participated in a consultation related to the Copyright Board of Canada. Today, we wish to testify on the essential role the board plays.

SODRAC is a member of CPCC. As such, we support its recommendations to have a technologically neutral private copying system and an interim compensatory fund in the meantime. We are also in favour of including audiovisual and artistic works in the private copying system.

That brings us to the more specific points we would like to submit to you. On that note, I'll give the floor to Mr. Lavallée.

Mr. Martin Lavallée (Director, Licensing and Legal Affairs, Society for Reproduction Rights of Authors, Composers and Publishers in Canada): We would like to go into further detail on five points.

The first point is the exceptions for reproduction rights in the act in general.

Starting from the exceptions for reproducing backup copies, ephemeral copies and technological copies, we maintain that many exceptions in the Copyright Act simply do not comply with the three-step test of the Berne Convention. For reasons of convenience, and to save time, we will simply refer you to the brief of the Coalition for Culture and Media, which was presented to you in Montreal on May 8, 2018, and which we support.

The second point is the copyright term.

SODRAC recommends extending the term of protection to 70 years after the death of the creators. Most of Canada's major trading partners already recognize this term, which has become the norm in the following countries, listed alphabetically as examples: Australia, Belgium, Brazil, France, Israel, Italy, Mexico, the Netherlands, Norway, Russia, Spain, the United Kingdom and the United States.

The third point is accountability and the value gap, which we talked about earlier.

On one hand, the act allows users to use the works as part of the content they generate, and, on the other hand, the network services are exempt from all responsibility. But people who use digital streaming platforms that chiefly provide this type of content and that market it should not be able to argue the defence stated in section 31.1 of the act.

Rather, we believe that introducing a mandatory licence agreement between the digital streaming platforms and a group of rights holders would be significantly more efficient than forcing those rights holders to make claims with each individual who uploads protected works on the Internet.

The fourth point concerns binding arbitration.

When the Copyright Board of Canada, an administrative tribunal accessible to collectives, renders an arbitration decision, that decision is usually deemed to be binding. However, the Supreme Court recently ruled that licences issued by the board should not be considered as necessarily binding for users. If the intent of Parliament were to implement a procedure to provide royalties for individual cases, its intent was certainly not to allow parties to retain the right to exempt themselves from decisions they do not like. Therefore, an amendment to section 70.4 of the act is required.

The last point concerns foreign servers.

The territorial nature of the interpretation of the act comes up against a reality that knows no borders. Therefore, SODRAC is proposing, much like with communication rights, that Canadian reproduction rights holders have the right, beyond any doubt, to royalties when online services serving Canadians are provided with servers located outside Canada.

The Parliament of Canada has the power to pass extraterritorial legislation. For example, if most of an online target audience is located in Canada, the link could be that final user.

In closing, I would like to mention that SODRAC will submit a brief soon that will list and propose simple amendments to certain sections of the Copyright Act, in order to correct the problems we have raised in our presentation today.

● (1635)

Mr. Alain Lauzon: How do we bring users, who, increasingly, are from outside Canada, to the negotiating table, if the right we're defending isn't clear and has been weakened by a plethora of exceptions in terms of users' rights? How can we think that authors alone can negotiate the conditions of use for their works? This situation creates an imbalance that is detrimental to the cultural economy, and makes the system a matter of law, instead of providing a free, level playing field for negotiations.

At the end of its study, your committee should ideally provide Parliament with proposed amendments to the act that take into account the solutions presented today.

Thank you for your attention. It will be our pleasure to answer your questions.

The Chair: Thank you very much.

[*English*]

Finally we're going to move to the Canadian Media Producers Association with Erin Finlay, as well as Stephen Stohn. You have up to five minutes please.

Ms. Erin Finlay (Chief Legal Officer, Canadian Media Producers Association): Thank you.

Mr. Chair, my name is Erin Finlay. I'm the Chief Legal Officer of the Canadian Media Producers Association. With me today is Stephen Stohn, President of SkyStone Media and Executive Producer of the hit television series *Degrassi: Next Class*—and all previous versions of that great hit show.

The CMPA represents hundreds of Canadian independent producers engaged in the development, production, and distribution of English-language content made for television, cinema, and digital media. Our goal is to ensure the continued success of the domestic independent production sector and a future for content that is made by Canadians for both Canadian and international audiences.

Do you have a favourite Canadian TV show like *Degrassi*? Chances are one of our members produced it. What about those Canadian films that are getting all the hype on the festival circuit? Again, it's more than likely you're hearing about our members' work.

In addition to *Degrassi*, which Stephen will talk about shortly, some recent examples of work by CMPA members include the Academy Award nominated feature film *The Breadwinner*; the adaptation of Margaret Atwood's *Alias Grace* on Netflix and CBC; *Letterkenny*, an homage to small-town life that began as a series of YouTube shorts, garnering more than 15 million views and becoming the first original series commissioned by Bell's CraveTV; and *Murdoch Mysteries*, one of Canada's most successful and longest-running dramas, averaging 1.3 million viewers per episode.

Canadian film and television is an $8-billion industry. Last year, $3.3 billion in independent film and television production volume in Canada generated work for 67,800 full-time equivalent jobs across all regions of the country and contributed $4.7 billion to the national GDP. The Canadians who work in these high-value jobs make the programs that provide audiences with a Canadian perspective on our country, our world, and our place in it.

The CMPA would like to briefly touch on two issues with the current Copyright Act that are negatively impacting independent producers and their ability to commercialize the great content that they create.

First, piracy remains a significant problem in this country. The current tools available under the Copyright Act are ineffective against large-scale commercial piracy. We ask that the Copyright Act be amended to expressly allow rights holders to obtain injunctive relief against intermediaries, including by site-blocking and de-indexing orders.

Second, contrary to what you just heard from Maureen, the producer must be recognized as the author of the cinematographic or audio visual work. A producer's copyright is the foundation for all private and public funding sources for film and television projects in this country. It is this economic value that banks lend against, and what broadcasters and exhibitors license to bring a project to audiences. Put simply, authorship and ownership of copyright in the cinematographic work is what allows the producer to commercialize the intellectual property in a film or television show.

I'll turn it over to Stephen.

● (1640)

Mr. Stephen Stohn (President, SkyStone Media, Canadian Media Producers Association): Television and filmmaking are a collaborative endeavour. The producers bring together all the creative elements to move a project from concept to screen.

We producers hire and work closely with all the creative work. We love our screenwriters. Over the years we've hired dozens of them to work on *Degrassi*. We also love our directors who help turn the scripts into projects, and we've worked with dozens of them over the years. Also crucial to the production is the actors. We work with hundreds of them, the most famous of whom is undoubtedly Drake, but people like Nina Dobrev, Shenae Grimes, and Jake Epstein, and as I say, hundreds of others. They're vital to the final product, as are the production designers, the art designers, the lighting directors, the composers and musicians, the editors, the crews, and the gaffers. They're all vital to helping shape the project and bring our collective vision to the screen. After all, television programs and feature films are the ultimate collective works.

To date we've produced 525 episodes in the various *Degrassi* franchises. When we start producing episode number 526, we'll hire a director and a team of screenwriters to work on that episode. To suggest that this director or those writers, who worked on one episode of *Degrassi* long after the characters, the settings, the format, the scenes, the plot, the storylines, and the theme music have all been put in place, ought to be considered the authors of that episode is simply wrong, and it doesn't work commercially. However talented they may be, they are working off a foundation and creating a product that was built up over the years. In addition, they're working together with a whole series of other incredibly talented crew, actors, and cast to make that project come true.

As producers, we pull together those people. We hire them. We pull together all sorts of partners to invest in our projects. We develop them, we manage the production, and we ultimately work to protect, manage, and then commercialize the copyright in our shows.

To reinforce what Wendy and Erin have said, strong enforcement tools help to ensure that we retain the value in our intellectual property. *Degrassi* is nearly in its 40th year. It's available in 237 countries and 17 languages around the world. It amazes me that on a Friday night just past midnight someone pushes a button or clicks a mouse somewhere in cyberspace and suddenly the entire season is available in 17 languages throughout the world, except in four countries: Syria, North Korea, China—which they're working on—and one other that I forget. This is amazing to me. It's a real success story.

Despite this availability there are over 1,300 torrents and 3,000 illegal links to *Degrassi* on popular BitTorrent and linking sites just in Canada, each of which can be used to illegally access our content thousands and thousands of times. On one such site, *Degrassi* has been viewed 50,000 times. I'm not an accountant, so I won't estimate the number at 50,000 times 1,300 or 50,000 times 3,000 or both. Whatever it is, it's an unfathomably large amount of piracy. It's undeniable that piracy remains a serious problem in this country that negatively impacts our ability to grow Canada's production sector to its full capacity.

Copyright owners need effective enforcement tools to plug pipes to illegal content, to prevent free-riding off the backs of creators, and to retain the value in our intellectual property so that we can continue to build off and reinvest in our great Canadian shows.

Finally, the protection, retention, and commercialization of copyright by Canadians is a key part of the government's innovation strategy. To fulfill our key creative and business roles, independent producers need a modernized Copyright Act that provides for strong copyright protections, and an efficient marketplace framework that supports ongoing investment in Canada's innovative creative products. A modernized act will ensure that all our partners in the industry can continue to make great shows that are distributed across multiple platforms for the enjoyment of Canadians and audiences around the world.

● (1645)

Thank you for the opportunity to discuss these issues with the committee. We'd be pleased to answer any questions you might have.

The Chair: Thank you very much.

One would probably be Drake's phone number, I suspect. However, we're going to go right to Mr. Sheehan.

You have five minutes.

Mr. Terry Sheehan (Sault Ste. Marie, Lib.): I'm not going to ask that question, but I know it will come.

Thanks a lot for that great testimony. We've been listening to great testimony here in Ottawa, and we've travelled across the country. We're hearing quite a bit and we're trying to figure out exactly how creators use copyright to negotiate a better deal for themselves. We've seen revenues for the overall industry going up, but they're saying that in many cases the amount of money the individual creator is making is going down—I could go into the stats but I won't —so maybe you just want to give a comment on that.

The other issue is piracy, and I agree it's a problem. It was an extreme problem, I think, a few years back. I can remember when we had the peer-to-peer sharing networks that were rampant. Now, with the advent of Spotify and Netflix, how have those changed the industry? We've heard testimony that some people aren't quite as satisfied with Spotify as a way to compensate, probably because of the licensing agreements, as opposed to Netflix, on which we've heard some fairly positive feedback.

Maybe I'll start with Stephen, and then maybe someone else can—

Mr. Stephen Stohn: I certainly am positive about Netflix because that's where *Degrassi* is broadcast now. Spotify, yes, has two methods of streaming, one of which incurs the value gap that has been talked about before.

I do want to say, though, that we have had some progress, and I think you've put your finger right on it. In the early days of peer-to-peer sharing, a lot of content was simply not available. That led to people saying, “If I can't get it legally, I'll get it any way I can.” That problem has largely been solved with the Netflixes and the Spotifys and technology around the world, so things are better. But there still is a problem. There are some relatively easy ways—I think Wendy has talked about them, and Erin may want to talk about some more—to really reinforce the value in the copyright by protecting against piracy. I think that's what you were driving at in your question when you asked what could be done so that the individual creators would get more.

I'll just quickly say how piracy hurts *Degrassi*. When there's piracy, Netflix has fewer people watching *Degrassi* because there are a lot of people who view it illegally. That means they make less money. That means that when it comes time to renegotiate the licence fee, they don't give us as much as we could be receiving. When I say “we”, it's not just the producers. It's everyone in the value chain who we represent, because it all trickles down. It's a wonderful export opportunity, and strengthening the copyright and entering these provisions that have been talked about will really help to do that.

Mr. Terry Sheehan: Sure.

Ms. Maureen Parker: May I address your first point about how we can strengthen the creative structure?

Mr. Terry Sheehan: Yes.

Ms. Maureen Parker: We are the creators. Screenwriters and directors are the creators. With all due respect, this represents a long-standing difference of opinion between the CMPA and us, but producers are not the creators. A creator is the person who starts with the blank page at home, in their office, maybe in their pyjamas, with a coffee. The point is that they are the creator of the cinematic graphic work.

It's very true what you just said about our income declining. It absolutely is. I think it's very important for the committee to differentiate between service production, which is what Wendy represents, and Canadian content production, like *Degrassi* and what my members work on. In service production, those scripts are written by Americans in the United States. Canadian content production is written by Canadians, who are authors of the audiovisual work. Rules for content creation in the U.S. are different from the rules in Canada and Europe. In Canada, we have failed to address the issue of who the author of the work is. We have because it just hasn't been addressed. There's no consensus. There will never be consensus on who the author of the audiovisual work is. You'll have to make a decision. The right decision is the person who actually does the creation, not who may.... By the way, screenwriters are now also showrunners, and they hire directors and actors. The model Stephen is referring to is a very old model. It's not currently what exists.

I just encourage you that there are individuals who are creating, and they're hurting, and you need to address authorship.

Thank you.

● (1650)

The Chair: Thank you very much. We're going to move on because we are tight for time.

Mr. Jeneroux, you have five minutes. I'm sure everybody is going to have a chance to jump in.

Mr. Matt Jeneroux: Wonderful. Thank you, Mr. Chair.

Thank you to everybody for being here in this tight room we have today.

Mr. Stohn, many members of this committee have been insistent on Drake's attendance here, so I feel I'm speaking on their behalf. Anything you can do to help out would be great.

You are welcome, everybody, for that.

Mr. Dane Lloyd (Sturgeon River—Parkland, CPC): That's leadership right there.

Mr. Matt Jeneroux: That's right.

I want to ask about some of the comments that were raised by both Erin and you with regard to piracy. You mentioned large-scale commercial piracy. I'm curious as to what exactly that means. Is that YouTube and others, or is that something else that we're not aware of?

Ms. Erin Finlay: Yes, I referenced commercial piracy. We're talking about pirate sites, the sites that are wilfully engaged in making money from selling pirated content through various means. That's really the target of the discussion.

YouTube has various business models, but I don't think we're talking about YouTube anymore, because the content that's been put up on YouTube has largely been commercialized. For the most part, some revenues are flowing back to creators and producers on YouTube.

There is a question of whether it's enough money. I know the value gap is real, and we've heard a lot about the value gap between YouTube and other services. The targets of our biggest concerns about pirate sites, though, are the kinds of blatant pirate sites that are commercializing infringement.

Mr. Matt Jeneroux: Sorry, do you mind going into just a bit more detail on what websites these are?

Ms. Erin Finlay: The Pirate Bay is the best example. It's an older example, but that's a prime example. I know you've heard of a few others over the last few weeks.

The Pirate Bay, as far as I know, has been largely shut down, but Wendy certainly has the stats on all of those for you.

Ms. Wendy Noss: Maybe I'll knit together some of the comments from your friend as well.

Our position is that really, we try to do three things.

First is to give consumers the access they want, when they want, in the business model they want. You might want a subscription model, you might want to download, and so on. We want to get our content to consumers.

Second, we want to help consumers understand the impact of piracy. That's the impact Stephen has so articulately described to you, but it's also the impact on consumers. Various research has been done. One in three piracy sites contains malware. We've done research on sites that Canadians access. The vast majority of these have high-risk advertisements, scams, porn, and links to sites where your privacy can be compromised. That's what we try to do to ensure that consumers are aware as well.

The third part is to address those sites and services that, as Erin said, operate on a commercial scale.

If we think of it as a pie chart, right now in Canada, or at the end of 2017, 70% of the people who were accessing pirate sites in Canada were doing so through hosting and linking sites. Only 30% of that, at the end of 2017, was P2P, peer to peer, so you can see there has been a change and a shift in the piracy models Canadians are using.

Secondly, one of the largest growing threats is Kodi boxes that have illegal access to IPTV sites and illegal IPTV streams, or illegal hosting and linking sites on the Internet.

Again, we're seeing different kinds of piracy threats, and that's part of the reason we need different tools.

The Departments of Canadian Heritage and Industry, or ISED—sorry, I'm showing my age by calling it Industry—just commissioned a study and found that 26% of Canadians either accessed an illegal stream, downloaded, or somehow looked at or used pirate sites. The majority of those—36%—were movies, and 34% of those were television shows.

● (1655)

Mr. Matt Jeneroux: Is that research public? Can we get some of that research?

Ms. Wendy Noss: Do you mean the departments' research? Absolutely.

Mr. Matt Jeneroux: No, not the department's research, the initial research that you mentioned.

Ms. Wendy Noss: Yes. We have a little fact sheet we use about piracy and I'm happy to share that with the committee.

Mr. Matt Jeneroux: Okay.

Ms. Wendy Noss: Again, also, not that we need to go into it here but it gives you the three most popular P2P, three most popular hosting, and three most popular linking sites that Canadians use.

The Chair: Thank you, and if you can forward that to the committee it would be wonderful.

Ms. Wendy Noss: Absolutely.

The Chair: Thank you very much.

[*Translation*]

Mr. Nantel, you have five minutes.

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

My first question is for you, Ms. Rioux.

I would like to return to one thing in your presentation.

[*English*]

You talked about hosting services exception to protect against value gap.

[*Translation*]

Can you explain what that means? Your wording is a little confusing to me.

[*English*]

Ms. Caroline Rioux: Because of the limitation of time I didn't actually orally address that matter. In our written submission you'll be able to read a little bit more about it. When we defined the value gap, our experience in that has been that there are certain platforms that qualify, or self-qualify, themselves as benefiting from the hosting exception, where we don't believe that they would qualify under the exception because we don't think that they're merely a dumb pipe.

Mr. Pierre Nantel: Could you name a brand, or a company?

Ms. Caroline Rioux: I would rather not name names because we do enter into negotiations over time with some of these types of services. Generally we're talking about user-generated content types of services, but what happens is that our negotiations become much more difficult to try to secure some favourable rates for our rights holders because these services will take the position that they're not really convinced that they really have to pay us any royalties, and that they really do feel that they qualify under the hosting exception.

What we would like to see in the Copyright Act is a change to clarify that the hosting exception does not apply to services that are content providers, effectively, and that offer music in terms of suggesting or optimizing the choice that consumers can see and play an active role in that process.

[*Translation*]

Mr. Pierre Nantel: Thank you.

Ms. Parker and Ms. Finlay, you have correctly defined the need to protect Canadian content. Clearly, Ms. Noss is not arguing the same point. That said, everyone agrees that we must protect productions, whether they are Canadian or American. By the way, American productions also create jobs here, that's quite obvious. All three of you are seeking to obtain greater protection vis-à-vis Internet service providers. The notice and notice regime seems much too burdensome to you. You would probably prefer that Internet service providers become more accountable, and even that we implement a notice and takedown system.

Have I correctly assessed your wishes, Ms. Noss, Ms. Parker and Ms. Finlay?

[*English*]

Ms. Erin Finlay: I can speak to that briefly. We're not saying notice and notice is too onerous. I think that's the ISPs' position on the notice and notice regime. We would say it is useful as an education piece to users, consumers, who aren't aware that they are infringing content, so the notice and notice regime should remain in place. We're not seeking a notice and take down regime. I think around the table and the consistent testimony you've heard is that the notice and take down regime is not very effective. I think that's what our friends in the U.S. would say.

What we are seeking is the ability to seek de-indexing and site-blocking orders with respect to ISP search engines and hosting services.

● (1700)

Ms. Wendy Noss: Yes, I would agree. Notice and notice was something the ISPs had asked for during the last round of reform. It is an educational tool and it is designed only for people who are using P2P sites. As you can see, that's a small component now of the piracy problem, and in addition, simply sending somebody a notice and then saying if they don't stop it you'll send them another notice is not the most effective tool. However, again, it is a tool that the government gave us and we did use to try to educate people about privacy risk of their computers and the impact on the Canadian marketplace.

I think the French implementation of 8.3—and *je suis désolée*, I'll say it in English—is really a simple but effective way of articulating it, which is giving the right to order any measure to prevent or to put an end to such an infringement of a copyright, or a related right, against any person who can contribute to remedying the situation, and that's what these intermediaries can do. They can contribute to remedying the situation.

Mr. Pierre Nantel: Especially with the "destination" concept, meaning that where the person is located, that's where the rules and laws should apply. Am I right?

Can I ask all of you about the Copyright Board...? Am I done?

Sorry about that. If there is any comment on the Copyright Board review, please send it forward because I think we're working on two pieces and they have to fit. I'm afraid that the government is going to come up with a very nice surprise with the Copyright Board: "Oh, this is how we do it." Then we'll see where we are sitting with this law and this Copyright Board.

Thank you, Mr. Ruimy.

The Chair: Thank you.

I don't think that's the way we work here in this committee, but thank you very much.

Mr. Pierre Nantel: It's so casual.

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

You have five minutes.

Mr. David de Burgh Graham (Laurentides—Labelle, Lib.): Thank you.

Ms. Noss, what's the relationship between the MPAC and MPAA?

Ms. Wendy Noss: We represent the MPAA companies here in Canada.

Mr. David de Burgh Graham: Basically the MPAC and MPAA are the same organization.

Ms. Wendy Noss: Yes.

Mr. David de Burgh Graham: What is the MPAA's and the MPAC's position on net neutrality?

Ms. Wendy Noss: On the net neutrality position, I think Minister Bains said it well. It is only dealing with legal content. It has nothing to do with illegal content. From our perspective, the position that we're taking in terms of seeking new tools to fight piracy has nothing to do with net neutrality.

Mr. David de Burgh Graham: Who operates as the judge, jury, and executioner in your case? If you're saying that there's a site that you allege is a copyright infringer and you have that site taken down, what authority is saying that you are correct?

Ms. Wendy Noss: These are to give you the relief in the act to seek injunctions from a court, so the court determines.

Mr. David de Burgh Graham: You need a court order for each and every take down and removal of a link.

Ms. Wendy Noss: No, we're not talking about notice and take down. We're talking about—

Mr. David de Burgh Graham: You're talking about delisting. It's effectively the same thing on the Internet.

Ms. Wendy Noss: We're talking about injunctions against intermediaries and those are obtained from a court. What we're seeking in the legislation is the same thing that they have throughout Europe. It is the French implementation I just read to you, which is the ability to get injunctions against third parties that are in a position to reduce piracy. It's not saying that these third parties, be it the ISP, which is providing connectivity, or the search engine, have liability. It's saying, "You're in a position to help reduce piracy." We would go to a court, apply for an injunction, and the court would determine the scope of the injunction.

Mr. David de Burgh Graham: A number of years ago, the MPAA and RIAA, the recording industry association, went after individuals who were using P2P sites and suing the pants off these poor families. How did that go, what happened, and does that still happen?

Ms. Wendy Noss: I'm not sure where you're getting that information, but that's not a position of our company. As I indicated in my statement and reinforced there, and as you heard from Erin, we're looking to address commercial-scale piracy by people who enable infringement in a way that hurts Canadian jobs, Canadian businesses, and the full scope of the creative process.

● (1705)

Mr. David de Burgh Graham: I could discuss this for quite a while, but I have more questions to offer others.

You mentioned that you have a lot of content by a lot of creators in Canada. That's very useful information to know. I used this example a couple of times in the House and committee. One of my favourite TV shows is called *Mayday*, made here in Canada. It's available in 144 countries, and it is effectively impossible to get in this country. Can you tell me why? It's a great show if you have a Bell account, but if you don't have a Bell account, you can't get it. It's simply not legal. There's no way to do it.

Ms. Erin Finlay: I'm sure the producers and creators of *Mayday* would be thrilled if it were available everywhere, every place that's possible. I can't speak to what the exact example is there.

Mr. David de Burgh Graham: It's interesting because you can buy it in Europe and have it shipped to Canada, but then you end up with another problem, which is region-encoded DVDs. If I buy a DVD overseas, it won't work in North American DVD players. If I buy a DVD here, it won't work in a European DVD player. Is that in any way ethical? I ask that openly.

Ms. Erin Finlay: Is it ethical that you can't...?

Mr. David de Burgh Graham: Is it ethical to buy something that is deliberately blocked from working based on where you are?

Ms. Erin Finlay: Is it ethical to buy something...?

Mr. David de Burgh Graham: To sell something....

Mr. Stephen Stohn: If I can say, and I don't want to overstep my bounds here. There are different numbers of scan rates and line rates in European television sets—

Mr. David de Burgh Graham: It has nothing to do with that. It's encoding.

Mr. Stephen Stohn: Yes, which require different encoding for DVDs in the zone 2 regions from the zone 1 regions, is my understanding.

Mr. David de Burgh Graham: It's not about standards.

Mr. Stephen Stohn: Clearly, I think all of us would say that we would love one single standard. That would be the ideal.

Mr. David de Burgh Graham: It's not a standards issue. It's a cryptographic issue.

There are eight different codes. You put it on a different code for this region. If it's NTSC or PAL, which are just two standards—not eight standards—algorithmically, they can be converted very easily. There's no technical reason to do that. It is a pure copyright TPM protection system. If I sold a bottle of water, for example, and said that you could drink it only in Europe and not in America, would that be ethical?

Mr. Stephen Stohn: It doesn't make any commercial sense to me. I would think that people would be quite happy to sell in either territory and have a single standard.

Mr. David de Burgh Graham: That sounds wonderful, but it's not actually the case.

Ms. Erin Finlay: I think we have to be realistic about how rights are managed around the world. Certain buyers and distributors acquire rights for certain territories. That's the way it currently works. Again, every producer and every creator would be happy to have their content available all around the world provided they're able to negotiate that.

As to your question about whether it's ethical or not, I think where you got to was whether it's an infringement of copyright and the breaking of the TPM. I think that's perhaps what we're talking about.

Mr. David de Burgh Graham: If I had more time, we could get into it more.

The Chair: Unfortunately, you don't.

Thank you very much.

Ms. Erin Finlay: We'll do it in our written submission.

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

Mr. Dane Lloyd: Thank you. My first question will be between Ms. Noss and Ms. Finlay.

In regard to piracy, it's been several years since I've seen commercials on television about piracy, about how downloading a movie or recording a movie in a theatre is theft. If this committee were to recommend that the government engage with further activity on the piracy front, what areas would you suggest we focus on?

Ms. Wendy Noss: As I said, we're seeking new tools and are certainly happy to provide any further information to this committee in terms of the legislative tools that we think are important.

We also think that educating the public is important. As I said, we consider that part of what we'd like to do in terms of helping to reduce the problem, so certainly anything the government could do to participate in that.... I know that the U.K. government, for example, has put a great deal of time and money into trying to educate the public there about the importance of—

Mr. Dane Lloyd: Do you know how much that campaign cost the U.K. government?

Ms. Wendy Noss: I don't offhand, but I'd be happy to provide you with.... There is an online link. It's called "Get It Right from a Genuine Site" or something like that.

Mr. Dane Lloyd: Do you know if there was an industry partner in that project financially, or was it purely the government?

Ms. Wendy Noss: There are a bunch of different ones. Again, I'm using that as an example, but what I'm happy to do is to provide you with a couple of different examples of education campaigns that have been undertaken by the public authorities. The U.K. IP office has another of their own. Again, we think that's an important piece, particularly because the risks to the privacy of consumers are so great.

Legislative tools are really key. I think one instructive example would be the camcording problem you referenced. It was not that many years ago that there was a problem with illegal camcording in Canada. The laws weren't clear, and you had a lot of people who said, "Don't do anything." They said there was no proof that it was a real problem and no proof that piracy was having an impact on people in Canada. They said that making a law wasn't going to change anything and that people would still do it.

Guess what. In the committee of the whole, the Conservatives, the Liberals, the NDP, and the Bloc all supported legislation that provided a clear rule that when you camcord illegally in a movie theatre it is against the law, and there was an immediate and long-standing impact. Previously, Canadian camcorders were the illegal source of between 20% and 24% of movies that were still in the theatres. Two years subsequent to the enactment of that legislation in Canada, it's been less than 1% every year.

● (1710)

Mr. Dane Lloyd: Thank you. That's important information for our committee.

My next question is more for you, Ms. Finlay, or Mr. Stohn. In regard to the copyright provisions and whether the screenwriters or the producers are the creators, I hope you can give me as balanced an answer as possible on this. How do you think it would affect the business model if we were to recommend that screenwriters be treated more as creators and have further copyright protections under the act?

Ms. Erin Finlay: Perhaps I'll start with the broader perspective, and then Stephen can talk about the business model specifically.

Here's something to keep in mind. The suggestion that recognizing the directors and screenwriters as authors or first owners of copyright wouldn't upend the market, I find troubling. These arrangements have been negotiated in collective agreements for years—decades—by very strong and effective unions like the one Maureen works for. All of the ownership and the assignments and the exclusive licences are covered by those collective agreements, including all of the royalty streams flowing back through to screenwriters, directors, actors, and everyone else.

I wanted to start from that sort of high-level perspective. Maybe Stephen can talk about how it would affect his business model.

Mr. Stephen Stohn: Our financiers and our distributors want to deal with the copyright owner.

The producer is the one who has taken the initial economic risk. It was colourful, Maureen, what you said about going downstairs in your dressing gown and writing a script, but years before that, the producer had an idea, was hiring people to develop that, taking the economic risk, approaching a broadcaster or distributor to get some seed money to get them invested in the project, and carrying that through until there was an ultimate product that could be marketed.

That product can only be marketed by the copyright owner. Our biggest single market, of course, is the United States, and our American friends just don't understand any concept other than dealing with the copyright owner and the producer owning the copyright.

It is true that the screenwriters in Canada own the copyright in their screenplays. There's a certain logic to it. We may agree or disagree on that, but they have gone downstairs in their slippers and created that screenplay. However, the producer has worked over the years to turn that—and to work with hundreds of other people—into creating a product that is commercialized by the copyright owner. That's really what we drive at.

If for some reason it was decided that it was important to convey copyright ownership on someone who didn't do all that work, we'd have to somehow as an industry get around that by entering into contracts that convey the copyright to the producer. Otherwise, how is the producer going to commercialize the product in the end? It just doesn't make any sense.

The Chair: Thank you.

Ms. Maureen Parker: Can I address the end of that question, please?

The Chair: We still have some time, but I need to get the questions moving.

Mr. Baylis, you have five minutes.

Mr. Frank Baylis (Pierrefonds—Dollard, Lib.): I'll follow up on that and continue with that line of questioning.

If I'm writing a brand new screenplay, a new movie that doesn't exist, I get that there's a lot more of the copyright that would go to the director and the screenplay. We can use Mr. Stohn's example of *Degrassi*. The screenwriter of an episode will not develop the backstory. They won't develop the characters, the sets, or the setting. The people who develop those are as much part of the creative process, if not more so, that someone who just writes one episode. Would you agree or not?

● (1715)

Ms. Maureen Parker: I don't agree because it's actually an incorrect premise.

Mr. Frank Baylis: You don't agree. In your case, the person who came up with the backstory—

Ms. Maureen Parker: That is a writer. That was not Mr. Stohn. That was created by a writer.

Mr. Frank Baylis: I get that, but that person who wrote one episode took all that work to write that one episode.

Ms. Maureen Parker: That's right, and that writer therefore was the author of that episode. It is a collaborative business—

Mr. Frank Baylis: But he wasn't the author alone. He used other characters. He used the names—

Ms. Maureen Parker: Sure. We build on series in—

Mr. Frank Baylis: No. You said that he started with a "blank" sheet of paper. He didn't. These are the names, this is the name of the school, this is the name of the teacher, this is their character, this is the type of words they would say, and this is the language they speak. That person was not in any way the sole creator.

Ms. Maureen Parker: May I say that it's a very big business model? Right now, we do have screenwriters who are the ones who develop script material, who create characters, and who've created the setting. In an ongoing series like a *Degrassi*, yes, obviously there are pre-existing concepts and pre-existing settings, but those are created and worked with in an individual script. The dialogue is individual. The plot is individual. It is—

Mr. Frank Baylis: I understand that, but someone would own the characters, for example, and if it was—

Ms. Maureen Parker: Right, and that would be the writer of the first script.

Mr. Frank Baylis: Okay. You would then have to direct and cut a deal with the writer of the first script to write the story for Mr. Stohn...?

Ms. Maureen Parker: There are character royalties. You'd pay certain royalties, etc. The problem with not defining authorship—

Mr. Frank Baylis: Let's stay with *Degrassi* as an example. There are 500 that have been written and, over the years, the 500 screenwriters who have written each episode have advanced the characters. Are those 500 going to have to be dealt with individually to be able to...?

Ms. Maureen Parker: Television doesn't work that way. There were probably maybe 50 screenwriters, or maybe 30. Companies go back to the same writers. They use story departments.

Mr. Frank Baylis: Let's say there are 50 writers.

Ms. Maureen Parker: Okay. To your point that there are multiples, absolutely, because there are multiple creators, but each episode is a copyrighted work in and of itself. When Mr. Stohn or a producer like him sells a series, he is selling a group of episodes that are individually copyrighted. When you talk about piracy, you're talking about each individual episode, which may be seen without any compensation.

Mr. Frank Baylis: I have one last question, then.

When you write the actual screenplay for any movie, the ownership and copyright of the screenplay itself remains with the writer. Is that correct?

Ms. Maureen Parker: That's correct.

Mr. Frank Baylis: Okay, you just want to expand it, so that it's more than that. You want to own more than just the screenplay.

Ms. Maureen Parker: No, we're not expanding it. The current business model—and I cited that in my presentation—and in the only court case that has ever been heard on the topic, the screenwriter and director are the authors. It is the producers who are coming in from a different place.

Mr. Frank Baylis: I understand that.

We're tight on time, but thank you.

Ms. Maureen Parker: Thank you.

Mr. Frank Baylis: Ms. Noss, I just have one question for you. You mentioned narrowing the definition of safe harbour. Can you expand on that, please?

Ms. Wendy Noss: Sure. It's built on what we've seen in Europe that has been impactful. When the act was last amended, the piracy threats that existed at that time did not operate in the way that piracy threats of today operate.

This would take the best practices we've seen that have been working around the world, so that if an intermediary, such as an Internet service provider or a search engine, has knowledge that its services are being used to infringe copyright, that intermediary will no longer have the safe harbour. That provides an encouragement to all intermediaries in the system to act responsibly.

The issue today, where global piracy has an operator in one jurisdiction, a hosting site in a second jurisdiction, and a business model that's propped up by a payment processor or an ad network in a third jurisdiction, really has to be addressed in every country effectively. Again, I would point to tools that the government has instituted in the past that have been effective.

Last time, we asked for the enablement provision, so that those who enable infringement would be liable for infringement. What we saw is that with a global piracy problem like Popcorn Time, at the time, there was action in New Zealand and action in Canada based on the enablement provision, and that allowed you to effectively address the problem writ large.

● (1720)

The Chair: Thank you very much.

Now we're going to move on to Mr. Lake. You have five minutes.

Hon. Mike Lake (Edmonton—Wetaskiwin, CPC): Thank you, Mr. Chair.

This is a little bit of déjà vu for me. I spent eight years as the parliamentary secretary to the industry minister. It sounds as if we're having pretty much the same meeting that we would have had three or four years ago.

I want to thank you, Ms. Finlay, because any time a witness says, "contrary to what you just heard from" and then names another witness, that makes the meetings much more interesting.

Ms. Parker, in response to that, you talked about us as government, I guess, in a sense, failing to address the question regarding authorship. Is it really a matter of failing to address it, or is it fair to say that it has not been addressed the way your organization would like?

Ms. Maureen Parker: Actually, it has not been addressed, period.

Right now, the way it works is that screenwriters and directors, in the only court case that has ever been brought forward, are considered authors of the audiovisual work. It's actually a problem for you and for copyright holders, because authorship is tied to the life of the author. If you don't define who the author is, whose life is it tied to?

We have heard from many entertainment lawyers. It's a very ambiguous area. Disney, for example, would certainly never let that happen. They would address the copyright term of a character. In Canada, that has not been addressed, so there is confusion. The author is an individual, and we totally appreciate that producers commercially exploit the production, and that is their job, to finance and distribute the production, but they do not create it. I think it's a real flaw in the system to not address authorship.

Hon. Mike Lake: As members of Parliament, we often don't agree on things. What I found during the last round with copyright was that we do agree that we all want to see fantastic content created. We all want to enjoy that content. We want to see our creators properly compensated for the content they create. There is some difference in opinion among witnesses in terms of what that looks like.

As members of Parliament, oftentimes we find that the experts are the ones who follow these issues, but I'd like to try to point my constituents to some of the conversations. What would you say to the average Canadian who doesn't live in this world other than by being an enjoyer of the content? How would you explain to them how screenwriters, directors, and producers are compensated for the work they do right now? What is the logistical reality around that now?

I'll go to you, Ms. Parker.

Then if Ms. Finlay or Mr. Stohn want to answer that as well, I'd like to hear from each of you.

Ms. Maureen Parker: I'll say just quickly that screenwriters do live in your communities. They're creators. They do pay taxes. They support families. They need revenue and income to do so.

Currently, there are different modes of compensation. Yes, we bargain collectively, but collective bargaining does not cover such things as secondary use. We're hearing a lot about piracy. That's a big business problem, absolutely, but at the core of our industry are individuals who create, and they are not properly compensated for all the secondary uses that are now coming into play through new technology.

In terms of what authorship grants, it's determining not just the life of the author but equitable remuneration and how that will play out. I believe my colleague spoke about that as well. That is another means for artists to be compensated. Again, that work allows individuals to become creators. It supports them and supports the telling of our stories.

Hon. Mike Lake: Just to clarify, though, in this case I'm not looking for how we grow the pie, necessarily, with this question. I'm talking about how we divide the pie between the three entities we're talking about and what the current situation is right now.

Maybe I'll let Ms. Finlay or Mr. Stohn speak to that.

Mr. Stephen Stohn: Perhaps I can jump in here.

It's really governed by some very good and effective collective bargaining. ACTRA, the Writers Guild, and the Directors Guild all have extensive meetings. I've been in some of those meetings. You do not want to be part of the extended meetings well into the night, going back and forth on exactly these issues—i.e., secondary use. They get resolved. We work together, hand in hand. You were talking about dividing the pie. That is really dealt with through the collective bargaining process, and I can't think of a better way to deal with it.

I do have an answer to your first question about the overall pie, but I won't go into it in great detail because it's not a copyright answer. We face a crisis in Canada with the influx of over-the-top services that are coming in not subject to Canadian content rules and not subject to CRTC regulation. That is a crisis in our industry that really will affect the pie itself.

● (1725)

The Chair: Thank you very much.

I'll just let everybody know that we'll go a little bit past 5:30 p.m., probably to a maximum of 15 minutes, because I know that members still have questions they want to ask.

Mr. Longfield, you have five minutes.

Mr. Lloyd Longfield (Guelph, Lib.): Thank you.

It's a great conversation we're having. It's great to get diverse views. Thanks to all of you for preparing to get here and for getting us the information we need for this study.

Perhaps this is a question for Caroline. I want to focus on something that we haven't touched on too much in looking at the music industry. We've had advocacy on having the definition of “sound recording” looked at and on the soundtrack of a cinematic work being a sound recording. The argument we've heard is that making this amendment would allow performers and makers of sound recordings to receive compensation for the use of their performance and recordings in television and film productions beyond the initial fee they get, as a union rate, for creating the sound recording. Unless it's live, they don't get paid.

How did this develop? Why did we exclude soundtracks?

Then, maybe for everybody, what would the impact be on the industry if we compensated musicians for the sound they produce for movies?

Ms. Caroline Rioux: I thank you for asking that, but I'm afraid I can't respond on this question. It's not the area I happen to work in. I think you've heard from other collectives on that matter in the past.

Some of my colleagues here might be able to advance an answer, but it's just not the area I'm in. I was trying to paint that quadrant earlier with my slide. That's the other quadrant or piece of the pie.

Mr. Lloyd Longfield: Those are different reproduction rights that we're talking about.

Ms. Caroline Rioux: Yes, that's right.

Mr. Lloyd Longfield: Okay. Thank you.

Alain or anybody, can you help with that?

Mr. Alain Lauzon: If I may, I'm totally in agreement with Caroline. As I mentioned in my speech, we're on the side of the works. We're not on the side of sound recordings. We don't know the details related to that.

Mr. Stephen Stohn: Perhaps I could just leap in, because we do agree on something here. That is, generally speaking, producers agree with our friends at Music Canada and the sound recording industry that this would be an expansion of copyright and a potential source of remuneration, good remuneration, for those creators, the performers and record companies, in sound recording.

Mr. Lloyd Longfield: How would that affect those late negotiations that you get involved with?

Mr. Stephen Stohn: When the pie gets bigger, the negotiations get easier.

Mr. Lloyd Longfield: It depends on which part of the pie you're looking at. The costs go up, because performers will be paid, so there won't be as much profit in the production, potentially.

Mr. Stephen Stohn: From the producers' perspective, we're neutral on that. If the licensees of the broadcasters need to pay a small fraction of their revenues—

Mr. Lloyd Longfield: Okay.

Mr. Stephen Stohn: We are generally supportive of stronger copyright, with our friends.

Mr. Lloyd Longfield: That's good to hear, because we're trying to benefit the creators as much as we can as we look at this legislation.

When we look at blocking non-infringing uses.... We had a little bit of a discussion about CDs, but is there anything else in terms of locks on the Internet or something we need to look at in terms of the act, which isn't included in the act, that could protect against illegal streaming or illegal use of what's on the net?

● (1730)

Ms. Erin Finlay: We've touched on our main requests, but we'll certainly flesh that out in our written submissions, because it is quite detailed, and we'll give some suggestions as to what should happen there.

Mr. Lloyd Longfield: It seems to me there is something technical there, and there is also some education, because when I'm streaming, I don't know whether I'm doing it in a way that the people who created the music or movie are getting paid for it. As a consumer, I have no idea.

Yes, Mr. Lauzon.

Mr. Alain Lauzon: I remember back in 2012 when we wanted to have notice and take down and all that, but things evolve. You have to look in Canada at streaming. In 2014 Spotify came in, so it's kind of new in relation to that. The problem in the past was that, if there was no legal service available, people would go where they could find it, so they had obviously more services and all that. The problem is—and this was the first question that was asked on the value—in digital, the value is lowering, whether it's for sound recordings or for us, the works. That's one of the things the value gap is looking at.

Obviously, I think personally there are not enough studies that are followed. If I look at other countries, the U.K., France, etc., there are a lot of studies that have been done on piracy, following that, and so on.

A way to increase remuneration besides the legal licenses that we do for downloads and Spotify is to have a regime that compensates for reproductions that are done when people don't know if they are legal or illegal.

Mr. Lloyd Longfield: Thank you very much.

The Chair: Thank you very much.

[*Translation*]

Mr. Nantel, you have five minutes.

Mr. Pierre Nantel: Thank you very much.

[*English*]

I see two big things, first the piracy thing. Stealing is stealing. How do we enforce this?

I know for many rights holders there's an impression that legislators like us tend to think this piracy thing is over, and then we start hearing about stream rippers. A regular person would think the easiest thing is to get a subscription to Apple Music, to Netflix, or whatever. Apparently not.

Let's put this aside, because we're talking about fair compensation. Would you say the “destination” concept in Europe is something that we should take into consideration?

Mr. Stohn, you talked about the Netflixes of this world that are acting like they are not behaving as broadcasters in this territory, where we pushed so much to create Canadian content, maybe *The Beachcombers* or your stuff. What example of best practices we should apply, according to you?

This is for Mr. Stohn or Mr. Lauzon—

Ms. Erin Finlay: I'll hand it over to Wendy, but article 8.3 in the InfoSoc Directive out of the EU is the best example, and Wendy has already spoken about that, so that's what we're modelling our request after.

[*Translation*]

Mr. Pierre Nantel: Mr. Lauzon, Mr. Lavallée, do you have anything to add on this topic?

A few weeks ago, the committee heard from David Bussières, from the Regroupement des artisans de la musique. He demonstrated that, even if Canada were equipped with a legal and policy framework to support content creators, and even if we mandated broadcast quotas for a variety of platforms to increase the discoverability of our culture, artists would still have a hard time making a living from their art. In the old days, some artists were able to live off their music, even if they did very few shows.

What do you think, Mr. Lauzon?

Mr. Alain Lauzon: In Mr. Stohn's case, we are talking about audiovisual. I can come back to that. This is about audio. The value has definitely decreased. The 2012 amendments to the act have cost us an incredible amount of money in many areas. I'm thinking of commercial radio and digital, for example, which we talked about. When we used to sell albums on tangible media, we had figures. In the case of downloads, it's very low.

So there are a lot of changes. You were talking about quotas. That isn't what we're discussing here, but it's important. It's also about exemptions and value. In terms of value, it isn't normal that the rate for downloads and streaming is between 13% and 15% in Europe, while it is 7% in Canada. I don't blame the board, but there must be other ways of looking at the market.

When online music services began to be offered, other countries took Canada as a model. Indeed, the first rate we set was the highest in the world. However, it's now one of the lowest. Something's not working.

I would like to make a brief comment about audiovisual. I don't know much about screenwriters, but when it comes to people who commission music, I want to say that they don't have to give up all their rights to producers and broadcasters if they want to increase their remuneration. That is the current audiovisual business model.

Mr. Stohn talked about his negotiations with the United States. Indeed, that is how they work. However, this isn't the case in Europe. There, the creators give all the exploitation rights to the producers, but no copyright is given to the producers, whose role is to collect royalties.

I, for one, am a member of the International Confederation of Societies of Authors and Composers, and I know that Canada has one of the lowest per capita collections in the world. In Europe, everyone contributes to this, especially in the digital world. We're not just talking about Netflix and all the networks, but secondary uses.

According to the current audiovisual model, the creator is paid very little. Everything goes to the producer, who assumes a risk. I'm aware of that, but there is a nuance to be made. Let's say that digital brings us to think about this business model.

● (1735)

[*English*]

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

Mr. Terry Sheehan: Thank you.

I'll share some time with Frank as well.

I'm trying to understand the current system. We've heard testimony about other systems that perhaps would be better than the current system. Under the current system, a letter is sent and then the industry, which is fairly well resourced, hires lawyers and the lawyers then engage with them.

What obstacles are there right now, and what's your success rate under the current system? Perhaps answer on the success rate first and then on the obstacles.

I'll start with Erin.

Ms. Erin Finlay: Thank you.

You're talking about suing infringing sites in Canada?

Mr. Terry Sheehan: Yes. I'm talking about piracy and going after the pirates.

Ms. Erin Finlay: Piracy, specifically, I haven't done for many years. I've been fortunate enough not to be in private practice, so I can't speak to the success rate. I can tell you a bit about the process typically.

Mr. Terry Sheehan: I just want to know about the obstacles. I know what the process is.

Ms. Erin Finlay: One of the obstacles is that currently under our present system we would have to sue, for example, Google, to seek some sort of an injunction, a Mareva injunction or something like that. Google would then defend itself as any defendant would by saying it's not liable. The challenge with that is that instead of working together and coming up with a solution together, you end up having very opposed views because you're in a court case dealing with it.

The other issue is that there's always a debate over whether the injunction is actually available.

Mr. Terry Sheehan: You'd like the government to have Google under—

Ms. Erin Finlay: I never should have said “Google”. It's a search engine.

Mr. Terry Sheehan: You want the government to enact some legislation to make it mandatory for the service providers to work with you.

Ms. Erin Finlay: Not mandatory—and Wendy, absolutely you can jump in—but there are a number of options available. The problem is that we have a very long court process. There's a debate right at the beginning of the court process on whether these are even available to rights holders, so you wind up in a tussle over that. It takes years and years.

Mr. Terry Sheehan: I'll let Wendy chip in. Is there any success that you know of? I need to understand this.

● (1740)

Ms. Wendy Noss: I think the difficulty is that we're conflating.... We're sort of talking at each other as opposed to having a common understanding. I think what you were getting at earlier was the notice and notice system.

Mr. Terry Sheehan: Yes.

Ms. Wendy Noss: That's what I thought. You can tell I'm used to translating Canadian into American for Americans. Under the notice and notice system, a notice goes to a user of a P2P site—an individual who's been accessing a BitTorrent site. The notices that we send, for example, really are educational devices. They tell the user, “Hey, you may not know that your network isn't secured” or “Hey, you may not know somebody else in your home is accessing this BitTorrent site”.

Mr. Terry Sheehan: Wouldn't it be introduced in some sort of court proceeding that the letter was sent?

Ms. Wendy Noss: No. Again, I can speak only for my members and our studios. These are educational tools that are going to the individuals who are accessing the BitTorrent sites. That's only for P2P, and it's only an educational tool. I think that's what your original question was.

Then, sort of at the back end, you were talking about success rate.

Mr. Terry Sheehan: Yes, go ahead.

Ms. Wendy Noss: The different tool that we're talking about today is being able to get injunctive relief, such as site-blocking, against intermediaries. The reason we're quite different from when we were before Mr. Lake before is that we now have close to a decade of experience in the EU and 40 countries around the world where they have site-blocking in place. The research has proven, first of all, that it has reduced users' accessing the site that's blocked. That's obvious, but the research has also shown two very important things. Number one, in those jurisdictions where you have site-blocking there is an uptick in users' accessing legal means more, so they are accessing all the legal over-the-top services and download services more. Number two is that there is a reduced overall usage of piracy.

There definitely is research in other jurisdictions where they have these tools that shows it's both technologically advanced and extremely effective.

Mr. Terry Sheehan: Thank you very much. I'm going to turn over some time, because those are excellent answers.

The Chair: Make it very brief.

[*Translation*]

Mr. Frank Baylis: I have a question for Mr. Lavallée.

The fifth point addressed in your presentation was the location of servers. You mentioned servers that weren't located in Canada, but I didn't really understand what you meant. Could you explain the challenge this represents for you?

Mr. Martin Lavallée: More specifically, we are talking here about reproduction rights. In the digital world, the value of the work is associated with the server where the copy was originally made. The Copyright Act is unclear in this regard. A person could succeed by arguing that because the reproduction was made in another country, Canadian law does not apply.

We should simply introduce a notion of technological neutrality into the Copyright Act. The current version of the act includes a section on copyright infringement at a later stage, when a copy of a work is produced. If, for example, books are printed elsewhere and imported into Canada, and the authorization was not originally given by the Canadian owner in the other country, that importation is considered copyright infringement. In this case, the word “copy” should simply be replaced by “digital copy”. Suppose a reproduction is placed on a server in a cloud, and the Canadian holder has not given permission at the outset. Since this service primarily serves Canadian consumers, the same recourse should be available. We should be able to argue that Canadian law applies, since the recipients are Canadians.

[*English*]

The Chair: Thank you very much.

Ms. Noss, again you referenced piracy going down. Is that part of the report you're going to be forwarding to us?

Ms. Wendy Noss: What I have for you today in French and English is about what we know about piracy. I would be happy to provide a compendium of some of the research that has come out of Europe and those other jurisdictions and provide that to the committee as well.

The Chair: Excellent. The goal here is to get stuff on record. Once we have that, our wonderful analysts can do a fantastic job and guide us through this quagmire.

For the final five minutes, we go to Mr. Lake.

Hon. Mike Lake: I'm sure your analysts will have no shortage of material to work through with this study.

Mr. Lauzon, you talked about the private copying regime. What specifically is your organization advocating for in that regard?

● (1745)

Mr. Alain Lauzon: SODRAC is a member of the private copying regime, and I think last week in front of you the people at the copyright regime, CPCC, came here and explained to you what we wanted related to that. Remember that in 1997 the law for the copyright regime was introduced in Canada.

Hon. Mike Lake: Mr. Lauzon, I'll break in for a second. This is my first meeting as a member of this committee, so could you quickly tell me what that looks like from your side.

Mr. Alain Lauzon: I'll go in French, okay?

[*Translation*]

The private copying regime applies to reproductions that are made by consumers but that we cannot control.

In Canada, the private copying regime was introduced in 1997 and targeted physical media, DVDs and cassettes. Subsequently, some people argued that the private copying regime should be technologically neutral, that is, that it should now apply to copies made using telephones or tablets, but the court decided otherwise. Technological neutrality wasn't introduced into the act when it was modernized in 2012 either. All we are asking is that this regime be technologically neutral, so that it also applies to digital media.

Since the act won't be amended for some time, we ask that a compensation fund be created in the interim.

The private copying regime represented $40 million for rights holders. Today, DVD reproductions are down, so that this scheme now represents about $2 million. It is a place where we could truly compensate the loss of income of the rights holders. Over the past six or seven years, rights holders have lost $38 million a year.

[*English*]

Hon. Mike Lake: This is that $40 million a year that I was reading about from...?

Mr. Alain Lauzon: Yes.

Hon. Mike Lake: Okay.

In answer to an earlier question, you talked about compensating for things people do that they don't know whether they're right or wrong. Is that...?

Mr. Alain Lauzon: No. In the CPCC brief that was filed on it, we were only talking about compensated copies that are legal. You have to understand, CMRRA and us, we have a joint venture called CSI. We issued licences for legal....

Hon. Mike Lake: The $40 million is to compensate for illegal copying, right?

Mr. Alain Lauzon: It's not illegal copies. It's for copies done by the consumer that we are not able to control. The source is not illegal. The source is legal.

Hon. Mike Lake: If I buy a CD, let's say, at a flea market or something, and I make a copy on my computer, you're saying that I should have to pay an additional fee for that copy?

Mr. Alain Lauzon: Absolutely. In the licence that we issue to iTunes, if you download a song, it will be covered by your licence, and it's not on the computer, it's on the mobiles and the iPads.

What we're looking for is say someone rips a copy or someone takes a copy on the net and downloads it, whether it's a legal source or not, it becomes a copy that is done for which we are not able to issue licences. That's the reason. There's a value related to that, and the private regime is something that is well recognized around all the countries. I can file a study that has been done with the private copying all around the world by CISAC, explaining exactly in each jurisdiction how the law is done, how it's evaluated, and the money that's earned by the copyright owners.

The Chair: Thank you very much. That's all she wrote, folks.

I'd like to thank everybody for coming in today. Again, it's very complex. It's not the easiest subject to talk about. There are lots of emotions. The point of this is to get as much as we can on the record. I would like to thank our witnesses for being here today.

For the rest of us, I have great news. We're going to sit during the summertime.

Some hon. members: Oh, no!

The Chair: I'm kidding.

I want to let you know that when we come back on September 17, we're going to get a summary from the analysts of what was presented so far on education, publishing, music, film, broadcasting, and TV. We're also going to get a critical analysis of data presented to the committee by the last 100-plus witnesses. We'll spend that first meeting just recapturing everything that we've done.

A voice: It's summer homework.

The Chair: We don't have the homework; they have the homework.

Thank you all very much. We are adjourned.

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