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Chair

Mr. Gary Schellenberger

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• (1105)

[English]

The Chair (Mr. Gary Schellenberger (Perth—Wellington, CPC)): Good morning, everyone.

Welcome to meeting three of the Standing Committee on Canadian Heritage. Pursuant to Standing Order 108(2), we are doing a study of Canada and the new media.

This morning we welcome, from the University of Ottawa, Michael Geist, chair of research in Internet and e-commerce law.

Good morning, Mr. Geist. If you would, start with your presentation, please...

I have a point of order from Mr. Rodriguez.

Mr. Pablo Rodriguez (Honoré-Mercier, Lib.): Mr. Chair, as a point of information, I'd like to know why there were no meetings this Tuesday and last Thursday.

The Chair: This Tuesday we didn't have any witnesses. Our witnesses couldn't get here for the meeting. That's why there was no meeting.

Mr. Pablo Rodriguez: And last week? Two meetings were cancelled. I'd like to know why.

The Chair: Again, we didn't have witnesses.

When we went into this, we had to go back to our witness list and back to the witnesses. Mr. Geist is here today because he was available for today. Not all our witnesses are available for the days that we require. Going forward, there will be witnesses at every one of our meetings.

Mr. Pablo Rodriguez: So are we okay for the next meeting?

The Chair: Yes.

Mr. Pablo Rodriguez: Thank you.

The Chair: Go ahead, Mr. Geist, please.

Professor Michael Geist (Chair, Research in Internet and E-Commerce Law, University of Ottawa): Great. Thank you, Chair.

Good morning. As you heard, my name's Michael Geist. I'm a law professor at the University of Ottawa, where I hold the Canada Research Chair in Internet and E-commerce Law. I'm also a columnist on law and technology issues for the *Toronto Star* and the *Ottawa Citizen*. I was a member of the national task force on spam; I was on the board of directors for many years for the Canadian Internet Registration Authority, CIRA, which governs the dot-ca domain name; and I sit on the Privacy Commissioner of Canada's

expert advisory board, but I appear before this committee today in a personal capacity and represent only my own views.

The committee posed several questions, but I think two capture the essence of the issue. First, how have developments in digital media changed the new media environment? Second, what can government do? I'd like to try to take a stab at least at opening some discussion on both.

First, how have things changed? As we move from a world that was largely characterized as one of scarcity to one of abundance, I think we're seeing Canadians play an important role. Record labels like Nettwerk Records in British Columbia or Arts&Crafts in Toronto are at the forefront of using the Internet to promote their artists and benefit from its great potential. Notwithstanding some doom and gloom, the Canadian digital music market has grown faster than the U.S. market each of the past four years. In fact, we rank seventh worldwide for digital music sales, which is virtually identical to our sixth-place ranking for offline music sales.

The Canadian entertainment software industry is growing at a breathtaking pace, with regular investments in Quebec, Ontario, and British Columbia. It's not legal frameworks that are dictating the investments but rather Canadian talent, creativity, and marketplace success. Smaller players are finding success in new markets as well, like iPhone and Facebook applications. The Canadian television network The Score is a North American leader for its online application. Companies like Polar Mobile now supply applications for the iPhone to a global market.

Canadians also play a key role in new book models. For example, Wikitravel is one of the Internet's most acclaimed travel sites. It was launched in 2003 by two Montreal residents, Evan Prodromou and Michele Ann Jenkins. They used the same Wiki collaborative technology that's proven so successful for Wikipedia, inviting travellers to post their comments and experiences about places around the world in an effort to create a community-generated travel guide. The site has accumulated more than 30,000 travel guides in 18 different languages, with 10,000 editorial contributions each week. Content is licensed under a creative commons licence that allows the public to use it, copy it, edit it, and freely work with it. Building on that success, they've established Wikitravel Press. It represents a new approach to the travel book publishing business based on Internet collaborative tools and print-on-demand technologies.

Now, the compelling stories aren't limited just to new entrants. Consider the National Film Board of Canada. I don't expect the NFB to replace YouTube in the minds of many when it comes to Internet video, but a series of innovations has highlighted the benefits of open distribution and the potential for Canadian content to reach a global audience. Last year, just months before the NFB celebrated its 70th anniversary, it launched the NFB Screening Room, an online portal designed to make its films more readily accessible to Canadians and interested viewers around the world. To meet its objective it committed to being as open, transparent, and accessible as possible, including making the films freely available and embeddable on third-party websites.

In January 2009, just over a year ago, it started with 500 films. Today that number has nearly tripled, with almost 1,500 films, clips, and trailers, and the growing selection has been accompanied by a massive increase in audience. There have been 3.7 million online film views just in that first year alone: 2.2 million from Canada and another 1.5 million from the rest of the world. That's set to grow as the daily views, just in January, were 20,000 Canadian films by the NFB. That's per day.

The site also uses mobile technology to increase public access. In October of last year, just a few months ago, it launched an iPhone application that was downloaded more than 170,000 times and led to more than half a million views on the ubiquitous mobile device.

Similarly, the CBC has experimented with new distribution models. In 2008 it released a high-resolution version of the program *Canada's Next Great Prime Minister* without any copy protection on BitTorrent, the peer-to-peer protocol that's often linked with unauthorized file sharing. The public was able to download, copy, and share the program without any restrictions.

- (1110)

The use of BitTorrent may come as a surprise to some who mistakenly equate file sharing solely with infringing activities. BitTorrent and other peer-to-peer technologies are finding increasing favour with legitimate businesses attracted to its ability to distribute content in an efficient, cost-effective fashion. It has become particularly important for Canadian independent filmmakers and creators, who see it as a cheaper way to distribute their work.

In fact, the CBC's model was inspired by what the Norwegian Broadcasting Corporation had done. It had earlier used BitTorrent to distribute *Nordkalotten 365*, one of that country's most popular programs. It proved successful, with tens of thousands of downloads at virtually no cost to the broadcaster.

These are a tiny fraction of the success stories we see today. We could canvass sector by sector to see how the Internet is proving enormously valuable to creators, consumers, and producers. But I want to turn to the question of what the Canadian government should be doing. I point to five issues as a starting point for discussion.

The first is Canadian networks. Canadian telecommunications networks were once the envy of the world. That's no longer, as we now rank far from the top in virtually every international ranking. Ensuring that Canadians have access to high-speed networks that rival current leaders like Japan and South Korea should be a top priority. I acknowledge that this is often perceived as an industry

issue, but there is a critical heritage dimension here. We need to recognize that policies on high-speed networks and competitive wireless pricing are directly linked to new media success, since they are key distribution systems of Canadian digital content. This involves addressing several issues.

We need universal access so that all Canadians can access this new media.

We need to promote investment in fast fibre-to-the-home services so that Internet-based distribution models can take hold and remove the bottleneck that sometimes arises from either limited screen space or limited channel availability that has hampered some Canadian creators in the past.

Assist Canadians to become part of the creative and participative process. Many of us recognize that the line between creators and users is increasingly blurred today, and we need networks that facilitate both participation as well as consumption.

Finally, we need to ensure that we enforce network rules of the road, including net neutrality and traffic management guidelines, so that all content is afforded an equal opportunity and doesn't fall victim to limited access based on the kind of content or the program used to distribute it.

The next issue is digitization. I think there are few issues more central to new media policy than digitization. Most countries have recognized the need to ensure that national content is both preserved for future generations and made more readily accessible to the public. But in Canada, plans have languished to the point that it feels as if someone has hit the delete key on the prospect of a comprehensive Canadian digital library.

Our failure to keep pace has become readily apparent in recent years. Just by contrast, in September 2005 the European Union launched i2010, a digitization action plan. Several years later Europeana debuted—a website that provides direct access to more than 4.6 million digitized books, newspapers, film clips, maps, photographs, and documents from across Europe. The plan is to host 10 million of these objects by the end of this year.

By comparison, Canada is still largely stuck at the digitization starting gate. Library and Archives Canada was given responsibility for the issue, but was unable to muster the necessary support for a comprehensive plan. The Department of Canadian Heritage would seem to be a natural fit for a strategy designed to foster access to Canadian works. It has funded a handful of small digitization efforts, but has shown little interest in crafting a vision similar to what we see in Europe with Europeana.

The next issue is government as a model user. In recent years many countries have embraced open data initiatives, including both the United States and the U.K. Others, such as Australia, have adopted open licences to make sure that government content is more readily usable and accessible. We have started to see some of those same things in Canada at the municipal level. Cities such as Vancouver, Edmonton, and Toronto are leading the way.

Open government data is consistent with government transparency goals, and holds great economic potential by inviting Canadian businesses to add value to public data. Canadian policy should encompass principles such as open government data, the removal of crown copyright, and more open licences for government data, including things like government video, as well as a commitment to at least equal opportunities for procurement around open-source software. We should be, as a federal government, much like we see at the municipal level, talking about open data, open standards, and open-source software.

Fourth is cultural policy. Canadian cultural policy has long focused on the creation and promotion of Canadian culture. The government has already begun to shift much of its support toward new media and digital platforms. As we move from a world of scarcity, with limited bandwidth and difficulties in accessing culture, to one of abundance, where there is nearly unlimited access to culture, Canadian policies must shift as well from what I think are increasingly unworkable regulations that limit access to foreign content, toward efforts that back the creation and promotion of Canadian content.

• (1115)

In many ways, cultural policy is more relevant than ever. What we have to do is ensure that it becomes relevant by being effective in the current environment. In fact, with a new spectrum auction planned within the next couple of years, I think strong consideration should be given to earmarking some of those proceeds for a digital strategy, including digital cultural funding. We can use some of that revenue directly in this area.

Finally and fifthly, I can't help but deal with it: copyright. It goes without saying that copyright policy is an important part of a government strategy on new media. As part of that policy, I think it's absolutely crucial to ensure that we maintain in the online world the copyright balance that exists offline. This means that creators receive appropriate compensation and have the flexibility they need to be able to create. It means that users maintain their user rights. It means that companies don't face an intellectual property thicket when they attempt to innovate in this space.

I'd point to three key areas here. First off, Canada should implement the WIPO Internet treaties. That said, the WIPO Internet treaties offer considerable flexibility in how they are implemented, particularly around the issue of anti-circumvention rules—digital locks—a fact that was recently confirmed in a Conference Board of Canada report on intellectual property. This means that we can implement the treaties and link it to circumvention where there is actual copyright infringement.

Secondly, there is the issue of intermediary liability, largely thought of as ISPs. Frankly, I think this should be an easy one. Both of the digital copyright bills that we've seen in the past, Bill C-60

and Bill C-61, adopted the same approach: notice and notice. This involves a copyright holder sending a notification to an ISP, which is then obligated to send on that notification to a subscriber.

These notifications work. The Business Software Alliance has noted their effectiveness, as many users receive the notification and alter their conduct accordingly. In fact, recently, the Entertainment Software Association of Canada pointed to its own study, which found that 29% didn't respond to the notice, leaving an impressive 71% that did. I think those are pretty strong numbers.

Thirdly, there is fair dealing. Today, we all recognize that there is a problem with fair dealing. Everyday activities such as recording television shows or format shifting aren't covered. Artistic endeavours like parody aren't covered. Some teaching activities aren't covered, and innovative businesses can't rely on the provision either. This goes to the heart of new media creation.

The solution I'd propose, which I think is a clean, simple one, would be to add two words—"such as"—so that the current list of fair dealing would become illustrative rather than exhaustive, and we would build in flexibility, but—this is crucial—not lose fairness. It is fair dealing, not free dealing. Incorporating a "such as" provision would incorporate all the restrictions that currently exist within the fair dealing framework to ensure the uses are fair, but at the same time would ensure it is not limited to the narrow series of categories we currently have.

This is an exceptionally exciting period of time, I think, filled with potential for creators, consumers, and Canadian business. The Internet and the digital world offer new ways to meet the challenges of yesteryear, such as a lack of screen time, barriers in reaching an audience, and, increasingly, the high costs of production, particularly around distribution.

I think it's great to see this committee grappling with this important issue. I welcome your questions.

• (1120)

The Chair: Thank you very much for that presentation.

Our first question comes from Mr. Rodriguez, please.

Mr. Pablo Rodriguez: *Merci, monsieur le président.*

Mr. Geist, thank you for being here. It's always a pleasure to see you.

[*Translation*]

We shall come back now to our specific subject that is new media. One aspect which interests very much the Committee concerns the future of traditional media.

What is the impact of new media on traditional media more specifically on television as it is? We note that television faces huge challenges. Generic channels are facing huge challenges given the presence of many specialty channels. Fewer people are watching television while more and more people are turning to the Internet to meet the same needs.

I have a simple question to begin with: What is the future of traditional TV?

[English]

Prof. Michael Geist: That's a simple question?

Voices: Oh, oh!

Prof. Michael Geist: I read with interest, as I'm sure everybody did, the CRTC findings as well as the report to the government this past week. I think the truth is that nobody knows for certain what it looks like.

I think what we do know is that we can't create policies that largely ignore the reality that is the Internet. If I had a criticism, for example, of the CRTC decision earlier this week, it was that I felt that it existed almost in a vacuum, as if the Internet didn't exist—as if we can create certain kinds of policies designed to support some of the broadcast television you're referring to, and assume that consumers will simply move in that direction regardless of what the costs happen to be.

Now, the CRTC argued exactly that in the report that followed the second day. They suggested that consumers are largely price insensitive and will continue to pay fees, no matter if they increase.

I must admit, I am skeptical. It may be true for a certain demographic of Canadians that they are both price insensitive and heavily reliant on broadcast television, and will continue to pay. But if I take a look at younger demographics in particular, I think they spend... Everyone knows they spend increasingly amounts of time online. In fact, they use that online environment not just for basic communication and access to culture and social media like Facebook, but they use it for what is effectively the equivalent of television. I use in this case even my own children as essentially my example of what I see is happening. If you ask them, take away the TV or take away the computer—and they're young, eleven and nine—it's an easy choice.

Mr. Pablo Rodriguez: That's an excellent point.

[Translation]

Since you raised the subject of CRTC, what role do you see for it in this transition? The way I see it, CRTC is not in a position to make a decision concerning new media and the new environment.

For example, should the Broadcasting Act be reviewed? How do you see the role and also the authority of the CRTC in that context?

[English]

Prof. Michael Geist: Last year was obviously a very busy one for the commission, where they were looking at broadcast as well as some of the telecommunications issues. What I thought became readily apparent, particularly as part of the telecom discussions when we were talking specifically around things like network neutrality and the guidelines that Internet providers have, is that you had

groups like ACTRA and many other creative groups up there wanting to talk about the impact those telecommunications rules were going to have on what most of us would conceive as broadcast—on that ability to take content and ensure that it's available on all the various platforms.

The commission was very reluctant to do that. They said we're talking about telecom here, and there are separate hearings for broadcast. What I think has become increasingly apparent is that the silo approach of regulation saying this is broadcast and this is telecom is almost completely broken down. I think the ability to distinguish between these two and say the restrictions and the rules that apply in one sector don't apply in the other is a problem. The CRTC finds itself often really bound in that regard, and having trouble dealing with that.

In an ideal world I think we would revisit, frankly, the separation of those two acts and come up with a broader communication act that recognizes that it is certainly true today, and it's only going to be more true in the future, that distinguishing between what we see as conventional broadcast and what we see as telecom are virtually indistinguishable.

• (1125)

The Chair: You have ten more seconds... Okay.

Madam Lavallée, please.

[Translation]

Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ):

Mr. Geist, thank you very much for being here. Your coming here is very much appreciated particularly for all your remarks about the digital world and also copyright. They are well known and understood.

And it is in this context that you advanced ideas about what this government should do. You laid the groundwork for a future global strategy for transiting into a digital universe. I am pleased that you have also included copyright because it may not be obvious to everyone that we cannot switch to a digital world without first solving the copyright issue.

In completing your answer to Mr. Rodriguez, you made reference to a bill. Would you not agree that before moving forward with a bill, this government, which has to date provided band-aid solutions to pressing needs, should instead elaborate a broad global strategy for transiting to digital based upon what we have at the present time? This should be put together to create a vision allowing everybody to feel that they are all moving in the same direction together, including consumers who are facing important challenges at this time.

[English]

Prof. Michael Geist: We're in absolute agreement that there is a desperate need for a national digital strategy. I would note that the five areas that I highlighted aren't designed to be comprehensive. When we talk about a digital strategy, I think digital strategy involves a number of other areas as well.

What I've heard from the government, paying attention to the Speech from the Throne and some of the things that the industry minister has said, is that strategy may be forthcoming. So I think a lot of us are waiting with bated breath to see precisely what the government has in mind.

I think you're right, that it is long overdue, and I don't think it's just this government. I think, in many ways, we've spent about 10 years going sideways, doing virtually nothing. If you take a look back, from a digital perspective, we had a very solid strategy in the late 1990s. At the time there was an industry minister, John Manley, who was in that same position for a long time. He took it as one of his issues, and it laid the groundwork for a whole series of policies, from privacy legislation to ensuring that all schools were connected to a whole range of different things. I think it was a very positive development.

We have spent the last 10 years, through successive governments from both parties, not doing very much. I think the kind of declining rankings that we see, let's say in the telecom area, is a direct result of that. It's almost resting on our laurels, as it were. So I absolutely agree.

You mentioned the need to deal with copyright. I certainly agree with that, and I also hear from the Speech from the Throne that it's happening. I would note that one of the criticisms we saw when the last bill was introduced, in terms of Bill C-61, aside from the substance—I'm happy to talk about the substance, of course—was the lack of public consultation on this issue. In fairness, last summer the government conducted what was, I thought, the best, most open copyright consultation we have seen. More than 8,000 Canadians took the time to respond to that consultation.

If anything, it provides our elected officials with a clear indicator that this matters, certainly to creator groups and to industry groups but also a huge amount to individual Canadians as well. When you do a government consultation in the middle of the summer and 8,000 people turn up to submit their views, this matters.

[Translation]

Mrs. Carole Lavallée: By the way, public consultation on copyright did not fare without some problems. In fact, the members of the Canadian Private Copying Collective had to fight to be invited, which is rather strange. I am afraid that this could suggest that the government has a tendency to ignore people who would present opposing views.

In regards to copyright, I have a sense that legislation will come soon. Some even say as early as June. According to you, what should be the most important changes to the present law to align it with digitization?

• (1130)

[English]

Prof. Michael Geist: We hear much the same kinds of things. I actually do think that the consultation, just to close on that, was open. It's true they had these round tables, but anybody who wanted to submit something could. I received so many e-mails from, especially, younger Canadians who indicated this was the first time they had participated in a government consultation. I thought it was encouraging not just to see the numbers but also to see that it was

bringing younger people, who traditionally may have been seen as more apathetic when it comes to policy and the political process, and getting them involved. So I thought that was quite a good thing.

In terms of the specific issues, during that presentation, I actually tried to highlight three. One is the WIPO Internet treaties. I think there have been some people who've disagreed with the treaties themselves and the need to implement. I think, in a sense, that train has left the station. I think we are now at a point where everyone is in agreement that we need to move forward on those treaties. What becomes crucial, though, is that the devil is in the details with those treaties and they provide considerable flexibility. I think we need to ensure that they're implemented so that there is the appropriate protection in the digital environment, but, at the same time, we have to ensure that the flexibility that exists in that treaty is reflected in Canadian law as well. And I think that means linking people who pick the digital lock, who circumvent technologies, to instances of copyright infringement.

Someone who circumvents, let's say, to protect their personal privacy because they're concerned someone is looking at their listening habits, let's say, and using a digital lock to facilitate that, I think ought to have the ability to circumvent that lock. It's not copyright infringing, it's ensuring that their privacy is appropriately protected. On the other hand, someone who circumvents so that they can burn 1,000 DVDs and sell them on a street corner, the law ought to be able to come down hard against that and it clearly ought to apply. That's one.

The second issue has to do with the role of intermediaries, of ISPs. As I mentioned, in the prior bills the approach that we've seen is one of "notice and notice", and I think it's proven effective. If think the "notice and takedown" approaches that we've seen in some other countries have proven highly problematic. And, even worse, the approaches that a couple of countries have begun to experiment with, where they would literally kick people off the Internet, the three strikes approach, I find to be completely disproportionate. They run counter to the very policies we're trying to implement from a digital strategy perspective.

Third is the issue of fair dealing. I think fair dealing becomes, in many ways, more relevant in a digital environment. There's litigation right now, in British Columbia, where there were creators who did a parody of a newspaper and were sued by that newspaper on copyright grounds. They turned around and said, hold on a second, it's an obvious parody. It's not a copy of that newspaper. And the court said, sorry, fair dealing doesn't cover parody. We're more than 20 years past, almost 30 years, with the VCR and it's still not legal for a consumer to record a television show.

I think those kinds of things make the act seem completely anachronistic. If we're going to update into the digital environment, we need to provide much-needed flexibility into that fair dealing provision.

The Chair: Thank you.

You went a little over your time.

We'll go to Ms. Leslie, please.

Ms. Megan Leslie (Halifax, NDP): Thank you, Mr. Chair.

Thank you, Mr. Geist. We're really lucky to have you here to share your expertise with us. While you have expertise on issues, I actually want to tap into your expertise on, I guess, the digital world and the politics of the digital world.

We are having this study, and the approach of the committee is to look at the role of the federal government. So I want to ask you what your thoughts are on what we're doing. What are maybe some pitfalls or some dangers we could avoid here? How would we do that? Do you have any advice for us on how we're actually moving forward with this?

Prof. Michael Geist: As I mentioned off the top, I think it's a good thing to be doing. It's a great thing. It's an important area, and the extent to which the committee can help feed into a broader digital strategy I think is very useful.

I guess if I take a look at the last five years or more of discussion on digital issues, whether in committee or more generally, there is a tendency, and it's natural, to hear from what we might see as the usual suspects. I think it's unquestionably important to hear from those established players. But I think we also need to recognize that much of the innovation that is taking place in this space is not coming from those traditional players. In fact, many of them are struggling to keep up. To come up with a relevant study that really looks at the opportunities as well as at some of the challenges, it becomes absolutely essential to ferret out and identify some of those more innovative players. In many instances, that's not easy, because we're not talking about household names.

People have heard of EA, Electronic Arts, the large software company, let's say, which is hugely successful. Polar Mobile is less well known. But the growth of Facebook applications and iPhone applications is a massively fast-growing market, one that is very innovative and that has such low barriers to entry that it provides tremendous opportunities for Canadians to compete. It's identifying those kinds of players. It is the smaller record labels or the more innovative record labels out there that recognize the challenges and the tremendous opportunities. They are gearing their business approach towards embracing the Internet as opposed to trying to find ways to keep it from entering into their business plans.

• (1135)

Ms. Megan Leslie: Of course, we're going to hear from the major players and the no-names. But while we have you here, do you have some suggestions for us as to who wouldn't be on our radar here in Ottawa? Who are some innovative people we should be talking to?

Prof. Michael Geist: Well, I just mentioned a couple, and I'm happy later, certainly, to provide the chair or members of the committee with the names of the kinds of businesses we're seeing.

It is, of course, a fast-moving space. If there's one other kind of Canadian success story that perhaps you ought to be thinking about hearing about, it's the number of noteworthy successes that started in Canada and are no longer here. To give an example—I mentioned my younger kids, so I'll mention them again—there was a brief period of time when my kids were very into Club Penguin and Webkinz. People who have kids of the preteen set will recognize both of these. These are dominant players in the online space when it comes to kids' games. They are for the pre-Facebook set, so to speak. They are very, very successful. Webkinz is still a Canadian company,

run by Ganz, so it's a great example of a Canadian company that has adapted to the online environment. Club Penguin is one that was bought out by Disney.

Why is Club Penguin now U.S.-owned? Why is StumbleUpon, which started up here, U.S.-owned? Why is Flickr? Think about the photography area. It is one of the dominant players when it comes to online photography. The dominant player now is Facebook, which has literally three billion photos posted every month. It's a staggering number, but Flickr has billions as well. It was started by Canadians and was, of course, bought out by Yahoo.

If we're going to talk about creating a national digital media strategy, we also ought to be talking about how we retain that Canadian success and talent in Canada. That's something I don't think we've spent a lot of time thinking about yet.

Ms. Megan Leslie: What's holding up the process here in Canada when it comes to having net neutrality enshrined in Canadian law?

Prof. Michael Geist: I actually think we have a better-news situation than perhaps we had, let's say, a year ago. I thought the CRTC hearings on net neutrality were quite good. I thought the guidelines the CRTC came up with were, in the main, pretty good as well. The fights you see taking place in the United States are largely around guidelines that could ultimately look much like what we have in Canada.

The issue, now that we have these guidelines in place, is whether we are going to have effective enforcement. I think the criticism about the net neutrality guidelines or the traffic management guidelines, from the very beginning, was about whether there was effective enforcement. We saw a baby step in that regard, so to speak, from the CRTC earlier this year when they took on the issue of disclosure. One of their requirements was that ISPs have to disclose their practices. ISPs are still not disclosing them in an appropriate fashion, and the CRTC wrote to the ISPs and said that it needs to change.

Even today we have all sorts of traffic management practices that I think are problematic and that need ultimately to be tested. We have those high-level guidelines, but what we need is actual enforcement to determine whether the guidelines can deal with some of these problematic policies. That's an answer we don't have yet and that's going to require some enforcement, something that I hope we see this year.

The Chair: Thank you.

Mr. Rajotte, welcome to the committee.

Mr. James Rajotte (Edmonton—Leduc, CPC): Thank you very much, Mr. Chairman. I certainly appreciate being here.

Mr. Geist, I always find it interesting to listen to you. Thank you very much for your comments here today.

I very much appreciated it when you talked about the silos of telecom broadcasting. I think you're fundamentally right on that. With respect to young people being active on copyright, I can say that's certainly true in my riding. I know a lot of people became active on Bill C-60 and Bill C-61.

I know you were quite a strong opponent of Bill C-61. Some people had the impression that you oppose any copyright measures. But as you've said this morning, you in fact support copyright policy in terms of implementing WIPO "notice and notice" of fair dealing. I appreciate those comments. I think you're recommending to the government that it be a smaller and more streamlined bill that's technologically neutral.

In the discussion on copyright, you also talked about creators and users. It's a real challenge in terms of the new online environment to ensure that creators are compensated for the work they do, including a person who writes a song, a producer, and all the way down the line for any field.

Could you comment on how to ensure that we actually compensate creators in the new online environment?

• (1140)

Prof. Michael Geist: It's a terrific question and a very important one. It's one that people have been grappling with for some time. In some ways, I'd divide my answer in two.

One of the ways that creators are compensated in the online environment is within the market. We have to recognize that new media doesn't require a complete collective government plan to ensure creators are paid in the online world in the same way they're paid in the offline world. In fact, I think many creators find tremendous opportunities within the online world. They're sometimes paid in the conventional ways. At other times, they're paid far more in different ways.

The stories of one-offs, such as Nine Inch Nails, Radiohead, and some other musicians out there, have become increasingly more commonplace as illustrations, in some instances, of giving away some of that intellectual property. You can use their work or have access to their work because they recognize they can make far more in other places. Policies that are designed to protect and hoard IP as much as possible can often miss the forest for the trees. If the goal is to maximize the type of revenue that can be generated, oftentimes providing it and giving it away can actually work quite well. I think there are great opportunities.

At the same time, there may well be another role. When there is a market failure, collective licensing often comes in. I think it is worthwhile talking about whether or not the collective licensing approaches that we now have in place will still work in the current environment. Frankly, before we begin layering in all kinds of additional fees, we need to ensure the structure is working appropriately. I'm not someone who says absolutely no to potential levies or new collective systems. I think they have a role to play, if the market really does break down, and they can provide a better alternative.

Mr. James Rajotte: That's what I want to follow up on. In the past, there was an assumption that if people bought VHS tapes or cassettes, they would in fact be using them for recording purposes. They would be breaking the copyright, if you want to use that phrase, and a charge, tax, or levy should be charged.

There are new proposals coming forward on the copyright regime being extended to MP3 players, iPhones, iPods, cellphones, etc. Isn't it the wrong way to go to assume that if people are buying these

products, they are in fact breaking copyright and should therefore pay a levy, tax, or fee?

Prof. Michael Geist: The issue is obviously quite politically charged in terms of the motion that came through this committee, as well as the private member's bill that we've seen. I think there's value in a private copying levy. I have some concerns with the proposals that have been put forward.

First, with all respect, it's not the people putting this forward, but it's those who are calling on elected officials to support a private copying levy who are being disingenuous. On the one hand, they say that a lot of copying is taking place and the creators need to be compensated. I think that resonates with people and it makes some sense, but we all recognize the kind of copying that's taking place is largely peer-to-peer copying. Yet, those same groups will turn around and say this isn't about peer-to-peer copying, but it's about other types of copying. It strikes me as not being completely honest.

If we're going to have a levy that actually addresses the real type of copying, let's have a debate. Let's establish a levy that makes some sense, doesn't create price distortions, which I think, with respect, this one does, and is not overly broad, which, with respect again, I think this one is. But nevertheless, let's at least have an open debate.

I think there's an attempt here to have one's cake and eat it too. On the one hand, we want all kinds of compensation for copying, including copying on new devices. At the same time, we persist in calling people who make those copies "pirates". We can't have it both ways. If people are going to pay, let's have a levy that genuinely addresses those issues and where the copying is taking place. Let's not kid ourselves. This isn't about someone who buys a CD and copies it on an iPod. This is about dealing with peer-to-peer copying. Yet, the groups behind it persist in saying it's not about that.

The Chair: You don't have any more time, Mr. Rajotte.

We'll go to Mr. Simms, please.

Mr. Scott Simms (Bonavista—Gander—Grand Falls—Windsor, Lib.): Thank you, Chair.

Thank you, Mr. Geist. It's good to see you again.

You and I have a similar pattern of trying to deal with this issue. You obviously are far more knowledgeable than I am, but we both have this habit of not only watching the content our children look at but of seeing how they look at that content.

I've a 15-year-old son. I've said time and time again in this committee and others that you can put in place legislation that cuts down on circumvention. It'll take about a year to do it. It'll take my son about 48 hours to get around it.

I've always been a fan of a point you made earlier: this is illustrative, not exhaustive. Are we going in that direction in the sense that the legislation we put in there mirrors what is happening right now in Europe? It says, look, these are the guidelines by which copyright is enforced. They create a more flexible system that not only, obviously, protects people's copyright but also allows fair dealing and allows people access so that they can further create beyond that.

How do Bill C-60 and Bill C-61 not do that, and how should we go towards that more flexible type? I completely agree with you on the WIPO treaty stuff. We're way behind, and it's a game of catch-up.

• (1145)

Prof. Michael Geist: In fact, I think you've put two issues on the table. You're talking both about anti-circumvention and about fair dealing, and both are, as I've said, critical issues that we have to deal with.

On the issue of anti-circumvention, I say again that we need to implement, if only because of the kind of political pressure we face from other countries and to at least send the message that we are trying to update. But as you've just noted, there's flexibility in how we go about implementing. We can be fully compliant with these treaties and still seek to preserve the kind of balance we have off-line in a digital world.

With respect to fair dealing and that move toward flexibility, in recent years we have seen other countries—Israel is a good example—move toward an exact U.S. fair-use approach. Now, I take the position that simply taking the U.S. provision is not the right way to go. There are those out there who would disagree with me... who are seen to be on my side of the fence on this; no, we want fair use.

I think it is a far better approach to recognize that we now have years of jurisprudence around fair dealing that emphasizes—

Mr. Scott Simms: There's one that keeps popping up in your books; is it CCH and the Supreme Court?

Prof. Michael Geist: Yes.

Mr. Scott Simms: Would that decision be a basis for our new copyright legislation, and do you think it should be?

Prof. Michael Geist: Yes, I think it should be.

The CCH case was a case that sounded a very strong signal that copyright is a balance, one of both creator rights and user rights, and it sought implementation and interpretation of copyright in that balanced fashion. I think that was the right thing to do.

I think what the courts have done on fair dealing is send a signal that this is a user right. It's an integral part of the Copyright Act, and it needs to be interpreted in a flexible fashion. But there are still limits. So the Canadian courts have established limits that say that it isn't a "free for all", it is a "fair for all".

I think building in that kind of flexibility achieves a number of things. First, it's consistent with what the court had to say. I think it actually provides great benefits to creators, users, and businesses that are trying to be innovative. It also addresses the issue that came up with the earlier question of why this is all taking so long or is taking too long. I think if we go to the sort of piecemeal approach with respect to fair dealing...

I think almost everybody will, at this stage, agree that we need to deal with parody. We need to deal with time-shifting and the recording of television shows. We could probably identify a half-dozen or so things that almost everybody would agree we need.

The reality is that the day after this legislation passes, there are going to be people coming up to you again saying that you didn't

address their issue. We need this additional piecemeal thing, and we're going to spend a decade getting into those kinds of debates. A flexible, forward-looking approach says that we're not going to specifically define the categories, but what we are going to ensure is that we have fairness built into the process—fairness for both sides.

Mr. Scott Simms: Is that where Bill C-61 went wrong?

Prof. Michael Geist: In my view, Bill C-61 went wrong in a number of places. That's one area where I think it went wrong. For example, it legalized the recording of a television show, but it came with 12 conditions. The conditions included things like only being able to keep it for a limited period of time. Only one person could see it. You could only record the show once, so you'd better not set your PVR to record all the episodes, because if it recorded a rerun, you would be in violation. And it was all subject to a digital lock at the end of the day.

On fair dealing, it went wrong by going both piecemeal and by making it far too restrictive, far beyond what the law would currently say fair dealing would be.

• (1150)

Mr. Scott Simms: It was far too exhaustive.

Prof. Michael Geist: Well, I think it made it virtually unworkable.

I think this is an important point. People often talk about the need for respect for copyright and claim that a whole generation today doesn't respect copyright. Well, I have to say that in some ways, it works both ways. A law that tells people that it is illegal to record a television show or that in order for it to be legal, you have to be able to tick 12 boxes, doesn't engender any kind of respect for copyright.

To create that kind of respect, we need forward-looking laws, but we also need a certain amount of trust among the public to recognize that we're going to treat them as adults and that this is the framework, and there's some flexibility built into that framework. Otherwise, people look at this law and say that this is just utter nonsense.

The Chair: Thank you for that.

Mr. Pomerleau, please.

[*Translation*]

Mr. Roger Pomerleau (Drummond, BQ): Thank you, Mr. Chair.

Thank you for coming, Mr. Geist.

Clearly, we are at a very promising time with the advent of these technologies, a time when extraordinary prospects are open to us.

All the same, there are some people who are excluded from this process. I am thinking about people of my generation or of my father's who have great difficulties mastering the use of these systems. There are also people who, like me, live in isolated rural areas where they have no access to the Internet. These people are excluded and suffer the consequences.

I, myself, have been using a BlackBerry for a year and I must admit to its advantages. It is because we have immediate access to information allowing us to take immediate decisions. Those who have these tools obviously have an advantage over those who don't, especially when it comes to business.

So, while there are people who are excluded, there are also all those nation states who do not have access to these systems. How do you see the situation unfolding in the long term given the problem of people who are excluded?

[English]

Prof. Michael Geist: Sure. You've pointed to two kinds of digital divides, in a sense. You've pointed to a digital divide that is a skills digital divide, where it's sometimes based on just life experience, demographics, what have you. There are people who are deeply comfortable with this. I think again of my kids, or even my students and even more recent graduates, people now into their thirties and forties who have grown up with the Internet. We forget; we still talk about service...in some ways it's early days. But anyone who, let's say, entered high school or even middle school from the mid-1990s or before, 15 years ago, almost 20 years ago, can scarcely remember a world without the Internet, and certainly not one without the personal computer. As time moves on, more and more of the population here and elsewhere have those skills and have that comfort level.

That said, the question was posed earlier about a digital strategy and I think skills development, digital literacy, has to form a part of that as well. It's not just about ensuring that we have the network. It's also about ensuring the kind of comfort level both for people who are coming into the workplace, but especially for people who may be transitioning between jobs and the like. We have to address that kind of issue. In fact, the controversy or the mistake a week or so ago around the community access program...where the government is funding support in many communities, in thousands of places, often in libraries. That actually serves as a prime place for many people to get those kinds of skills and education. I think it's an important program and I'm glad the funding continues for that.

In terms of the rural-urban divide, you're absolutely right. This is an issue we've known about and have been grappling with for a long time. I think at this stage we surely must come to the recognition that even left solely to the market—and there are obviously incentives for the large telecommunications and cable companies to try to ensure that as many people are wired as possible—there are still going to be have-nots. Saying that wireless technology solves this problem I don't think is right. I don't think the speeds offer the kinds of capabilities that are necessary for things like lifelong learning, for a range of new services, for some of the health services that we're going to start seeing happening. I don't think satellite works either. I think anyone who thinks satellite is an effective alternative should be required to use it, and then we'd see just how effective it is as an alternative.

There is unquestionably a role to play for government to ensure that there is no community left behind. Decades ago we talked about universal service and we thought of universal service in the context of the telephone. Universal service today ought to mean broadband.

•(1155)

[Translation]

Mrs. Carole Lavallée: Let me return to the issue of iPod levies. As you know, it is I who submitted the motion here at this table, who has tabled it and had it passed. Among other reasons, I did so because artists must be paid for their work. When you say that this is not a serious problem because if they are not paid for recorded music, they will be for their public performances later on, this makes me very uneasy. It's like having a university professor who works for nothing because we expect him to be paid for his conferences outside of the classroom.

This seems unjust and makes no sense. Clearly, even with an iPod levy, artists would not entirely recover their losses even if we don't expect that to happen. This is because much of the musical works downloaded on iPods are done so legally but there still is all the other possibilities available through MP3—

[English]

The Chair: We need a question quickly, because we're already at five and a half minutes. And I'll need a short answer.

[Translation]

Mrs. Carole Lavallée: I just wanted to make this comment. Moreover, writers and authors also deserve to be paid. We know that their works find themselves in these applications. That is all I wanted to say.

I shall not ask any questions since we are short on time.

[English]

Prof. Michael Geist: Let me just respond, and if I have the time later on, perhaps I'll get to the author issue, because I think it's an important one as well.

I agree that there needs to be compensation. I don't necessarily agree that it means there needs to be an iPod levy, though. I think those two are distinct.

You say there's a lot of copying taking place. That's right. The problem is that as the bill reads at this point in time, it does not clearly say that the kind of copying that takes place is now legal. So if we're going to create an environment where there is this kind of system that seeks to legalize it, then you have to at least legalize it, and that's not what we have within the iPod levy. What the iPod levy seeks to do is compensate people for copying done from a CD onto an iPod.

With respect, my view is that someone who has gone out and purchased that CD ought to have the right to transfer that song onto his or her iPod without compensation. The truth of the matter is that most people I know today purchase the CD and never once listen to it on the CD itself; they listen to it on their iPod. If there is additional value there, then price it into the CD in the first place.

The Chair: Thank you for that.

Mr. Bruinooge, please.

Mr. Rod Bruinooge (Winnipeg South, CPC): Thank you, Mr. Chair.

I have to agree with Ms. Leslie that we're very fortunate to have your expertise here today.

As much as I almost feel like being enticed into a further discussion on Madam Lavallée's point from the opposite perspective, I'm going to set that aside and just go to some of the questions I'd like to ask.

You spoke briefly in one of your interventions on the concept that it was going to become impossible to differentiate between broadcast in broadband or access to the Internet the information that we receive through the various pipes. As broadband becomes accessed through means for which there are no longer any wires—that typically is the case these days, although the home still does rely on some wiring—once perhaps our home-based set-top boxes that deliver our television content and our Internet content begin to be able to access wireless networks, do you envision an environment where those wireless networks are accessible by all our devices here domestically and those wireless networks could be coming from abroad? If that is the case, can you give us a sense of what that environment would be like for being able to attempt to rein in content restrictions?

Prof. Michael Geist: There are a few things I'll try to unpack there.

First, I don't think we're going to give up wired and wireless any time soon. In fact, over the years, we are likely to see both of these coexist in the same way we do today but with faster speeds. There are limits of physics, I think, in the wireless space that will not allow it to offer up the gigabyte to the home that Google is proposing to offer up on a trial basis in some communities in the United States. We're not going to get to that point.

As long as there are demands out there for faster and faster speeds, I think there is a role for fibre to the home, for the wired connection. There is also unquestionably a demand for fast speeds in the wireless space, because I think a mobile Internet is a core part of the way people will experience that Internet. So let's be clear. In my view, these continue to coexist and they get faster and become more and more important in our lives.

You raised the issue, essentially, about content coming from outside the jurisdiction and how you regulate that. I made a brief reference in my opening remarks to the challenge of adapting cultural policies from a world of scarcity to one of abundance. That, in a sense, is the question. The world of scarcity was one in which you could keep certain kinds of content out; you could keep it scarce and thus make it more regulable. Today we live in a world of abundance where keeping content out simply isn't possible, and it creates real challenges for those who want to have regulations premised on that scarcity. So I think it's very difficult to keep content out.

That said, I don't think that necessarily means that laws stop applying. I think, for example, of the spam legislation we're seeing, or about hate speech, about a range of different rules. What they seek to do is say, if you are in Canada, those laws are still going to apply. If you're outside the jurisdiction, yes, it's going to be very difficult for us to apply those laws, but at a minimum what we're going to do is ensure that Canadians respect the laws that are in place and that we can enforce.

So I don't think the Internet becomes this no-law land where nothing applies. I think it continues to apply. But I think we've known for 15 years that the ability to regulate content from outside the jurisdiction—short of trying to become a China—is almost impossible to do.

• (1200)

Mr. Rod Bruinooge: Maybe I'll bridge now into a philosophy that I think you were espousing in relation to how the market should be able to essentially accommodate the content creators.

I guess that type of market philosophy is obviously something that I hold. I'm not going to say that you share that same philosophy. But essentially when someone's creating something—in this case, artistic—or any type of endeavour that becomes digital, if a consumer can get similar degrees of content for free, then in theory there's no market.

But if that artist can then differentiate themselves to the point where their content is desirable, only at that point can they extract value from it and have a market. I think that's kind of the philosophy, unfortunately, that we're at with the Internet.

Is that kind of what you were talking about?

Prof. Michael Geist: It's obvious that it is a challenge to compete with “free”, but I don't think we should be of the view that just because something is available for free, no market can develop. For instance, iTunes has sold well over a billion songs, and all of those songs are freely available online. Let's not kid ourselves. You can access it through peer-to-peer. You can access it... If my kids and other kids want to listen to music, they frankly listen to it on YouTube. It is effectively licensed, but they listen to the song. That's all they wanted to do anyway, to listen to the song.

There are lots of ways of accessing that song, some paid, some not. The truth of the matter is that there is value associated with the way you access a song, through iTunes or through a CD, so that you can compete with free.

The oldest example that people like to offer up is that they got a glass of water for free, and there are plenty of people walking out right now with a bottle of Dasani or Perrier or other kinds of bottled water, in which they pay for basically the same thing. They'll pay two or three or more dollars for it.

Mr. Royal Galipeau (Ottawa—Orléans, CPC): But it's not as good as that water.

Prof. Michael Geist: There you go.

The truth is that you can compete with free if you provide value. One of the really exciting things about the Internet is that we're seeing innovators coming up with all kinds of different ways where they can add value and entice the customer to pay.

The Chair: Thank you.

Ms. Dhalla, please.

Ms. Ruby Dhalla (Brampton—Springdale, Lib.): Thank you very much for coming.

I have had a chance to take a look at some of the work you have done on copyright and net neutrality, and I think you're to be commended for your great insight and perspectives.

I wanted to just pick your brain on a couple of things. Given all of your expertise and wisdom, I think our committee could benefit. One of the things that you've written about in the past in regard to cultural policy is a sort of new innovative idea dealing with the Internet Registration Authority and the funds that they get. One of the ideas that you have proposed is that every Canadian should be able to get a free Internet domain name to ensure that we increase the number of individuals who are participating online.

Perhaps you could comment on that and the direction that you see new media going in over the next three to five years. Tell us what you think our committee and the government could perhaps do to prepare for that, to ensure that Canadians from all demographics, regardless of their socio-economic, cultural, and linguistic background, would be able to participate in the evolution of new media.

• (1205)

Prof. Michael Geist: Thanks. Those are great questions.

I'm glad you raised the issue of CIRA and the "dot.ca" domain name. I spent six years on that board. I think it's a well-run, terrific organization. There are more than one million dot.ca domain names registered.

I think we ought to recognize that it generates sizeable sums of money. The way it works is that you register a domain name and you pay that, effectively, licence renewal year after year. The costs of the registry are relatively low, so you're generating quite a surplus of funds.

I think we ought to be doing something good with that surplus of funds. The government still does play a role. It sits on the board in an ex officio capacity on CIRA. The proposal I put forward was indeed to provide everybody with one free domain name. I think, actually, you could do that both as a mechanism to encourage people online... I think it would actually spur business investment, because then you get people who have the domain name and want to start doing things with it. So that's good in that sense.

From CIRA's perspective, I don't think it eats away at all of their revenue, because there are still going to be businesses who want to register, and individuals who want more than one domain name, for which they're going to have to pay. I think it's a nice, tangible way for Canada to create more of a presence online in the form of the dot.ca.

So that's the dot.ca proposal. In terms of what government can be doing, let me touch back for a minute on one of the issues that didn't necessarily seem immediately relevant to new media. This was the issue of open government.

One of the things government ought to be doing to prepare Canadians, so to speak, for this new world is to prepare itself. The reality today is that we talk about all these exciting, innovative things taking place within the private sector. There is mounting expectation for the government to engage in the same way, so that consultations adopt some of the same kinds of openness approaches that we see businesses adopting and public groups adopting, with government trying to do those same sorts of things, government making its own materials available so that people can use, and reuse, and build for cultural, economic, and policy purposes, and for all kinds of different things.

In some of those areas it's low-hanging fruit. For me, in an ideal world we would simply get rid of crown copyright. I don't think it's appropriate to have to ask for permission to use government documents. But if we don't want to do that, we can do what the Australians have done, which is adopt a creative commons licence that says that anybody can use these government works for, particularly, non-commercial purposes without having to seek permission.

We don't have to even change the law. We just have to change the policy so that government begins doing the same kinds of things we're seeing in the private sector, and becoming, I think, more relevant in the lives of Canadians, and in a sense preparing itself for this new media world.

Ms. Ruby Dhalla: Just going back to copyright, you had mentioned earlier there were a lot of challenges in regard to the proposed copyright legislation.

Since we only have a minute, perhaps you have three ideas, moving forward, that need to be taken into account when new copyright legislation is being developed.

Prof. Michael Geist: I touched on, obviously, the specifics. If we were to think about it from a principle basis, I would say that, one, it needs to be forward-looking. We need to recognize that some proposals that have been put on the table, and are very strongly advocated for, come out of the 1990s. We're talking about policies a decade or older that, frankly, have been proven not to work. We need a bill that doesn't become irrelevant the day it is passed, or frankly, irrelevant the day it's introduced.

We need legislation that is forward-looking. We need it to be technology neutral. Bill C-61, as an example, made specific reference to VHS tapes, talking about the ability to transfer in format from a VHS tape to digital. This is ridiculous. This is not forward-looking. This is go to your basement to see if you can find any VHS tapes.

So we need forward-looking, we need technology neutral, and then I think we need to remember the issue of balance. Everybody comes and says that copyright is all about a balance. I think we need to recognize that it is very easy, if we're not careful, to take the balance we have in the offline world and distort it online. Locking everything down without bringing on the balancing stuff that we have in the offline world would distort the balance in this digital world, which I think we all recognize is the dominant place where most people are going to be consuming and creating.

The Chair: Thank you.

Mr. Rajotte, next question, then Ms. Leslie.

Mr. James Rajotte: Thank you, Mr. Chairman.

I wanted to follow up, Mr. Geist, with respect to your issues of digitization and government as a model user. I'll just pose a series of questions and issues for you.

On digitization, could you explain to us what we're not digitizing? You gave some examples—for instance, the National Film Board, which is digitizing a lot of works.

Also, in terms of government as a model user, I have to say I'm a bit surprised by the comment. In my sense, the information being put online is a vast amount of information. Even the consultations, and you described the copyright consultations—I think you described them as the best, most open copyright consultation.... Also, all the budget consultations were online since last year, and the new pension consultations will all obviously be online. I think these are certainly good things. I think everyone would agree with that.

Perhaps you could, just explain where the government should be going more in terms of being a model. You look at BizPal as an example for small businesses. Could you explain where government as a model user needs to do more, and also in terms of what we should be digitizing that we're not currently?

• (1210)

Prof. Michael Geist: I'll deal with the second part first, the issue of government.

For a number of years the perception of government in the online environment was this e-government, this notion of delivering government services online. That is a very good thing. In fact, Canada was seen as being very good at it. Today there is in many countries an increasing emphasis on what might be seen not as e-government but rather as open government, saying that we can take many of the data sets that reside in government—and not all of these are political policy things. This is everything from weather data—weather data is a classic one that we take for granted—to government-generated, which we make available, and you get economic ecosystems that develop around that. But at the moment there is still a lot of data—population data, labour data, Statistics Canada data, Industry Canada data—largely in data sets that are not readily accessible.

What we are seeing take place at the national level in other countries like the U.S. and the U.K. is to try to put those data sets online and then make them freely available to mix and reuse, in a sense to mash up and have the public add value to it. I can't tell you necessarily everything that is going to happen with that other than to say we are going to see things happen with it.

In Vancouver right now they put their data up, everything from basic garbage collection data to other kinds of municipal service-type data, and they said you can do what you like with it. I was just literally this morning at a meeting on open government, and one of the initiatives they were talking about was VanTrash. For whatever reason, Vancouver changes the dates of trash collection every month. I don't understand why, but apparently they do. What did this do? This took Google Maps, mashed it up with the data the city was supplying, and allowed people to take a look at where they were and to get an e-mail notification the night before their trash was scheduled to be removed. It is the sort of thing we would typically think of as e-government, and in fact, it's not the government providing it, it's the public that is using this data to build and mash up on it.

So I think we're seeing a lot of that and I think there would be a lot of value in doing that.

On the issue of digitization, there are a number of digitization initiatives that are taking place. The University of Alberta is doing some things where it tries to take some of our cultural heritage and

bring it into the online world. The best-known digitization initiative anywhere right now is the Google initiative. It is of course taking books and digitizing them.

The Google initiative is a great initiative, but if we live in a world where the only major digitizer is Google, that's a problem. What we need is to recognize that we are a relatively small country. We could, if we wanted, create a national digital library in which we digitize everything. We could start, if we wanted, just with works that are in the public domain. If you want to start with what is non-controversial, no longer copyright-associated, and everything in the public domain all gets digitized, and from there start moving toward all the other works, you could find ways.

Germany is trying to move forward with the same kind of thing and to do it in a way that builds in some kind of compensation model when the works are being used. But if you do that, what could be a better way of ensuring access by Canadians and by the world to Canadian culture than by ensuring it is available in a digital format?

Mr. James Rajotte: Do I have more time, Mr. Chair?

The Chair: Yes, you have 30 seconds.

Mr. James Rajotte: I know you wrote a column about Amazon in Canada, and it's a very topical issue. I am wondering if you can just expand, for the committee, your views on that in terms of what the government should do with respect to that issue.

Prof. Michael Geist: I had a chance to write a column and then do a debate on it on the CBC radio show *Q*. I think there is a role to play for Canadian regulations that support Canadian authors and support Canadian publishers. Indeed, there is scarcely a book published anywhere in this country that does not enjoy support from the public, in a sense, through the various programs, and that is absolutely essential.

I am less convinced that similar kinds of regulations are needed for booksellers, much less a distribution arm of an online seller. The reality is that one of the big challenges Canadian authors faced in years past was lack of shelf space. It wasn't whether or not the company was foreign owned. It was that bookstores, especially some of the smaller stores, have a limited amount of shelf space and so, yes, they are going to carry Canadian titles, but they are also going to carry the J.K. Rowlings and the Dan Browns and all the other well-known authors, because they are in business to sell books that their customers want to buy.

Amazon and the other larger players are a good thing from a Canadian author and publisher perspective, because it addresses that shelf space issue.

Mr. Simms has a copy of one of the books that I edited on copyright called *In the Public Interest: The Future of Canadian Copyright Law*. I think it is a pretty good book and you can download it for free online. But what's notable is that if you go down to Chapters or to a smaller bookstore, the likelihood is that you're almost never going to see it. I understand. It just doesn't sell all that much. But if you go to Amazon you can find it, and so Amazon is a good thing for me and my co-authors, indeed, for the majority of Canadian authors, whose biggest challenge is obscurity in terms of finding a marketplace. The notion that Amazon somehow harms that just isn't consistent with the experience we have seen to date.

•(1215)

The Chair: Thank you.

Ms. Leslie, please.

Ms. Megan Leslie: Thanks, Mr. Chair.

I'll ask two questions in a row so that I can hand over the rest of the time to you.

You cited BitTorrent as being an enormous success. I think the Internet service providers would disagree. Can you tell me what you think about the ISPs' predictions about where this is going, that it will be the end of the world?

You also cited Canadian companies that are leaving Canada. Was it Webkinz?

Prof. Michael Geist: Webkinz is still here, but Club Penguin was bought out.

Ms. Megan Leslie: Club Penguin is gone, as an example.

With Canadian content, what can we do to actually promote Canadian content on the Internet in addition to keeping our companies going here?

Prof. Michael Geist: Just to clarify, in terms of BitTorrent being a great success, I was actually saying that CBC was a great success for using BitTorrent, although clearly BitTorrent is a very popular protocol and is successful in the sense that a lot of people use it, although some people understandably have problems with some of its uses.

I would note, though—and I'll address both who uses it and then the ISP side—some of the most outspoken groups that we saw before the CRTC on the traffic management hearing, related to ISPs, were creator groups. There were documentary filmmakers, ACTRA, and CFTPA, who are all out there saying for us, we see things like BitTorrent as an alternative distribution model that provides actually a very cost-effective mechanism for distribution and a means to ensure our work gets out there. I think there is increasingly a recognition that this is useful for many things. There is of course an infringing on authorized activity, but there is lots of authorized activity as well.

In terms of ISPs and their relationship with this sort of content, I think they have a bit of a love-hate relationship with it. Obviously, when you take a look at ISPs that are promoting ever-faster speeds, and say you can download quicker, no one is kidding anybody. They're talking not just about a basic webpage like a newspaper or my website, they're talking about the ability to access content whether streamed or sometimes available through things like the BitTorrent protocol. It's been a driver of customers, to be sure, but it also is an increasing user of bandwidth.

The concern that comes up in the context of ISPs—not to go through the whole CRTC hearing again—is one in which many of these ISPs also have a video arm as well, video on demand, or cable distribution and in a sense, there is the potential for competition between those video services and other means of distributing, including streaming and BitTorrent. One of the real concerns is if what you're looking to do is try to ensure that independent creators in particular have the ability to use these alternative distribution

systems, you've got to ensure that the platform itself is treated in a neutral enough fashion. You can't have certain kinds of content that is in the self-interest of the provider being able to promote on a faster lane or what have you, and the other stuff being relegated to a slower lane or being throttled in the way we're seeing today. I think that's a big issue.

In terms of promoting Canadian content, let's recognize the fact that there is an unprecedented amount of Canadian content online. But there is also an unprecedented amount of American content online, and French content online, and U.K. content online, because there is simply an unprecedented amount of content being created today. That's a good news story. The challenge, you're right, is how to find some of these things. Are there programs we could think about? I'm sure there are. I think the reality is that success stories sometimes are by design, sometimes are by fluke—there's any number of ways why certain things go viral and people find success stories. When I look at the *Têtes à claques* of the world, when I look at some of the other sorts of things, they have found great success, and they've found it doing it online. If the traditional notion of Canadian cultural policy was let's ensure Canadian content is being created, I think it's being created. In some ways, we've got a big success story happening right now.

•(1220)

The Chair: Thank you for that.

We'll now move over to the Liberals. Mr. Rodriguez and then Mr. Simms.

Mr. Pablo Rodriguez: I'll just take a minute and then pass it over to Mr. Simms, because Mr. Rajotte raised the Amazon question.

[*Translation*]

I do not think that the existence or the role of Amazon is the issue because we see that it plays an important and useful role. It concerns more the physical presence of Amazon in Canada. In this case, it would be simply through a warehouse and not through direct sales. Thus, Canadians could order their books online and receive them from the Canadian warehouse.

However, many people say that it is a backdoor entry to get around the current legislation forbidding foreign interests from selling books. So, starting with the establishment of a warehouse followed by direct sales to Canadians would be a way of getting around the current legislation.

Is it your opinion that this would not be a bad thing and that we should eventually change the law to allow foreign companies to own bookstores, for example, and to make direct sales to Canadians?

[English]

Prof. Michael Geist: First, my understanding is that Amazon is the second-biggest online seller. I think Chapters/Indigo is still number one. If you were to ask Canadians who have purchased from Amazon.ca whether they know if Amazon has a distribution arm in the country, I don't think there's practically anybody who would know whether they have or not. So this idea that we're debating—whether or not Amazon should be able to come in... Amazon is here, and they've been here for eight years. Whether they've had a distribution arm physically in the country or not has been immaterial to consumers. As I said, I think there's been net benefit to authors and publishers in the fact that they are here, because their work is available.

Frankly, the risk that they are going to set up physical space in Canada is a non-existent risk. First of all, I don't think it's a risk. If we get more competitors into the space, I don't necessarily see it as a bad thing. Given that Amazon has never, to my knowledge, set up a physical store anywhere, I can't imagine why they would start here in Canada. Their whole model is based on not having physical stores. Their whole model is to get into place the efficiencies of being an online seller. The idea that this is a backdoor mechanism to set up a corner Amazon store runs completely counter to 15 years of what that company has been doing.

Mr. Pablo Rodriguez: But it wouldn't necessarily be Amazon. It could be any other company, but using this to get into the market eventually. That's what you hear from some people, so I'm asking.

Prof. Michael Geist: That's a fair point. There may be others who do it.

At this stage, I guess I would ask what we are afraid of exactly. I think there are positives and there are negatives with respect to the big sellers, including the Chapters/Indigo type. I hear from many smaller publishers and authors who have many complaints about some of those big stores, and others who say they appreciate the fact that they're readily available.

This may sound a bit hokey, but I looked at the way Canada was during the Olympics—this proud, confident country, not afraid to be out there saying we're Canadian. I think it was fantastic. We all loved it. I would love to see that kind of energy and confidence in other areas, and it seems to me that a policy that expresses real concern that a foreigner might own a bookstore and that this might somehow harm a Canadian author or a Canadian publisher runs completely counter to the kind of confident country that I thought we saw in Vancouver last month.

We have nothing to be afraid of. I think Canadian authors and publishers are world-class. I think they are well established, and that there's no reason to think that even a foreign-owned book seller is going to change any of that.

The Chair: Mr. Simms.

Mr. Scott Simms: Thank you.

I have a problem with digitization in my area. It is not 100% penetrated by broadband rural access. We've talked about this before. Digital literacy is a huge issue for me, in the sense that the government is becoming more open, using e-government. They're saying now that people are applying for EI online now, we don't

need these extra... But there are so many people isolated by that, who are not digitally “literate”, if I can use that word.

I only say this as a comment, to get your comments on it.

The second part, and I'll let you go from here, is that you use a lot of international models, and ones that make a lot of sense. You mentioned “notice and notice” as an example used successfully in Europe, and “notice and takedown” as used not so successfully. We're now engaging in a comprehensive trade agreement with Europe, and I suspect that our being behind in copyright is not going to bode well in these discussions or any other discussion that is considered to be part of a comprehensive trade agreement.

These are two different issues entirely, but...

• (1225)

Prof. Michael Geist: On the issue of skills—we had a chance to talk about it earlier—I'm in complete agreement. Any digital strategy has to include a skills component and to recognize that the digital divide is both one involving access—the sense of being able to access the network—but also involving the capacity to use the network. So I agree absolutely.

Notice and notice, just to be clear, is actually made in Canada. It's not a European model; it's a Canadian model.

Mr. Scott Simms: Did you not say that it was used in other jurisdictions successfully, or were you talking about our own jurisdictions?

Prof. Michael Geist: No, it's used successfully right here. The way notice and notice has worked is that it's actually been an informal agreement among ISPs and rights holders in Canada for the last number of years.

I get e-mails fairly regularly from people who have received one of these notifications saying—for instance, you're alleged to have downloaded a movie—and want to know what to make of it. You explain to them what to make of it.

That's in place right now in Canada, and it has worked. So in fact, this is a made-in-Canada project that others are looking at and about which they are saying that it works quite well.

I'm glad you raised the issue of CETA, the comprehensive Canada-European Union trade agreement. As well, I should note ACTA, the Anti-Counterfeiting Trade Agreement. I would argue that both of these pose an enormous challenge to Canadian domestic sovereignty when making a made-in-Canada approach on some of these issues.

With respect to ACTA—the entire ACTA leaked earlier this week—the kinds of changes that would be required in ACTA would take away much of the discussion we've just had. In effect, the secret meetings that are taking place in different places around the world would ultimately dictate what Canadian policy looks like in copyright, rather than allowing us to have a true made-in-Canada solution.

The case of the European treaty is frankly even worse. If you pay attention to my blog, probably tomorrow, you will likely see a link to a leak, because someone sent me earlier this week—I'm telling you candidly—the entire intellectual property chapter, at least as it currently stands.

Mr. Scott Simms: Is this for the current negotiations?

Prof. Michael Geist: Yes. Things seem to leak. I don't know who it was; it was an anonymous source, but someone provided it to me.

I will tell you that this would fundamentally reshape not just copyright, but patent and trademark as well. In many ways what the Europeans are demanding is that Canada alter its intellectual property laws in all areas to match and almost mirror what the Europeans have done—everything from extending the term of copyright to providing new levels of protection for all sorts of patent-related issues and requiring us to join new treaties.

This is as comprehensive a change to Canadian IP law as I think we have ever seen. And yet the truth of the matter is that the EU negotiations are at the moment largely below the radar screen, and few recognize that in a sense what we have spent much of the last 90 minutes discussing—the idea of a made-in-Canada approach that ensures we meet the needs of Canadian creators and Canadian consumers—is largely being negotiated in these two trade agreements without anybody seemingly having a say at all.

Mr. Scott Simms: Do I have time left?

The Chair: You have time for one very short one. I'm being generous.

Mr. Scott Simms: I'll let it go. My question is much longer than that.

The Chair: Okay. That last one was a long question.

As chair, I have just a couple of things to say. I'd like to have a little time.

I have spoken to Ian Wilson on various occasions. He is former head of the National Library and Archives of Canada. He not only put the two entities together, but he tried to digitize the contents of the library and archives.

Having said that, I hope as we go forward that those things can be done. I think that relates to some of the things you said earlier.

I know, having sat on the heritage committee for roughly seven years, that WIPO has been before this committee I don't know how many times. I think it was signed back in 1996 or 1997.

Should that WIPO treaty be signed before we go any further?

● (1230)

Prof. Michael Geist: No. In many ways, some of the things that we see coming out of WIPO are actually past their best due date. I don't think they have worked well. That said, I also recognize that there is pressure to do it. We did sign it. That doesn't obligate us to do anything further, but the practical reality is that we need to move forward.

No, I think that ensuring that we get the right copyright bill—one that is going to last, so that you don't spend another seven years having to debate these same kinds of issues—means that we incorporate not just WIPO issues but other issues, such as fair dealing.

I can't emphasize this enough: it's not just about being able to say that we're WIPO-compliant; it's about ensuring that we are WIPO-compliant in a way that tries to preserve the balance. There is a good way of implementing WIPO, in my view, and a very dangerous way of implementing it, one in which we alter the balance.

Let's do WIPO, but let's do it in a made-in-Canada way that is compliant with the international obligations but that tries to preserve the fundamental principles and values we have associated with copyright as well.

The Chair: Thank you very much.

I must say that this meeting has been very enjoyable. I thank you for your candid answers.

The meeting is adjourned.

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