



House of Commons
CANADA

Legislative Committee on Bill C-32

CC32 • NUMBER 020 • 3rd SESSION • 40th PARLIAMENT

EVIDENCE

Thursday, March 24, 2011

—
Chair

Mr. Gordon Brown

Legislative Committee on Bill C-32

Thursday, March 24, 2011

•(1105)

[English]

The Chair (Mr. Gordon Brown (Leeds—Grenville, CPC)):
Good morning, everyone.

I will call to order this twentieth and apparently possibly the last meeting of the Special Legislative Committee on Bill C-32.

For the first hour today we have the Honourable Ramona Jennex, who is the Minister of Education for the Province of Nova Scotia, as well as her deputy minister, Rosalind Penfound, and Wanda Noel, legal counsel of the Copyright Consortium.

Minister Jennex, you have the floor for five minutes.

Hon. Ramona Jennex (Chair and Minister of Education for Nova Scotia, Council of Ministers of Education, Canada): Thank you very much.

Good morning, everyone. As stated, I am accompanied today by Nova Scotia's deputy minister of education, Rosalind Penfound, who also serves as chair of the CMEC deputy ministers' committee respecting copyright issues, and by Wanda Noel, the legal counsel to our organization.

The Council of Ministers of Education Canada, CMEC, is an intergovernmental body founded in 1967 by education ministers to support their collective efforts in fulfilling the constitutional responsibilities for education conferred on provinces and territories. I am the chair of CMEC's Copyright Consortium, which is comprised of 12 of the provincial and territorial education ministers, the one exception being the minister from Quebec.

Copyright law directly affects our policies and practices in classrooms across Canada. The existing lack of clarity is why the CMEC Copyright Consortium has been persistent over the past decade in urging the federal government to clarify digital copyright law.

Ministers of education, as the guardians of the Canadian public education system, view copyright matters very seriously. We respect and teach respect for copyright within schools. We are actively engaged in the federal copyright reform process to seek fair and reasonable access for students and teachers in their educational pursuits.

Rapid advances in technology-enhanced learning call for a modernized Copyright Act. Students and teachers require a copyright law that addresses these new technologies, technologies that have opened doors to wonderful new ways for teachers to seize upon that "teachable moment" with their students. In the absence of the

proposed education amendments that embrace this technological development, Canadian schools and post-secondary institutions may be legally obliged to forgo learning opportunities and curtail Internet use in the classroom out of fear that they may break the law. Bill C-32 deals appropriately with these significant education issues. This legislation provides the right balance between the rights of users, creators, and the industries that market the works of creators.

This morning I submitted to the committee clerk a set of recommendations addressing a number of Bill C-32 amendments that impact education. In certain cases, the consortium has suggested specific legislative wording. In my short introductory remarks I wish to highlight three matters that are of particular importance for education ministers.

First, Bill C-32 addresses the priority concern of the education community, which is to establish the legal framework for students and teachers to use the Internet for teaching and learning. The proposed educational use of the Internet amendment is a reasonable, balanced approach for learning in the digital age. We applaud the government for this, because balanced legislation, based on principles of fairness, can be effectively taught and enforced.

Second, the consortium applauds the inclusion of education in the fair-dealing provision. However, although welcome, we suggest the education and fair-dealing amendment needs to be clarified. For this amendment to have its desired effect, the term "education" should be clarified by stating that education includes teachers making copies for students in their classes. This clarification is needed so teachers may copy short excerpts from copyrighted material for their students—for example, a clip from a television program for a current events class or a diagram illustrating a science or math topic. The wording of our proposed clarification is similar to the United States fair-use clause, which has been in place since 1977. Adding education—including multiple copies for class use—to the list of enumerated fair-dealing purposes will not mean teachers can copy whatever they want. Copying by teachers still must be fair under the two-step test to qualify for fair dealing established by the Supreme Court of Canada. For example, copying entire books does not meet the second test for fairness.

Third, it has been suggested by some witnesses that the education community does not want to pay for education materials. This is clearly wrong. Educational institutions currently pay for content and for copying materials. For the education community, copyright reform law is not about getting material for free. The education section currently pays hundreds of millions of dollars to purchase and license content, such as textbooks, film, music, and art. With Bill C-32, the sector will continue to pay hundreds of millions of dollars. Nothing in Bill C-32 alters the current relationship among education, publishers, content providers, copyright collectives, and the Copyright Board.

In closing, the education ministers across this country have long maintained that a modern and balanced copyright framework will protect the public interest and produce many societal benefits. The need for such a framework has never been more important than now, when all levels of government are investing in connecting learning Canadians and promoting skill development and innovation. The CMEC Copyright Consortium would like to see this copyright legislation passed to establish that necessary framework for learning Canadians to excel in our digital world.

Thank you.

The Chair: Thank you very much, Minister.

Is there anything that the legal counsel or the deputy minister would like to add?

A voice: Not at this point.

The Chair: Okay, thank you very much.

We will now move to the first round of questioning, with the Liberal Party for seven minutes.

Mr. Garneau.

• (1110)

Mr. Marc Garneau (Westmount—Ville-Marie, Lib.): Thank you, Mr. Chair.

First of all, I would like to thank the Council of Ministers of Education for the very complete documentation they have been sending us over the course of the past year. We've certainly received a great deal of material. Many of your positions, if you like, are quite clear and well known.

You talked about the need to perhaps define more clearly what is meant by "education", and you brought up the fact that it should specifically include teachers making copies for their students. Is it possible to ask your organization to provide us with what they would consider to be a proper and full definition—perhaps taking into account the legal aspects of it—of what they consider to be the education exemption? Is it possible for all of you to put your heads together and send us something you would consider to be an adequate definition? Is that a request we can make to you?

Hon. Ramona Jennex: Yes, we can provide that information.

We're asking for the words "education with multiple uses" to be added at this time.

Mr. Marc Garneau: Okay, you're saying "with multiple uses"?

Hon. Ramona Jennex: It's "with multiple copies". Sorry about that.

Mr. Marc Garneau: Okay. That obviously adds some definition to it, but it would be useful for us as legislators to understand it more fully.

I think there has been a general consensus that we want to provide some definition to the term "education" because it can be interpreted in different manners by different groups. Obviously with you being a minister of education and working with others, it would be very useful for us to have what you would consider to be a definition of education. That would be much appreciated.

On a different subject, do you see this bill, if it passes the way it is written, having any implications, from a budgetary point of view, for the ministries of education of the provinces and territories?

Hon. Ramona Jennex: No, there would be no change in terms of the budget aspect.

But I will ask that Rosalind Penfound speak on budgets. As you know, deputy ministers are the ones who are always in charge of the budget process, so I would appreciate if she would respond to your question.

Ms. Rosalind Penfound (Deputy Minister, Copyright Consortium, Council of Ministers of Education of Canada): Thank you, Minister.

Thank you for the question. Our assessment is that each year across Canada there's likely more than a billion dollars spent by the education sector to pay creators for their books, movies, art, etc., that are purchased and used by schools and universities. There are processes in place via the Copyright Board for things like access copyright and rates to be struck for the photocopying of material.

We don't believe in any way that this bill would change that. All of those processes will be in place. We would not anticipate that this bill would in any way reduce the amount of money the education sector would be putting into these efforts. We think it's cost-neutral in that respect. Those processes remain in place. They will still be there. As they are there now, they will be there should this bill become law.

Mr. Marc Garneau: Thank you.

You have focused, for obvious reasons, on education. Do you have opinions on other parts of the bill that are of interest to us as legislators—for example the issue of digital locks, the issue of statutory damages, and those kinds of things? Are there opinions you want to express to this group this morning on those things?

Hon. Ramona Jennex: I'm here representing education ministers. We've long maintained that we need a modern legal framework in which to operate. But on the issue you speak of, I will be asking legal counsel to respond.

Thank you.

Ms. Wanda Noel (Legal Counsel, Copyright Consortium, Council of Ministers of Education of Canada): Thank you, Minister.

The submission that was given to all the committee members this morning does address digital locks. The position of the consortium on that issue is that breaking of a digital lock should be prohibited only when the purpose of the breaking of the lock is to infringe copyright. That's the position in a nutshell.

It also describes why the digital lock provisions in the bill are not workable in practice, and I believe there are seven reasons set out in the submission as to why, in a school or post-secondary institution, you can't apply them and make any sense of them.

• (1115)

Mr. Marc Garneau: Okay. I think you line up with the vast majority of witnesses we have heard on this subject. In other words, the issue of copying for non-infringing purposes for personal use is something the bill should contain, which it doesn't at the moment. As the bill is currently written, any circumvention of a digital lock is considered an illegal activity.

Ms. Wanda Noel: That's correct.

Mr. Marc Garneau: Very good.

Do you have opinions on the statutory damages?

Ms. Wanda Noel: Yes.

The statutory damage provision in the bill is intimately connected with the technological protection measures sections. In the digital lock sections, there's a provision that says that if you honestly believe you are not breaking a lock, then you shouldn't be penalized for doing so under the bill. The position of the council is that the same legal notion or concept should also be applied to the exercise of fair dealing rights under the bill. So the result would be that if you, as a teacher or a student, honestly believed that what you were doing was fair under the second test in the CCH case, then you shouldn't be liable for statutory damages. In fact, we went so far as to say there should be no damages at all.

Mr. Marc Garneau: On the other side of the coin, on the main point you brought up today, of course we have also heard from many writers and those who produce materials—not just writers, but those who produce materials that are used in the educational field—and some of them feel this bill will prevent them from having access to payments for their works that they consider to be due to them. Now, you have made the case that you don't believe this is the situation. Can you expand a little bit as to why you feel they will not be shortchanged by this legislation as it's proposed?

Hon. Ramona Jennex: The creators who use the Internet, for example, for business will not be impacted. There are many aspects that are in the public domain, and unless we have clarity we're not going to be able to move forward in our society and in our education system without fear.

In terms of copyright, and the teaching of copyright, I would just like to add at this point that I come from a 30-year background as an educator. I was a teacher. Copyright is taught from primary up: what it is, what people need to do to respect copyright, and how important it is. These provisions, with these amendments we're suggesting, will provide clarity. They will not impact any of the creators or any businesses at all. Those things will stay intact, and we'll be able to have much clearer guidelines through which we'll be able to not only

teach it but also continue to instill the respect that students need to have for copyright.

Mr. Marc Garneau: Thank you.

The Chair: Thank you very much, Minister.

Thank you, Mr. Garneau.

We'll move to Madame Lavallée, *pour sept minutes*.

[Translation]

Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ): Good morning to our witnesses.

I find this morning's discussion to be a bit theoretical. As you are surely aware, this bill is about to die on the *Order Paper*. I am fairly certain that we will not be talking about Bill C-32 for very much longer, that today is our last meeting and that the bill will die on the *Order Paper*. So this is a theoretical discussion.

To begin with, I was quite surprised to see, in the first paragraph of your speaking notes, a list of all the provinces and territories that are part of your consortium. We can see that Quebec is not among them; but the way in which it is indicated is not very clear. The text says: "...Ministers of Education in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick..."

Would it not have been simpler, and more honest and direct, to say that the Quebec Minister of Education was not part of your consortium? The approach used is misleading and implies that there may be other things just beneath the surface of the brief that are less than straightforward. It makes me uncomfortable.

So the Quebec Minister of Education and the Quebec Government are not included. As you know, the National Assembly unanimously passed a motion against Bill C-32, specifically because of the education exemptions. I am not sure if you are aware, but it is quite difficult to achieve unanimous consent in the National Assembly, where you have Liberal federalists, PQ sovereignists and ADQ right-wingers.

The Minister of Education wrote a letter in opposition to Bill C-32. She wrote that the bill did not respect the value of artists' work. The Fédération des commissions scolaires du Québec also came out against Bill C-32 for the same reasons, since the fair dealing provisions do not show respect for the work of artists or the value of that work.

I would not say that there is a unanimous Quebec view on Bill C-32, since I know one organization that supports it. That said, how is it that almost all Quebec institutions, organizations and orders of government are opposed to Bill C-32 and its education exemption and fair dealing provisions? How is it that, in Quebec, in the field of education, we all agree with paying artists and with the need to respect their work and to instill that value in our children? How is it that we do not have the same approach? Actually, I think that we do not share the same values. Last Tuesday, a witness sitting where you are sitting now told us that the difference was explained by the term "copyright," that is, the right to copy.

In French, we do not talk about the right to copy. The term we use is the right of authors. We have respect for creators and their work.

So how is it that this works for Quebec and not for you? Would it be possible to have two approaches—each of us with our own sovereignty, you might say? If Canada and Quebec each developed its own approach, we would stop arguing about it. You could have your fair dealing roles, and we in Quebec would continue to respect our creators. Would it be possible to do that?

I would also like to know whether a school, a class, a child, a student or a school board has ever been taken to court by a copyright holder for breach of copyright.

• (1120)

[English]

Hon. Ramona Jennex: Thank you. I will begin to answer the question, and then I will be looking to Wanda for that last part.

The point to note about the minister from Quebec is that we have an open-door policy with this consortium, and all of the information that we have is provided to the Minister of Education in Quebec.

We're here today at what you point to as being probably the last meeting of this committee. I felt it very important that the group of ministers from across Canada have its voice added to the record, to the effect that we maintain the need for a modern and balanced copyright framework. This is why I am here today, to discuss this issue.

This bill, as amended, will continue to respect the artist and creators. It will provide a balance whereby the public education system will have fair and balanced access to materials. There is nowhere that the amendments would impact upon creative people and businesses receiving their information.

I'm going to look to Wanda to answer the legal point, and if possible I will also have my deputy minister respond.

Thank you.

Ms. Wanda Noel: Thank you, Minister.

If I understood your question correctly, Madame Lavallée, you asked whether there were any copyright law infringement suits against students or teachers in the country. The answer to that question is no, not many. There may have been the odd one here or there. My own personal practice is not based on copyright infringement suits.

The point that I think is important for legislators to be aware of is that teachers and students at all levels need to have a law that has very clear rules, so that they can first of all obey them and second of all can teach what those rules are. For example, they can teach, starting in kindergarten, what you can do with the Internet and what you can't and what is respecting a copyright owner's right and what is not. The provisions of the Copyright Act define what the rights of the users are—student and teachers—and also what the rights of the creators are.

The minister's message, the very important message that I think needs to be brought out here today, is that clarity in the Copyright Act is critically important for both the people who use the act and the people who benefit economically from it.

• (1125)

Ms. Rosalind Penfound: I could add that deputy ministers of education across the country have been worrying about, thinking about, and discussing this issue of copyright for more than ten years now. What we tell our many teachers, professors, and educational administrators, when they come to ask us what they can do and what they can use....

We recognize that there's a void here. I guess the best way I could describe it, although we don't know of recent or any prosecutions against people in the educational sector, would be by way of example. Say there were a political science class occurring somewhere in the country in the next few weeks and perchance an election might be going on. Say one of those professors or teachers were to call to say that they'd really like to use the election as something to study for their class, by comparing what may have been written in the political science texts ten years ago about media and the democratic process, through copying one or two pages from that book for the 18 kids in the class, with what's happening on the Internet, what's being tweeted, what's been in the print media and what is on the television.

They would wonder which of those things are okay for them to do. As deputy ministers of education and ministries of education across the country, we have no clear answer for that. So we think that there's a clear void in the law and that we need very much to have clarity around this and that the proposed bill strikes the right balance and will provide that clarity.

The bottom line is that good public policy is needed.

The Chair: Okay. Thank you.

We'll move to Mr. Angus, for seven minutes.

Mr. Charlie Angus (Timmins—James Bay, NDP): Thank you, Mr. Chair, and I thank the witnesses for being here today.

I would like to say, from our position in the New Democratic Party, that your presence here today is very much welcomed, regardless of whether this is the last meeting of this committee or not. I believe that this committee has done excellent work. We've heard a wide range of views. I think we're coming to some very good, clear, concise understandings of copyright, which I'm hoping will be picked up very soon after the next Parliament, whatever that parliamentary configuration is.

With regard to the questions I'm going to ask you today, I don't think we need to hear much more philosophy about copyright. I'm interested in the nuts and bolts of what is practical, what is enforceable, and what is impeding our abilities to use these works in ways that benefit our communities.

I had raised the concern with the librarians and archivists the other day that some of the provisions in the bill seem to have an unnecessary impact on the ability of people to access works for education in the interlibrary loan provision, proposed subsection 30.01(5). There's a limit of five business days on what you can use, and then you can't use what was sent digitally through an interlibrary loan. No, proposed subsection 30.01(5) has a 30-day limit on course materials. Course materials have to be destroyed after 30 days. The other one was the interlibrary loan, that you had it for five days. It seems to me that would put students who are learning in a distant environment at a major disadvantage over other students. Would you have opinions on those?

Hon. Ramona Jennex: Yes, thank you for those questions. I'm going to defer to Wanda.

Ms. Wanda Noel: Thank you, Minister.

The Council of Ministers' position on the 30-day destruction requirement is that it should be removed from the bill, for the simple reason that from the teacher's perspective, educational resources to create lessons are scarce and precious. It makes no sense to destroy them when they will only have to re-create them to teach the course again in the next semester or the next term.

From the students' perspective, the destruction requirement is equally unacceptable because students build from one course to another. If you take a first-year chemistry course, for example, you need to keep your notes from your first course in order to build the knowledge when you take the second course.

The position is that the 30-day requirement should be removed.

• (1130)

Mr. Charlie Angus: I'm interested in what impact the technological protection measures will have on visually impaired, deaf, or hard of hearing students. My oldest daughter went through the entire school system with a major hearing disability. Every single year we had to deal with her ability to access courses in a fair, reasonable manner. On the one hand we have laws that guarantee students complete access in the classroom, and yet, for example, if a teacher is showing a film that's not closed-captioned, under the digital rights management protection laws you would have to break the lock in order to provide closed-captioning on a film for a student to be able to participate alongside other students.

Are you concerned, in terms of the visually impaired or deaf students, about their ability to have fair access alongside other students if the technological protection measures remain unamended?

Hon. Ramona Jennex: I'm going to refer that to legal counsel.

Ms. Wanda Noel: As I understand the provisions in Bill C-32, there is a carve-out that allows for circumvention of a TPM in the case of providing access to a perceptually disabled student. There is a problem with the drafting of the provision, because it requires that you do not "unduly impair" the technological protection measure. There's a great deal of scope within "unduly impair". Some of the perceptually disabled organizations are saying that you can't. It means you have to put the TPM back onto the work and that is impossible to do.

I understand a subsequent witness to us this morning is representing perceptually disabled people, but from the Minister of Education point of view, we would like to see that "unduly impair" technological protection measure condition removed from that provision.

Mr. Charlie Angus: I wanted you to raise that on the "unduly impair", because again it seems to me that there are elements in the bill that lay out a very reasonable framework but then sometimes seem to get too intrusive, if we're going to "unduly impair". It seems to me, from seeing what happened with DVDs with adding closed captioning, you're basically making a new copy of it. So what's the point to add a technological protection measure? Are kids going to take that home and put it on isoHunt and trade it with all their friends? It's highly unlikely. This is used in a very specific case.

Do you believe that we would be able to maintain the credibility of the intellectual property that's being used if we strike "unduly impair"?

Ms. Wanda Noel: I'm not a technical person, but from my theoretical understanding my answer would be yes.

But the council's position and that of many of the user communities—libraries, archives, and museums—on technological protection measures overall is that you should be able to break the locks and circumvent, as long as your purpose is not to infringe copyright. The very basis upon which that whole section of the bill is crafted is, in the council's view, fundamentally wrong.

Mr. Charlie Angus: I'm interested in your concern about the digital delivery of course materials. One of our understandings here is we're going to maintain a balance. We have collective licensing in place. The collective licensing organizations do excellent work of maintaining the rights of the creators. If we're going to be doing digital course packs to communities, why wouldn't you just accept that there should be a collective licence in place and they'll get paid and students will learn?

Ms. Wanda Noel: The digital course pack provisions in the bill, and I'm going to be frank here, are very hard to understand. It's the longest section in the bill. The policy objective, or the intent of what those provisions are intended to cover, in my view is overly complex. I believe the reaction in the post-secondary community is that they will not use them or access them because—

• (1135)

Mr. Charlie Angus: I'm sorry—I only have a second here.

For my clarification, then, is the language unduly difficult, or are you objecting to paying a collective licence for digital course materials?

Ms. Wanda Noel: No, not at all. Digital course packs—

Mr. Charlie Angus: If the language were cleared up, that would make it something that would be fairly straightforward?

Ms. Wanda Noel: Possibly it would be used. But there are problems, and we don't have time to go into that today. In the submission there are major problems with how this section is structured.

Mr. Charlie Angus: Thank you very much.

The Chair: Thank you very much.

We'll move to Mr. Fast for seven minutes.

Mr. Ed Fast (Abbotsford, CPC): Thank you, Chair.

I thank all three witnesses for appearing before us today. I want to thank you for one of the most articulate explanations and defences of the fair-dealing provisions in this bill.

I agree with you. I think this does strike the right balance. I think you referred to the right balance being based on principles of fairness. This bill does that. And I think you referred to the bill as representing good policy. I want to assure you, in regard to the several amendments that you've talked about and have referred us to, that we will certainly take notice of those and seriously consider them.

I suppose what really troubles me and is profoundly disappointing is that after all of this work, after already having heard over a hundred witnesses, having received hundreds upon hundreds of submissions, the opposition coalition has chosen to basically defeat and throw out this work we've done on a bill that is critical to our economy.

You've referred to the fact that it is critical that this bill be passed and passed right away. I think there are several reasons why I would suggest that it's critical. It's critical for our digital economy, for our knowledge economy, for education, and for our creative industries. As you know, this is the third bill that is going to be dying because of elections being called. For me it's profoundly disappointing that we're going to lose all of that good work because of some political machinations on the part of the opposition coalition.

Having said that, you had referred to the expansion of fair dealing to include education as striking the right balance, and I agree with you. There are some who suggest that there's going to be considerable lost income to publishers and some creators. I disagree with them. In fact, I think you're probably familiar with the Alberta versus Access Copyright case, which is a Federal Court of Appeal case that actually states that the fair-dealing provisions contained in Bill C-32 do not impact how fair dealing will be applied. The CCH case, the Supreme Court of Canada case, applies and makes it very clear that essentially there is no loss of revenues. This is simply clarifying what fair dealing is, especially in the context of education.

I wanted to deal with the digital lock issue, and I've taken note of your comments regarding that. One of the complaints we've heard from many of the creators is that this balance we're seeking to strike appears to have shifted the balance primarily in one direction, and that's away from protecting creators and their copyright. It's one of the reasons why we, as a government, have actually maintained some protection for digital locks. We don't want those digital locks circumvented, because it opens up a whole new opportunity for abuse.

I wanted to refer you to clause 47 of the bill, which actually provides the minister with very broad regulatory power to introduce additional circumvention exemptions where the minister could say that as we move forward, as we develop experience with this new bill and the new legislation, we recognize that we may have to continue to provide additional opportunities for circumvention. I believe the flexibility that's designed into this bill will address some of the concerns that you've raised regarding digital locks. We don't

know what the future holds, we don't know what new technology will arise, but we provide the minister with the tools to do this without having to go back and make statutory changes.

Perhaps I could have your comments on whether you support those broad regulatory powers and what impact those may have in the future as we continue to develop this experience with this new copyright regime.

• (1140)

Hon. Ramona Jennex: Around the issue of the digital lock, I feel the fair dealing with the Supreme Court law covers that.

In terms of your other comments, I am going to look to legal counsel to talk about the digital lock law aspect of that.

Thank you.

Ms. Wanda Noel: Thank you, Minister.

My legal advice to the council—and you're not going to like my answer—is that users' rights in a copyright law should not be defined by regulation. They belong in a chamber like this, in a public debate in Parliament.

I've been involved, over my 30 years in this copyright business, in drafting regulations pursuant to the Copyright Act. The 1997 amendments had a couple of regulatory rounds. The issues about digital lock and exceptions to it are a balance between protecting a technology and users' rights. I think those rights have to be debated publicly, and publicly stated in the act, and not a behind closed-door regulatory process.

Mr. Ed Fast: Let me just pop in at that point.

You referred to “user rights”.

Ms. Wanda Noel: Yes.

Mr. Ed Fast: Now, I've reviewed the Copyright Act. There's no reference to user rights. That term is not used. In fact, the only reference to user rights that I've seen is in the CCH case, where I believe it's used once. In fact, it's not even....

The Supreme Court that's actually creating the term is simply adopting how some of these rights are described by others in the industry. I do know that the Copyright Act refers to “sole right” on at least nine or ten different occasions, and each time it's the right of the copyright holder. That has to be our starting point when we're dealing with copyright.

The creators, they create something. They have the right to ownership in that. When we create additional rights for users, perhaps to circumvent digital locks, that's a derogation of the powers or the rights that copyright holders have.

So we have to be very careful as we move in that direction that we do so in a measured way, which again is why the minister's power to regulate allows us to adapt to the changing environment and to learn from the experience going forward.

I'm quite confident that the minister, whoever it might be going forward, is going to act very reasonably in ensuring that users have access to fair dealing and if required are able to circumvent to do so. But we want to make sure that the copyright holders also have the ability to enforce their copyrights. That is the starting point, defending private property, which is found in copyright.

Again, when we're trying to find that balance, it's usually a quid pro quo. It goes both ways. There are many creators who are saying that balance has been shifting very much in favour of the users and very little going back to the creators.

I just want to leave that with you.

The Chair: Thank you very much, Mr. Fast.

We'll now move to the second round of questioning. It will be a five-minute round.

For the Liberal Party, we have Mr. Rodriguez. I understand you're going to split your time with Mr. McTeague.

Mr. Pablo Rodriguez (Honoré-Mercier, Lib.): Yes, I'll try to.

First of all, I have to say that it's a bit sad to see that Mr. Fast took some time at this important committee to make some partisan comments.

If I wanted to make some partisan comments, I would remind him that in 2005 we had a very good bill that was brought down when the coalition, the NDP-Bloc-Conservative coalition, brought down the government.

If I wanted to be partisan, I would also remind him that there was another bill in 2008, and that died because the Conservative government called an election.

If I were partisan, I would remind him that it's been two-and-something years now that they were elected—including prorogation, of course; we have to remind them of that.

If this has been delayed, it's certainly not been because of the Liberal Party, Mr. Chair. You know that very well.

I'll now turn to our guests.

• (1145)

[*Translation*]

Good morning.

Thank you for being here with us today.

What connection is there between you and Access Copyright?

[*English*]

Hon. Ramona Jennex: Our relationship is...and will stay the same with these amendments.

I will have that further clarified, though, by our legal counsel, if you would need any further comments on that.

[*Translation*]

Mr. Pablo Rodriguez: From what I understand, you are involved in a major court case against Access Copyright. Correct me if I am wrong, but I believe that you had a disagreement regarding fees applicable to students. The Copyright Commission dealt with the

case and ruled in favour of a new fee with which you disagreed. You took the case to court, and I believe that Access Copyright won and maintained the fee. My understanding is that you want to take the case to the Supreme Court. Is that correct?

[*English*]

Hon. Ramona Jennex: Thank you for your question. I will have Wanda answer that for you.

Ms. Wanda Noel: The answer to your question is yes. A leave application has been filed with the Supreme Court of Canada to hear a very narrow issue that comes from that case. It's not all of it, it's a small part, but the principle is very important. The principle is, can a teacher make a copy for students in his or her class?

I'm going to take two minutes, because from a policy perspective this is really important. The case law in the Federal Court of Appeal says that an online music seller can stream music to a prospective customer and that's fair.

[*Translation*]

Mr. Pablo Rodriguez: I am sorry to interrupt you, but I have only five minutes.

What happens to the money that is collected in the meantime? What happens to the money that has to be collected for copies while the court proceedings continue? Is it redistributed to the authors?

[*English*]

Ms. Wanda Noel: No, it's paid to Access Copyright.

[*Translation*]

Mr. Pablo Rodriguez: Can Access Copyright distribute the money, or does it need to keep it until the matter is settled in court?

[*English*]

Ms. Wanda Noel: I can't answer that because I don't know what the internal accounting rules are in that corporation.

[*Translation*]

Mr. Pablo Rodriguez: If I understand correctly, this situation penalizes authors, since the money has to be kept aside for the time being, given that you have launched another appeal.

I have to stop there, because I promised my colleague I would leave him some time.

[*English*]

Hon. Dan McTeague (Pickering—Scarborough East, Lib.): I'm going to continue with the answer to the question.

Thank you for being here.

Your current appeal from the Federal Court of Appeal, which found that the tariff, the rate, was in fact correct, has led you to talk about more than just money. You've said that this is not about money. Your appeal suggests that the current law of interpretation of fair dealing is "confusing and unclear".

Am I to take it that the six-step test of the Supreme Court of Canada in CCH is not acceptable? Are you looking for something free here that you wouldn't otherwise get, say, in snow-plowing contracts or looking for free computers? I'm confused by the position taken by your organization. It sounds to me that you would prefer to obtain things for free that would otherwise respect some of the property rights that Mr. Fast alluded to earlier.

Hon. Ramona Jennex: That was the misconception. We're not asking for anything for free. The education system, the sector, pays for licences and copyright, and will continue to do so. What we're asking for with these amendments is to have things clarified. There's a silence—

Hon. Dan McTeague: I'm sorry to interrupt you, because we probably just have seconds.

Are the factors enumerated in CCH sufficient? You're looking for fairness here, but it seems to me it's already well defined. Are you quibbling with that decision? If you are not quibbling with that decision, I'm trying to find out why you're appealing a decision with the Federal Court of Appeal.

• (1150)

Hon. Ramona Jennex: I will have Wanda answer that question.

Ms. Wanda Noel: We are asking the Supreme Court to interpret the second step in the CCH case on what is fair, using those six factors. The Federal Court of Appeal has established a hard and fast rule that a teacher who copies for students in his or her class—it's not fair, period. We think, as a matter of public policy, that's not in keeping with the spirit.

Hon. Dan McTeague: So you say there's no clarity, that CCH does not provide you the clarity you're looking for.

Ms. Wanda Noel: Exactly.

Hon. Dan McTeague: Thank you.

The Chair: Thank you very much.

Sorry, we have to move on.

Monsieur Cardin.

[*Translation*]

Mr. Serge Cardin (Sherbrooke, BQ): Thank you, Mr. Chair.

Good morning, and welcome to the committee.

You know that we place a high value on protecting copyright. We would have loved to see legislation passed that would protect copyright and also meet the needs of the public and education. Unfortunately, the government has brought in such a bad budget that we will not be able to see our work through to the end.

If I am correct, you mentioned in your remarks that nearly \$1 billion is spent in Canada for copyright and licences of all sorts.

[*English*]

Hon. Ramona Jennex: Yes, that is correct.

I'll have Rosalind expand upon that.

Mrs. Rosalind Penfound: On the reference I made earlier, in our estimation it's probably in the vicinity of \$1 billion across Canada. That would include what the educational sector would spend on

either buying a work outright—whether it be a book, a movie, or a piece of art—or paying for the use of one of those things.

[*Translation*]

Mr. Serge Cardin: As my colleague said earlier, the Quebec National Assembly is opposed to Bill C-32 as it was presented to the House of Commons. National Assembly members are concerned that authors and creators will suffer a loss of income.

You mentioned that your organization has an open mind on this issue and that there were discussions with Quebec.

In your opinion, is the Quebec Ministry of Education wrong in thinking that creators and authors would lose significant income?

[*English*]

Hon. Ramona Jennex: I feel there's a misconception about a loss of revenue for authors and for the creative community. What we, the ministers of education from CMEC, are seeking is to have the amendments in here so that there's clarification. This will not affect any of the revenues that any of our creative people will receive. They would stay the same. There's no loss of income in this.

We're asking for this for reasons of clarity. At this point, there's no clarity about what teachers and professors can do within their classrooms. We also have to look at what students can and cannot use in their assignments and reports. So that's what we're asking for.

[*Translation*]

Mr. Serge Cardin: The Canadian Conference of the Arts provided us with a summary of the financial impact of Bill C-32 on artists and other rights holders. It amounted to \$126 million. That may not seem like very much when compared with \$1 billion, but it turns out that the \$1 billion covers more than just copyright. The percentage is lower.

Potential losses in the education field under the new fair dealing rules are said to total \$41.4 million. That is based only on what has already been paid and not on what could be paid under the rules in the current legislation, which might increase.

You tell us that there will be no losses for authors, creators and collective societies. But the committee has received this other information and estimates of losses. The figures are not terribly precise and may end up being a little more or a little less, but there is still an expected loss of \$41.4 million from the fair dealing rules.

Do you maintain your position? Do you believe that there will be no changes in copyright?

•(1155)

[English]

Hon. Ramona Jennex: Yes, I'm saying with a firm commitment that there will be no loss of revenue for people who are in the creative economy. I feel that the claims you have brought forward are groundless. We've looked at this carefully. We're not asking for anything for free. We're asking for clarity. That is why we're here today.

[Translation]

Mr. Serge Cardin: But \$1 billion is a lot of money! There might be a temptation to try... There are cutbacks everywhere. A minister must be tempted sometimes to say that \$1 billion is a lot of money and ways must be found to reduce it.

If you had to find a way to reduce that amount, might it not be by changing a few of the provisions in the copyright act?

[English]

Hon. Ramona Jennex: We are not looking in any way to make savings. We are asking for clarity. At this point, teachers and students and professors are having difficulty knowing what they can and cannot do.

Society has changed, technology has changed, and the Copyright Act hasn't kept up with the new reality. So we're seeking clarity. There will be no loss of revenue. The claims that you brought forward are misconceptions. You talk about making efficient use of our money. We would definitely not in any way be affecting anyone who would be making a living at creating materials, creating art, creating music. That is not any part of this. What we're here for is to make sure there's clarity.

The Chair: Thank you.

We'll move to Mr. Del Mastro.

Mr. Dean Del Mastro (Peterborough, CPC): Thank you, Mr. Chair.

Thank you to our witnesses today for appearing.

Minister, this has nothing to do with copyright, but I am the parliamentary secretary to the Minister of Canadian Heritage. How is the Canadian Museum of Immigration at Pier 21 coming along in Halifax?

Hon. Ramona Jennex: Oh, I'm telling you, it is absolutely wonderful. There are many wonderful things happening at Pier 21, and the excitement around that being named a national museum is much appreciated. Ruth Goldbloom, bless her heart, is dancing.

Mr. Dean Del Mastro: My grandparents arrived at Pier 21. I can't wait to visit it once it's completed. That's great news.

First of all, thank you very much for appearing today. It is very important.

On copyright, I think you are right to seek clarity. We've heard an awful lot of witnesses. Part of the challenge we have had is that there is, I suppose, a suspicion—perhaps that's the best way of putting it—a lack of trust among the creative groups, certainly among authors. We had an author appear last week who indicated that her feeling

was that you would be taking them to court to eliminate revenues they are currently seeing. We've heard no such thing.

Have your school boards or your teachers or have you yourself ever indicated to anyone that you're not going to have to pay anyone any more for creative works? Have you heard any of the provincial ministers indicate that they feel that this education fair-dealing exemption means that they will not have to pay any more for copyrighted works?

Hon. Ramona Jennex: No, there has been no discussion about that at all. This has everything to do with seeking balance and making sure that it is clear at this time.

It's very difficult in the education system to operate without knowing. I know that we don't have much time left, but just on that point, I was in the Department of Education as a teacher for many years, and I could provide many examples myself of not knowing if I could use something in the classroom and of not having anyone who was able to answer that question.

I am going to ask the deputy to give an example of what's happening at the Department of Education in Nova Scotia around the lack of clarity.

Ms. Rosalind Penfound: Thank you, Minister.

I would comment that we not infrequently have people within the province asking us what the rules are, what they can do and what they cannot do. We don't have a clear answer for them.

What we are saying here today is that this bill is about allowing teachers and students to fairly use materials and works and to harness technology while respecting the rights of creators. It is not about preventing them from earning money from their creations or from controlling their use to the extent they may wish.

We want to have clear answers for the education sector.

•(1200)

Mr. Dean Del Mastro: I've met with hundreds and hundreds and hundreds of groups on copyright since 2008. I've always said that it's about defining the boundaries. Once people know what's legal and what's not legal, especially educational facilities and ministries and provincial governments and so forth, they're going to do what's legal. The overwhelming majority of Canadians follow the law. We know that. I appreciate that. I do think that clarity is important.

Minister, one of the things that excites me is where education is going and how technology, some of the new innovations we see, is really going to benefit education. One of the things about including education for fair dealing is that it allows some flexibility. It allows, for example, electronic boards and things that are on the Internet and so forth. Those should be incorporated as fair dealing in the classroom.

I foresee a time when perhaps textbooks aren't the medium through which we actually convey learning. It may well be through digital devices, such as iPads, or who knows. But I'm very excited, and I want to allow for that innovation to occur.

Is innovation with technology something your government supports and something you foresee happening in education?

Hon. Ramona Jennex: Absolutely. We're moving in that direction. It's mind-boggling to see how far we've come in such a short amount of time with regard to technology and what the classroom looks like. We have five-year-olds who come to school now who know more about computers than I did when I first started teaching. Mind you, I have taken many courses to bring myself up to speed.

It's part of who we are now in our society. Technology and the changes in technology are part of who we are, because what we're using today could be very much different five years from now, because, as you know, each and every year there is something new that comes on board. The education system has to be right at the cutting edge of that, because we need to make sure that our children are comfortable and that we're using it. If we don't use the technology properly in our schools and our universities, there is going to be a disconnect with the general society. We have to be responsible, therefore, with technology. We have to be right there on the cutting edge with anything new.

Mr. Dean Del Mastro: Thank you very much.

The Chair: Thank you. That will have to be the last word.

I'd like to thank our witnesses for coming today.

We will briefly suspend and come back in a few moments.

- _____ (Pause) _____
-
- (1205)

The Chair: All right, folks, we will call this meeting of the legislative committee on Bill C-32 back to order.

We have witnesses from three organizations. From Athabasca University we have Troy Tait and Rory McGreal; from the Canadian National Institute for the Blind, Cathy Moore; and from the Canadian Association of Disability Service Providers in Post-Secondary Education, Karen Coffey.

We will start with Mr. McGreal from Athabasca University for five minutes.

- (1210)

Dr. Rory McGreal (Associate Vice-President, Research, Athabasca University): Mr. Chairman, members, thank you for inviting Athabasca University. We feel that this is a very important event for us.

I'd like to introduce Troy Tait, who is our director of government affairs. I'm the associate vice-president, research, at Athabasca University, and I'm also the Canadian UNESCO Commonwealth of Learning chair in open education resources. That might give you an idea of why I'm taking the position I am today.

Athabasca University is Canada's open university. All our students are online. We have over 40,000 students, in every province and territory of Canada and in over 100 countries. You can see how important the use of the Internet is for us, and that copyright use, on the Internet and in a digital environment, is absolutely essential to our existence, as it is for traditional universities, who are more and more going online. There isn't a traditional university today that

doesn't have a very large percentage of its content and its teaching and learning online.

I'd like to remind members—and I was a bit discouraged by some of the comments this morning—that copyright started not to conserve the rights of authors; on the contrary, the first copyright law was a law for the encouragement of learning. That's the point of view I'm coming from as an educator: copyright is for encouragement of learning. They thought it would help learning, if they gave authors certain limited rights. I can see that it's being more and more morphed into just authors' rights and that people are forgetting the learning component. So I am pleased that in this bill we have added learning as part of the fair dealing provisions.

Generally, we support the bill. We're talking about some minor exceptions that will improve it and make it usable in a 21st-century environment.

E-books are becoming mainstream; tablet computers are the way people are beginning to read. Last year, Amazon for the first time sold more e-books than they sold printed books. So we're talking about a different kind of world. However, have you read your licence when you buy an e-book, and the restrictions on it? Why is it becoming unfair to own a book when you buy it? What happened to the principle that "you buy it, you get it"? Now, you buy your e-book and they say yes, you can read it in Australia, but don't highlight on it, you can't annotate on it, and it's illegal to show it to your friends. There are so many restrictions on them that it's becoming impossible for us to use them in an online learning context. This is what is driving us as a university to open education resources.

Whereas you talk about losing money from fair dealing, we're saying no, you're not; it's going to be the same. The publishers are not going to lose money from fair dealing; they're going to lose money because they put in restrictions and have digital rights technological protection measures to make them unusable in an online learning context. This will force us to go more and more to open education resources, and we're doing that now. The State of Washington is going that way. The whole state is going to open education resources. California is moving in that direction. And they're doing it because of the locks. They can't function using the new tablet computers and e-books and everything, with the proprietary restrictions that are on them.

If you want to support the publishing industry, beware of unintended consequences. There's a big unintended consequence here. If you put the locks on, you're going to lose money, because we can't use them in a learning environment.

•(1215)

In online learning, we have to compare texts online. We cannot live with a licence and with protection measures that control everything we do in infinite detail. We need them to be open and flexible so that we can use them in a variety of different ways. We want to be able to use e-books in a 21st-century context with our students. And digital locks should not prevent legal uses that include fair dealing.

You say this is a balanced law. No, it's not. There's no fair dealing in this law. If somebody puts on a digital lock and I can't break it, I can't access my fair dealing rights, my legal fair dealing rights. So don't say it's balanced. It isn't balanced. But it's very easy to make it balanced—just say “for any illegal purpose”. That's all you have to do.

It's been argued that these restrictions to the publishing industry—

The Chair: I'm sorry, we're going to have to let you get into that a little more in the questioning.

We'll move along now to Cathy Moore.

Ms. Cathy Moore (National Director, Consumer and Government Relations, Canadian National Institute for the Blind): Thank you, Mr. Chair and members of the committee. We'd like to thank you for this opportunity to speak to you today.

I have to say that for a moment I was very pleased to think that Rory was perhaps going to become a colleague. As a member of the CNIB, I think we'd be honoured to have you.

I'm here today representing the CNIB, and specifically a service that we provide called the CNIB library. This is a library that has been in operation since 1918, since the inception of our organization. It's a library that provides library materials in accessible format or alternate format. The formats you would be the most familiar with would be Braille or audio. But audio, of course, these days can be audio streaming. It can be a CD, it can be a downloadable file, etc. So we've of course expanded.

We're one of the largest producers of alternate format material. For library purposes, we are the largest in Canada. But I certainly want to acknowledge my colleague on the other side and the educational resource centres in this country that are also producing alternate format for their students. It's absolutely essential.

In 2008 CNIB submitted three recommendations to the copyright reform committee. It's hard to believe it's now 2011. But we want to provide you with at least some encouragement that two out of the three recommendations, really, have been addressed. So I just want to briefly put a couple of provisos around that.

We had recommended to clarify the language of subsection 32(1). And I should mention that what is pertinent to CNIB in the production of alternate format for persons with perceptual difficulties is obviously subsection 32.1(1), around exemptions to copyright infringement. The language of subsection 32(1) has been clarified. We're very pleased with that. Thank you.

Our third recommendation was around digital locks and technical protection measures. And we are cautiously encouraged by the recommendations that have been made, in that there is now an

acknowledged exemption or ability for the production for persons with perceptual disabilities, or on behalf of persons with perceptual disabilities. There is an acknowledgement that circumvention is required and permissible, and the tools in order to circumvent a TPM are permissible.

Now, that's good, and of course we're more pleased with that than to be prohibited by that, but it does not in any way address the issues of the broader community, the educational community. So those are good first steps, but ideally if we can work out a business model—and again, that's not the role of this committee—that would allow publishers to be circulating files that are in fact in an accessible format, in a format that doesn't require circumvention, it would dramatically increase our ability to produce alternate format books.

The second recommendation.... I just want to finish by saying that in the import and export clause, in subsection 32(1), it has been, again, an improvement. There is an acknowledgement that we need to bring in books. Why produce Harry Potter 19 times across the English-speaking world when one production and then exchange it back and forth is what we're looking for?

One of the pieces, though, right now that is very problematic for us is very small in comparison to some of the other issues. The requirement of the producing institution to actually establish the citizenship of the rights holder, although it seems very small, is actually very difficult for us to do. It would require more resources, more staff. It is difficult and time-consuming, and it really takes away from the very limited resources we have to do what we're doing, which is to produce and run a library. So if another organization, rather than the actual reproducer or reformatter of material, could be identified—for example, Access Copyright—as the organization needing to establish, and just hand over the information in terms of citizenship, whether this person is a Canadian citizen, a refugee, etc....

I think I will conclude there. Thank you again for the opportunity.

•(1220)

The Chair: Thank you very much.

We'll now move to Karen Coffey for five minutes.

Ms. Karen Coffey (Member, Canadian Association of Disability Service Providers in Post-Secondary Education): Good afternoon.

On behalf of the Canadian Association of Disability Service Providers in Post-Secondary Education, CADSPPE, we would like to thank the legislative committee for the invitation to appear today.

CADSPPE is a national group of professionals committed to the ongoing creation of accessible, equitable, and inclusive post-secondary learning environments for students with disabilities. The CADSPPE membership includes disability service providers from colleges, technical institutions, and universities as well as anglophone and francophone professionals.

Across Canada students with print disabilities, such as those who are blind or who have reading disabilities, have limited access to textbooks and course materials that are readily accessible to them. During the last decade there have been major advances in assistive educational technologies for people with disabilities, such as screen readers that can take a digital file and read it aloud to a student who cannot see the written word or is unable to comprehend the written word due to a severe reading disability.

This technology opened opportunities for students with perceptual disabilities, which makes up the single largest group of students with disabilities in Canada's colleges and universities. Students are now able to utilize sophisticated text-to-voice software programs that can convert digital text into formats that allow a student to listen to their textbooks and required course material.

Many provincial student loan programs already recognize the value of this technology to students with disabilities. As a result, students who qualify for student loans may qualify for grants to purchase the necessary software and hardware that are required to access the digital formats of their course material. However, the hardware and software does them little good if they can't access the digital materials required, such as an electronic version of a textbook.

Unlike their non-disabled peers, a student with a perceptual disability cannot simply go into their college bookstore and purchase an accessible copy of a required text. As a result, they become dependent on disability service providers to undergo the labour-intensive process of trying to convert a print copy of a textbook into a format that meets their needs. This process can take weeks, resulting in the student falling behind in their studies as they wait for textbooks in a format they can actually use.

In the case of text provided by publishers, students must rely on permission from the publishers to obtain text in alternate format. They also must rely on disability service providers to assist in obtaining those texts, as publishers, citing concerns about copyright, will not provide alternate format texts directly to students. Some publishers make excellent supports available and students receive the alternate format copies of information. In other cases, the alternate format may take weeks to reach the student, and some are not available at all.

When manual scanning is necessary, students must purchase a print textbook, cut the spine of the book to allow for scanning, and then physically scan the page to allow for the translation of a screen-reading program. The scanned information must then be edited for accuracy, as the electronic translation process is not always accurate. Across Canada disability service providers struggle to keep up with the many requests for scanning and editing text. Some post-secondary institutions, especially those in rural areas, do not have the staffing, the expertise, or the equipment to support students in scanning and editing all of their required readings.

The Government of Canada must insist that publishers make texts and materials readily available to students with disabilities. Ideally, students with disabilities would purchase their alternate format texts from the bookstore in the same manner other students purchase print textbooks. Furthermore, we urge the committee to include clear legal provisions that will require publishers and producers of print and non-print instruction materials sold and used in Canadian institutions to provide structured e-text files of those instruction materials to institutions upon request and in a timely manner. We see the legal thrust of the proposed law on copyright placing the burden of providing access to e-text files upon those responsible for creating and marketing the instruction materials in the first place.

• (1225)

Students with disabilities are not asking for a free ride when it comes to textbooks. They are willing to purchase their textbooks just like every other student. What they're asking for is the right to go into their local university or college bookstore and buy the textbooks that are accessible to them at the same time as their peers. Without this right, students with perceptual disabilities will continue to face barriers to what should be a fair and equitable Canadian education.

The Chair: All right, thank you very much.

We'll now move to questioning. We'll go to the Liberal Party, Mr. McTeague, for seven minutes.

Hon. Dan McTeague: Thank you, Chair.

I may not be using my seven minutes, but if I do I apologize in advance.

Mr. McGreal and witnesses, thank you very much for being here today. This may be our last round, but I'm sure we'll come back to this at some point, hopefully, after the election.

I'm wondering if I could get from you, Mr. Tait, or you, Mr. McGreal, your position here with respect to fair dealing. I just want to parse out what your position is, recognizing, of course, the unique nature of your university.

I understand you have worked with or at least shared some positions with the Association of Universities and Colleges of Canada, which was here just a couple of weeks ago. I'd just like to get a little bit more detail from you on that. I didn't really hear, from your comments, something about your position.

Dr. Rory McGreal: Our position follows from the AUCC position, and even CMEC. We like the amendments including education and satire and parody, and we like the idea that we'll be following the six factors named by the Supreme Court. We'd just like to be able to avail ourselves of it. But if somebody puts a lock on, there are no fair dealing rights. I don't know how we can even talk about fair dealing rights if you can put a lock on and take them all away from us. It doesn't make any sense.

Hon. Dan McTeague: Your concern, then, is about access more than money in this case, I take it.

Dr. Rory McGreal: Yes. Fair dealing, as it stands in this law, is very good. I think you've struck the right balance. As I said, there are just some very moderate improvements to the law that we're suggesting.

Hon. Dan McTeague: Because of course we're dealing with access as it relates to the addition of education, in terms of fair dealing, which the bill proposes, would you agree or would you consider that it would be considered unfair dealing—to use that term—if it has a negative impact on the market for a work? Would that be something you would look at?

Dr. Rory McGreal: There won't be a negative effect on the market. I think what's happening is that too many people in Canada are focusing on the IP economy, and particularly the copyright economy. If you'd wake up and smell the coffee, you'd see that a much bigger economy is the fair dealing economy. You have web hosting companies, search engines, software developers, device manufacturers, news agencies. All of these depend on fair dealing and a robust fair dealing law. A recent report put out by the United States said it's bigger than the IP economy, and it's way bigger than the copyright economy. So if you're talking about effects on the market, we should be opening up the fair dealing economy, because that is the big economy, not the IP economy. Excuse me, IP is big, but both are big, and the future is going more and more to the fair dealing economy. If you look at the industries that depend on fair dealing, you'll see they're growing much faster than the IP economy.

• (1230)

Hon. Dan McTeague: What about an amendment that said something would be considered unfair if there were a collective society that existed for works? Would you have trouble with that particular amendment?

Dr. Rory McGreal: If what? Sorry.

Hon. Dan McTeague: If there exists a licence from a collective society for these kinds of works—the market, for instance, or someone who is a property right holder or a holder of a particular copyright—would you have any difficulty with suggesting that fair dealing would exempt, or would you ignore someone who had such a licence?

Dr. Rory McGreal: I don't see how it would. Fair dealing is very restrictive. You can't do a great deal with it, but what you can do is really important.

Hon. Dan McTeague: Yes, Mr. McGreal, we're concerned about what “fair dealing” means, because now “education” is much broader than the way it was once defined. In fact, I think even the Supreme Court has made it very clear in its decisions. I think you'll be familiar with this, that there's no set test. As to whether dealing is fair will depend on the facts in each case, which is why I'm interested, because this is a very broad definition that's been given. The courts have said that they want to be relatively restrictive, but have defined it in a way that I think leaves it very nebulous. This is why we're trying to get from you what your take is on this kind of thing, whether or not you would see certain things as fair under education and certain things as unfair.

But I thank you for that anyway.

Mr. Garneau had a question here, because I think you got into IP. I'll let him handle it.

Thank you, Mr. McGreal.

Mr. Marc Garneau: Mr. McGreal, I just want to understand one thing. You are talking about digital locks, and I want to be clear on whether you're saying we shouldn't have digital locks at all, or it's all

right to have digital locks but we must allow circumvention for non-infringing or non-illegal purposes.

Dr. Rory McGreal: I support digital locks. If you want to use digital locks, go ahead. That's fine. But don't take away my rights in order to assert your right. If you want to put up a fence on your property and it goes over my right-of-way, I would like to have the right to open the fence, open the gate.

Mr. Marc Garneau: I just wanted to clarify that with you. You're in line with most people. Thank you.

Dr. Rory McGreal: Thank you.

The Chair: Thank you very much.

We'll move to the Bloc Québécois. Madame Lavallée, *pour sept minutes*.

[Translation]

Mrs. Carole Lavallée: Thank you very much.

Since this is probably the last time we will be speaking at this legislative committee, I would like to say that the Bloc Québécois finds it extremely regrettable that this bill will die on the Order Paper. About a month ago, we made an offer to the Minister of Industry and the Minister of Canadian Heritage to try to get this bill through.

The first thing we asked was for the ministers to ensure through this bill that artists would receive all the money to which they are fully entitled. We suggested that this be done by modernizing the private copy rules, withdrawing the education exemption and reintroducing royalties for ephemeral recordings, which amounted to annual revenues of \$126 million. The Bloc Québécois could not pass this bill without that revenue going back to artists.

We find it extremely unfortunate that this government has preferred to impoverish its artists and the cultural sector rather than to adopt this important bill, which is needed in order to clamp down on piracy and illegal downloading as well as to clarify situations such as the one you have just told us about.

Mr. McGreal, you referred in your presentation to the first copyright act, known as Queen Anne's Law. You are a scholar, you come from a university and you are responsible for research. In your research, you have probably looked up what the queen of England said at the time that first copyright law was passed. We have to remember that publishers and printers at that time controlled the manuscripts and printed them as much as they liked, without caring about the authors. Not just novelists, scientists too.

That period was called the Enlightenment in Europe, and scientists were becoming very important. The queen of England, who was good to her subjects, wanted to educate them. You are right on that score. So she passed this law—she was the first to do such a thing, too—which was a sort of revolution in that authors were finally provided with rights. She found that both scientific and literary authors no longer wanted to share their works with printers and publishers, because they used them and made changes to them but paid little or nothing to the authors. The printers and publishers took over the ownership of the works.

The queen of England took inspiration from the philosophy of John Locke, who made the very important point that people own their intellectual work. The creation belongs to the creator and not to the user. Your rights and interests have to be seen from the perspective of the creator's rights. When you buy a book, you are not buying the content, the novel: you are buying the right to have it in your possession in a given format. You read the book, but the creation still belongs to the creator.

Digital books need to be viewed the same way. The creation still belongs to the creator. The digital format is just different and more modern. The principle does not change. The creation belongs to the creator. If we want culture in both Canada and Quebec to develop and blossom, and if we want creators to continue to produce work, we need to show great respect for the process of creation. I do not believe that access is the problem. In your university, there is no problem with access. The problem is the requirement to pay. If you wanted to obtain a second digital book, you could easily do that. You could also obtain a printed version of the book and pay royalties through Access Copyright.

• (1235)

There are a number of ways to access the information contained in digital and print versions of books. But we need the author's consent to do so, whether we are talking about a scientific author or a literary one. Authors must be paid, since they created the works and are responsible for them.

[English]

Dr. Rory McGreal: There's a recent survey from Spain of students using e-books, and they complained they'd rather have the paper book because of the restrictions that are put on the e-books. There are all kinds of restrictions. You can pay all the money you want, but you still have these restrictions, and the restrictions interfere with the educational process. That's the problem.

As to your historical example, I'm afraid I have to respectfully disagree with you. Copyright did not create intellectual property. Intellectual property is a new word; it's been around only since the 1960s. What it did was give authors the copyright, not *le droit d'auteur*; that's a French concept. It gave the right to copy for a limited time. It created the public domain. It said authors can have their right for a limited time, 27 years, as long as it promotes education. That was the origin of the law.

[Translation]

Mrs. Carole Lavallée: I am sorry to interrupt you, Mr. McGreal, but my time is limited.

I would invite you to review your history books and reread the context in which the first copyright law, Queen Anne's Law, was created. You will find that it was the first time that authors were given rights.

[English]

Dr. Rory McGreal: It was the first time that rights were given to authors and to the universities. In fact, it didn't give rights; it limited rights. It was for the owners. The printers owned it. As it is today, generally, the authors and the creators, which I think is a misuse of the concept, don't get much of the money. Right now the money goes to publishers, not to the creators. A small percentage goes to the

creators. In those days, it was the printers and it limited their rights. It wasn't brought in to give them rights; it was brought in to limit them to 27 years and to make sure that it expanded knowledge.

• (1240)

The Chair: Thank you.

Mr. Angus.

Mr. Charlie Angus: After the hundred and something witnesses we've had, it seems we're all going back to first lessons, so it's good that we have you here. Queen Anne's law was the law to encourage learning, so when we deal with fair dealing, we're finding ourselves back with that first principle.

I'm interested in what's been said about fair dealing today. My colleague from the Liberal Party suggested that the ministers representing education in every province in Canada were trying to get something for free—that was their definition of fair dealing.

I'm concerned also with my colleague from the Conservative Party. He suggested all along that technological protection measures have to do with the market; if you have a problem, take it up with the market. He's modified that somewhat. Now he says we can trust the minister; the minister would be all-knowing and all-wise, and if there's a problem we can take it to the minister. He says that user rights are casually mentioned in the Supreme Court's decision in *CCH Canadian Limited v. Law Society of Upper Canada*. Yet when I read the decision, it says, "User rights are not just loopholes. Both owner rights and user rights should therefore be given the fair and balanced reading that befits remedial legislation." And it says that this interpretation is to ensure that the user rights are not constrained.

Is it not the role of the federal government to bring forth legislation that defines what fair dealing is, so that we can move forward and get on with education and ensuring that artists are protected?

Dr. Rory McGreal: I would support that. It has to be fair. I've been seemingly all on the user side, but I believe in protecting the rights of creators. This is important. The key point that I want to make is don't take away our rights in order to protect your rights. There are silly things in the law: you destroy your research paper within five days or you put it in a filing cabinet. This is ironic, because the copyright collectives insist that we give them their information digitally, but they want us to take our research papers, print them out, and put them in the filing cabinet. Nobody does that any more. What is that law about? It's just absolutely absurd.

Mr. Charlie Angus: I want to go to the sense of a two-tier set of rights being created. I doubt that would even pass a court test, that you can define rights in legislation but they don't exist in the digital realm, where everything is moving.

I'm concerned with the technological protection measures—again there is the law of unintended consequences, as much as we want to protect property from being unfairly ripped off and put on isoHunt—in terms of education whether or not they will have a huge impact. I'm looking at the state of California, and you had mentioned them. They're putting \$500 million in the next four years to create online, accessible, open education resources that will be available to anyone using the Internet. Whether or not the move in the United States with people will get around the technological protection measures by creating open education, would that encourage something at the University of Athabasca to start using those open education materials and perhaps in the end leave many of our national and regional publishers in the lurch if we're still under the technological protection regime?

Dr. Rory McGreal: The move is already under way. We are committed to moving to open educational resources. Quite a few universities are following in our lead already. This has started. But it's big in the States. The State of Washington has gone to open education resources. California is going. President Obama put in I think it's \$200 million for the creation of open education resources.

Again, the main impetus to this is the digital locks. You can't run a modern university online with all these restrictions. We're negotiating with our publishers, and we give millions of dollars to publishers. I hope that the creators get some of that money, but we give millions, and we give millions to the copyright collectives as well. We just want to make sure that we can do, with the material, what needs to be done for learning. You can't do it if you put all these restrictions on it.

We have students in Australia. We have DVDs; they don't work in Australia. What are you talking about? The world is getting smaller. They're putting in all these restrictions, and they're trying to control us. You can have this book, but you can't do this, you can't do that, you can't do this other thing. It's an offence to show the book to your wife. Read those licences. They're so restrictive that we just can't work with them. And it's going to destroy them. These are the unintended consequences.

I've said in a few forums, well, bring on the digital locks. Lock everything away. Because I'm the chair of Open Education Resources, and I'm promoting the use of them and I think there couldn't be a better promotion. If you think you're defending the copyright industry by making it more and more restrictive, I respectfully suggest that you're not doing it, that the unintended consequences are going to come.

• (1245)

Mr. Charlie Angus: Madame Moore and Madame Coffey, I'm interested in hearing from you again in what it means on the ground.

I mentioned in the earlier session that my daughter went through university and through high school and grade school fighting pretty much every step of the way to get access. In her last year in university she met with a number of students who had perceptual disabilities. She asked them what they did when they were confronted by a teacher or professor who simply wasn't interested in accommodating them. In every single case the student dropped the course. My daughter didn't. She actually would take them to the human rights commission, and that's how she got through school.

But she was shocked. She said that if it wasn't absolutely easy for the teacher or professor, they simply refused.

When you add the extra burden of being able to access materials in a timely manner to participate in a course, how do you think that affects students who are trying to go to post-secondary education, or even high school, to get where they need to go?

Ms. Cathy Moore: I'll start and Karen can finish.

What happens is that typically a person with a perceptual disability ends up taking longer at university because they're waiting for their books. They often take part-time classes. It's not disability-related all the time, it's often simply resource-related. So it takes longer to get through university. It's more demanding. Their marks aren't as high because they've started reading the material in October and everybody else started in September, so it creates an uneven playing field. The more complicated it becomes to produce alternate formats—and technical protection measures certainly complicate things—the longer it takes to get books to kids. Whether they be books, course packs, or whatever, get them to kids the same time as their non-disabled peers are getting them.

Ms. Karen Coffey: Certainly these students are at a disadvantage from the get-go, in that they really have to start planning well in advance to try to get their books in an accessible format. It is extremely labour intensive. A recent study done out of Dawson College in Montreal said that for every week in which they didn't have a textbook, their grade mark went down one letter grade for each week. Oftentimes, by the time these materials are readily available to them, the course is finished. It's completely unfair.

It's completely unfair: there is no reason why they should not be able to go into their bookstore and buy an electronic copy of the textbook, just like their peers do. It certainly holds them at a severe disadvantage. The wonderful advances in educational technology that are helping so many other students with disabilities are actually putting up additional barriers to students with perceptual disabilities who can't access digital files.

The Chair: Thank you.

We'll move to Mr. Braid for seven minutes.

Mr. Peter Braid (Kitchener—Waterloo, CPC): Thank you very much, Mr. Chair.

Thank you to all of our witnesses for being here this morning.

I'll start with you, Mr. McGreal, if I could. You're the associate vice-president of research at Athabasca. What's your academic background?

Dr. Rory McGreal: Computer technologies and education.

Mr. Peter Braid: Excellent.

When was Athabasca University first established?

Dr. Rory McGreal: In 1972.

Mr. Peter Braid: So you've seen this transition to the digital age, and you've obviously needed to have your mandate of online and distance education unfold and move with the transition to the digital age.

Dr. Rory McGreal: Yes.

Mr. Peter Braid: Do you see advantages in Bill C-32 in further assisting the move to the digital age within the context of online?

• (1250)

Dr. Rory McGreal: Absolutely. I think it's a good bill. I'm just talking about minor amendments, one of them in proposed section 30.01, I think, about recognizing that distance education is the equivalent of classroom education. This is really important for us.

Mr. Peter Braid: Absolutely.

Dr. Rory McGreal: So yes, I do support the bill. It's just that there are some very small things that don't seem to make sense to me.

Mr. Peter Braid: Understood. So just briefly, how does the addition of education to fair dealing help Athabasca fulfill its mandate of providing online and distance education?

Dr. Rory McGreal: Sorry, but how does what...?

Mr. Peter Braid: How does the addition of education to fair dealing help Athabasca University fulfill its mandate?

Dr. Rory McGreal: Well, I think it gives it clarity. Right now, it's just our researchers who can avail themselves of fair dealing, or so we think. If you add education, then we could use it in the learning context. We wouldn't feel guilty about moving from one website to another with students, sharing limited amounts of material, and taking advantage of the fair dealing rights available in the distance education scenario. Before, we were in limbo: we didn't know if we were legal or not legal.

Mr. Peter Braid: So that's clearly very important.

Dr. Rory McGreal: Yes.

Mr. Peter Braid: Lastly, you spoke earlier in response to a previous question about this notion of a fair dealing economy. Could you just elaborate a little on that? What is the fair dealing economy and why is this so important?

Dr. Rory McGreal: There's a recent report. If you look up "fair use" and the digital economy in the U.S., you'll probably find it, or I can get it for you. The digital economy is an economy of about \$2.2 trillion, as compared to the IP economy, which was around the same, at \$2.2 trillion. It's all these industries that I mentioned: web-hosting companies, search engines, software developers, device manufacturers, news agencies, etc. They all use the fair dealing, and they're stronger in the United States because fair use is a broader concept than fair dealing.

But we have all of these industries. They're growing in Canada. I'd like to see a study of it in Canada, because I think people would be shocked. People are putting on their blinkers in saying "we have to protect IP, we have to protect IP", and I agree with them—

Mr. Peter Braid: So do I.

Dr. Rory McGreal: We have to protect IP, but there's another economy that depends on fair dealing, and it's just as powerful and just as important for all of us.

Mr. Peter Braid: Thank you.

Dr. Rory McGreal: Not only that, it's the right thing to do.

Mr. Peter Braid: Great.

Ms. Moore, thank you very much for being here today. I have a CNIB office in my riding of Waterloo. I'm very familiar with its importance and the valuable work and services you provide.

Bill C-32 clarifies the rights of persons with perceptual disabilities, as you've also concurred with. Could you just briefly explain why that's so important? Secondly, what are the practical day-to-day uses of the exceptions that we've provided for in terms of alternate formats?

Ms. Cathy Moore: Proposed section 32 really needs to be understood as an interim measure. The context is that it's interim.

What it means is that it allows associations working with persons with perceptual disabilities—the associations typically are non-profit or under-resourced, as there's very little private industry there, unfortunately—to be able to afford, in CNIB's case, to have a library that has 86,000 titles; to be able to do all of the manipulation, etc., required in order to create an alternate format of that material and house it, store it, deliver it, host it on a web; and to be able afford that without having to incur the additional expense of paying royalties.

Now, we buy the books—I want to be clear there—but we have the option of being exempt from buying more than one copy, etc.

In a perfect world, in a world that would work much better and really increase the equity between the availability of accessible library materials versus regular print materials or the print versions, be they digital.... Because right now only about 10% is available in alternate format through a library service, ours or Quebec's or otherwise.

A perfect world would be publishers that were able to work out a business model that worked for them, that worked for the rights holders, outside of the framework, necessarily, of the legislation, that allowed for the production of accessible files, master files or whatever, that we could simply receive; or, even better, publishers that simultaneously produced accessible alternate format along with their mainstream format so that in fact the two become one. Mainstream format becomes alternate format at the same time.

There are examples of that. Technologically we're moving there. Technologically, in terms of not the material itself but the device to use it, the iPad tablet....And I have no stock in Apple—

• (1255)

Mr. Peter Braid: Or the RIM PlayBook, which will be released in just a matter of weeks.

Ms. Cathy Moore: Or the RIM PlayBook; we haven't seen it yet.

Unfortunately, I have stock in neither.

The Apple tablet comes with an opportunity or an ability to make the print as large as you need it, but also a built-in screen reader. For someone who is not using it for print at all but is using it for the audio, they're able to access the material on that tablet.

Generally speaking, it's there, mainstream; there's nothing special, there's nothing extra, there's no exemption.

So the context of proposed section 32 is that at this point this is an iterative step, but it's not the ideal, and it's certainly, we hope, eventually not the.... We don't stop there.

Mr. Peter Braid: Great.

The Chair: Thank you very much.

I'd like to thank our witnesses for being with us today. I think your presentations were excellent. I know the committee appreciated it.

If in fact this is the last meeting of our committee, I want to thank the committee members for all of their hard work. It's been a pleasure acting as your chair. I think we've had some good meetings.

And if in fact it is the end of this Parliament and there is a future bill on this topic, then hopefully the testimony that this committee has received will be received by a future committee.

Thank you to all committee members.

An hon. member: Thank you, Chair.

The Chair: The meeting is adjourned.

MAIL  POSTE

Canada Post Corporation / Société canadienne des postes

Postage paid

Port payé

Lettermail

Poste-lettre

**1782711
Ottawa**

If undelivered, return COVER ONLY to:
Publishing and Depository Services
Public Works and Government Services Canada
Ottawa, Ontario K1A 0S5

*En cas de non-livraison,
retourner cette COUVERTURE SEULEMENT à :*
Les Éditions et Services de dépôt
Travaux publics et Services gouvernementaux Canada
Ottawa (Ontario) K1A 0S5

Published under the authority of the Speaker of
the House of Commons

SPEAKER'S PERMISSION

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Additional copies may be obtained from: Publishing and
Depository Services
Public Works and Government Services Canada
Ottawa, Ontario K1A 0S5
Telephone: 613-941-5995 or 1-800-635-7943
Fax: 613-954-5779 or 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
http://publications.gc.ca

Also available on the Parliament of Canada Web Site at the
following address: <http://www.parl.gc.ca>

Publié en conformité de l'autorité
du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la *Loi sur le droit d'auteur*.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

On peut obtenir des copies supplémentaires en écrivant à : Les
Éditions et Services de dépôt
Travaux publics et Services gouvernementaux Canada
Ottawa (Ontario) K1A 0S5
Téléphone : 613-941-5995 ou 1-800-635-7943
Télécopieur : 613-954-5779 ou 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
http://publications.gc.ca

Aussi disponible sur le site Web du Parlement du Canada à
l'adresse suivante : <http://www.parl.gc.ca>