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## **Standing Committee on Canadian Heritage**

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**EVIDENCE**

**Tuesday, November 6, 2018**

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**Chair**

**Ms. Julie Dabrusin**



## Standing Committee on Canadian Heritage

Tuesday, November 6, 2018

• (1105)

[Translation]

**The Chair (Ms. Julie Dabrusin (Toronto—Danforth, Lib.)):** Welcome, everyone, to the 129th meeting of the Standing Committee on Canadian Heritage.

Today, we're continuing our study on remuneration models for artists and creative industries.

[English]

We have with us Gina Fafard and Ingrid Mary Percy from Canadian Artists' Representation. We have Regroupement des artistes en arts visuels du Québec, Monsieur Moridja Kitenge Banza and Monsieur Bernard Guérin. From Copyright Visual Arts, we have Mr. Paddy Lamb and Mr. Grant McConnell.

We will go in the order that you appear on our list. We will start with Canadian Artists' Representation, please.

**Ms. Ingrid Mary Percy (National President, Canadian Artists' Representation):** Thank you very much.

[Translation]

Good morning, everyone.

[English]

Thank you for inviting us to speak today.

My name is Ingrid Mary Percy. I'm a visual artist, educator and president of CARFAC National. I normally live in Corner Brook, Newfoundland and Labrador, but currently reside in Victoria, B.C., where I'm a Ph.D. student in the department of art education at the University of Victoria.

As the national association representing Canada's visual artists, our mandate is to improve artists' working conditions. Artists are often asked to work for free, and we believe that they should be paid fairly for their work.

According to the 2011 labour force survey, there are nearly 16,000 visual artists in Canada with average incomes just under \$25,000, which was about half of the average income of all Canadians and only slightly above the low-income cutoff. The median income is about \$17,000, so more than half of all visual artists are below the poverty line. Visual artists are the most likely of all artists to be self-employed and are among the most vulnerable when it comes to income precarity.

There are many ways we can improve artists' incomes: better taxation policies, guaranteed basic income and social security measures, better funding for the arts and more. Our brief includes recommendations for changes to the Copyright Act that can lead to improvements in artists' incomes.

Our colleagues at Copyright Visual Arts and RAAV are going to speak about two of our recommendations while we focus on the artist's resale right, which we have also presented to the industry and finance committees and a Senate subcommittee.

The resale right allows visual artists to receive a royalty payment each time their work is resold through an art auction house or commercial gallery. We are asking that artists receive 5% of subsequent public sales of their work if it sells for more than \$1,000 and meets various eligibility criteria. The resale right allows artists to share in the ongoing profits made from their work. It is common for art to grow in value over time and as the reputation of the artist grows.

Many of our most celebrated artists live in poverty, and while they may still be making more art throughout their lives, everyone wants to buy the early work, the work that made them famous. The resale right will be of most benefit to senior artists as well as indigenous artists, as their work often increases in value within their lifetime. Sometimes the increase is minimal and sometimes it's dramatic.

We have several stories of artists across Canada who would benefit from the resale right, everyone from Kenojuak Ashevak to Rita Letendre, from Mary Pratt to Kent Monkman. In a moment, you will hear from the daughter of the celebrated artist Joe Fafard.

Once the measure is established in Canada, artists would be paid on sales here as well as when their work is sold in countries that also have the resale right. France first legislated it in 1920, and it now exists in at least 93 countries worldwide. Many of those countries worried that if they legislated this, it would drive the markets to countries that do not have it, but that has not happened. The cost and hassle of exporting art is rarely worth the effort. The resale right has been discussed in trade negotiations with the European Union, and the World Intellectual Property Organization is advocating for mandatory international implementation under the Berne Convention.

You may have many questions about how the right works. Won't it be difficult to administer? Why do we need a law? Why add a new tax? Let me be clear. This is a copyright royalty, not a tax. It is not collected by government. We're only asking that you give us the legal right to collect the royalty. We're not asking for government funding. We need a legal mechanism because, if people aren't required to pay, they simply won't do it. We need a legal framework. After that, there are ways to allow the market to administer it efficiently.

We have good models for administration to refer to, and many of the details about how it is administered have been considered by us and our international colleagues. We have studied these issues extensively, and we keep up to date on how it works and has been reviewed in other countries. We have a detailed proposal of how it would work in Canada.

•(1110)

The artist's resale right was discussed the last time the Copyright Act was reviewed and although committee members, including Minister Rodriguez, were supportive, it did not make it into the act last time. They told us to wait five years for the five-year review.

In the meantime, our proposal has been endorsed by the Government of Nunavut and the hamlet of Rankin Inlet. A bill was presented in 2013 but did not pass before the last election.

Last year the finance committee recommended that the Copyright Act include an artist's resale right. Now you and industry are examining copyright and artists' incomes. We urge you to make this change now.

Thank you.

**The Chair:** Ms. Fafard, please go ahead.

**Ms. Gina Fafard (Gallery Owner, Slate Fine Art Gallery, Canadian Artists' Representation):** Hello. My name is Gina Fafard. I am the co-owner and operator of Slate Fine Art Gallery, which is a small commercial gallery in Saskatchewan. We have been in operation since 2013, but my experience in the art industry has far preceded this.

I worked for many years as an artist and I have been privy to the inner workings of the art industry for much longer. As the daughter of well-known artist Joe Fafard, I have had the unique experience of watching an artist build his career from the very early stages of long hours in the studio to his current state in which he employs an apprentice, an operations manager and eight foundry workers who assist in the production of his artwork.

It has been a wonderful adventure to see what can be done when a creative mind has the drive and can build the means to follow through on his dreams. Joe was lucky that he had some early success that allowed him to build his industry. It's not often that this opportunity is afforded to artists.

The artist's resale right will benefit artists such as Joe Fafard, and I believe he deserves this benefit. It is his hard work and perseverance over many years that has created the increased value in his artwork. Over the last 30 years, at least 20 artworks by Joe Fafard sold at auction, which would have been eligible for royalties. The total price

value of those works was \$1.5 million. If he had the resale rights, he would have been paid almost \$80,000 in royalties.

These totals do not include all of the online auctions of his work, nor the secondary sales through dealers. This information is not available because only auction details are public.

It is important to acknowledge that the sale of a piece of artwork is for the object itself and not for the intellectual property. This artwork is still the work of the artist. The artist always maintains ownership of the artwork. The resale right has potential to allow artists to share in profits and support the economy.

Joe Fafard's 10 employees all have families, so any monies paid to him have the potential to benefit not only him but 10 other families.

Similarly, Annie Pootoogook's brother, Cee Pootoogook, has said that he has had family and friends who didn't have much money and she would sell her artwork and take care of them. People followed her to weekly trips to the co-op and she would share her earnings when she had them. We cannot dismiss the importance of royalties when they benefit so many.

The artist's resale right compensates artists as contributors to their works' value and provides artists with a more sustainable income based on the value of their own work. If the work is donated to an institution or gifted to a friend, the artist's resale right is the only opportunity for the artist to get some compensation for that work.

The artist's resale right makes the difference to senior artists' ability to earn a living. It is often taken for granted that artists thrive once they become established. Even artists such as Mary Pratt who have won Governor General's awards may find it difficult, if not impossible, to make a living from their art. Her work sold for very little in her early career and later she struggled to continue to make work to earn a living. Research shows that senior visual artists have media earnings of \$5,000 a year and that one-third of all artists are at high financial risk. Artists rarely have the luxury of retirement.

Will this affect small businesses such as my own? It will to some degree, but only a small percentage of our market is secondary. According to a study by Canadian Heritage, only 3% of the secondary market is through commercial galleries. Most galleries will not be affected because they deal primarily or exclusively with the primary market.

I feel it is a small amount to pay to our artists, and it is their due. Our gallery has already taken on this policy of paying out an artist's resale right percentage to those artists we represent.

As a gallery owner, I witness time and time again young artists selling their work for far less than its value, far less than allows them a living wage. They do this in an attempt to break into the art market and establish themselves in hopes that they will some day be compensated accordingly for the work they do. If we do not create an environment in which this is possible, we will continue to see talented young people move on to other professions in frustration with an industry that does not support them.

• (1115)

**The Chair:** Ms. Fafard, you're at the end of your time. If you could wrap it up quickly, that would be great.

**Ms. Gina Fafard:** I just have a quote from Joe that I want to share with you, if there's time:

I am in full support of the modest proposal that artists have resale rights. It seems very little to ask when you consider that the artist through his or her efforts over many years is largely responsible for the increased value of their work. Many of the early works were sold at low prices because the artist had not developed a reputation. Over many years, some artists, through diligence and hard work, manage to increase the value of their market manyfold. A buyer reselling a work may experience a windfall or at least a handsome profit. Sharing such a windfall with the artist who is largely responsible for this happy event with a modest 5% return to the artist seems less than generous to me, but let's start there.

**The Chair:** Thank you.

[*Translation*]

Now we will go to Mr. Kitenge Banza and Mr. Guérin from the Regroupement des artistes en arts visuels du Québec.

**Mr. Bernard Guérin (Executive Director, Regroupement des artistes en arts visuels du Québec):** Good morning. Thank you for inviting us to speak today.

I'm the executive director of the Regroupement des artistes en arts visuels du Québec, or RAAV. With me today is our president, Moidja Kitenge Banza, who is a visual artist.

In its brief, the RAAV calls on the committee to consider a series of measures concerning the review of the Copyright Act and related measures aimed at ensuring better remuneration for artistic creation in the plastic and graphic arts.

We will start with the issue of exhibition rights, which is specific to the visual arts, and then move on to fair dealing and the education exception, which applies to various categories of artistic works protected by copyright.

Since exhibition rights were established in the Copyright Act in 1988, many visual artists have seen a significant increase in their revenues. The payment of royalties for the exhibition of their works for purposes other than sale or rental has gradually become the norm. Unfortunately, the date of June 8, 1988, mentioned in the act means that all works produced before then are not subject to exhibition rights, which is absurd. As a result, artists who are seniors and the heirs of deceased artists are excluded. This date clearly results in indirect age-based discrimination since, logically, the works produced before June 8, 1988, are by older artists.

In our opinion, this limitation based on the date of creation could be a violation of section 15 of the Canadian Charter of Rights and Freedoms. Over time, this date is becoming increasingly arbitrary and further isolates older artists. We realize that at the time, applying this right to works created after this date minimized the financial

impact of the new royalty on museums and galleries. However, 30 years later, this argument no longer holds water. The payment of exhibition royalties should be the norm, regardless of the date when the work was created and, indirectly, the age of the artist who created it.

Artists tend to be older on average. A survey of our membership showed that the average age is 59 or 60. You can imagine a scenario where certain artists in a show receive exhibition royalties and others don't. Those being paid would be the younger artists, while the older artists would be deprived of royalties for their older works of art.

Karl Beveridge, a Toronto-based artist, told me that when one of his shows was touring Canada, he got paid by some galleries but not others. We think that makes no sense. That is why the limitation in subsection 3(1)(g) should be eliminated.

When Copyright Act was last reviewed, we raised serious concerns about the fact that introducing a new fair dealing exception for education could have a significant impact on artists' revenues. Sadly, our concerns proved to be well founded.

You have received briefs from various copyright collectives, including Copibec, Access Copyright and Copyright Visual Artists, that eloquently illustrate the negative effects of this exception. After the exception was introduced, certain universities reacted by establishing their own fair dealing guidelines. For example, Laval University did not renew its collective licences with a copyright collective and drafted its own policy on the use of works by others. It took a class action lawsuit by Copibec for Laval University to suspend this policy and sign retroactive licences.

York University in Toronto reacted in a similar way. York argued before the Federal Court that its use of reproductions of works was fair under section 29 of the Copyright Act. In his decision, however, Justice Phelan wrote that "York's own Fair Dealing Guidelines are not fair in either their terms or their application". If York's policies were applied in their entirety, for instance by copying this book from an anthology, to use Justice Phelan's example, no royalties would have to be paid. That is simply unacceptable.

Several ministries of education also terminated their reproduction licences. This shows that the concept is very flexible, and its scope needs to be clarified.

• (1120)

We feel that the fair dealings criteria set out in the CCH case of 2004 need to be fleshed out and clarified.

We have given it some thought and discussed this with other organizations and we are not calling for the straight up withdrawal of the exemption for educational institutions. However, this exemption has to be better regulated and the criterion of the effect of the dealing on the market should be fundamental in determining whether the dealing is fair.

We will get into the British and Australian models a little later, but generally they are quite inspiring, where fair dealing for the purpose of education, research or private study should be tied to assurances of fair compensation when licences are available through copyright collectives.

Under the proposed model, the fair dealing exemption would not apply to educational institutions when a work is accessible on the market through a licence issued by a copyright collective. It is a so-called system of “statutory licences”, which is very well described in the information sheet that the Australian Copyright Council submitted to your committee. In terms of size, the Australian market is similar to that of Canada.

What is more, such a change would ensure that Canada meets the three-fold criteria recognized in Article 9 of the Berne Convention on Literary and Artistic Works, that permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.

To achieve that, section 29 of the Copyright Act needs to be amended to include a reference to Article 2<sup>Bis</sup> of the Berne Convention or have wording similar to that proposed by Access Copyright.

In closing, RAAV strongly supports the *droit de suite* that CARFAC just talked about in detail.

I will close this presentation by reiterating the importance of statutory licences and collective management.

• (1125)

**The Chair:** Thank you, Mr. Guérin.

[*English*]

We will go to Copyright Visual Arts with Mr. Lamb and Mr. McConnell, please.

**Mr. Paddy Lamb (Co-Chair, Copyright Visual Arts):** Good morning. Thank you, Madam Chair and members of the committee, for the opportunity to speak to you today.

My name is Paddy Lamb. I am a working visual artist living in Strathcona County, Alberta. I have been actively involved in advocating for visual artists at a local, provincial and national level for more than 15 years. Since 2015 I have served as co-chair of Copyright Visual Arts. Although my work does sell in a commercial gallery, occasional sales make up only a small portion of what I earn through my practice, so I'd like to begin with an explanation of the importance of royalty distribution to artists like me across the country and how the scope of this organization addresses that.

Copyright Visual Arts is a not-for-profit copyright management society run by and for artists, offering specialized author's rights administration for professional Canadian and Québécois visual and media artists. It provides users with comprehensive access to the artworks and professional services of its members. It negotiates and issues licences that allow the legal use of artists' work, collects the royalties, and pays the artists.

We seek to provide an inclusive and accessible platform for the management of copyright royalties for all visual and media artists in

Canada. We also seek to educate artists about copyright, moral and intellectual property and the use of their work, and to improve the socio-economic conditions of visual artists by advocating for improved federal legislation, including the artist's resale right, reforms to the Copyright Act, fair dealing and best practice standards.

Copyright Visual Arts has over 25 years' experience in collecting and remitting exhibition, reprography and reproduction royalties for visual artists. Annual royalty revenues are paid to approximately 1,000 artists. We issue all appropriate tax forms for these payments. Any interested artist may affiliate without any cost.

As the primary copyright collective for Canadian visual artists, we monitor and respond to developments in copyright policy. We regularly attend meetings of the International Confederation of Societies of Authors and Composers, CISAC, and its subgroup, the International Council of Creators of Graphic, Plastic and Photographic Arts. As such, our members benefit from knowledge of the international market as well as reciprocal licensing agreements with more than 15 countries. We offer presentations on copyright and our services on an annual basis at national and regional conferences, at meetings of artists' associations and community groups, and at professional practices classes at universities and colleges.

Most recently we've undertaken several important new initiatives in response to the needs of artists. We are working with a broad coalition of indigenous arts associations to develop an indigenous intellectual property guide. We are partnering with CARFAC and Access Copyright to develop new tools to allow for certified attribution of works of art through the use of blockchain technology.

Copyright Visual Arts is the lead partner in a major project to create an online licensing website for Canadian visual art. The project's objective is to make strategic use of digital technologies by developing a modern copyright management tool for visual art that simplifies and accelerates the licensing process with secure online payments. It will improve access to Canadian visual artists' work while also ensuring that artists' rights are respected and royalties are paid. The project includes an online image bank of artists' work, a fee calculator, and an integrated licensing system. It will enable artists, museums, artist-run centres, educational institutions and private users to join other players in Canada's creative industries by participating more fully in the digital economy.

I would now like to introduce my colleague, Grant McConnell.

• (1130)

**Mr. Grant McConnell (Artist and Educator, Copyright Visual Arts):** Thanks, Paddy.

Thank you, Madam Chair and members of the committee, for the opportunity to speak to you today.

My name is Grant McConnell. I work as a visual artist in Saskatoon, where I also teach studio art and Canadian art history part time at the University of Saskatchewan and the affiliated St. Peter's College. I've been a member of Canadian Artists' Representation for 40 years, and served two terms as president and national spokesperson of that organization. I'm currently a member of the board of Access Copyright.

Copyright Visual Arts asked me to speak here today as a working artist. It's from that perspective that I'll address some of the issues currently before you.

I am not an A-list artist. You probably don't recognize my name or know my work. Although I've had moderate success exhibiting in public and commercial galleries over the last 35 years, I could describe my working life as being that of an average-income artist. For my art practice, many years I would make close to that \$24,000 figure referred to in the written brief.

**The Chair:** I will just stop you for one second.

The bells are ringing, and you can see that the lights are flashing. It's a 30-minute bell.

I will ask the committee if I have unanimous consent to allow Mr. McConnell to finish his presentation. We can rise after that. Does that work?

Thank you.

Mr. McConnell.

**Mr. Grant McConnell:** I work hard for any critical and commercial achievements I've had, and while I enjoy teaching, I need this second income in order to make ends meet, to feed my family and to continue to make what I think is a valuable contribution as an artist to my community and to the larger Canadian community.

When I think about what I need as an artist to continue in my practice and feel confident in the belief that I stand a fair chance at succeeding in my chosen profession, the answers are modest in scale. One of the answers to this is access to incremental income derived from exhibition royalties and reproduction payments, which are currently limited under the existing law. Another answer, which I think about more now that I'm 60 years of age, is that I might share, in some small way, in a profitable resale of a work of mine at a commercial gallery or auction house. As expectations go, these are pretty basic, but meaningful remuneration for artists comes in small packages. A \$400 exhibition royalty payment or a fee for reproduction is what keeps us going in this notoriously unpredictable pursuit.

Please bear with me on this next point. These are comments that I think can be extended to the working lives of writers, composers, musicians, choreographers, and others when I say that in our work places we have around us unsold work, art that is unseen in public, unpublished or unstaged work. This is part of the working life of the successful creator. As with a scientist who does many experiments before making a discovery, we as artists have no guarantee of succeeding in the short term. In our unrecognized and unrewarded work, we make a substantial contribution to the cultural production of Canada.

I am bringing this up in the context of the statement today because to ask us to walk away from any financial return possible from a successful work that finds its way into the larger world is unreasonable. All we ask is that, when a work of art does reach the public through exhibition, publication, staging or reproduction, we not be asked to take a pass on payment that might be derived from that engagement. The balance between users' and creators' rights that we're looking for can be summarized in two words: licensing and royalties.

I'd like, for a moment, to specifically address fair dealing as it has come to be understood in relation to our creative content in Canada. I recently visited the Canadian Association of University Teachers' website to better understand its stated position of support for fair dealing as it applies to education. This is a position that I don't share, but I did find myself nodding in agreement with much of what I read there. Artists do want to see their work included in affordable course packs. They want to see their videos screened in the classroom and their art involved in engaging class content.

The big difference that I have with CAUT's position is my belief that the content should be adequately paid for through licensing. I'm not a corporate publishing cartel attacking fair dealing for mercenary reasons, as referred to on the website. I'm a working artist who is compelled to identify the aberrations of the 2012 copyright legislation that have unfairly impacted my own and my fellow workers' incomes. The copyright payback cheque to artists used to be enough for a trip to the dentist or for back-to-school clothes for the kids, but not anymore.

Here's something about rules-based agreements. We've heard a lot about rules-based agreements over the last year in relation to a certain trade agreement with a certain economic partner. But which set of rules is it and in whose favour will it be applied? Fair dealing might be looked at through this same lens. If you walked onto the campus of any Canadian university heavily involved in research today and proposed a wide-ranging reduction of protections for intellectual property covered by patent law, your reception would be cool, to say the least.

The same might be said of a suggestion that teachers and university professors—

• (1135)

**The Chair:** Mr. McConnell, you're at your time. I'm going to ask you to try to wrap it up quickly.

**Mr. Grant McConnell:** I certainly will.

Licensing at a post-secondary institution in Canada for one student is \$26, about the price of three beers at the campus pub. That's what we're really looking at here.

Bernard and I were in Geneva earlier last year. They were asking us to fix the problem. The "Canadian flu" is what the fair dealing problem is called in Geneva. We're hoping that what comes forward out of these discussions, and further discussions is that the problem gets fixed and that we are respected very much in that right.

Thank you very much.

**The Chair:** Thank you.

We are going to have to suspend for the votes right now. There should be time for us to come back to hear the presentations from our other panel, so if I could encourage everyone to hop, skip and jump and run back, that would be wonderful.

We are going to suspend. Thank you.

• (1135) \_\_\_\_\_ (Pause) \_\_\_\_\_

• (1225)

[Translation]

**The Chair:** We will now resume.

We welcome Mr. Jean La Rose and Mr. Sky Bridges from the Aboriginal Peoples Television Network; Mrs. Élisabeth Schlittler from the Société des auteurs et compositeurs dramatiques, as well as Mr. Jonathan Frantz and Ms. Lucy Tulugarjuk from Igloolik Isuma Productions, Inc.

[English]

Why don't we go in the order we have on the agenda.

We'll begin with the Aboriginal Peoples Television Network.

[Translation]

**Mr. Jean La Rose (Chief Executive Officer, Aboriginal Peoples Television Network):** Thank you, Chair.

[English]

My name is Jean La Rose. I'm the chief executive officer of the Aboriginal Peoples Television Network and the chairperson of First Peoples Radio, which I will be speaking about in a moment. I am joined today by Sky Bridges, APTN's chief operating officer. We will be alternating as we go through the text.

We are pleased to present today on the theme of remuneration models for artists and the creative industries. Let me speak first about APTN and the role we play in the indigenous television industry.

The launch of APTN in 1999 had an enormous impact on indigenous participation in the television sector. Before APTN, the creative opportunities for indigenous peoples were limited. For the most part, indigenous production took place within the framework of the northern native broadcast access program and the funding provided by Canadian Heritage to the native communications societies.

The societies played a key role in producing indigenous content, especially in indigenous languages. However, the resources available to the sector did not support a great deal of content, and it was not available throughout Canada. APTN was formed by some of the communications societies to meet these challenges, and they are still APTN's members.

One of APTN's goals when it launched was to produce more higher-value content in all television formats, including drama, documentaries, news, lifestyle and entertainment, and to make that content available to all Canadians.

APTN has been a success. You are no doubt familiar with many of our programs, including leading dramas such as *Mohawk Girls*, created by Tracey Deer and Cynthia Knight and produced by Rezolution Pictures, and our more recent reality TV production,

*First Contact*, which takes six average Canadians with strong opinions about indigenous peoples on a 28-day journey into indigenous Canada. *First Contact* is based on an Australian format and is a co-production of Indios Productions and Animiki See Digital Production, APTN's associated production company.

We now support hundreds of hours of original indigenous production in all formats, including our award-winning news and information content. We produce and acquire content in English and French, and in at least 15 indigenous languages, each year.

When APTN launched in 1999, there were only a small number of independent indigenous producers in Canada. Now we commission and acquire content from close to 100 different companies, in addition to our own productions. Collectively, the sector employs hundreds of people in front of and behind the camera. It's a remarkable achievement.

Because APTN is distributed nationally as a basic service on cable, satellite and IPTV platforms, this content is available to all Canadians. It is something in which we believe all Canadians can take pride.

When we consider, therefore, remuneration models for creators, I think it is sometimes important to return to first principles. APTN created a space in the broadcasting system for indigenous expression. Without APTN, the opportunities were almost non-existent, and without opportunities, there was no basis for meaningful remuneration of any kind.

• (1230)

**Mr. Sky Bridges (Chief Operating Officer, Aboriginal Peoples Television Network):** What APTN has done for television, we are now hopeful we can achieve in radio and music through First Peoples Radio, or FPR.

FPR just launched two new indigenous radio stations in Ottawa and Toronto. Operating under the name ELMNT.FM, the CRTC licensed these two stations in June 2017 after a competitive process. ELMNT.FM will offer music, news and information programming, and call-in shows and talk shows from an indigenous perspective and in a popular format. They will also offer indigenous language programming relevant to each market. These stations receive no government funding so they will need to stand on their own in the competitive marketplace.

These stations will provide indigenous musicians with far more exposure and air time than they have ever received on mainstream radio. At least 25% of the music we play will be or feature Canadian indigenous artists. The talent pool is rich and one greater exposure for indigenous music can lead to more air time across other stations as well.

Two stations may not transform the music scene in the same way that APTN has done for television, but it's a start. The increased opportunity for indigenous musicians to earn royalties from airplay is welcome.



We are looking beyond radio too. Indigenous artists have been prolific in the creation of content and have influenced leading bands and entire genres of music. Allow me to direct your attention to a production by the Canadian indigenous production company, Rezolution Pictures, of Montreal.

The movie is titled *Rumble: The Indians Who Rocked the World*. It is an unprecedented documentary feature film about the history of music. Through the portrait of jazz, blues and rock icons, *Rumble* pays homage to the indigenous influences that have transformed popular music despite attempts to censor and eradicate native American cultures throughout history, a musical chapter too often muted that *Rumble* has finally met in front of the stage.

However, success in the mainstream and financial security are not common among these musicians. New digital platforms don't seem to be the answer, with many commentators pointing to the disconnect between how music is more available than ever on digital platforms, but payments to our artists are in decline.

APTN is currently developing a potential indigenous music management arm to assist indigenous artists to develop their careers and tap into available revenue streams.

As you are no doubt aware, live performance still makes up the greater part of musicians' livelihoods, so connecting audiences to indigenous talent is key to supporting this sector.

In addition, as a broadcaster, APTN is familiar with the large selection of content for synchronization with television and film production. This is an area of potential growth for indigenous artists. Through our radio services and music initiatives, APTN is focused on assisting indigenous musicians to take their rightful place in Canada's music landscape.

**Mr. Jean La Rose:** In conclusion, this committee is examining remuneration models for creators. Clearly, artist compensation has to keep pace with changes in technology and how Canadians see and hear the content that they enjoy. At the same time, for many indigenous artists, the main question is still finding opportunities and getting airplay—at all—in mainstream media. APTN, and now FPR and APTN's music management initiative are important steps that have opened and will open doors for indigenous creators of all kinds. These initiatives are enabling indigenous peoples to participate fully and meaningfully in Canadian media, and increasingly all Canadians are taking notice and appreciating the wealth of talent and creativity in our communities.

Thank you for this opportunity. We would be pleased to answer questions even if we have no time to.

**Some hon. members:** Oh, oh!

**The Chair:** All right.

[Translation]

We will now hear from the Société des auteurs et compositeurs dramatiques.

Mrs. Schlittler, you have the floor.

**Mrs. Élisabeth Schlittler (General Delegate for Canada, Société des auteurs et compositeurs dramatiques):** Madam Chair, ladies and gentlemen, we thank you for inviting us to take part in the

review of the Copyright Act. My name is Élisabeth Schlittler and I am the General Delegate for Canada for the Société des auteurs et compositeurs dramatiques, or SADC, and the Société civile des auteurs multimédia, or SCAM.

SADC and SCAM — I apologize for the acronym, which may sound odd to anglophones, but that is the name of the organization — which have had offices in Montreal for over 30 years, are two societies that manage the rights of their Canadian and international members on a wide repertory of dramatic works and documentaries. They have been tasked by their author clients to negotiate, collect and distribute the royalties paid by those who use the audiovisual, radio, and stage repertories. They are both collective management societies within the meaning of the Copyright Act.

SADC represents authors of dramatic works, screenwriters, directors, playwrights, choreographers, composers and stage directors. SCAM represents, screenwriters, directors, and documentary directors. SADC-SCAM represents nearly 2,000 Canadian authors, francophones and anglophones, mainly screenwriters and directors of television series, feature films, cartoons, short films, and web and radio series. It also represents playwrights and choreographers.

By joining SADC or SCAM, the writers authorize us to share their works with the public through telecommunications. SADC's audiovisual repertory includes feature films such as *The Fall of the American Empire*, by Denys Arcand, and series such as *District 31*, by Luc Dionne. SCAM's repertory includes documentaries such as *Roger Toupin, épicier variété*, by Benoît Pilon, and *Un pont entre deux mondes*, by Pascal Gélinas.

In consideration of what authors' rights have contributed, SADC-SCAM engages with authors in negotiating the conditions for the licences it will issue, including to television channels and digital platforms that use the repertories. In Canada, SADC-SCAM has negotiated licences that cover six traditional channels, 20 specialized channels, one pay subscription channel, five digital platforms, one radio channel, and an agreement for cable rights. Thanks to the contracts negotiated by SADC-SCAM in France, Belgium, Luxembourg, and Monaco with television channels and digital platforms such as YouTube and Netflix, as well as its agreements with national authors societies in Switzerland, Italy, Spain, and Poland, Canadian members are guaranteed to receive royalties from the use of their work in those countries.

The remuneration principle that SADC-SCAM stands behind, including in francophone countries in Europe, and which is applied in Quebec, is quite simple: an author must be linked to the work for the duration of its economic life and must be remunerated for all forms of development of that work. In other words, an author must benefit from the success of his or her work and be remunerated fairly by all users of that work, including by television channels and digital platforms.

For that, collective management of rights remains indispensable, especially in the digital age. The current review of the Copyright Act must foster the creation of works and the fair remuneration of authors by better equipping collective management societies. We are calling on the government to ensure that the legislation recognizes the invaluable contribution that authors make to the Canada's economy and culture and establishes their remuneration. It is time to compensate for the many exemptions that were adopted in 2012 and to remember that this legislation is meant to protect the authors. The government has to end the looting of intellectual property resulting from the work done by authors. It has to send a clear message indicating that all work deserves to be paid and that people cannot get everything for free.

In the brief we submitted last May, you will find our recommendations in detail. I will provide a brief overview.

First, we recommend that the lack of legal clarity on the question of ownership of copyright in cinematographic works and audiovisual works be addressed. We believe it is necessary to clarify whether it is a collaborative work between a number of co-authors and to include a presumption of copyright ownership for the benefit of the screenwriter and the director.

• (1235)

This clarification will allow us to negotiate remuneration with Canadian channels and platforms for our members who are directors and who have not been remunerated so far.

Like most countries with a private copying regime, we recommend that the Canadian private copying regime be expanded to audiovisual works and that it apply to every medium used by consumers to reproduce them. This expansion of the audiovisual regime would rectify a situation that is impossible to justify for authors and sister societies with whom we have reciprocal agreements.

We recommend following the European Parliament model and having all digital intermediaries contribute to funding the cultural content that they deliver or provide access to and profit from. We commend the Minister of Finance for trying to find fiscal solutions to e-commerce, but we ask that all taxes that are collected by national companies also be collected by the foreign companies and that a portion of the money be set aside to fund Canadian culture.

We are pleased that Canada negotiated term of copyright in the United States, Mexico, Canada Agreement, finally changing it in Canada to 70 years in order to reflect the extended period of time during which works are being used and to harmonize Canadian legislation with modern foreign legislation.

On behalf of the members of SACD-SCAM, thank you for your attention. I am ready to take your questions.

• (1240)

**The Chair:** Thank you.

[English]

Now we will go to the Isuma Collective, please.

**Ms. Lucy Tulugarjuk (Executive Producer, Nunavut Independent Television Network, Isuma Collective):** [*Witness speaks in Inuktitut*]

I am Lucy Tulugarjuk, executive producer at NITV, Nunavut Independent Television Network, and I work closely with Isuma Distribution International. I am thankful to be invited to attend this meeting.

Isuma is a collective group of companies and people who have been in the business of production, broadcasting and distribution of Inuit-language video content for the past 30 years. We are an Inuit organization but work as a national cross-cultural effort. I work with Jonathan Frantz, Norman Cohn, Zacharias Kunuk, and Sam.

Two of the founders of Isuma are Zacharias Kunuk and Norman Cohn, who are both elders and looking forward to retirement. Jonathan and I are the next generation of Isuma to continue to produce Inuit-made, Inuit-acted, Inuit-produced content, to continue to preserve our culture and language, and to hopefully have more years of our right to have published Inuit art into the media and into the audience at the national and international levels.

When we started, indigenous applications were not eligible at Canada's major funding agencies. Zacharias was among the first indigenous artists to get Canada Council funding. We lobbied for years with the Canada Media Fund and Telefilm Canada to access professional production financing and to help create what is now a rapidly growing Canadian indigenous production sector.

In the process, we made a film that went to Cannes in 2001 and is considered by the Toronto International Film Festival as Canada's best film of all time, *Atanarjuat: The Fast Runner*. That was my first time to be in a feature film as an actress, and from there on, I continued to work with Zacharias and Norman behind the camera and in front of the camera, casting and producing, and I did makeup and scriptwriting.

I did my first scriptwriting and directing a feature film and now we are premiering *Tia and Piujuq*, which is our first children's feature film in Inuktitut, English, French and Arabic. I'm hoping that in the future we will continue to produce more Inuit films so that we can continue to preserve our language and our culture.

I'll pass the microphone to my colleague, Jonathan.

• (1245)

**Mr. Jonathan Frantz (Producer, Kingulliit Productions, Isuma Collective):** Thank you, Lucy.

What has made Isuma possible, in addition to making fantastic films, is the ability to create a sustainable business enterprise in the very remote community of Igloodik, which has a population of only 2,000. It's about five hours north of here.

Through the work of Norman Cohn and Zacharias Kunuk, they figured out a way to create a collective group of companies and non-profit agencies to support the whole process of production from start to finish. They've incorporated for-profit companies, have a non-profit agency that is now recognized by the CMF as a broadcaster, and recently started a distribution company.

It's that fabric of relationships between the organizations that lets Isuma be the largest non-government employer in Igloolik, larger than mining activity and other new forms of economic opportunities in the north, while creating a product that supports Inuit culture and language.

We've now recently started to export this model of indigenous and locally produced production to other nations within Canada. We're working with the Haida Nation and recently launched a film called *Edge of the Knife*, which is in the Haida language, a language spoken by only 24 people left in the world. It's been getting a lot of international and national news coverage on the success of its ability to help restore that language. It's been reaffirming for Isuma to see that this is a model that can be expanded and applied to other areas.

Part of the challenge we're currently facing is the ability to get our content out to indigenous audiences. There are very few distributors in the marketplace and very, very few who support the type of work we do. Indigenous-language subtitled films don't meet the typical standards for investment by distribution companies, and if you don't have a distributor, you're not eligible to apply for Telefilm financing.

The Canadian government has been very great in creating a production capacity—production support—for films, but we feel that there's a bit of a lag in the ability to get films to market. What we're trying to do is look for resources, partners and opportunities to get these important films to the audience members who care about them the most.

Currently, Isuma Distribution is pulling together money. We have very good support from local government agencies. We have created a hybrid system using Internet distribution through our own website—IsumaTV—and through iTunes, and we're in talks with Netflix. We do a lot of community tours to take the films to these remote communities with a professional projection kit so that we can provide the theatrical community screening environment and, again, so people can celebrate the films where they matter most. We also host film screenings in small independent theatres, recognizing that it's not commercially viable to try to sell weeks of a run for a theatre that sits 600 people, but it's very viable for a small 50-seat theatre to run a few days here and there.

That's what we're hoping for more support on. A big part of the ability to distribute these films in remote communities is improved Internet connectivity. The north faces one of the most expensive and poorly served Internet connections within Canada. It's 10 times the price and one-tenth of the speed of the Internet you get down south, so there is no ability for these consumers and audience members to easily access the content that we're creating.

I'll leave it at that for now. Thank you very much for your time.

**The Chair:** Thank you.

I have a question for the committee members, just as a possibility. We have 10 minutes left. I was going to propose that we could do five minutes for each party. It would take us five minutes over, but it would give everybody a chance to get five minutes in. Do I have agreement to proceed that way?

**Some hon. members:** Agreed.

**The Chair:** Perfect. We are going to begin with Mr. Hogg, please, for five minutes.

● (1250)

**Mr. Gordie Hogg (South Surrey—White Rock, Lib.):** Thank you.

Thank you very much for your submissions. There seems to be some common themes among each of the three presenters, and I wonder if you've heard these comments from each other before.

The big issues appear to be promoting, preserving and protecting the arts that each of you are specifically engaged in. Do some commonalities exist? As we're trying to look at methods of supporting and promoting the things you're doing, do some common themes run among all three of your groups, and if so, what might those be?

**Mr. Jean La Rose:** Hearing from everyone, I think certainly from our end here at the table, the big issue for us is finding opportunities to expose the content we create, and it's defining ways to expand the opportunities we currently have.

When it comes to the remuneration model, as we said earlier, you usually generate some remuneration when you have an opportunity to send the material around and generate some revenues for it. In the case of indigenous-language programming, those opportunities are few and far between and they're sometimes restricted to a community. With subtitling we can broaden it—and we certainly have—but again, the challenge is to bring it to wider audiences to generate, hopefully, new revenues to create new content.

APTN has also set up a distribution arm that we are working with a lot of our indigenous producers to bring that content to. MIPCOM, MIPTV, MIP Cancun, all those opportunities around the world create totally new venues for our productions, and it's good to hear that Isuma is doing the same. Maybe there are ways we can work together.

Certainly from the point of view of the regulation, what seems to happen is a stronger opportunity for indigenous peoples in the country to have that content made available. There needs to be both the legislative and the policy work done to give us that range of opportunity right now. The Broadcasting Act, for example, refers to the special place of indigenous people, or aboriginal in the case of the act. What is a special place?

As resources become available—we're one of the richest countries in the world, and if we're saying we don't have the resources, then I have to guess we'll never have them. I think the role of this committee and Parliament and the government is to find ways to put some action behind those words and give us opportunities to reach out to the rest of the world and be able to tell our stories to everyone.

I'll leave others the opportunity to speak.

**Mr. Jonathan Frantz:** You don't have to look too far to see examples where film and television have been used to preserve culture and language. The French-Canadian film industry is very strong and has a unique identity. That was created a while ago with the Parti Québécois and then the creation of SODEC and investment of serious money and long-term commitments.

We're a small independent group and have a very successful track record of film production, but we're still functioning in this unofficial status year by year, trying to access money to keep things going. If there was a more stable income, a long-term commitment to focus on indigenous language and see media as a modern tool to promote so many of these values that I think we all share, it would be tremendously valuable.

[Translation]

**Mrs. Élisabeth Schlittler:** As far as SADC is concerned, I might add that since we represent authors, we are more interested in the Copyright Act. I am not currently discussing models. We truly need legislation to give us leverage and the chance to negotiate without having to go to court. That is what we need to guarantee that our authors get paid now. Legislation is what can truly help us.

We also have to give some members of SADC-SCAM, the directors, the recognition that they currently aren't getting. We think that with some legislation we could achieve our goals.

[English]

**The Chair:** That brings you to the end of your time. You only have 15 seconds left.

**Mr. Gordie Hogg:** I will just say something really quickly.

You've each made reference to the principles or values that I think reflect us as Canadians, wanting to ensure there are successes in the multicultural nature of our country and particularly the heritage each of you bring. I look forward to being able to find some of the ways those values and principles become operationalized, whether it's the Copyright Act or a number of others. If there are commonalities, which I was trying to get at, and you made reference to some of them, those are the pillars we need to build on in our work. Thank you for that.

•(1255)

**The Chair:** Mr. Blaney.

[Translation]

**Hon. Steven Blaney (Bellechasse—Les Etchemins—Lévis, CPC):** Thank you, Chair.

This is an interesting conversation.

Welcome, Mr. La Rose. We know APTN. It is part of our media environment. You said that you launched two radio stations. Do you have a presence on digital platforms? Do you have a strategy for extending your channel's reach and also with regard to the related royalties and copyright? Can you comment on that briefly?

**Mr. Jean La Rose:** The APTN channel is very present on digital and online platforms. We provide a large part of our programming online. We're trying to expand the distribution of our products online. We're looking to establish a partnership with a major distributor or with another distributor that would broadcast our programming around the world.

In terms of radio, our goal is certainly to create opportunities for our songwriters and musicians to receive copyright royalties, which currently isn't happening.

From a legislative perspective, it may be worthwhile to look at SOCAN, which pays royalties only to artists who have joined the organization. The artists must join the organization, but not all Indigenous artists are aware of this. We're working on encouraging Indigenous artists to join the organization, which many of them have never done before. If SOCAN could be required to take a proactive approach and to ensure that the creators join the organization in order to receive their royalties, it would certainly be very beneficial to our community.

Mr. Bridges can tell you more about our digital activities, but also about royalties and availability.

**Hon. Steven Blaney:** Okay.

[English]

**Mr. Sky Bridges:** APTN is exploring how we can go beyond our current borders in terms of our current digital offerings which are on our website. It is an important strategy for us to move forward on that to offer an OTT offering such as an Netflix model.

It is imperative in terms of our looking five and 10 years from now as consumers demand and consume content in different ways. That landscape is very challenging on the financial side. It does not have the financial structure, security if you will, of linear television. We have to move forward on that in a respectful and risk management way.

[Translation]

**Hon. Steven Blaney:** Thank you. In short, you're concerned about opportunities, challenges and the need for support.

Ms. Schlittler, you said that collective societies must be given tools. In your recent remarks, you also emphasized the need to recognize copyright ownership for screenwriters and directors. Can you elaborate on this issue?

**Mrs. Élisabeth Schlittler:** Here's an example. As it stands now, as soon as we approach a television channel to obtain rights, if the channel refuses to negotiate with us, we must take legal action in order to negotiate, because the act doesn't require the channel to appear before the Copyright Board of Canada.

**Hon. Steven Blaney:** Do any countries have this requirement enshrined in legislation?

**Mrs. Élisabeth Schlittler:** Yes. Italy and France include this requirement in their legislation. The French legislation specifies who must be paid and how and deals with collective management through proportional remuneration.

I wouldn't necessarily go that far for Canada. However, the Canadian legislation must really help us in this area so that we can avoid legal proceedings and expenses. For the time being, it isn't doing so.

**Hon. Steven Blaney:** Thank you.

**The Chair:** Mr. Nantel, you have the floor.

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

Thank you all for being here.

Ms. Schlittler, about two years ago, I had the opportunity to meet your director general, Mr. Rogard. The goods and services tax, or the GST, storm imposed on over-the-top television services in Canada really started during this meeting. He was right. By imposing the GST on online content providers, we ensure that we know who's doing what and to what extent.

Thank you very much. We appreciate your recommendations.

In both cases, your two organizations can vouch for the importance of discoverability. Mr. Bridges mentioned the low copyright royalties paid by music streaming services. However, in both cases, I think that the success of APTN, a channel that I know much better, is tied to the fact that its programming isn't confined to a given station on my Vidéotron terminal. It's part of the package, and I see it come through. Are content creators concerned about discoverability within this wealth of content, given the drop in copyright revenues per play or per view? We also mustn't forget to preserve our market share. Wouldn't you agree?

• (1300)

**Mr. Jean La Rose:** Discoverability remains an issue for APTN, because it's one thing that CRTC hasn't mandated. Our channel may be part of the skinny basic packages or may be one of the mandatory channels in some locations. However, in other places, we're relegated to channels 300, 400 or 500.

**Mr. Pierre Nantel:** Really?

**Mr. Jean La Rose:** Often, people see a great deal of snow before finding us, and it's easy to get lost in a snowstorm.

Discoverability is really very important. I believe that APTN is one of Vidéotron's first 10 to 15 channels. We're grouped with other channels in Rogers' skinny basic package. This helps a great deal with our discoverability. However, other distributors relegate us to the 300-level channels, and the skinny basic television package includes channels 1 to 50. Sometimes, no one can find us.

This greatly affects our revenues. Unfortunately, Numeris doesn't measure APTN's audience. Instead, it measures a Canadian audience in which our audience may or may not be included. Often, when Numeris has trouble forming a group to collect certain audience data, as was the case last spring in the west, it simply doesn't measure the data. In these situations, no data on APTN is available, which could theoretically indicate that no one was watching us. Yet this is far from the case.

The negative consequences are undeniable. For the sake of our companies and our national or cultural sovereignty, it may be necessary to ensure that all our creations are sufficiently promoted so that the audience can discover them more quickly and easily. This would result in much higher royalties for all the artists and people who contribute to content creation.

[English]

**Mr. Jonathan Frantz:** Sorry, did you mean specifics about about discoverability?

For us, it's such a unique market. I think the films are always made.... Zacharias says his main audience is always his Inuit audience, and then it sort of ripples from there. For us, the issue is more about getting the films to that main audience. They know what we're doing. They like what we're doing. It's just getting a way for them to see it.

In terms of the revenue model, for us on the distribution side it isn't the same as with a broad national spectrum. We're more interested in trying to count seats or views and show that the production investment that we and the government are making is justified by the people who are seeing the films. Whether or not they're paying for them is of less significance for us. It's just important that people have the opportunity to see them, and that justifies the production expense and the time and effort that go into creating these films.

**Mr. Pierre Nantel:** Thank you.

[Translation]

**The Chair:** I want to thank all the witnesses.

[English]

Thank you to all of you, and thank you for your patience as well.

The meeting is adjourned.





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