Dear Honourable Members of Parliament,

I would like to take this opportunity to address some inadequacies in the current copyright system and to call for action.

Principal recommendations

I am very much in favour of just and appropriate compensation for all content creators. That being said, I am opposed to people using the copyright system to effectively HIDE works which were produced for public consumption in the first place and which ought to remain accessible for future generations to benefit from.

What I sincerely want to see is the establishment of a system that would COMPEL rights holders (as well as television stations and organizations that hold archived videos) to cooperate with good-faith requests for older works, including works that are already in the public domain as well as works that are not in the public domain. If the work is not yet in the public domain but the requestor (such as a library, a charitable foundation or an individual) offers, in good faith, to pay all necessary compensation to any rights holders that need to be compensated, in exchange for a copy or a screening of the work, then the holder of the work should be compelled, under statute law, to negotiate an agreement and/or fulfil the request. They should not be allowed to completely ignore the request or dismissively give a blanket 'No'.

In suggesting this, I am referring to all copyrighted works in general, but more particularly to archived television broadcasts in the following categories -

(1) full newscasts and interviews with public figures from decades past, which common sense tells us should be fully available for consultation and research (major libraries have long had local and national newspapers archived on microfilm for consultation and research; the videos of local and national newscasts would complement those newspapers and would greatly enhance our country's priceless historical record)

(2) classic children's television programmes, most especially *Mr Dressup* and *Polka Dot Door*, which are an indelible part of Canadian heritage and, moreover, are not specific to a single time period. They are not filled with outdated or archaic cultural references; instead, they are filled with educational material and music that would be extremely stimulating and beneficial to children of any generation. I am certainly not the only parent who would want to have the OPTION of giving my children these programmes to view and learn from, instead of just giving them whatever is easily available at the current time.

For these videos to be inaccessible, and for copyright to be used as a reason to keep them inaccessible indefinitely, is not at all beneficial to our society or to our

children's futures. (As you know, the fact that the works will eventually pass into the public domain does not actually guarantee that the holders of the archives will automatically provide them to the public at that point in time, unless they are obliged to do so by law!)

The marketplace, functioning under the current legislation, has been failing to make these types of works accessible to people who could derive tremendous intellectual and developmental benefits from them. It is time for the government to step in. It is time for Parliament to use its legislative power, to use the power of statute law, to speak up on behalf of Canadian consumers and Canadian parents, to say that the hiding of important older works must stop. Giving creators appropriate compensation is entirely fair and commendable - but encouraging the practice of putting archived educational programmes behind closed doors and keeping them away from people who could actually learn from them and benefit from them is not. (It does not even benefit the creators - if the work is labelled 'unavailable', then the creators are not receiving money that they could be receiving if the work were available!) These works need to be accessible, particularly when there are individuals and libraries ready and willing to pay for them.

There are times when any benefits that might accrue to the copyright holder by keeping an audiovisual programme hidden are outweighed by the positive impact that the availability of the programme would have on the general population. This countervailing public interest ought to be recognized and taken into account.

Further recommendations

Parliament should make it clear that the holder of a work that has passed into the public domain should facilitate, rather than restrict, access to the work for any interested member of the public.

Parliament should urge the government to fully fund the careful conservation of all existing archives, so that the good work that has already been done will not ultimately be wasted.

Parliament should encourage, not discourage, the creation and proliferation of archive repositories for artistic works of all kinds, so as to minimize the disappearance of human cultural and artistic heritage. Such archive libraries should be given wide discretion to build and preserve their collections. They should be protected from liability for copying orphan works, and they should be fully exempted from any barriers to the circumvention of 'digital locks' (particularly where the societal interest in preserving a work for posterity outweighs any fears that the party wishing to impose the 'digital lock' might have).

Parliament should revisit the views expressed by respected experts such as Michael Geist at the time of the 2012 amendments to the Copyright Act, and amend

sections which those experts criticized for being overbroad, unnecessary or repressive.

To that end, I concur with the view, expressed in many of the other submissions made to this Committee, that the 2012 amendments regarding the circumvention of digital locks are extremely draconian and must be significantly amended so as to take into account the existence of the right of fair dealing, the legal mandates given to libraries and museums, the importance of cultural archiving, and so on.

A call for a very specific amendment

Regarding subsection 30.01(5) of the Copyright Act, I strongly advise Parliament to delete the following words:

'However, the student shall destroy the reproduction within 30 days after the day on which the students who are enrolled in the course to which the lesson relates have received their final course evaluations.'

and replace them with the following words:

'If the lesson contains information that is subject to the Personal Information Protection and Electronic Documents Act, then the student shall dispose of that information in accordance with that Act. Otherwise, the student may retain the lesson, provided that the student does not republish it, redistribute it or use it in a way that is inconsistent with the Copyright Act.'

Reasoning: For one thing, the existing provision appears to be virtually impossible to enforce. Furthermore, the interests of the author of the lesson would not be prejudiced if the student does not republish or redistribute the lesson, but simply retains it for private review or for any other permissible, private, personal, fair use. Students who take notes in class, or receive handouts from the teacher in class, are not asked to destroy them after a period of time! The student has paid for the course and expects to acquire the knowledge and the course materials being offered. I do not see how it does any harm to let the student privately review the lessons from that course, even if it is more than 30 days after the course has ended, the same way that they could review a physical handout received in class. It can only be beneficial to the student's long-term knowledge and expertise!

Some people keep up their expertise solely through continuing professional development courses, but others may do so by occasionally re-reading their university textbooks and course notes! For there to be a legal provision that would purportedly deprive a student of the opportunity to review course materials which they already paid for is unfairly prejudicial to the interests of the student and does little or nothing to advance the interests of the teacher. Indeed, I would think that teachers, and society in general, would be happy to see that there are students who are conscientious enough to want to review and remember the lessons they received in each course! After all, the purpose of education is not just to get the student past the 'final course evaluation'! Every educator hopes that the student

will actually absorb and gain the knowledge that the course provided, and maybe make use of that knowledge in their academic or professional careers! To insist that the student delete any copy of the lesson within a mere 30 days is to deprive the student of a RESOURCE that could help them with retention of knowledge, a resource that they might still want to turn to in the course of their careers. The existing provision is morally unjust and fails to reflect the true aim of education. It needs to be amended as indicated above.

I sincerely hope that these recommendations will be enacted as a result of this statutory review. Thank you for your time.

James Lee, citizen of Canada and resident of Ontario