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Chair

Mr. Dan Ruimy

Standing Committee on Industry, Science and Technology

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• (1535)

[English]

The Chair (Mr. Dan Ruimy (Pitt Meadows—Maple Ridge, Lib.)): Good afternoon, everybody.

Happy Halloween. I thought a ghost would pop up somewhere, but that wasn't the case.

Welcome to meeting 135 as we continue our study on the five-year statutory review of the Copyright Act.

Today we have with us as individuals, Tony Belcourt, arts and cultural knowledge keeper and Johnny Blackfield, certified blockchain professional, by video conference from North Carolina. We're looking forward to your presentations.

We're still waiting on one more, maybe she'll pop in, Lou-ann Neel. She's a Kwagwalth artist from Victoria, British Columbia. Hopefully she'll be able to join us.

Finally, from the Indigenous Culture and Media Innovations, we have Monique Manatch, executive director.

You'll all have seven minutes to present and then we'll go into our rounds of questions back and forth.

We're going to start with Mr. Belcourt. You have seven minutes.

Mr. Tony Belcourt (Arts and Cultural Knowledge Keeper, As an Individual): Thank you, Mr. Chair and honourable members.

My name is Tony Belcourt. I'm known as an indigenous advocate whose career includes being the founding president of the Native Council of Canada, 1971 to 1974, and the founding president of the Métis Nation of Ontario, 1994 to 2008. I was a member of the board of governors of the Métis National Council and served as the Métis nation ambassador to the United Nations and the Organization of American States. I took part in the negotiations on the draft UN Declaration on the Rights of Indigenous Peoples. I am also a writer, producer and director of documentary films. I am semi-retired, and I'm now regarded by many as a Métis elder and indigenous arts and cultural professional.

I was involved in the arts very early in my career. In 1969 and 1970 I was vice-president and managing director of Team Products in Alberta and Mackenzie. Team Products was a co-operative of over 500 Métis and first nations artists and craftspeople from throughout Alberta and the Mackenzie Valley of the NWT.

The production and sale of arts and crafts in the 1960s and 1970s was an essential source of income for our people. It supplemented living off the land and seasonal employment. Today the sale of art and crafts is a mainstay of the indigenous economy in many communities and households. According to 2011 Canadian census data, there were over 136,000 artists in Canada who spent more time at their art than any other occupation. Of those, 3,700 are indigenous artists, representing about 2.7% of all the artists.

Indigenous artists today are achieving great success in the art world. Until a short while ago only regarded as “craft” by such institutions as the National Gallery of Canada, indigenous art can now be found in galleries throughout the world. Art that once sold for less than \$100 is now sold in auction houses for tens of thousands of dollars. Indigenous artists now command commissions in the tens of thousands of dollars.

While there has been considerable positive change for indigenous artists who today find markets that were unheard of 50 years ago, problems of ownership and authenticity are manifest. Renowned Canadian aboriginal artist Norval Morrisseau sold some of his paintings on the street for literally pocket change. In 2014 his painting *Figures in a garden* sold at auction for \$50,874 U.S. Norval's story is not unique. Many aboriginal artists struggle in poverty as the resellers, forgers and imposters get rich. A trial in Ontario recently revealed an alleged wellspring of hundreds of fake paintings purported to be the work of the famed Anishinabe artist, and is threatening Norval Morrisseau's legacy.

Noted indigenous artist Simon Brascoupé asked me to bring this message to the committee: “The Copyright Act does not cover 'cultural rights', the intellectual property rights associated with a cultural group, in this case indigenous peoples cultural property held in common, such as distinctive art, design, dance, etc., practised today or in the past. Indigenous peoples may have 'laws' which are practised within a group that may include passing on of intellectual property orally from one generation to another or from one individual to another.”

Cultural rights are recognized by the United Nations Declaration on the Rights of Indigenous Peoples, and should be recognized under copyright law. Article 11, sections 1 and 2, read as follows:

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent....

Canada is a signatory to the United Nations declaration, and the Prime Minister has pledged to implement its provisions with Canadian law. As an act of reconciliation with indigenous peoples, the Copyright Act must be amended accordingly.

Master carver Derek Manik Edenshaw asked me to bring to your attention this message concerning fraudulent indigenous art: "I come from a family of artists of many mediums. A lot of my cousins, like myself, were fed by native art growing up. Each village on Haida Gwaii depends on the economic benefits of a thriving native art market. People see the success of northwest coast masters and assume that making native art makes us all rich. That's quite simply untrue. There is an automatic industry standard 100% markup on native art. After the overhead costs of tools, materials and workshop space, west coast artists get a very small hourly wage if you broke it down."

He continues, "There has always been knock-offs and fake first nations art, and why wouldn't there be. It's the best. We have been continuously investigating various methods people use to create and get their fake art to market. These fraudulent pieces are directly taking food out of the mouth of first nations families that have limited options beyond resource extracting jobs, which tear at the core of what makes us indigenous."

Finally, there is the issue that Canada has yet to amend the Copyright Act to provide for an artist's resale right. Others, including CARFAC and Access Copyright, have appeared before this committee and have made excellent presentations about this matter. However, I would respectfully like to suggest that the recommendation that the artist's resale right be limited to sales through public auction or through galleries would have a serious negative impact on indigenous artists. Most depend on direct sales rather than sale by auction or through galleries.

Recently I've been working with G52, a private company, on a small ad hoc indigenous artist collective to pursue development of an indigenous art registry using blockchain technology. Our goal is a platform that will safely and securely allow indigenous artists to authenticate their work in a user-friendly online environment that foments artist collaboration, display, sale and purchase of art. Indigenous artists would govern the database.

This project is bringing indigenous artists, curators and academics together for a formative meeting in Toronto next month. It is our intention to undertake consultation with artists and members of the indigenous community to create a registry and user platform that will address many of the issues raised before the standing committee. We believe such an indigenous art registry could assist in tracking the sale and resale of indigenous art and, therefore, make possible the extension of the artist's resale right to those artists through this new technological process.

In any amendment to the Copyright Act to provide for an artist's resale right we urge this committee to recommend that the process through which the artist's resale right would apply be worded in such a way as to allow that right to be open to the form of direct sale.

Again, I thank you for the opportunity to appear before this committee, and we embrace the opportunity to work with all of you, and the Government of Canada, in assuring the rights and protections of indigenous artists and their works, which are so clearly an indelible part of our history, culture and our future.

Thank you.

• (1540)

The Chair: Thank you very much.

We're going to move to Indigenous Culture and Media Innovations, Monique Manatch.

Ms. Monique Manatch (Executive Director, Indigenous Culture and Media Innovations): Are there no questions?

The Chair: No, we're going to do all the presentations first, and then we'll go on to the questions.

Mr. Tony Belcourt: What about Johnny?

The Chair: All right, we'll give you some time.

We're going to go to Mr. Blackfield, a certified blockchain professional.

You have seven minutes.

Mr. Johnny Blackfield (Certified Blockchain Professional, As an Individual): Thank you very much, Mr. Chair.

My name is Johnny Blackfield. I'm appearing here today as a certified blockchain professional. My goal is to reiterate what Mr. Belcourt just mentioned about using blockchain for an indigenous art registry. My goal today is to tell you a bit about blockchain and then tell you how it's effective in creating an indigenous art registry.

I want to start by telling you what a distributed ledger is. A ledger forms the foundation of accounting, a system to store accounting information and transaction information. A distributed ledger is a database that can be shared across multiple sites, geographies or institutions where all the users within the system can have access to the ledger either via copy or by connecting directly to the larger database. Any changes made on any one of the ledgers will be reflected on all the ledgers that currently exist.

Blockchain is fundamentally an online digital ledger system to record transactions and events. It's built on a distributed network of nodes all interacting with each other and holding an exact copy of the ledger. In its purest form, it is also a decentralized network of nodes that verifies every transaction recorded in the ledger. No central authority is required to authenticate or validate transactions.

The essential properties of blockchain that make it so useful include that it is immutable or irreversible. Once transactions are recorded in a blockchain, they are cryptographically sealed and made irreversible. This prevents double spending, fraud, abuse or manipulation of transactions, which plagues most databases.

The second property is that it requires no intermediaries. Blockchain technology, through the use of cryptographic proof, allows two parties to transact directly with each other without the need for a trusted third party.

Finally, it is transparent. In a public blockchain, every transaction on the blockchain is recorded and is available for anyone to review. For example, for the most common blockchain available today, Bitcoin, you can trace every Bitcoin transaction back to the creation of that coin.

The key technological attributes of a public blockchain include a distributed peer-to-peer ledger. As I mentioned, it's a database with multiple relay points or nodes that all contain an exact copy of the transaction ledger. A node is essentially a computer, a server or a group of computers that forms a single relay point in a blockchain network. Each node talks to every other node in a peer-to-peer fashion. Each node processes and verifies transactions in a blockchain.

In terms of a block, all the transactions that occur in a blockchain are recorded in a block of a certain size. In Bitcoin, that block size is one megabyte. In Bitcoin cash, it's eight megabytes. A block is essentially just a bunch of transactions coming together. Once a block has been processed, it is permanently connected to the previous block using cryptography. Many blocks together form a chain of blocks, or blockchain.

The fourth property is a consensus mechanism. Since blockchains are decentralized with no leader or central authority to make decisions, the nodes need a dynamic way of reaching agreement in a group known as consensus mechanisms. A consensus makes sure that an agreement is reached within the nodes, which could benefit the entire group as a whole.

There are, essentially, two types of blockchains. Public blockchains rule the cryptocurrency world. Enterprise blockchains focus on permissioned blockchains. Public blockchains are fully decentralized and fully transparent. The blockchains are secured by economic incentives and cryptographic verification. There is no reversal of transactions. Confirmations are slow. There are limited privacy protections, but the costs of transactions are low. As I mentioned, Bitcoin, Ethereum and all cryptocurrencies are public blockchains.

A permissioned blockchain, which is the one we would recommend for an artist registry, is a quasi-decentralized, hybrid approach to a blockchain. The consensus process is controlled by a pre-selected set of nodes. Read permission of the blockchain is

restricted to participants. There are options for the public to do limited queries. The participants can agree to rule changes, transaction reversals and modification. Near-time confirmation of transactions are possible. A greater degree of privacy protections is allowed, and transaction costs are agreed to by the consortium. It is also called a consortium approach to blockchains.

• (1545)

I told you a little about blockchain, and now I'll start with the primary uses of blockchain technology. Number one is the transfer of value. Blockchain allows for secure, low-cost, near real-time transfer of value between two parties without the need for a trusted third party intermediary. It forms the infrastructure to power functional digital currencies or cryptocurrencies.

Number two is record keeping. Although not the best mechanism to store large volumes of data, blockchain, through its distributed and decentralized ledger technology, offers a highly reliable, secure and low-cost mechanism for record keeping. Records in a public blockchain are immutable and secured through cryptography. Popular applications of blockchain for record keeping include digital identity, credential management, tokenization of financial securities, and audit trails for supply chain and logistics, financial transactions and government compliance.

Number three is that they are smart contracts. Smart contracts are digital contracts created by computer code and programmed to trigger a transfer of value and information under certain conditions. For example, a sale of artwork would be controlled by smart contracts. Popular applications include automated governance of regulatory compliance, trade settlements, clearing, etc.

Blockchain has been making the news lately in several new cases. I've picked a few that were really interesting and relevant. Most of us have sent an international wire transfer using SWIFT. Right now, SWIFT would take anywhere from one to three days to complete a transfer. SWIFT has started experimenting with blockchain technology and has been able to do transfers in as little as two hours, as opposed to three days.

Walmart has created a blockchain, along with certain Chinese retailers, to help monitor food safety and food supply chains in countries like China, where you don't have as much transparency.

One that is of particular interest is Reebok, because one of the challenges Reebok has had as a shoe company, is that a number of counterfeit shoes are coming into the market. Reebok has formed an alliance with one of the major stores called Major, essentially taking brand new shoes created by Reebok, giving them each a unique identifier and burning them onto a blockchain so that any shoe that is not listed there would be known to be counterfeit, whereas any shoe listed there would be authentic.

Finally, I have a homegrown example. IBM will now be implementing a blockchain solution to track marijuana supplies as they move up the supply chain from farm to distributor to retailer to consumers in British Columbia. They're creating a system that puts the entire supply chain on blockchain so there's incredible transparency and they know where each party comes in and out of the system and they can distribute payments to everyone down the blockchain.

• (1550)

The Chair: Sorry to cut you off, Mr. Blackfield. We are running a little bit over, if you can try to wrap it up. Thanks.

Mr. Johnny Blackfield: Sure.

Now that we've covered what blockchain is, I'll talk about some of its uses to empower artists.

Jacqueline O'Neill, executive director at Blockchain Art Collective, pretty much says that resale rights don't exist in North America for artists. Specifically, as Mr. Belcourt mentioned, artists who sell for thousands more than they initially sold for get nothing, whereas blockchain technology will allow them to get a piece.

Specifically, the benefits of blockchain technology in an indigenous art registry include tracking physical or digital art sales. You can do digital art sales through digital signatures. For physical art sales, there's technology called CryptoSeal, which allows you to create a digital fingerprint for physical art and allows you to track secondary sales.

Regarding art authentication and provenance, blockchain will allow every indigenous artist to register their art on the blockchain, and they will have a claim to that art for eternity. Blockchain can also help improve resale rights. Using a blockchain art registry and doing sales through that, the system can automatically take a percentage of every secondary sale and store it for the artist as a royalty fee.

In conclusion, there are many benefits to blockchain, specifically simplified transactions, immutable data, increased transparency and increased trust; however, there are also some concerns with using blockchain, specifically scalability issues or lack of blockchain literacy, user interfaces, etc. All of them are still evolving. My conclusion is that, although there is tremendous potential to empower artists through blockchain technology, certain technological and commercial challenges are also being worked on right now.

I believe the future is really looking bright for this technology for indigenous art.

That concludes my presentation.

The Chair: Thank you very much.

I was remiss in making a connection between Mr. Belcourt and Mr. Blackfield. They're working together to create an indigenous art registry and using blockchain as a potential solution. I wanted to make that connection for you.

We're going to move to Lou-ann Neel.

You have seven minutes. Thank you.

Ms. Lou-ann Neel (Kwagiulth Artist, As an Individual):
[*Witness speaks in Kwak'wala*]

I've introduced myself, Lou-ann Neel. One of the names that I carry is Ika'wega. I come from the Mamalilikulla and the Kwagiulth of the Kwakwaka'wakw, the Kwak'wala-speaking people. I acknowledge the Lax Kw'alaams people for always making me feel so welcome in their ancestral lands.

I want to speak today, mostly from the heart as an artist, about some of the concerns I've been hearing over the last 30 years in my volunteer work with artists all throughout the province of British Columbia.

One of the main concerns we have is the appropriation of our traditional art forms. They have been appropriated across the world. All of these appropriations are impacting directly our ability to participate in our own industry, our own market, and to have control over the things that come from our families and our nations.

Our traditional art forms are owned by our people. They are inherited rights that are passed down from one generation to the next. I come from an artist family. I am now the seventh generation in my family to continue practising our artistic traditions. These rights are inherited through our potlatch system, and they have very strict rules concerning them: who gets to create and the levels and degrees at which people train, become apprenticed and then become mentors themselves.

Some of the concerns that I hear are around the lack of support for indigenous artists across Canada, and in B.C. particularly, where we used to have a provincial arts organization called the B.C. Indian Arts and Crafts Society. That society folded in 1986. We've been 30-plus years without any kind of organizational support for our artists. This is very concerning, because it means that there is no regulatory body or advocacy body watching out for the very things that my colleagues have talked about with this indigenous art registry.

Some of the practical solutions that artists have asked me to share today are around having a really thorough analysis of the Copyright Act, the copyright office, Canadian Heritage, the United Nations Declaration on the Rights of Indigenous Peoples, section 35 of the Constitution, the royal commission, the TRC, and in B.C., the Status of the Artist Act—an analysis of how all of these things fit and work together and can create solutions to address some of the concerns we have.

Our artists continue to operate daily at under poverty levels. One of the studies that was done back in 2012 here in B.C. by the Indigenous Tourism Association found that in Vancouver alone, the tourist industry sold artworks, or rather copies of our artworks—some of them are blatant copies and rip-offs—and 88% of that indigenous-themed market has nothing to do with our people, any of our people. We do not see the proceeds coming back to our communities. We don't see royalties. Permissions have not been granted for the use of many of our designs in the first place.

What we want to do is to propose a national indigenous arts service and advocacy organization. Each of the provinces would follow suit and support this, provincially, through their respective arts, culture and language organizations.

Our arts are intertwined with our language and our social, political, economic, cultural, legal, intellectual and governance structures. I want to point out that some of the most popular art forms that are sold in the world today carry symbols and shapes that only come from this part of the world on the coast.

If you look in the ancient history of art all around the world, you will not find the design that we call the “ovoid”. You will not find a split u, and many of the shapes that comprise our traditional art forms. They were invented here. They were created by our people and they continue to be maintained by our people. We want to continue protecting our art for future generations. That's our role, responsibility and obligation as artists.

● (1555)

I want to propose to the committee—I'm not sure about the extent or the scope of your influence on this, but I hope that you'll carry this message to your colleagues in other departments that oversee these kinds of things—that we want to have this national arts organization to work closely with CARFAC and CARCC. We have good relationships with these two organizations and we'd like to continue pursuing that.

We'd like to have a national organization that will educate the public. People take our art because they don't know any different, and they don't know any different because we're not actively and proactively informing Canadian citizens about whether it's appropriate to take designs. We also want to see a great deal more consultation with our artists in respect of the Copyright Act. Currently, the act does not specifically address communally owned property, familial-owned property or properties held by the nation. We want to elaborate on these things, but we feel that a coordinated approach is very much necessary.

I ask the committee to consider making these kinds of recommendations to your colleagues and involving more artists across the country in these discussions. We need to create solutions

that are going to enable us to take back our proper roles and responsibilities with respect to our art and continue the tradition into the future.

[*Witness speaks in Kwak'wala*]

Thank you.

● (1600)

The Chair: Thank you very much.

Now, finally, we're going to go to Monique Manatch.

Ms. Monique Manatch: [*Witness speaks in Algonquin*]

Welcome to our unceded, unsundered Algonquin territory.

[*Witness speaks in Algonquin*]

My name is Monique Manatch. I am a member of the Algonquins of Barriere Lake and the executive director of Indigenous Culture and Media Innovations.

Mr. Chair and honourable members of the committee, I would like to begin by stating that Canada needs to create a fair and balanced intellectual property system that works for everyone, including indigenous peoples in Canada.

Over millennia, indigenous peoples in their knowledge systems have developed a wealth of traditional knowledge and traditional cultural expressions, which they rightly wish to protect and promote using their constitutional rights as well as the intellectual property system.

In the Constitution Act, 1982, the rights of the aboriginal people of Canada were included in section 35:

The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

Subsection 35(1) did not create rights but rather provided for the constitutional recognition and affirmation of inherent rights created by aboriginal law. Under subsection 35(2), “aboriginal peoples of Canada' includes the Indian, Inuit and Métis peoples of Canada.” The Canadian Charter of Rights and Freedoms also contains a key provision protecting aboriginal and treaty rights.

Neither the oral nor the written promises in the reconciled treaties indicate that the nations or tribes delegate or transfer any jurisdiction to the Queen, Canada or the provinces with respect to their traditional knowledge and traditional cultural expressions. The courts have affirmed, according to the terms of most treaties, that the British sovereign did not give Indians rights. The indigenous nations gave the British sovereign specific rights or responsibilities in their territory.

This statement gives notice to the inconsistency between the federal Copyright Act and the constitutional rights of aboriginal peoples. The Copyright Act should be amended to be consistent with the constitutional rights of aboriginal peoples.

As a first step, the act should be amended to provide and promote the traditional knowledge and traditional cultural expressions of aboriginal peoples with a non-derogation clause. A non-derogation clause is needed for the protection and promotion of traditional knowledge and cultural expressions.

Traditional arts may embody both traditional knowledge, the method of making; and traditional cultural expressions, their external appearance. Many forms of ceremonies, powwow, designs and totems of this heritage reside in the traditional custodians of the stories or images. They include oral traditions, literature, designs, sports and games, visual and performing arts, dances and songs. These manifestations carry not only the sacred knowledge but also the law of aboriginal peoples.

The purpose of this non-derogation clause is to clarify that aboriginal knowledge and cultural expressions are protected and promoted under subsection 52(1) and section 35 of the Constitution Act, 1982, and section 25 of the charter.

In indigenous communities it is usually a group or society, rather than an individual, who holds the knowledge or expressions. These groups monitor or control the use of these expressions to pass on important knowledge, cultural values and belief systems to later generations. The groups have authority to determine whether the knowledge, expressions, stories and images may be used, who may create them and the terms of reproduction. Before the copyright law was developed in the Canadian common law and statutory law, the various confederations, nations, tribes, clans and societies created, preserved and nourished this knowledge and these expressions.

At a minimum, the Copyright Act should be amended to contain a non-derogation clause to protect the traditional knowledge and cultural expressions of the aboriginal peoples or to prevent their misappropriation by others. Such a clause is necessary to prevent an aboriginal people's traditional knowledge and cultural expression from being used without their authorization and to ensure that the people in question have the opportunity to share in the benefits of such use.

Canadian common law has not defined "traditional knowledge", "traditional ecological knowledge", "traditional cultural expressions" or "indigenous knowledge". In the filters of contemporary Eurocentric thought, traditional knowledge is formulated to mean the know-how, skills, innovations and practices developed by aboriginal peoples, while traditional cultural expressions are interpreted as the tangible and intangible expressions of traditional knowledge and cultures.

●(1605)

The intellectual property system in Canada does not protect or promote these constitutional rights nor offer any solution. It is time for federal law to be made consistent with the aboriginal and treaty rights of aboriginal people.

Canada has endorsed the United Nations Declaration on the Rights of Indigenous Peoples in 2007, including article 31, which states, "Indigenous peoples have the right to maintain, control, protect and develop their" intellectual property over such "cultural heritage, traditional knowledge and traditional cultural expressions".

Canada should begin consultations with the aboriginal peoples about how they want to protect and promote their traditional knowledge and traditional cultural expressions. They may choose to protect them by aboriginal law or by co-operating in the establishment of protective legislation that gives an intellectual property style of protection to traditional knowledge and traditional cultural expressions.

Thank you. *Kitchi meegwetch* for the opportunity to speak to you today.

The Chair: Thank you very much.

Before we get going, what will happen is that we will go to just before five o'clock, and then Mr. Albas will be asking to debate a motion. We'll break then. We'll finish our questions, and we'll save up some time for that as well. I appreciate the collegiality, and we get to spend time with our witnesses.

We're going to start off with Mr. Sheehan.

You have seven minutes.

Mr. Terry Sheehan (Sault Ste. Marie, Lib.): *Kitchi meegwetch* to all our presenters. It was very informative.

I'm from a riding up in northern Ontario called Sault Ste. Marie. I'm proud to say that it is a traditional meeting ground for first nations and Métis people. They were coming to Sault Ste. Marie thousands of years before Canada came into being. They came for the whitefish because of the river. The first nations came from all over to fish there. Then it became a sacred area where they wouldn't do war because they were fishing and providing for their families. While they were set up there, they started doing powwows, sharing stories and arts and culture, and doing commerce. It's very interesting.

On that site later on, there was a residential school, where Algoma University is now. They have recently applied for and received funding, and they're building the Anishinabek Discovery Centre, which is going to house a chiefs' library that will have knowledge and artifacts. I know the parliamentary secretary was there recently. At the recent meeting I was talking to Chief Bellegarde and he said they had passed a resolution from Chief Sayers in the area where they're going to house some of that.

I'm very pleased to see there are a lot of things going on from coast to coast to coast as it relates to arts, culture and knowledge as we move towards truth and reconciliation.

I'd be really interested, Tony, if you could expand on how the blockchain technology can be used to preserve and promote indigenous works, and the details on the creation of the registry using blockchain, with your associate Johnny Blackfield. I know we ran out of time with the presentation.

Would either one of you like to address that, or both?

Mr. Tony Belcourt: Sault Ste. Marie is the home of Steve and Roddy Powley.

Mr. Terry Sheehan: They're very good friends of mine.

Mr. Tony Belcourt: That was a famous case that went to the Supreme Court of Canada to establish unequivocally that the Métis right to hunt and fish for food was an existing constitutional right.

We're at the formative stages of our discussion on this. There are about 50 people across Canada who are going back and forth discussing this. That includes the people from Canadian Heritage, Canada Council for the Arts, the various galleries, and indigenous artists and curators.

There is 100% interest and desire that we have something that we've just outlined. It's basically an organization that Lou-ann Neel says we need to have. We need an organization, obviously, as we don't have one, that would make the decisions of what art gets to be included in the registry. There are some very touchy issues on indigenous identity, but that's part of the whole discussion. We have to have that. Who decides? It has to be the indigenous people who decide, nobody else.

On the indigenous art registry itself, our discussions are about that being a separate entity that is owned partly by the indigenous organization and partly by a private company. They would be sourcing financing and so on, and managing the technical aspects of the registry, but overseeing what is registered and by whom is the decision of the indigenous peoples.

As Lou-ann was mentioning, a national organization that would be involved in development of a registry would also want to be doing many more things, for example, formally coming to a committee like this, representing its members, advocating on behalf of its members for changes to legislation. As Lou-ann said, it would be doing the work of education and promotion of our art, customs, cultures, traditions and values, so that people have a better understanding of that.

I hope I've given you an explanation.

•(1610)

Mr. Terry Sheehan: That was really good.

My next question will be to Lou-ann Neel and perhaps, Monique, you can also take a shot at it.

While we were travelling throughout Canada, we were asking, "How can we do a better job with copyright with first nations and Métis people?" One of the things that was brought to our attention was that asking permission was important. But when we delved into it, we found out that often the piece in question wasn't owned by an individual, it was owned by a clan, if you will, or the first nation itself.

Lou-ann, you started alluding to that. Could you explain that to us a little more? If we made changes to the Copyright Act, how would we incorporate some of that?

Ms. Lou-ann Neel: Absolutely. I think one of the advantages we have at this moment in time is all of the work that's been going on around the revitalization of indigenous languages. As I mentioned,

everything is really intertwined—social, political, economic, cultural, governance, legal—and that includes our art. When we talk about art, of course, that's all of the disciplines—song, dance, music, theatre and of course visual arts.

I think we're lucky that we have the work going on around language, because it actually serves as a really strong starting point for us to connect, or reconnect our arts disciplines and practices with the work that's going on with language. The two are the same. I think we already have some initial infrastructure there. I think there's a definite process of learning here. We can do what our language communities have done to establish and re-establish themselves. As well, many of the words that are used to describe our art, and in fact tell the ancient stories that we're telling, are in the language.

I think there are some partnership abilities there, but we've also had many instances over the past 30 years of many local and regional arts organizations starting up and then, because of that larger umbrella of support that we really need to keep these things going long term, lasting two or three or five years. I think it's about making that long-term commitment and making the departments responsible, giving them the ability to engage in these discussions with us and then calling on our brothers and sisters who are doing the good work in language.

•(1615)

The Chair: Thank you very much.

Mr. Albas, you have seven minutes.

Mr. Dan Albas (Central Okanagan—Similkameen—Nicola, CPC): Thank you, Mr. Chair.

To all of our witnesses, thank you for your testimony, for coming today to speak about issues that you all feel very passionate about, and for helping us with our work.

To specifically Lou-ann Neel, the Canadian ballet or dance association—I'm not sure which one—was in here. They talked about an area that's quite important to me, which is that individual artists should be able to copyright choreographed movements in sequences. I used to be a martial arts instructor. I do share concerns about movements that have been passed on for generations. Having individual ownership of those choreographed movements may be an issue.

When someone does a choreographed dance, say, based on traditional ways and knowledge, do you feel they should be able to own copyright on that choreography, or do you think that is something that we should not permit as copyrighted material?

Ms. Lou-ann Neel: That is a good question. There was an approach that I recommended when I was working at the Banff Centre for the aboriginal arts program back in 2003-04. We did a pilot project where we brought together traditional dancers to show us the actual movements they use so that our modern aboriginal choreographers could learn from that and be truly inspired. It was not copying the movements but being inspired by the movements and understanding what they were.

I think the question is really about whether we should be able to allow that kind of designation not under Canadian copyright law but under our traditional laws. Under our traditional laws, those dance movements stay within their ceremonies and only there, because they're connected to something much larger, much greater, around our spirituality, our history and our culture.

I think what we need to focus on here in Canada is that there are some really beautiful and incredible opportunities for our young choreographers to be inspired and to create new movements that are based on the old ones but are not exact copies of them. I think we're missing an opportunity. I think reaching into our traditions and trying to bring them forward in that way whittles away at the sacredness and the specialness of those movements in the ceremony. They're also part of our belief systems. When you make those movements along with the song, along with the entire atmosphere of the ceremony, you're sending out vibrations. Lots of us really strongly believe in that. That's an energy and that's a force that we need to protect.

I think it's more about having more discussions about what is appropriate and what is inappropriate. That's a discussion, as my colleague mentioned a few minutes ago, that has to take place amongst our people.

Mr. Dan Albas: In my area of the Okanagan, obviously, there's a real desire to maintain culture. For example, the Outma school on the Pentiction Indian Band Reserve, has worked very hard to build traditional knowledge as part of the public curriculum. If a teacher decides to codify certain practices in a certain way, for example, making textbooks outlining language or outlining rituals, in an attempt to organize it, how then would that copyright?

Again, if he or she wants to take it to a Canadian publisher, the Canadian publisher is going to want to know who owns the content, so that when they publish it, if there are fair-dealing issues.... When someone takes the time to structure that traditional knowledge and language or culture in a specific way for teaching purposes, do they own the copyright for that, in order for them to help facilitate that their nation and their communities would be able to share that culture and traditional knowledge?

• (1620)

Ms. Lou-ann Neel: Here in B.C., I know that we've had a lot of discussion around that. Again, that falls under the example that's being set by our language revitalization communities. There's still no upper-level legislative protection that covers everybody the same way because the languages are so different and the communities' approaches are different. Everyone is at a different stage of doing this kind of work. Many of the communities that have been at it for a while have taught to ensure that any curriculum or any of these kinds of materials, which are being developed with the language, should rest with the nation. By nation I mean the language nation, not necessarily the Indian Affairs band structure because that's an administrative structure, but the traditional knowledge keepers and intellectual property holders of that knowledge work together in teams with their language specialists, so that it remains with the tribe.

We do still need some recognition of those entities, at the upper levels and at legislative levels, especially. With the Copyright Act, I

think this is a place to start and I think it can duplicate itself across other pieces of legislation.

Mr. Dan Albas: At that same school, there are non-indigenous teachers who do teach and have created good relationships in the community, have built the trust of the children and have put together specific processes. Again, if someone was to put some of that traditional knowledge into a different format, like a textbook or audio material or a website, would that person be able to then have copyright to be able to have those works produced in a larger format?

I'm just worried that, if we don't have certain rules about how we navigate these areas, we won't see the propagation of culture and new innovation, especially. There's a gentleman who's tweeting an Inuktitut word a day and again, there's a teacher who's taking that content with his permission and formalizing it in school. That's an innovation. At some point, he may choose to codify it in a book. That's where I think many of these things have to be answered.

I appreciate your submission today.

If I could, I'd like to go quickly on to the artist resale. First of all, if someone is indigenous—and again, not all first nations, as there's also Innu, Inuit, Métis—would all those be able to participate in this registry? What if someone does not identify their works as indigenous, specifically, but they're of indigenous origin? How does that work with the registry?

Mr. Tony Belcourt: The people who are involved in our discussions are first nations and Métis. The Inuit have the Inuit Art Foundation and they have the tag system. We're talking about wanting to be able to collaborate and work together, obviously, but the people involved are first nations and Métis people, at this point.

Mr. Dan Albas: If someone creates art that they would not classify as indigenous and again, let's say that it's a classical oil painting, would that qualify under this because they're of indigenous origin or would it only apply to a certain criteria, which is specified by the registry's criteria?

Mr. Tony Belcourt: That's up for discussion. Our focus is to bring indigenous artists together and that their art is what will be registered. We haven't put limits on it at this point.

You have raised a really good question. I hadn't even thought about it. Thank you.

The Chair: Thank you.

We're going to move on to Mr. Masse, for seven minutes.

• (1625)

Mr. Brian Masse (Windsor West, NDP): Thank you to the witnesses for being here and to those who are in different locations.

With regard to the Copyright Act, are there things that can be done right now, without a legislative review, that you would suggest as a priority?

My concern is that the committee here will turn around a decision to the minister in terms of a report. The minister will get back to us. Then there will have to be legislative changes in the future. If there are going to be changes to the act, that will require it then going through Parliament again, and then it will be signed eventually and so forth. We're probably not going to see much happen through legislative measures for the next year and a half, with an election looming.

With that in mind, maybe I will start here in Ottawa and then turn to our guests by video conference, could you prioritize things that maybe under the legislative framework you would like to see get some immediate results, if there are things, or is this a larger problem?

Ms. Monique Manatch: What comes to mind immediately is the fact that the copyright law is based on the individual. Our knowledge and culture is based with our communities. It's community-oriented. For example, there are images used on the teepees out west, where the families own those images. Only certain members of the family are given the responsibility and ability to put those images on those particular teepees. When someone comes along and takes a picture of those images, and then turns around and sells T-shirts, and claims copyright because they have the images....

If you change the form of the knowledge, that does not constitute ownership of the knowledge. Regardless of what form the knowledge takes, whether it goes to a website or becomes a book, the knowledge itself is still owned by the community.

Mr. Brian Masse: Okay.

Ms. Monique Manatch: I think that's a starting point, for me anyway.

Mr. Brian Masse: That's good advice.

Mr. Tony Belcourt: We've been in discussions with officials, as I mentioned before, at the Canada Council for the Arts and also Canadian Heritage. They are interested in what we're doing because at Canadian Heritage, in fact, they were planning to do some research on their own.

What we would like to do, and if this committee could support us, is to have this work on a possible regulation and so on, which could be developed in conjunction with the indigenous artist community and support our full participation and inclusion in that work. My purpose coming here today....

I'm not speaking on behalf of an organization. I can't. I speak for myself, but I know the sentiments of what our people are talking about.

The Copyright Act is before you now. There are going to be amendments to the Copyright Act. If you're going to include an amendment for an artist's resale right, I wanted to say to leave it open enough so that it won't be just limited to the sale of art through auction or galleries. Enable this new technology to come into play and be used as well, so that there can also be direct sale between artists and sellers and the resale right would apply in that circumstance as well.

Mr. Brian Masse: Thank you.

Mr. Blackfield.

Mr. Johnny Blackfield: I would say, from a technology standpoint, that we can absolutely start to build the technology for an indigenous art registry right now. There are certain other factors beyond legislation that such a registry could help.

One of the key attributes of such a registry would be provenance, or essentially figuring out who exactly the artist is. Once indigenous artists register their art and it's authenticated on a blockchain, it's their claim for eternity. It's immutable. As far as I know, we don't need any legislation to implement that. The legislation would be on enforcing the resale right or whatever percentage we assign to that.

Right now we can build the technology, but it will still take anywhere from a minimum of six months to 18 months to build this effectively. We can build it and then enforce legislation—whatever it turns out to be—at a later point.

• (1630)

Mr. Brian Masse: Thank you.

Ms. Neel.

Ms. Lou-ann Neel: We've been waiting a really long time for some steps to move forward. One of my most immediate priorities is the formation of a national indigenous arts service and advocacy organization. We need some sort of a system where, as my colleagues mentioned, we can address committees such as this and also respond to the different departments that have the responsibility and mandates to address things that affect our artists.

It's all about rebuilding the structures within our communities so that we can respond to these things. Many of the systems we had in place traditionally were really clear about who got to be an artist, how they got trained, what they did with their art and what art forms they were allowed to practice. All of that structure came apart with all of the things we've heard about, like residential schools and the Indian Act. It's about redress and rebuilding. This is something we can do at an administrative and operational level without changes to legislation.

In the long term, I still would like to see amendments to the act and, further into the future, either addendums to the act or exemptions from it.

Mr. Brian Masse: That's very good.

Thank you, Mr. Chair.

The Chair: Thank you very much.

We're going to move to Mr. Graham. You have seven minutes.

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

One of the great frustrations I have in my life is that my great-grandfather, Alphonse Paré, spoke English, French, Cree and Ojibwa and didn't pass that knowledge on to the next generations. That frustrates me greatly.

For me to hear that the vast majority of so-called “indigenous art” isn't legitimate frustrates me. I didn't know that. There's nothing quite so horrifying as buying indigenous art and finding a “made in China” label on the back of it.

How can I as a consumer, and people generally, recognize fraudulent or counterfeit indigenous art? What can we do about it from that side of things as well?

Ms. Lou-ann Neel: We actually had an initiative here in B.C. that began to address that through the Indigenous Tourism Association. We did an authenticity labelling system. It was a pilot. We did this in 2014 and 2015, but of course it required funding support. We did not have the funding support to continue it.

By and large, the shops, galleries, producers and artists we talked with were very much in favour of this as a starting point—as something we could do. I could really see the synergies between that particular system and the system that Mr. Belcourt and his colleague have proposed.

There's that to take care of, but again, it's about public education and relationships. As Canadian citizens, we all need to realize that here we are in our country yet we're being treated differently. Other artists do not have the same challenges we do. I always use Robert Bateman as an example. Would you take a Bateman painting copy and expect not to hear from his lawyer?

We need that kind of support. We need organizational support. We need the ability, among our nations, to rebuild the kinds of structures we had that protected these ancient traditions.

Mr. David de Burgh Graham: Thank you.

I don't want to end there, because it's really interesting, but I do want to ask a few other questions of other people as well.

Mr. Blackfield, you mentioned problems of scalability with blockchain. Artist resales especially is something that takes place over an infinitely long time frame. Therefore, blockchains would have to be infinitely scalable to work. How scalable are blockchains?

• (1635)

Mr. Johnny Blackfield: That's a really good question, sir.

Right now, public blockchains such as Bitcoin and Ethereum have all had scalability issues. They're the most secure blockchains out there right now, because they've been tested over years, but they do have scalability issues. Some of the enterprise blockchains, the permission blockchains such as Hyperledger and Corda, and other platforms, are actively working on the scalability issue. For example, I run a start-up and we build on Corda, and we're trying to build a platform that can do millions of transactions every second, because we're building a trading platform.

This is one of the biggest problems being worked on in the blockchain world. I don't believe anyone has a solid result yet, but the blockchain world is so young that I would say in the next six to 18 to 24 months we're going to have some very scalable solutions. That being said, I don't ever see a blockchain art registry having as many transactions as, say, a stock exchange on blockchain. They're building platforms for stock exchanges, so that technology could very well be used for an art registry.

Although it is a problem today, it is not something I believe will be a huge sticking point in the future.

Mr. David de Burgh Graham: I've been in technology long enough to know that there's no system that lasts forever in

technology, so when something comes along that inevitably makes blockchain obsolete, or we discover that it isn't actually secure after all and there's some major vulnerability in the whole algorithmic process, how hard is it to get that cumulative historical data out of it and into the next system? If it's all cryptographically signed, how are we going to get that entire history back and salvage it?

Mr. Johnny Blackfield: That would really depend on what kind of blockchain you design in the first place. Again, blockchain is more of a methodology than a technology. It's being used in different ways. Like I said, there are different platforms and other technologies, and they're still evolving. Right now, I don't see too many reasons why blockchain would fail completely long term. There are certain limitations. Blockchain is not a solution for everything, though a lot of people think it is. I believe a system that's well designed and planned and takes the time to get there as opposed to rushing to market will actually prove to be quite useful in blockchain.

I completely appreciate your understanding of technology and your history in it and you're right that no system is fail-safe. There will be blockchains that will be hacked in the future for sure, especially now that we have quantum computing and other advances like that coming through, but right now it's the absolute best solution we have. There will be vulnerabilities in the future for sure, but people are working on that, too.

I think that's the best answer I can give you right now.

Mr. David de Burgh Graham: I appreciate that, but in the same vein, in a totally decentralized environment, which is what you're talking about being available as an option, someone has to hold the data somewhere. If everybody says somebody else is holding it, then sooner or later, nobody's holding it and the data is gone. How do you centralize a decentralized system?

Mr. Johnny Blackfield: I'll give you an example. This is just an approach. It's not the exact solution. In an indigenous art registry, it's decentralized in that it doesn't have one owner, but it could have dozens of owners. Every nation, every tribe, could have an ownership stake and they would each—I'll spitball here—put in a certain amount of money to put up the network. Then all of the tribes together would elect an administrative council that would actually administer the blockchain.

That is one approach, and that, in fact, is how Bitcoin works. Bitcoin has over 9,000 nodes or servers, and they've elected a Bitcoin foundation that runs it. There's a core team that actually implements all the changes and administers the network. That is one proposed approach of how you could take a decentralized model and still make it functional.

Mr. David de Burgh Graham: You mentioned Bitcoin, that's an interesting point. We know Bitcoin is pretty popular now for fraud and theft on the Internet and so forth: We've lock up your computer and give us a Bitcoin or we won't unlock it. Using blockchain, is this something that's going to help or hurt the fight against art crime and forgeries?

How would it affect the privacy of the buyers, given these records are floating around everywhere?

Mr. Johnny Blackfield: That's a great question.

Bitcoin, as I mentioned in my presentation, is a public blockchain. One of the advantages of Bitcoin is its transparency. It's public.

Any one of us could go and look at every block that's ever been created on Bitcoin and you can see every transaction. You don't see the names of people who have transacted, but their public addresses. Really, there is very little or no privacy, so to speak.

In a permission blockchain, you can add layers of privacy. You can create different levels of security and different admin rights. The purists don't like permission blockchains. They don't call it a true blockchain. But for enterprise purposes such as an indigenous art registry, you can create different permissions, different security levels, to make it far more secure or far more private than public blockchains.

• (1640)

Mr. David de Burgh Graham: Thank you.

The Chair: Thank you very much.

Now we're going to move on to Mr. Lloyd.

You have five minutes.

Mr. Dane Lloyd (Sturgeon River—Parkland, CPC): Thank you, Mr. Chair.

Thank you to the witnesses today.

Mr. Graham has kind of stolen my question, but it would be to Mr. Blackfield.

Could I get you to elaborate more on putting a blockchain on a physical good and how we are respecting the privacy rights of the buyer?

Then, secondly, just on a feasibility basis, how is the money going to be collected? Are you going to send an invoice to the purchaser, and say pay up, you just bought this artwork? How would that work in practice?

Mr. Johnny Blackfield: It's a great question. There are a couple of parts to it. I'm going to address the first part regarding the privacy of the buyer.

There is a new concept called "zero knowledge proof". It's pretty mathematical, so I won't get into the details. Essentially, it allows

someone to verify that the seller actually has the product and has sold it to the buyer, without revealing any of the details of the buyer. There is a way to have these transactions done in privacy. It's one of the innovations in blockchain that has really revolutionized the way that things are done. It's very, very new. There are very few actual implementations in production right now. However, zero knowledge proof is exactly a way that you can buy and sell art by protecting the identify of the buyer.

To your second question as to how the payment would work, this is through something called a "smart contract". A smart contract is essentially code that is written into the blockchain that will transact without an intermediary coming in there. What that means is that any time there is an actual sale from a seller to a buyer, the smart contract would be triggered to take a percentage of the payment from the buyer and input it into a registry for resale rights.

Mr. Dane Lloyd: I understand, but isn't that based on the good faith of the buyers and sellers to follow through with those payments?

Mr. Johnny Blackfield: Again, all this would depend on how the registry is used. These are some of the commercial questions still being asked and not fully answered. This system would work great if all of these sales are done online or through the registry, but—

Mr. Dane Lloyd: That answers my question.

Thank you. I appreciate that.

Mr. Johnny Blackfield: Sure.

Mr. Dane Lloyd: My next question is for Ms. Neel.

This came up when we were in Winnipeg and we were speaking to some of the indigenous witnesses. It has sort of been alluded to in some of the questions here. I want to see if I can get as specific an answer as I can.

Say there is a case where you have traditional indigenous knowledge, and we're being asked to envision a system where we would recognize the right of the group. You spoke of a language group rather than a formalized band structure. If there were an individual who was part of that language group and they wrote a book based on their experiences using traditional knowledge and symbols, we recognize that person's individual right to copyright.

However, if we recognize a group right, how do you foresee that working out?

Ms. Lou-ann Neel: That's a million-dollar question.

I think this is the part where we haven't finished our discussions. It goes back to being able to restructure that communal entity, if you will, that allows for individuals within that entity to create their own works and still go out and copyright.

For instance, in my family, I have rights to draw upon the legends and the crests from my particular family group. In this world, there is nothing to stop me other than my integrity, my obligation and my responsibility back to the nation. Those aren't codified rules. They are not written down anywhere. However, that's part of the structure I'm proposing that we start to develop within our communities.

• (1645)

Mr. Dane Lloyd: We want to make the best recommendations possible, and I think avoiding a possible conflict between an individual member of a nation who copyrights something and the recognition of the rights of the group... What recommendations would you have on how to balance those two sets of rights, or is that something that's undetermined at this point?

Ms. Lou-ann Neel: It is slightly undetermined. My biggest recommendation right now is to support that localized work that needs to happen so that we have entities that we can draw upon for that knowledge.

In the meantime, all we have is the current law, but as I mentioned right at the beginning of my presentation, we also have to reconcile and do an analysis of how all those things—the UN declaration,

TRC—roll out on a practical level. I don't think we've answered any of the questions on how those pieces of reports and recommendations overlap one another, and in some areas, leave gaps.

Mr. Dane Lloyd: Thank you so much. I appreciate that.

The Chair: Thank you very much.

For the folks in the room, you'll see the lights flashing. That's our bat signal to get ourselves out to the House because we have a vote coming up.

I'm looking at the time. It doesn't look as though we'll be able to come back to finish, so we're going to adjourn for the day.

I want to thank our witnesses for very interesting testimony. It's been really good.

I'm going to remind our witnesses that they can submit briefs. There has been a lot of interesting information, but if there are things you haven't said, I recommend you submit a brief, because we are very interested in this.

Thank you very much.

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