



Standing Committee on Industry, Science and Technology

Comité permanent de l'industrie, des sciences et de la technologie

**EVIDENCE NUMBER 112,
TÉMOIGNAGES DU COMITÉ NUMÉRO 112**

UNEDITED COPY - COPIE NON ÉDITÉE

Thursday, May 10, 2018 - Le jeudi 10 mai 2018

* * *

🕒 (1400)

[English]

The Chair (Mr. Dan Ruimy (Pitt Meadows—Maple Ridge, Lib.)): Welcome, everybody, to meeting number 112 of the Standing Committee on Industry, Science and Technology as we continue our study on the legislative review of the Copyright Act.

If you've been following along, you've probably seen that we've already had quite a few witnesses. This is day four of our road trip, and it's been very successful. The questions that we're asking can be pretty tough sometimes, but we need to be able to get good answers so our wonderful analysts on this side here can make a fantastic report.

We are going to get started.

Today we have with us, as an individual, an author, Patricia Robertson.

We have, from Association of Manitoba Book Publishers, Annalee Greenberg, editorial director, Portage and Main Press.

We have, from the University of Manitoba, Naomi Andrew, director and general counsel.

Finally, from the Winnipeg School Division, we have Sherri Rollins, chair of the board of trustees.

I will say that if you are not using your headpiece, keep it away from the microphone because it can go “pop” pretty loudly.

We have translators in the booth over there and we have some good supporters. It's not Quebec, so I can say translators. Everything that we're doing is being recorded and translated. It's all for the record, so take your time. Don't rush through your testimonies. You will each have up to seven minutes. We snuck in an extra couple minutes. After all the presentations are done we will go to our questions.

We're going to start off with Patricia Robertson. You have up to seven minutes.

Mrs. Patricia Robertson (Author, As an Individual): Thank you very much, Mr. Chair. Thank you for this opportunity to present in front of the committee.

My name is Patricia Robertson. I'm a writer of short fiction novels, poetry, essays, and literary journalism. I've published two books, and co-edited *An Anthology of Yukon Writers*. I hold an MA in creative writing, and I've taught creative writing at the university level for over 30 years in Vancouver, B.C., Whitehorse, Yukon, and now in Winnipeg. I've held writer-in-residence positions across the country in libraries and universities in B.C., Ontario, and Manitoba. I'm also a professional editor, primarily in non-fiction and educational materials, and I've worked with a number of Canadian publishers and organizations. I've been a member of the Writers' Union of Canada, and I served two years on its governing council.

I'd like to sketch a brief portrait of my income as a writer, that is, writing-related income, excluding teaching and freelance editing.

Last year, my writing-related income totalled \$10,353. I was fortunate to receive \$10,000 of that total from a Manitoba arts grant. I also received a grand total of \$40 in royalties, in book royalties, and approximately \$250 from the public lending right fund administered by the Canada Council. Finally, I received \$63 from Access Copyright, the agency that disburses funds received under the copyright tariffs.

A few years ago, before the educational sector decided on their own interpretation of fair dealing under the Copyright Act, I received about \$500 a year, so you can see there's been a huge drop. I'm now receiving about 13% of what I used to receive per year.

My husband is also a writer. He is a poet with four published books. Together, we used to receive about \$1,100 per year from Access Copyright. We now, together, receive about \$100 per year as payment for the reproduction of our work. That's a drop of about 90%.

These amounts may sound very small to the committee. I can assure you, as two independent self-employed writers, my husband and I, \$1,100 per year is a significant amount. The loss of that income is painful and it's particularly painful to be exploited by a sector that ought to understand the need to fairly compensate Canadian writers who, after all, provide the content that the educational sector uses.

I work in the educational sector as a university instructor, and I want to be able to use a wide variety of materials in the courses I teach. I also want to be sure that the creators of those works are compensated for the use of their work in a course pack. Like many instructors, I rely on a company called Canadian Scholars' to assemble the materials I select, and to verify their copyright status and arrange for payment to the authors. I'm now told that Canadian Scholars' is also more and more relying on the education sector's interpretation of the Copyright Act and is therefore not compensating authors.

To be absolutely clear about what writers earn from their publishers, and to clear up any misconceptions, most of us are not J.K. Rowling or even Margaret Atwood, for that matter. A best seller in Canada is about 2,000 copies. I'm talking about fiction now. The author's portion of that, assuming that the book is priced at \$30, is 10% of net or \$1.80. That's a total of \$3,600 for what may have been three or four years of work. That's a best case scenario. Most books are not best sellers, and some of those 2,000 copies are promotional and author copies or damaged. Those 2,000 copies may take years to sell. Meanwhile, the author is working on the next book, subsidizing it through whatever freelance work or

day job they can.

I'd like to finish by pointing out that large corporations, including universities, take all possible steps to protect their own intellectual property, yet Canadian writers apparently, who provide the imaginative and creative work that Canadian students read, are expected to underwrite the educational sector for essentially free.

🕒 (1405)

When school boards are buying one copy of a book and photocopying a classroom set, with no compensation to the writer whatsoever, there is something deeply wrong with the support of the cultural sector in this country.

Thank you.

🕒 (1410)

The Chair: Thank you very much.

We're going to move to the Association of Manitoba Book Publishers. Annalee Greenberg, you have up to seven minutes, please.

Ms. Annalee Greenberg (Editorial Director, Portage and Main Press, Association of Manitoba Book Publishers): You gave me two extra minutes that I don't have—

The Chair: You don't have to use them.

Ms. Annalee Greenberg: Okay.

I'm Annalee Greenberg. I am co-owner and editorial director of Portage and Main Press, and I am here today on behalf of the Association of Manitoba Book Publishers, or the AMBP.

That is an organization that represents 14 publishers producing a wide variety of books in English, French, and several indigenous languages. We want to acknowledge today that we are on Treaty 1 territory, home of the Métis Nation.

Our primary concern is that the fair dealing section of the Copyright Act needs to be clarified. Adding education as a purpose for fair dealing has caused immense harm to Canadian and Manitoba publishers, and has decimated the educational book sector. The changes affect both copyright royalties and book sales.

I know that you've heard from others in the publishing community, including the Association of Canadian Publishers, so I'll not repeat what you may have already heard, but I will provide some examples of how the changes have affected publishers here in Manitoba.

For instance, pre-2012 Access Copyright royalty payments to Fernwood Publishing were enough to support a full-time employee. Now the payments might support a worker for one-third of the time. Several Manitoba publishers have reported drops in copyright revenues of between 75% and 90%. Creative sector jobs and Canadian content are both at risk of being lost.

When the education sector devised its own guidelines without consulting publishers, it ultimately led to litigation. The case of Access Copyright versus York University at the federal court in July 2017, illuminated the shortcomings of the education sector's interpretation of fair dealing.

In addition to the loss of copyright revenues, publishers are also seeing decreases in sales of books as educators copy instead of purchase.

Within a year of the changes to the copyright law, Les Éditions du Blé experienced a 35% decrease in overall sales because of copying, and sales of their educational material continued to decrease year after year. In 2016 they

completely ceased publishing on the education side because it was unsustainable. This was a move that disappointed many educators as Les Éditions du Blé was one of the few publishers of French material outside of Quebec. Translators, scholars, and K to 12 educators who had been employed on the educational side were casualties of this decision.

Portage and Main Press, the company I am affiliated with, was also affected. With educators buying fewer books because of copying, author royalties have diminished. These diminished sales are not being balanced with K to 12 copying tariffs, however, which at Portage and Main are down 88% from what they were in 2013. Our authors are facing a substantial drop in income as a result of those lost royalties, the means by which they are paid for their work. And in some cases they've taken other jobs, as writing no longer supports them.

We have reconsidered publishing textbooks and other curriculum materials as revenues no longer cover the costs that are necessary to attain the quality standards that are expected by Canadian educators, and that our company has become known for. I did bring a few samples of textbooks that we and du Blé have published.

The educational component of Fernwood's publishing program has decreased from over 70% of its sales, to about half. In time there will be little or nothing produced by local writers and publishers that reflect regional and national narratives for schools and teachers to copy.

One publisher reported that they may now receive orders for a single copy of a textbook for an entire school or school division, which is clearly an unsustainable business model.

We do have some recommendations. We recommend an immediate end to unfair copying which, in itself, helps to clarify fair dealing.

We'd also like to see clarity around fair dealing provisions, which take into account purpose, character, amount of copying, alternatives, effect of the dealing, and nature of the work as emphasized in the ruling in the Access Copyright versus York case.

We'd like to see educators and independent Canadian publishers work together to develop fair dealing regulations that are mutually beneficial. Manitoba publishers are ready to come to the table.

🕒 (1415)

We'd like to see collective licensing reinstated in the education sector, as it is proven and it is affordable.

One final thought I have, with publishers no longer developing high-quality, uniquely Canadian materials, teachers will have to find other resources for their classrooms. It may be a challenge to find such materials because quality costs and expertise must be compensated for. Ultimately, Canadian students are the losers.

Thank you.

The Chair: Thank you very much.

Now, from the University of Manitoba, Naomi Andrew.

Ms. Naomi Andrew (Director and General Counsel, University of Manitoba): I'd like to thank the chair and committee members for inviting me and my colleagues to appear today on behalf of the University of Manitoba and for granting us this opportunity to take part in this first Copyright Act review process.

We acknowledge that we are on the lands of Anishnaabe, Cree, Oji-Cree, Dakota, and Dene peoples, and on the homeland of the Métis nation. We respect the treaties that were made on these territories. We acknowledge the harms and mistakes of the past, and we dedicate ourselves to moving forward in partnership with indigenous communities, and in a spirit of reconciliation and collaboration.

The University of Manitoba will be submitting a written brief. However, we would like to highlight a few areas in our

submission today. These are that the university is a content creator, the university also supports the Canadian creative economy by being a content user, the university supports maintaining the fair dealing exemption. The university's library acquisitions have increased; however, there has been a corresponding shift towards acquiring more digital content. The copyright revisions need to support reconciliation and the mandate of the National Centre for Truth and Reconciliation.

The University of Manitoba is the largest university in the province, with a community of over 30,000 students and 9,000 faculty and staff. Our community members are both content creators and content users. As content creators we contribute significantly to the Manitoba creative economy through cultural productions, academic publications, and research projects. In fact, in 2017 over 3,000 publications included University of Manitoba affiliation.

In particular I'd like to point out that the University of Manitoba supports Canadian content, authors, and publishers, through various initiatives, although sometimes through new acquisition models involving intermediaries. Also, our libraries have two long-standing programs for monograph acquisitions, focusing on Canadian literature and Canadian studies.

The University of Manitoba strongly supports maintaining education as a fair dealing purpose, and stresses that this exemption is providing measured access to content for students and academics just as intended, as a reasonable complement to, not replacement for, purchased content. The perceived decline in profits attributed to the educational exemption may be more related to a change in our preference for licences and e-formats. Therefore, creators may see from these licences new revenue streams that reflect the dominant way in which we now acquire and make available scholarly content. Correlation does not necessarily equal causation.

Over the past decade university members have increasingly expected digital access to materials, and our acquisition trends reflect this. In fact, just in speaking with my colleagues prior to the presentation, I was noting that for my 11-year-old son, all his textbooks are online. There is that expectation as students are moving through the system.

The majority of our library acquisition expenditures now go towards subscriptions to license electronic academic journals, but I should also point out we continue to purchase and license scholarly monographs, both in electronic and print formats. For example, from 2012-18 our overall acquisitions expenditures that went towards e-subscriptions increased from 49% to 73%. During the same time period, e-books increased from 14% of annual monograph purchases to 77%. Thus, we are paying less in transactional fees and individual print copy purchases, but significantly more to publishers for licences.

Universities are not in a position to acknowledge how publishers are compensating creators under the digital licences we are increasingly purchasing, but we urge caution that the Copyright Act should not be revised in a way that may inequitably shift the impact of the digital disruption from the publishing industry to the education sector.

🕒 (1420)

I would like to end off with speaking about copyright as it relates to the National Centre for Truth and Reconciliation. The NCTR is hosted at the University of Manitoba and is home to approximately five million documents relating to the history of Indian residential schools. As with most archives we do not own the copyright and the majority of archival documents and images. The Copyright Act serves as a barrier when NCTR is contacted for permission to use archival images for purposes that clearly support reconciliation. Only the original creator of the photograph can permit its reuse if a copyright exemption does not apply. Because of the history of Indian residential schools the requirement for an individual such as a survivor to have to contact a creator for permission is a very real barrier to youth and reconciliation. We propose that fair dealing be expanded to include an exemption permitting the use of full historical archival and museum content for reconciliation purposes.

While the University of Manitoba believes that the Canadian Copyright Act has strong provisions that benefit both creators and content users we urge growth in terms of how reconciliation is treated under the Copyright Act. We will be elaborating on these issues in the submission further in our forthcoming brief.

Thank you.

The Chair: Thank you very much. Finally from the Winnipeg School Division, Sherri Rollins.

Ms. Sherri Rollins (Chair of the Board of Trustees, Winnipeg School Division): Thank you, Chair.

On behalf of the Winnipeg School Division, I would like to thank the members of the Standing Committee on Industry, Science and Technology for the opportunity to provide feedback on the potential impact to student learning as a result of any revisions to the Copyright Act, specifically the requirements of section 29, "Fair Dealing".

It's my understanding that the framework for the review should include the educational needs and interests of indigenous peoples as part of reconciliation, as well as supporting Canada's two official languages, French and English, in terms of access to materials in all forms, as identified in the Copyright Act. The Winnipeg School Division has some very key information to share to that end.

The members of the board of trustees are concerned that revisions to eliminate the fair dealing provisions would have a severe and negative impact on the ability of our teachers to provide our students with extensive and complete classroom resources, both digitally and in print, due to the inability to incur additional costs to access materials for, like U of M, our 33,000 students throughout 78 schools.

The Winnipeg School Division is one of the largest employers in the province, and the largest school division in Manitoba. The division provides educational programs and supports for more than 33,000 students, from nursery to Grade 12, including adult programming.

The demographics of the Winnipeg School Division are in Exhibit A, as provided, but the division serves a significant number of families who live in poverty: over 50% of the families have incomes below the low income cut-off; indigenous families, like my own, represent approximately 27% of all families with children in the division; almost 50% of all immigrants who arrived in Winnipeg in the past five years live in the division footprint; and, 42% of elementary and 44% of secondary enrolment in the division experiences high student migrancy levels.

We're proud to offer educational programs and related services to students from nursery to Grade 12, in regular elementary and secondary classes, alternative, advanced, and language programs. We have a wide variety of programming in place for students with special education and behavioural needs. We're committed to life-long learning, and offer programs that allow adults to continue to learn and enrich their lives, and adolescent parents to succeed as parents and as learners. New Canadians, and students and families from a variety of diverse cultures, are also supported with programs in the Winnipeg School Division to help ensure success in our schools and our communities.

Student wellness and development is another priority that is evident in programming, such as school therapy and counselling services.

We've implemented a wide variety of initiatives to support indigenous education, both students and our staff. Indigenous programming and curriculum education initiatives are woven throughout nursery to Grade 12, across curricula across the Winnipeg School Division. Some examples include, elders in schools, including our traditional knowledge-keeper and divisional elder, programs that include indigenous music, visual art, and dance, indigenous games, athletes, and role-model studies, I could go on, and Star blanket math.

We also offer a number of language programs, such as French Immersion, but also bilingual Cree and Ojibway programming, bilingual Hebrew, Ukrainian, and Spanish. We also, of course, have English as an additional language to over 7,143 students.

Our board of trustees' primary responsibility is to ensure that all students receive the highest-quality education possible in our schools. As you can appreciate, in order to achieve these goals and foster academic, physical, social, and personal growth, teachers require access to a variety of educational materials to create engaged learners. For example, teachers need to incorporate current resources on human rights, poverty, equity, and sustainable development, including reconciliatory actions, resources that may be only available online, in news media, or in digital formats.

Students need to be able to synthesize and present their discoveries using digital and video technologies, and express their viewpoints through creative arts and performances.

Students also need to be able to manipulate and reformat resources, as allowed within the Copyright Act, for educational purposes.

🕒 (1425)

Along with this overarching responsibility, our board of trustees must provide responsible stewardship of the financial resources entrusted to it and must work in partnership with families, communities, and other organizations in ways that impact positively the overall well-being of children and youth and the federal government must be a partner, not a barrier, to this work. As the division serves a very diverse and unique community where education is critical for the success of our youth, many programs and services are provided that are not currently funded by the Province of Manitoba. The costs for the various programs and services that our division is not required to provide within the Public Schools Act totals over \$14 million, and that is provided to you in Exhibit C.

The division relies on the revenues raised from property taxation to offer unique programs and services for students. Of our funding, 60% is provincial government; the other 40% is raised through property taxation in Manitoba. With an urban indigenous city like Winnipeg, the Winnipeg School Division also has a story to tell this committee on the impact of the federal government's chronic underfunding on reserve, the pressures that segregated system has had on our school, and the history of colonialism. Thanks to Murray Sinclair, our proud independent senator, there is an increasing public awareness on the deplorable living situations on reserve, a growing awareness on the impacts of poverty, poor housing, sanitation, and five generations of the Indian residential school, and we're only beginning to realize the costs on school systems, like the one I represent in the Winnipeg School Division.

Many increased costs in school divisions' operations are beyond the control of school boards. Changes in student populations and enrolment due to immigration or refugee crises, for instance, needs and expectations, new provincial policy directions and legislation, arbitrated salary awards, and inflationary increases for services and commodities have significant financial impacts for school board budgets and implications for property tax levels.

The Winnipeg School Division recognizes and values the provisions of the Copyright Act, as expressed in federal law.

Are you going to cut me off, Mr. Chair?

Our commitment to honouring the rights of copyright holders is a priority for educators. We have done our part. We promote copyright provisions and invest funds annually through licences, ensuring copyright holders are compensated for use of work for SOCAN, the National Film Board of Canada, Re:Sound, etc.

I am hopeful today that the information shared will demonstrate that substantial revisions to the Copyright Act and the principle of fair dealing would have a devastating impact on a school division like ours and the ability of our teachers to provide students with current extensive teaching resources, especially in digital and non-traditional formats.

🕒 (1430)

The Chair: I'm going to have to cut you off there.

Ms. Sherri Rollins: I don't even hear your voice. It's like you're throwing your voice.

The Chair: You were waiting for me to cut you off?

Ms. Sherri Rollins: I was. I chair a board, so I know how it feels.

The Chair: We're going to move on with questioning.

Mr. Jowhari, you have seven minutes, please.

Mr. Majid Jowhari (Richmond Hill, Lib.): Thank you, Mr. Chair.

I welcome all the witnesses. Thank you for taking the time and sharing your insights, your positions, and making recommendations.

Let me start with Mrs. Robertson. You indicated that the revenue or the income that you've had from publishing and your Access Copyright has drastically been reduced. You mentioned \$63, but can you give me a comparison between 2012 and now, 2018?

Mrs. Patricia Robertson: Yes. I believe I mentioned that I was getting about \$550, I believe, before 2012 when the educational sector, as I said, unilaterally decided to reinterpret fair dealing. That's sort of the base amount. What happens to Access Copyright—and again I'm speaking for writers—all the monies are pooled, so all tariffs they receive from the educational sector will come into this pocket of money, which is then distributed to all writers across the country. So even writers like myself who are not directly writing for the educational sector will still receive that base payment. There will be top-ups if your particular work has been adopted for a classroom or—

Mr. Majid Jowhari: How much of that \$550 was the top-up? How much of it was—

Mrs. Patricia Robertson: The top-up would be about that \$550, and really, it would vary for each writer. I have never received a top-up, so I'm speaking about the base amount that every writer registered with Access Copyright would have received.

Mr. Majid Jowhari: You indicated that your income, as it relates to publishing, has now gone down about 90%.

Mrs. Patricia Robertson: Yes.

Mr. Majid Jowhari: Okay.

Ms. Greenberg, you touched on digital, but I want to go back and ask a question around it. How much money are you spending on digital or are you earning on digital as opposed to print?

Ms. Annalee Greenberg: I'm afraid I don't know how much we're spending on it, but virtually for every book that we publish, we publish an e-book. A book like this has added features like live links to archeological sites. I'm not sure. I can find out for you. Let's just say that the expected sales for e-books are minimal.

Mr. Majid Jowhari: Let me try to approach it in a different way. What impacts has the digitalization of publishing had on you, on your members? *[Inaudible]*

Ms. Annalee Greenberg: Frankly, not a lot. We have produced e-books.

Do you guys have any numbers on any e-books you sell? There are some other publishers here. I'm just wondering.

We create them. Very, very few people indeed buy them. I can find actual numbers.

Mr. Majid Jowhari: Yes, could you find that and submit that?

The last question to you, Ms. Greenberg, you made four recommendations. One of them was around clarity. You recommended that the purpose, the character, other elements need to be further identified. Can you expand on that one quickly?

⏪ (1435)

Ms. Annalee Greenberg: Oops. I took that directly from Judge Phelan's judgment on Access Copyright.

I view—

Mr. Majid Jowhari: How is that going to help the creative economy?

Ms. Annalee Greenberg: Because right now they are strictly looking at the amount, 10% a book.

I have another statement here from someone who has had course packs developed. To me a course pack is basically republishing: for example, another publisher contacted me about publishing an essay from this book. We found out where they were going to publish, the rights that they wanted, the geographic location, the duration, and we came up with an amount for that permission.

What's happening at the university level is that universities are essentially creating their own publications—and I consider “publishing” to mean “to make public for a number of people”. I don't know if I'm answering your question, but if indeed a student is doing an essay on the Delgamuukw case, and wants to use that chapter in their private study in order to work on their paper or something like that, to me that is fair use, but republishing is not.

When I say the purpose, if it's not private study and it's not someone's own educational research, that's taking it into a different realm. I hope that answers that.

Mr. Majid Jowhari: You talked about course packs. We've been talking to a lot of universities. I'd like to ask Ms. Andrew, can you give me an idea of how much you're spending on purchasing content?

Ms. Naomi Andrew: Do you mean purchasing content in general or acquisitions?

Mr. Majid Jowhari: Acquisitions, yes.

Ms. Naomi Andrew: Yes, we have quite a bit of data, actually, on our acquisitions.

Mr. Majid Jowhari: If you could break it down into how much of it is digital and non-digital, that would be greatly appreciated.

Ms. Naomi Andrew: I'll let the library answer on our acquisitions broken down into digital, electronic—

Mr. Majid Jowhari: Could you tell me how much you're spending overall first?

Ms. Mary-Jo Romaniuk (University Librarian, University of Manitoba): I can answer on behalf of what the library spent on purchasing, both electronic and print, in total, and I can give you the different numbers, the different amounts that we have spent in total over the years.

In 2012-13, I'll use that as a point, we spent \$9.485 million on acquisitions. That would include all acquisitions, including literary works both in e-format and print format. It would include the electronic subscriptions to journals and print journals.

In 2017-18, we spent \$10.8 million on the same packages of things.

Mr. Majid Jowhari: So over four years you've gone about a million—

Ms. Mary-Jo Romaniuk: We have. Some of that is because of inflationary pressures.

Mr. Majid Jowhari: Can you give me the breakdown of how much of it is digital?

Ms. Mary-Jo Romaniuk: Sure. In terms of electronic subscriptions, approximately half of it is electronic subscriptions, and that would be mostly for journals. About roughly 25% is for print subscriptions, again likely journals and book purchases, monograph purchases, which for us are literary works and scholarly works, we tend not to purchase textbooks, is \$1.8 million. That would be combined between print and e-book. I could break that down further for you, because we've got it in our submission. You can see there's a lot of numbers there.

Mr. Majid Jowhari: That's fine. Perfect. Thank you.

The Chair: Thank you. Sorry. Everybody is taking advantage of my time right now.

Thank you very much.

Before I move on, Ms. Greenberg, you had listed a book. Can you just tell us the name of the book and the author, please?

Ms. Annalee Greenberg: There's a couple.

The Chair: You referred to one. The one you were referring to. Yes, that's the one.

🕒 (1440)

Ms. Annalee Greenberg: This one?

The Chair: No, no.

Ms. Annalee Greenberg: This one?

The Chair: That one, yes.

Ms. Annalee Greenberg: *Indigenous Writes: A Guide to First Nations, Métis & Inuit Issues in Canada*. It's written by Chelsea Vowel, who is I guess a lawyer and scholar. It's an interesting one because, both at the secondary and university level—

The Chair: That's fine. I just needed to know the name and the author. That's all we needed to know, because you just referred to it, but you didn't tell us the name.

Ms. Annalee Greenberg: Yeah.

The Chair: All right. Thank you very much.

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

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

Thank you to you all for coming out today and for your presentations.

My first question is going to be for Ms. Greenberg. You seem to be on the hot seat quite a bit today.

In our previous committee sessions, it's been noted by a lot of universities and schools that they have been shifting to digital, and this has been put forth as a reason for why they're not going with the traditional access, copyright, or other measures. You said earlier today that you publish e-books, so in your opinion, has the e-book market been drastically undercut by the current fair use provisions?

Ms. Annalee Greenberg: I don't know. We sell e-books. We have not seen sales to universities. We haven't seen a lot of sales altogether. We haven't seen sales to universities.

Mr. Dane Lloyd: So you've seen a drop in print sales, but you haven't seen a corresponding rise in digital sales.

Ms. Annalee Greenberg: Not at all, no.

Mr. Dane Lloyd: Is it plausible or do you think...in your opinion, can you copyright-infringe an e-book?

Ms. Annalee Greenberg: Absolutely. Absolutely, yeah.

Mr. Dane Lloyd: So it's plausible that this is happening.

Ms. Annalee Greenberg: Yes. Absolutely.

Mr. Dane Lloyd: In your opinion, when a school or a university says, “We're spending more on digital, and that's why the authors and the publishers aren't enjoying as much revenue”, does that make any sense to you?

Ms. Annalee Greenberg: No. Again, with this book, we just had a request from a university library for the e-book, not to buy it but to have it forever. They wouldn't give us the term on it for lending rights, instead of going through the usual process for lending rights, and they would not give us a limit, they wanted it in perpetuity, and we basically said no.

Mr. Dane Lloyd: Thank you.

My next question is for Ms. Andrew and your colleague. I can't quite see the full name there behind the “11”.

Can you give us a breakdown, and if not immediately, please pass it on to our committee, on the breakdown of the source of the content? I know my colleague has asked is it digital, is it print, but I would like to know which countries' authors are you paying? Are you paying Germany's authors? Are you paying America's authors? How much are you paying Canadian content authors? Do you have those numbers?

Ms. Naomi Andrew: Yes, do we have—

Ms. Mary-Jo Romaniuk: I can give you some numbers and we've also put them in the submission.

I just want to put a point of clarification there. I will give you an example that helps answer that question. When you're talking about paying authors, we have what we purchased that is Canadian publishers and Canadian authors. There are many Canadian authors who are publishing in American journals and, of course, American publishers, so when you ask the question, “Are you paying Canadian authors”, we know how much Canadian content we're buying. In other words, on published Canadian content, not totally but we've been able to pull some of that out for you.

Mr. Dane Lloyd: When you pull content from another country, whether or not it's from a Canadian author but they're publishing from an American publisher or a German publisher, do you pay those publishers copyright fees that you would not pay to a Canadian publisher?

Ms. Mary-Jo Romaniuk: We pay the same. We acquire materials in two ways. We acquire print materials by buying the print copy. When we buy electronic materials we pay a licence to the publisher so if the publisher is an American publisher, it would be under that licence. That's how we acquire it. If it's a Canadian publisher, likewise.

Mr. Dane Lloyd: You are not paying access copyright.

Ms. Mary-Jo Romaniuk: You would not because the licence supercedes that and gives us the terms and conditions of use.

Mr. Dane Lloyd: Access copyright represents Canadian authors and publishers but they have said they're not being paid.

Ms. Mary-Jo Romaniuk: Well, the publisher from whom we acquire, and it could be...whoever it is. It would be an aggregator of some sort, or a publisher. That is their responsibility to pay the authors when they give us the licence.

Mr. Dane Lloyd: Okay.

I'll move on to another person, but I want to keep that in mind.

Ms. Rollins, on the very detailed explanation of the various breakdowns in cost within the Winnipeg School Division, and I just want to know if you have a number out of your \$396 million operating budget for how much currently is spent on copyright licensing?

🕒 (1445)

Ms. Sherri Rollins: It is approximately \$34,000.

Mr. Dane Lloyd: It is \$34,000. Okay, that would represent basically—

Ms. Sherri Rollins: —a dollar per student—

Mr. Dane Lloyd: —a dollar per student, and numerous publishers have listed that. It's about \$26. That's what the cost would be to return to a collective licensing regime, and out of a \$396 million budget, for 33,000 students paying \$26 adds up to about 0.002% of your total budget, so how do you square that with your statement that this has a devastating, severe, negative impact when it is at 0.002% of your total budget?

Ms. Sherri Rollins: Well, in part I did review how I've squared that is there is a downloading of federal government costs and the copyright would just be on the list of how we're getting squeezed from a provincial government that didn't give us an increase despite Hydro rates going up and the federal government long not having paid for the effects of colonialism and funding on-reserve.

I'd also say that years ago when we were paying approximately \$2 a student there were provisions in the Copyright Act for that.

This isn't what I understand the committee was coming for. We're on a new formula, so we're here to talk about fair dealing provisions and our desire to see them maintained.

Mr. Dane Lloyd: Yes, but if we did take away education out of fair dealing, we would probably have to return to a collective licensing regime in order to fulfill the law.

I'm going to move on into the reconciliation, which you did bring up. We heard testimony from a Professor Emeritus Dr. Andrea Andrea Bear Nicholas in which she stated, to paraphrase, the act of taking something that an indigenous creator—we have been talking a lot about indigenous users, but to take something from an indigenous creator and not compensate the creator for that, she was quite clear, is an act of colonialism.

How would your school compensate indigenous authors fairly under the truth and reconciliation principles?

Ms. Sherri Rollins: First of all, we do have indigenous authors on staff in our division—it's not a school board, it's a school division—and we do have indigenous authors as part of our faculty.

I did go over some of the copyright provisions that we do promote and that we invest funds through licences to ensure copyright holders are compensated, like SOCAN, like National Film Board of Canada. Some of our faculty participate in the National Film Board—

Mr. Dane Lloyd: Is that all included in the \$34,000 number, or is that in addition to \$34,000?

Ms. Sherri Rollins: That's and more criterion on-demand film performance licences, performance fees to music companies, so we do our part.

Mr. Dane Lloyd: But is that included in the \$34,000 number, or is that on top of that?

Ms. Sherri Rollins: That can be over and above. I just gave you an estimate on any given year.

Mr. Dane Lloyd: So if it's \$34,000, and then including these additional things you've said, what would be the total number that is spent on licensing and SOCAN, and those things?

Ms. Sherri Rollins: Through the chair, it depends on the year. Are we doing the musical, *The Lion King*, as a division, like we did last year? Is there a particular human rights inquiry that we're doing as a division? Is a particular high school with 1,500 students doing something in particular? So it really does depend. On average we hit a ballpark figure of \$30,000.

Mr. Dane Lloyd: Is that it for my time? You just like my questions. I think that's why.

🕒 (1450)

The Chair: Mr. Masse, you have seven minutes.

Mr. Brian Masse (Windsor West, NDP): Thank you, Mr. Chair.

And thank you everyone for being here today.

Ms. Robertson, could you remind us again in terms of a brief summary of how much your income, as an author, has dropped or changed in the last few years?

Mrs. Patricia Robertson: As I said, my reimbursement from Access Copyright has dropped from \$550 per year to \$63.

Mr. Brian Masse: Have there been other—

Mrs. Patricia Robertson: I should clarify. It's been dropping year by year and this year it was \$63.

Mr. Brian Masse: Have there been other opportunities that have emerged, that you have increased your revenue capabilities?

Mrs. Patricia Robertson: I wish I could answer yes, but no. I think it's important also to keep in mind that the entire cultural sector is under assault by companies like Amazon, like Google, which are illegally, as we speak, reproducing work under copyright and won that case eventually in the States, which a number of authors resisted.

So no, income for writers, and.... I have a briefing note here from The Writers' Union of Canada, which has done a number of surveys showing that writers' incomes are falling precipitously in all areas.

Mr. Brian Masse: I want to thank you for coming forth. We have to show some humility on this side that you have to disclose personal information like this. Because I find it odd, in terms of where we are now, and we just saw it again with this panel, that we know for a fact, and generally speaking, most artists have not seen compensation improvements under the current situation. We hear basically everyone else fighting over the use of it and how much they should get from the spoils.

I think it's another observation that we need to remind ourselves, as we try to find some sort of solutions—and maybe they don't reside just in this review of copyright—as I believe this exercise is probably going to be more about hopefully carving a path forward to get some type of justice there. Because we're just doing a review, and in the meantime you're right, the giants of Amazon, Google, and so forth will continue, and it's not sustainable.

Mrs. Patricia Robertson: May I just add a comment?

Mr. Brian Masse: Yes, of course.

Mrs. Patricia Robertson: There has been a great emphasis in this room on digital property, but e-books have levelled off. E-books are not becoming the be-all and end-all. Many people are returning to print.

The information given by Ms. Romaniuk about acquisitions by libraries, I think she was not including course packs. She was talking about subscriptions to journals, and so on, many of which are written by tenured professors who are

getting tenured salaries. Independent writers like me are not. We rely on really cobbling together strings of income that include, ideally, being paid for writing.

None of us went into this to get rich. I had no dollar signs in my eyes that I was going to become J. K. Rowling. We do it because we love it. We do it because it's a call, but we would appreciate compensation for reproduction of a work, which existed before the educational sector unilaterally reinterpreted illegally, as the court has now ruled, what those tariffs should be.

Mr. Brian Masse: It's interesting because there's more to it than just the digital age. I agree with your perspective. The same thing was said of radio. The same thing was said of bookstores. All you have to do is to look at the United States and independent bookstores have had resurgence that's similar to, actually, microbreweries and so forth. There's a cultural connection that goes beyond just the words on the piece of of printed paper or on the screen we're looking at.

Where I can go, though, I would like to ask Ms. Romaniuk, in terms of the purchasing that's being done, I'm just wondering whether you've noticed a shift. We know there are basically five large conglomerates that package and bundle for purchasing. In terms of your purchasing publishers—and I know there's a mixture in there, with Canadian authors in some of those publications—have those fees gone up? Have those increased over the last number of years? Has that happened?

🕒 (1455)

Ms. Mary-Jo Romaniuk: I will answer that question in two ways. First of all, the journal publishers have certainly enjoyed an increase. In other words, for anything that we're purchasing in journal format, those fees have gone up significantly.

In terms of licensing e-book content it's a little bit different because there are two kinds of e-book content: some which we license so we have use, and every year we have a different package we get to use; there are other ones that we buy outright or buy use in a more continual way. It's hard to compare those because it's like saying, “Do you have a print monograph one year that you pay a price for? If you buy a different one next year, is it a different price?”

Yes, overall our fees have gone up, but at differing rates. I don't know if I'm answering your question.

Mr. Brian Masse: Okay. That's great. No, no, you are. You're answering my question.

Would you say that if you didn't have access to some of those you would become a little bit more dependent, say if some of those were consolidated and you hadn't much choice to purchase from in terms of the packages, journals, and so forth? I'm wondering whether or not the trend I'm seeing, as we've travelled across and seen from Ottawa, there seems almost be a dependency model that's now being thrust upon school boards, and universities, and colleges. They seem to be all subscribing to similar operations for purchasing. I'm wondering if that's happening here as well.

Ms. Mary-Jo Romaniuk: Well, part of it relates to the academic process, and individual's needs to publish in journals for tenure and promotion purposes, and to share their research, the grants. It's a fact that people will share the research that comes out of the grants. As we move to open access models some of that's changing, and the library profession and others are trying to advocate for more open access, which will have a different effect on that cost.

The piece where most of this discussion is more on the scholarly monograph piece. I think we continue to try to buy that in ways that support Canadian content. I'm not sure that there's any aggregation model. We buy from the Association of University Presses, which have banded together to sell to all of us. I would argue that they do better because they now license through the Canadian research knowledge network, which exposes their content to 67 institutions, many of which may not have purchased.

Again, it's a licensing model. How the creators are compensated I can't honestly say.

Mr. Brian Masse: I'll come back. I have some time later.

It's just interesting because what's evident is that the creators are squeezed on every angle, and anybody who uses them never really knows how much they pay them.

The Chair: Thank you very much.

We're going to move to Ms. Ng. You have seven minutes.

Ms. Mary Ng (Markham—Thornhill, Lib.): Thank you, everybody, for joining us today. It's great to be here in Winnipeg and to hear all of your perspectives.

I'm going to pick up on a point, Ms. Greenberg, that you had talked about by way of the recommendations you shared with us. You said that there needs to be a clarification of fair dealing and the way in which it's interpreted, and that you, as Manitoba publishers, would certainly be prepared to work with educators.

You didn't say it, but I guess I'll ask it. Would that also include the content creators and the writers? The question actually is less for you than it is for the others. You've put a proposition out there about an opportunity to perhaps provide some clarity around fair dealing as a way in which it would work that could, perhaps, address some of the issues that authors and content creators are certainly seeing, like a reduction in income—we've certainly heard that consistently—and then speaking to educators about whether or not there is really this opportunity.

Based on what you said, is that something you as an author or content creator, and you as a university, would actually consider as an approach to help put some definition around the use of fair dealing that may be different from what it is today? It's to the authors and to the university. I'm just wondering whether or not that.... You suggested it as a recommendation, so is this something where there would even be interest on the other part?

⊕ (1500)

Ms. Annalee Greenberg: I'm going to very quickly say something before Patricia.

What everyone seems to forget is that we had a really good system before with the Access Copyright situation, which defined very clearly what was and what wasn't usable.

I would say that it was basically heaved out of here unilaterally by educational institutions, without any consultation, and I think I mentioned that. It worked, and it worked in a relatively inexpensive way and I think we should be looking back at what worked in the past.

Mrs. Patricia Robertson: I would echo that. It's certainly the position of The Writers' Union of Canada, and I'm not here to speak for them, but they make it very clear in a briefing note they provided to me that we need, and we had, a functioning collective licensing structure before the educational sector, as I said, came up with their own interpretation of what they should be paying. They're continuing to use our content, and content published by publishers, and yet they have decided they don't want to compensate us.

Ms. Mary Ng: Ms. Andrew.

Ms. Naomi Andrew: We've switched a little bit from fair dealing to Access Copyright, so maybe I'll first speak to Access Copyright and point out that a lot of the material and content in the collection offered by Access Copyright, the university was not using. A lot of the content offered by the same collective, we were already licensing under separate models, so we were paying—

Ms. Mary Ng: We've heard that so maybe you can actually go back to the fair dealing, which is—

Ms. Naomi Andrew: Okay, whether or not we would support....

I think it would be limiting, and I think the Supreme Court has always encouraged a flexible approach as opposed to rigid application of fair dealing exemptions. I certainly have read those cases. They're well written, well thought out,

and I do support that reasoning.

I should also say that if we did have that rigid application, it's not necessarily that universities would go back to Access Copyright or use more of that information. We are switching our models and it's very likely that we would encourage professors and course packs to rely more on open access material and the material that we license. We have a lot of links and licensing, so that's where our model is really shifting, towards licensed material and that access.

Ms. Mary Ng: That's okay.

Ms. Andrew, I just want to ask you, to help me understand a little bit better, about access to indigenous works and some of the archival material that you have that was used on the Reconciliation Commission. We are very interested in understanding and learning about where some of those barriers are.

You did talk about copyright as being a barrier. Can you just expand very briefly on what that is so that we have some understanding of that?

Ms. Naomi Andrew: The main barrier is that a lot of the information that has come to the NCTR—in the form of records, school records—and I'm going to focus on pictures because that is actually what people are more interested in. We don't own the copyright to that information, so it's—

Ms. Mary Ng: Who does?

Ms. Naomi Andrew: The creator, but it could be the priest who took the picture.

Ms. Mary Ng: I see, okay. I've got it.

Ms. Naomi Andrew: In order to have access if a survivor wants to come and says, "I want a picture of my dad", they'd have to go back to that person for permission and that's a real barrier.

Ms. Mary Ng: Okay.

My last question is to Ms. Rollins.

Can you just talk to us about your before fair dealings practice, post fair dealings practice? We did hear about schools, institutions photocopying works of creators. Can you talk to us about whether or not that practice changed before fair dealing and post fair dealing? In other words, has the practice of teachers in schools remained the same?

🕒 (1505)

Ms. Sherri Rollins: Yeah. I was interested to see Ms. Greenberg's book beside me, because it's one that I know our educators have bought. There's some level of school-based decision-making where our educators go out and purchase books, like *Indigenous Writes*, that are excellent. It isn't for them to photocopy the whole thing, it's for them to then tell other educators, "I have read this really great resource and you should buy it."

Ms. Mary Ng: Is there a policy in place...I know we've talked a lot about post-secondary institutions and they've put together a policy of how to comply with—

Ms. Sherri Rollins: Have our policies changed since: before, during and after? No. We still have the same practices.

Do you know what has changed? The fact that we've had to let go of our librarians and library texts because of chronic underfunding of our education system, so some of those things have changed—let alone the ability to pay for new textbooks—some of those things have changed in terms of the length of time that we keep textbooks around.

Ms. Mary Ng: So there aren't any new policies around how to...for your teachers and educators on how to comply with the Copyright Act. Would you say that there are or there aren't any policies?

Ms. Sherri Rollins: Yes, I would say we have policies. We have several policies in terms of how to comply with the Copyright Act at the school. Some of the things that we've done have been decentralized in order to not only save costs but centralize our copying at the division level so that we have some controls over that as well. Our schools cannot afford their photocopiers, let alone to make copies anymore, so we centralize our print services.

The Chair: Thank you.

We're going to move back to Mr. Lloyd. You have five minutes.

Mr. Dane Lloyd: Ms. Andrew, you brought up a very interesting point about the archival footage. I don't think anyone on this committee wants to deny survivors and their family members, or researchers for that matter, the right to do research and use archival footage, but I'm wondering, are priests, as you said, or content creators, challenging your ability to share this archival material or is this just a theoretical barrier that could happen?

Ms. Naomi Andrew: It's not theoretical. It is a real barrier. We do have those records now. We have a mandate to share them, not only upon request but proactively under privacy legislation specific to the NCTR, but often we cannot do that, so it is a real barrier.

Mr. Dane Lloyd: Why can't you?

Ms. Naomi Andrew: Because we don't own it and then we have a hard time finding...so it's not a matter of...and I would imagine we could build an exemption if a person who's an author or a copyright owner of a specific piece in the archive has an issue with it, but the problem is, for the most part, we cannot find the person who created it. If we have a picture—

Mr. Dane Lloyd: Has any author or content creator, or a priest, as you mentioned earlier, has anyone ever come to you and said, “Don't share this information. I'm claiming the copyright on this”? Has that ever happened?

Ms. Naomi Andrew: You know what? I can't speak to that. I shouldn't speak on behalf of the director of the NCTR. I do know that when we receive information the person who the information is about has asked for it to remain restricted, and we do have material that is restricted. We also make material, even if no one has had it, that we think is sensitive or inappropriate, restricted, so I can't, sorry, speak from [Inaudible] point of view, but NCTR will be submitting an independent breach, but what I would say is a lot of it we don't know who the author is.

Mr. Dane Lloyd: So it's like an orphan work. I think we heard that term.

Ms. Naomi Andrew: It is, yeah, very much so.

Mr. Dane Lloyd: That's very interesting. We'll have to look—

Ms. Mary-Jo Romaniuk: I just want to add an important piece to that. My understanding, from talking to our indigenous community, and the NCTR people, is that part of this relates to having the indigenous people having to go back to the perpetrators of what they feel are the crimes and re-empowering them and giving them that power to say no, so that active asking is painful because it is giving power back, and they find that inappropriate.

Mr. Dane Lloyd: But these people don't seem to exist or we don't seem to know who they are, so is that empowering these people?

Ms. Mary-Jo Romaniuk: They would start by going back to the churches.

Mr. Dane Lloyd: I see. Okay. Thank you.

This line of questioning is for Ms. Robertson. You're the only one I haven't really gone after today.

Your resume is quite impressive and it's very interesting because you have a lot of cross-sections of experiences. You're not only an author, you're someone who has taught at universities and schools, and you have also worked in

libraries, I've seen, as a writer-in-residence. Have you been able to see the interaction in copyright in all of those institutions that you have worked in, in the university and in the library?

🕒 (1510)

Mrs. Patricia Robertson: Not in libraries because I was largely meeting one-on-one with emerging writers or doing workshops. There seems to me to be a lot of copying going on in my English department at the University of Winnipeg. I mean, it's not that everybody's relying on digital, but even if they are, there's still a creator of that digital content and there still needs to be a way to license, to establish a collective licensing regime, whether or not it's Access Copyright, that acknowledges the creators. If we don't have creators, we don't have a culture.

Mr. Dane Lloyd: Yes, I think that's very important.

Mrs. Patricia Robertson: We need some way. Everybody else is getting compensated, from the administrators to the lawyers, to the printers, to you name it. Always the writers, the number of times writers get asked, "Well, just contribute to this anthology. No, we can't pay you, but the exposure...". Well, you can die of exposure, as you know.

Voices: Oh, oh!

Mr. Dane Lloyd: This is less of a factual thing but more about how you feel. I understand that getting your \$1,100 a year, like previous to that case, might seem like chump change, as you said, and now you're getting \$63. I'm not trying to denigrate the importance of that income stream, but do you feel that it hurts you more as a person, your feelings and your integrity, that you feel your work is being taken from you? It's not about the level of compensation; it's the very fact that you're not being compensated at all. Is that accurate?

Mrs. Patricia Robertson: Well, I would say it's both. I mean, it's real money that my husband and I needed—and my husband is currently ill, so I'm the sole earner in the family. Yes, I think writers across the country feel that it's a slap in the face, essentially.

You may remember back when the 'net got going, there became this very popular statement, "Information wants to be free." Well, now everybody thinks everything should be free, as though it just emerged out of the ether. Well, it doesn't. It's created by writers and other artists, and we need to be compensated.

Thank you.

The Chair: Thank you.

Mr. Sheehan, you have five minutes.

Mr. Terry Sheehan (Sault Ste. Marie, Lib.): Well, thank you very much. Thank you for acknowledging that we're on the lands of first nations of the area, the Métis people as well. I want to thank people for that.

Second of all, of course, "Go, Jets. Go." They're playing tonight.

Seriously, I'm going to ask the University of Manitoba, how do you apply and enforce copyright policy for the preparation of course packs again?

Ms. Naomi Andrew: I'll start a little bit of intro while Althea is coming.

Our course packs are printed at the University of Manitoba, and on a cost-recovery basis. No profit has been made. They are created through the bookstore.

I'll let Althea expand on that. She's our copyright strategy manager.

Ms. Althea Wheeler: Yes. The University of Manitoba relies on our electronic licences, for example where they permit course pack use, and transactional licences, etc., and are generally our copyright policy as we produce course

packs. And yes, they are all reviewed for copyright compliance centrally.

Mr. Terry Sheehan: How many course packs are there in a year, last year in particular compared to previous?

Ms. Althea Wheeler: Our course pack use is certainly declining. They are still used at the university. In 2018 there were about 29,687 course packs, whereas previously, in 2014, there were over 35,000. The number is going down.

Mr. Terry Sheehan: Are they using other means, electronic means, etc.? We've heard from other universities that course packs are going down but they're using different systems.

Ms. Althea Wheeler: Yes, absolutely. The learning management system we have, UM Learn, would be used.

Mr. Terry Sheehan: I'm sorry, which one?

Ms. Althea Wheeler: We use something called UM Learn. It's based on Desire2Learn, which you may have heard of before. That's our learning management system. Again, it would be the same, that we would be heavily relying on our electronic subscription within that system.

Mr. Terry Sheehan: Do you have a sense of how often your faculty, staff, or students rely on fair dealing exceptions? Are you tracking this activity?

⌚ (1515)

Ms. Althea Wheeler: Yes, we have a sense of that. I can definitely say, of course reviews we do in UM Learn, that while fair dealing can be applied it's usually for digital kinds of materials, things that you might find online to begin with such as reports, etc. That certainly seems to be the highest percentage of fair dealing we see in the learning management system. Quite frankly, since we have these electronic subscriptions and licences, it's just very easy for a professor to link to something that's already in the library catalogue. There's not as much, say, printing and posting of PDFs.

Ms. Naomi Andrew: I just wanted to add that we do have a service that we started called Copyright Solutions, and what that does is allows faculty members, with respect to their online courses, to come to the copyright coordinator and have their systems reviewed. The copyright coordinator will ensure they are copyright compliant and often recommend alternatives and licensed material that we already have that the faculty member may not be aware of open access, so that is a service that we offer to faculty.

Mr. Terry Sheehan: In testimony we've heard, Universities Canada said that their members pay more now than ever before for access copy material. Is that true for the University of Manitoba?

Ms. Naomi Andrew: Sorry.

Mr. Terry Sheehan: Universities Canada stated that its members pay more now than ever before for access copyright material. Is that true for the University of Manitoba?

Ms. Naomi Andrew: We don't have a licence with Access Copyright, but we are paying more than ever in terms of acquisitions in general, whether that be print or digital.

Mr. Terry Sheehan: That was "to access copyright" not "Access Copyright". Sorry.

Ms. Naomi Andrew: Oh, yes, that's our similar trend, our copyright acquisition fee increased.

Mr. Terry Sheehan: Just finishing up on this particular subject, because I've been asking some questions as well, what resources do you make available to faculty an staff and students to ensure compliance with copyright law? How do you assess the effectiveness of those resources?

We've heard some statements like "We put a poster beside the photocopy machine". That's not quite on. We've heard

there are some more elaborate processes and policies in place. What does the university do?

Ms. Naomi Andrew: We have very robust copyright compliance. Yes, we do have our posters. We have three people on our copyright staff. We have Althea, who is our Copyright Strategy Manager, our Copyright Officer, and our Copyright Coordinator. Our Copyright Coordinator's main role is to educate faculty and offer them review of course materials.

We provide advice online and in person on the phone to graduate students. We present to approximately 700 people per year. I've just created recently an online tutorial for faculty and staff, and it has seven modules that cover how to prepare, how to be copyright compliant. We have numerous policies in place, academic misconduct, responsible conduct of research and most recently, use of copyright-protected materials was approved by the audit risk management committee.

I'm trying to think. We do audits periodically and if we do see any issues with respect to those audits we will recommend changes for transactional licences switching to licenced material. If I look at the entire university, people are dedicated to copyright compliance, including the bookstore, our libraries and extent to that, and we have five full-time equivalents dedicated to copyright compliance.

The Chair: Thank you.

Back to you, Mr. Lloyd, for five minutes.

Mr. Dane Lloyd: You made an interesting comment, Ms. Andrew, about one of the reasons you are no longer with Access Copyright, as in the company, as Mr. Sheehan said, was because there was a lot of duplication and you were already paying for the rights of many things that access copyright was providing. Can you explain how that happens? How is there duplication? It seems to me that somebody pays for the right to sell a published work. How is somebody else also available to pay that?

It seems like there is only one owner, or one licence holder, so how can you be accessing copyright protected materials by paying one person but not actually paying somebody who also holds the licence for that?

🕒 (1520)

Ms. Mary-Jo Romaniuk: We'll see how we answer this. I hope this answers your question.

When we license material in the library, which is what she's referring to, we pay a licence fee to the publisher, who again, we assume, divvies it out appropriately, so that is how we licence material. Once it's licensed we have the right to use, and individuals use it. If we license five simultaneous users, five people can use it at the same time. If we license one, they take their turns.

The fee for use is already paid in that fee. When we were paying access copyright, of course you pay by head count, so in essence we've already paid the fee for most of that licensed material and, as you can see, the amount of both our dollar value and kinds of licences have expanded greatly so the duplication would only be worse.

Mr. Dane Lloyd: Would you say that you're paying for copyright? You're just bypassing access copyright and paying the publishers directly?

Ms. Mary-Jo Romaniuk: That's the model that's there. Access Copyright is one mechanism. The other mechanism, of course, is for us to purchase material or licensed material from publishers, which we have always done.

Mr. Dane Lloyd: These publishers are publishing works that Access Copyright was also selling to you?

Ms. Mary-Jo Romaniuk: There can be multiple ways you can acquire a work or rights to use a work. Access Copyright is one.

Ms. Althea Wheeler: If I can add, I think part of the difference is if we're looking at something that is born digital versus the print version, and we are increasingly purchasing those born digital versions of things. That's I think where the difference comes between who is getting paid.

Mr. Dane Lloyd: I'd like to switch this over to Ms. Greenberg.

What is your response to that? When you're a publisher, do you work with Access Copyright? You seem to get some revenue from them.

Ms. Annalee Greenberg: I think most Canadian publishers do. I think their repertoire is from Canadian publishers, but I'm just mirroring what Pat said. We have gone, from 2013 to 2017, to 12.5% of what we got.

Mr. Dane Lloyd: Are other publishers in your industry prospering right now because the universities are switching to them, or are all publishers currently hurting in the country?

Ms. Annalee Greenberg: I wish I could say that we are in the rooms and we are seeing people copying. We get anecdotal clues about what people are doing and Wayne Antony, who is a publisher at Fernwood, whose work is mostly post-secondary there, sent me a note of his experience, which I'm going to share if that's okay. It might shed some light on what is happening.

As you know, I think it's Universities Canada that put out a guide for copyright and the Ministers of Education—I don't know the full acronym—also put out a book called *Copyright Matters!*, so I think a lot of educators are going with that, which basically says, go for the 10% and don't worry about it.

This is from Wayne. He said:

A few days ago we received a request for a desk copy of a book that will be released this spring from a prof. at Carleton. She also sent her course outline with the request. The course outline for a senior undergraduate course shows no textbooks, but rather a list of book chapters and journal articles that will be posted for the course on the LMS, which is digital. It included several chapters from Fernwood books, including two from a book yet to be published, two from a book recently published, and single chapters from other Fernwood books. We have had no request from Carleton for permission to reprint these chapters.

Mr. Dane Lloyd: Interesting.

I'm sorry to cut you off, but is it plausible that there are other publishers out there who are being paid, and maybe they're just not going through Access Copyright and you?

Ms. Annalee Greenberg: Possibly, but I would say before these.... I work mostly with the K to 12. Before the modernization came, quite frequently we would get requests from teachers. We don't anymore. They don't ask anymore, they just interpret the copyright matters and booklets. We would get an email saying, "I would really like to use a chapter from this. What can you do?" and we'd arrange something. We get nothing like that anymore.

Michelle Peters, who is the AMBP executive director, may have something to add to that.

Ms. Michelle Peters (Executive Director, Association of Manitoba Book Publishers): Yes, I just want to add quickly that all of our members have reported that their Access Copyright revenues are down. As well, direct copying requests are down.

Mr. Dane Lloyd: The universities that contact you directly are also not doing that either?

Ms. Michelle Peters: That's down as well.

🕒 (1525)

Mr. Dane Lloyd: Okay, so that's interesting.

Thank you.

The Chair: I just want to get your name on record again, and your title.

Ms. Michelle Peters: Michelle Peters, executive director of the Association of Manitoba Book Publishers.

The Chair: Perfect, thank you. That's just for the record.

We're going to move to Mr. Sheehan. You have five minutes.

Mr. Terry Sheehan: Thank you very much.

My next question is going to be for Sherri Rollins.

I used to be a school board trustee many years ago. In Manitoba, how does the funding work? You referenced that some of the funding is down for your libraries, for library services. Do you set a mill rate or is it provincially driven?

Ms. Sherri Rollins: Thank you for asking that because we set the mill rate still. We're one of the few provinces that still have the ability to set the mill rate.

Mr. Terry Sheehan: Okay, and then you still receive some provincial funding for—

Ms. Sherri Rollins: Yes. We receive it, and school boards across Manitoba. In some cases school boards are almost 50:50. We're seeing a province vacate the space. It used to be around 80:20, which we've always asserted is the right place to be in terms of the province's being at 80% and our being at 20%, property taxation setting the mill rate. Some school divisions in the province are at 50:50, and an eroding 50% at that. We're at an eroding 60:40, and we have about roughly 2.3% from other sources, including the federal government, which compensated us last year for the increase in refugees.

Mr. Terry Sheehan: For the refugees, as well, then—

Ms. Sherri Rollins: We have 5,000 staff, so about \$387 million of our roughly \$406 million budget is teaching staff. That's not a lot to keep the lights on.

Mr. Terry Sheehan: No.

Ms. Sherri Rollins: That's right.

Mr. Terry Sheehan: It's always the number one cost.

Do you have first nations within your board, or are they urban indigenous?

Ms. Sherri Rollins: Of the on-reserve schools there are some reserves in Manitoba that still do not have high schools, and so yes, we do have students from sovereign first nations across the province who end up coming to our school. We also—clearly, in Winnipeg—we're an indigenous school division, as all school divisions are in Manitoba, and have about 30% declared indigenous students in our school division.

Mr. Terry Sheehan: Okay, because I was leading up to the K through 12 education that you were talking about, through some of your remarks, that's happening. Of interest to me and to this committee is copyright as it relates to indigenous culture. We're asking universities and colleges, and a lot of times it's a very oral tradition. Sometimes it's in a sacred form. How does your board basically utilize elders and other traditional teaching methods in your school board? Give some examples, perhaps.

Ms. Sherri Rollins: Well, we have a traditional knowledge keeper, who herself, Dr. Myra Laramée, is an author, as a creator of content, if that's what you mean. We have several elders who are attached to schools, not just our traditional knowledge keeper Dr. Myra Laramée. We have several elders.

Are you asking a question about their content that they create? They create curricula, curricula documents, books. Dr. Myra Laramee creates videos to share.

Mr. Terry Sheehan: The elders have that content, then.

Ms. Sherri Rollins: Yes. Oftentimes she's the owner of the content. She publishes through publishers. I'm not just talking about her specifically, but other elders and teachers publish through Manitoba publishers. We have teachers who have contributed to compilation documents. We have artists in our school divisions. They're creators of their content as well.

Mr. Terry Sheehan: Is that all the time, or does MP Jowhari have a chance to question?

The Chair: You're out of time, sorry.

Our last question for the panel is from Mr. Masse.

Mr. Brian Masse: Thank you.

The Copyright Board: reform, maintain the status quo, or are there any suggestions on improving it, in the short time we have? I have two minutes, so if I could I'll start with Ms. Wheeler and go across if you have any comments. If you don't, take a pass. I'm just trying to get a snapshot on the Copyright Board.

⊕ (1530)

Ms. Althea Wheeler: I think our comments are probably similar to those you've heard from other universities, that right now the process is quite slow. There could be more case management. The retroactive application of tariffs is somewhat problematic. Also, just on the issue of interrogatories, they should be for a specific purpose. Perhaps when an organization, for example Universities Canada, is involved, a representative number of institutions could be subject to the interrogatories rather than all. Those are our general comments.

Mr. Brian Masse: That's good.

Ms. Robertson.

Mrs. Patricia Robertson: Well, as I said earlier, I think we need a functional collective licensing regime—however the Copyright Board is involved in that, I don't know specifically—that recognizes the rights of creators to be compensated.

Mr. Brian Masse: Okay.

Ms. Rollins.

Ms. Sherri Rollins: I'd like to go back to something you said. A lot of the comments that I have are perhaps not for this committee.

In the school system, you were making comments that—

Mr. Brian Masse: I only have a few minutes on the Copyright Board. If you don't have a position on it, then I'll come back to you if I have free time, but I want to get across the board here, if I can.

Ms. Sherri Rollins: I'll have to say status quo, then.

Ms. Annalee Greenberg: I guess we support the Association of Canadian Publishers' concerns, which are the timelines and process and the amount of time it takes to have something heard and all the stuff that happens in the background when cases or tolls given because it can take many, many years for a case to come through. So to streamline

that process is important.

The other is enforcement. That's a big issue. I think that mechanism has to be improved.

That's about it.

Mr. Brian Masse: Do we have time for Ms. Rollins to finish?

The Chair: Ten seconds.

Ms. Rollins, very briefly, you wanted to make another comment.

Ms. Sherri Rollins: Yes. I just handed my card over to Ms. Greenberg because I agree with her statement that there should be more clarity around fair dealing and I think, as a board, we can do that. We do have policies, but I think more clarity could be doing that and this committee could help in that regard for sure.

The Chair: On that note, as you can see, it's not an easy subject. With everything we've been hearing and with each panel that continues to go forward, we get more questions that we need to be asking our panellists. They're getting harder and harder and it's not an easy thing to do, because we know it's such an emotionally charged subject. Bear with us. We have a lot more to do. This is a study that's not going to finish overnight. We'll likely be seeing witnesses until the end of the year.

On that note, I want to take a moment to thank everybody for showing up to our panel today and playing along with us. We will suspend until our next session at four o'clock.

Thank you.



(1600)

The Chair: Thank you very much, everybody, for coming to the second panel on the legislative review of copyright.

A couple of things. If you have an earpiece, please keep it away from the microphone because it could go boom and hurt people's ears. That's number one. It won't really go boom, but it will make a loud noise.

The second thing is as we go through our presentations, each one will have five to seven minutes, if needed. Then, we'll go into our rounds of questions.

It's important to understand that part of the role of the committee is to ask really good questions. Sometimes they're not comfortable questions, but if we don't get good data into our report, then we don't maybe make good recommendations, so part of this is to make sure that we have good, solid questions.

We're doing the statutory review. We're on a five-day tour. This is day four. We're in Winnipeg. Our study is going to continue on for about a year. We have divided things up into sections.

Today, I know we have...the second panel is a bit of a focus on indigenous. I just want to make sure you understand this is not just the one time. When we go into phase two, there will be a focus on indigenous as well, so whatever information you present to us today will be a good introduction that will help us when we are introducing more witnesses in phase two of the study.

Having said that, today we have, from the Winnipeg Arts Council, Alexis Kinloch, Public Art project Manager, we have, from the Manitoba Metis Federation, Sharon Parenteau, General Manager, as well as Georgina Liberty—my

apologies, with the Winnipeg Arts Council we also have Dominic Lloyd—and we have, as an individual, Lynn Lavallee, Vice Provost, Indigenous Engagement, University of Manitoba, and we will have somebody else coming in who is late at the moment, and we'll introduce her when she comes in.

We're going to start with the Winnipeg Arts Council. You have five minutes, seven minutes if you need it.

🕒 (1605)

Ms. Alexis Kinloch (Public Art Project Manager, Winnipeg Arts Council): We're going to share the time.

The Chair: Okay.

Dominic Lloyd (Program and Arts Development Manager, Winnipeg Arts Council): Thank you, Mr. Chair, and thanks to the clerk for accommodating us.

My name is Dominic Lloyd, and I have been managing arts funding programs with the Winnipeg Arts Council for eight years now, prior to which I worked in the Canadian music industry for almost a dozen years.

What I want to say is that the importance of the arts cannot be overstated to our quality of life, to the cultural, social, and economic well-being of Canada. However, even more important is the value of art itself. The creative ingenuity of people for its own purpose, experiencing the arts, is that which provides us the capacity to perceive, to feel, to interpret the world, and to build empathy.

What is less often stated but should always be at the forefront of our discussions is the recognition of the individual artist as the primary source of creative activity in all artistic disciplines. Without artists, quite simply, there's no art. This is what drives the Winnipeg Arts Council, and we ask today that you too keep this in mind as you cross the country and develop legislation that will have a great impact upon the entire Canadian cultural ecology.

Innovation is a word that's bandied about all the time as though it were a new concept, but by definition, artists are innovators. They've always been the ones looking for new ways to express our goals as a society and to interpret the world. It follows then that where conversations around ownership and financial rights of creative material occur, they must involve artists, first and foremost, and their interests must remain paramount in your deliberations.

Here in Winnipeg, we know that the arts are a significant contributor to the economy. Independent research from PRA in 2014 showed that they employ over 26,000 people in our city, and contribute over a billion dollars to our GDP. It sounds impressive until one considers Hill Strategies' research from the same year, which showed that artists in Canada are earning, on average, \$33,000 a year and—

The Chair: My apologies. If I can just stop you for a moment. When you're talking into the mic, if you're talking too close you're going to hear that popping sound, so if you can be just generally about that far away from the microphone—

Dominic Lloyd: I apologize.

The Chair: —it won't hurt the ears of our wonderful translators that we have back there.

Dominic Lloyd: I'll stop laughing in front of the microphone. I apologize again.

The Chair: Thank you.

Mr. Dominic Lloyd: What I wanted to say was that \$33,000 a year is high when you consider the income of artists in the visual arts, music, and dance.

We know that artists in Canada do what they do with very little money, but the work that they do is essential to building our community, our identity, and our economy, and their interests must be, above all, included in your discussion.

Ms. Alexis Kinloch: I am Alexis Kinloch, and I am an employee of the Winnipeg Arts Council.

I'd like to acknowledge that we're on the original lands of the Anishinaabeg, Cree, Oji-Cree, Dakota, and Dene peoples, and on the homeland of the Métis Nation.

It's crucial that the government work closely with indigenous communities to make room in these laws for indigenous arts practices and knowledge-sharing to be recognized in a way that is decided by indigenous people and is respected and protected in the law, and I urge you to make that a key priority throughout this review.

I've been a visual artist and writer for 14 years and I've worked in arts administration for eight years.

I thank you for the opportunity to speak about copyright and how it impacts artists, but I would like to note for the record that I find it extremely problematic and scary that such an important public review was announced only two weeks before the event, and that the invitation to speak came only two days before the engagement, leaving very little time to prepare.

Copyright is an important source of income for visual artists as they get paid when their works are exhibited, reproduced, or copied for classroom use. This becomes important because visual artists earn far less than the average Canadian, and three changes to the act could help improve their income potential.

For several years, CARFAC, the National Association of Visual Artists, has been advocating for an artist resale right, a royalty that artists receive when their work is resold publicly. They recommend that artists should receive 5% on future eligible sales. It is common for artists to sell their work cheaply early in their careers, and usually if that work increases in value later and is resold they are not paid.

For example, Inuit artist Kenojuak Ashevak's famous print, *Enchanted Owl*, originally sold for \$24 and was later resold for over \$58,000, for which he received nothing.

The resale right has been around for almost 100 years and it is being adopted by at least 93 countries.

Another change that artists are asking for relates to the exhibition right, which mandates museums to pay for use to artists when their work is exhibited publicly. Currently public museums and galleries are not legally required to pay for use to artists if their work was made before June 8, 1988, the date on which the right was enacted. It was argued that it minimized the financial impact that the new right could have, particularly for works in museum collections, but this has led to discrimination against senior artists as they are not always paid when their work is exhibited. This discrimination could be a charter issue. The exhibition right should apply to the normal term of copyright, the life of the artist and their estate, for 50 years after death.

The third request from artists is to place some limitations on the fair dealing changes that were made in 2012. Fair dealing has implications for all disciplines in the arts. Each year art works and publications are copied for use in schools and visual artists are paid for those copies, but many universities are no longer renewing licences for that use, believing that they no longer have to because of fair dealing. The act doesn't specifically define what is fair, and while lawyers battle it out, artists' incomes are eroding.

Between 2013 and 2017, payments to visual artists from Access Copyright declined by 66%. In 2012 we were told that changes to fair dealing would not have a significant effect on artists, but these numbers say otherwise.

We are not asking to get rid of fair dealing, but the education exception should not apply when it is possible to license work that is commercially available from a copyright collective or rights holder. This is how it works in the U.K. and we would like to see a similar model adopted in Canada.

Thank you.

The Chair: Thank you very much.

Before we move on, on another point, please talk more slowly. We do have translators and we are recording everything. Because this is for the House of Commons we have to have French and English so as you're speaking it's automatically being translated in the back.

Ms. Alexis Kinloch: I was trying to get a lot of info in initially.

The Chair: I know, that's why I gave you an extra couple of minutes. Thank you.

We're going to move to Ms. Sharon Parenteau, from the Manitoba Métis Foundation. You have the floor, please.

Mrs. Sharon Parenteau (General Manager, Manitoba Metis Federation Inc.): Thank you. Good afternoon. My name is Sharon Parenteau. I am the general manager of Louis Riel Institute, the culture and education arm of the Manitoba Metis Federation. We would like to thank you for providing us an opportunity to present to the Standing Committee on Industry, Science and Technology as part of the five-year review of the Copyright Act.

We recommend that the committee consider an alternative approach to dealing with Métis cultural property and develop substantive changes to the Copyright Act to protect Métis cultural property.

The Métis nation has a proud heritage with a distinct culture. Property stemming from Métis culture can include traditional indigenous knowledge: iconic images of the Métis, appropriating Métis artistic cultural expression, and representations of the Legislative Assembly of Assiniboia are three key examples of Métis cultural property.

The use of Métis cultural symbols without the consent of the Métis nation, and the abuse of Métis history and identity theft are key concerns in the protection and continuance of Métis culture for generations to come. The protection of Métis cultural property is complex, disparate, and will require expenditure of Métis resources to address. The Manitoba Metis Federation has developed the Manitoba Métis Community Research Ethics Protocol to protect the citizens of the Métis nation by ensuring that research involving the Manitoba Métis community is culturally appropriate and considers the distinction of the Métis nation. The MMCREP is an act of self-government to protect and promote the culture, history, values, collective rights and interests of Métis citizens.

The MMCREP generates a centralized research protocol where the MMF home office is the first point of contact for external and internal researchers. Researchers work closely with the MMF to direct them to departments, affiliates, regions, and locals respectively, in the context of their projects, thus ensuring the Manitoba Métis community's cultural, historical, and intellectual property is appropriately reflected and preserved.

Current copyright laws do not fully protect Métis cultural property rights. For example, fixation does not protect oral knowledge handed down from generation to generation. Works that have not been fixated in a tangible form of expression are not protected under the Copyright Act. Since fixation is one of the prerequisites of copyright protection, this limitation allows expropriation of traditional knowledge.

Advocacy through appropriate political channels is required to align Canada's intellectual property regime with the cultural property rights of the Métis nation. There are two ways through which this could be achieved: self-government agreement affording the Métis nation the authority to legislate to protect its cultural property, and legislation to directly address one or more of the intellectual property issues specifically from a Métis perspective and context.

There are existing Métis nation protocols that have been established by the MMF that are based on traditional knowledge handed down from generation to generation. The MMF has taken this traditional knowledge—such as the traditional harvesting methods as described in the MMF's Métis laws of the hunt, traditional land use teachings, which the MMF collects in its traditional land use knowledge studies, and the original Métis names for landmarks and historical communities—these and other protocols are documented in Louis Riel Institute publications.

We define “traditional knowledge” as the body of knowledge shared by indigenous people, and held by and transmitted between indigenous representatives, which supports traditional land use for the benefit and well-being of

indigenous peoples. Similarly, people come to understand the ecology of their surrounding environment through years of firsthand experience and inherent cultural understandings of relationships between humans, animals, lands, and water. People also come to understand the ecology of their environment through teachings that have been passed down through relations or within a community. This type of knowledge is often referred to as traditional ecological knowledge.

🕒 (1615)

Existing traditional knowledge is carried by the knowledge keepers of the community through oral transmission . There are fewer knowledge keepers and citizens who can speak the traditional language of Michif, making it difficult to preserve and revitalize.

An alternative way to preserve the oral history and knowledge is to recreate it in different forms. While the MMF has spent considerable effort collecting and using traditional knowledge for ecological purposes, the artistic community has only begun to explore this issue. In the age of digitization, artistic cultural expression is often appropriated by others with no safeguards.

Changes to the Copyright Act need to give the Métis Nation the authority to legislate and protect its Métis cultural property. Our traditional knowledge is usually transmitted orally through storytelling. Using the Manitoba Métis community research ethics protocol ensures researchers are working with the Manitoba Métis community to gather and protect Métis cultural property. Research gathered is subsequently housed in the Métis knowledge base and is protected by the Manitoba Métis Federation, the governing body for the Manitoba Métis community.

Thank you.

The Chair: Thank you very much.

I want to welcome our new guest, Camille Callison, indigenous services librarian, Ph.D candidate from the university of Manitoba. We're going to give you a chance to acclimatize.

We're going to jump right to Ms. Lynn LaVallee. You have up to seven minutes, please.

Ms. Lynn Lavallee (Vice Provost Indigenous Engagement, University of Manitoba, As an Individual): Dr. Lavallée, sorry.

The Chair: I'm sorry.

Dr. Lynn Lavallée: That's okay. I typically don't put my title. I try to be humble, but I got lectured by an elder once to ensure that I use it.

[Witness speaks in native language]

My name is Dr. Lynn Lavallée. I'm currently the Vice Provost, Indigenous Engagement, at the University of Manitoba. I'm an associate professor with expertise in the area of indigenous research ethics.

While a faculty member at Ryerson University in Toronto, I served for over a decade on Ryerson University's research ethics board, REB, with my final four years as chair of the REB.

I'm coming to you as an Anishinaabe person who understands traditional knowledges and ceremony from my own limited perspective, while also understanding the importance of promoting creativity and innovation with respect to research and the Copyright Act.

I would like to speak to the tensions I have witnessed with respect to indigenous knowledges and ethical research with indigenous peoples. What I will share is not new and has been discussed for well over a decade. However, we are still having these conversations, which indicates we have not achieved an appropriate balance with respect to indigenous

knowledges, intellectual property, and copyright. I hope my involvement here today is not to simply check a box as to ensure consultation with indigenous peoples, but to achieve further progress in the area of protecting indigenous knowledges, particularly as it relates to research and copyright.

Marlene Brant Castellano defined indigenous knowledge as, “traditional teachings being passed down through the generations, empirical research being gathered over time, for instance, observing how medicines can alleviate certain illnesses”—and when I say “medicines”, I mean traditional medicines—“and spiritual knowledge gained through dreams and revelations.” Marie Batiste talks about indigenous knowledge as not being a binary of western knowledge, and Willie Ermine speaks of the ethical space between indigenous knowledge and western knowledge with this ethical space overlapping. This is the space that we need to do more work on to protect indigenous knowledge.

The Copyright Act not only allows for the appropriation of indigenous knowledge but, as Youngin has stated, opens the door for the legalized theft of indigenous knowledge because copyright gives copyright to the person who has collected the information. Even though intellectual property is defined as “creations of the mind”, when a researcher speaks to an indigenous person, whether they're elders or traditional knowledge-holders, that knowledge that is shared is ultimately the creation of the mind of the person sharing the knowledge, yet copyright goes to the collector of the information.

Complicating that even further, some of our indigenous knowledge is not seen as creation of the mind of the individual. Often times, the knowledge is passed down through the generations, as Sharon has stated, it is not the creation of one person's mind, so intellectual property does not translate for indigenous knowledge. We cannot own indigenous knowledge, it is not our intellectual property as an individual, so for me this is the foundational tension between indigenous knowledge and western knowledge, copyright and intellectual property.

With respect to indigenous knowledge, copyright is contributing to the need to protect indigenous knowledge and not share it.

As you know, Article 11 of the United Nations Declaration on the Rights of Indigenous Peoples states that we need to, “redress through effective mechanisms cultural, intellectual, religious, and spiritual property taken without free, prior and informed consent or in violation of laws, traditions, and customs.”

I want to add that, given the Copyright Act and that academic institutions defer to the Copyright Act, informed consent is not being obtained because of the conflict between what is stated in the Copyright Act and the federal guidelines used by research ethics boards to review research protocols involving people.

Academic institutions are required to have any research involving people to undergo an ethical review via their respective research ethics board. REBs implement the federal guidelines, the tri-council policy statement, on ethical conduct for research involving humans, otherwise known as the TCPS. The TCPS underwent major revisions in 2010, with a chapter focusing on ethical conduct with research with first nations, Inuit and Métis peoples, chapter 9. While the chapter discusses the importance of community engagement throughout the entire process of the research, from the inception of the research idea to dissemination of the findings, and articulates that the research practices should be guided by a respect for and accommodation of first nations, Inuit and Métis priorities on joint ownership of the products of research, and maintaining access to data for a community, the TCPS also notes that we should defer to the applicable federal, provincial and territorial legislation, namely the Copyright Act, which gives copyright to the collector of the information, not the creator of the keeper of that knowledge.

🕒 (1620)

🕒 (1625)

The Chair: Thank you very much.

Finally we have Camille Callison. You have up to seven minutes.

Ms. Camille Callison (Indigenous Services Librarian, PhD candidate, University of Manitoba, As an Individual): Thank you.

My name is Camille Callison and I am honoured to be here today presenting to the Standing Committee on Industry, Science and Technology. Thank you for the opportunity to join you today, and thank you to the committee members for the important work that you do on behalf of all Canadians, including indigenous Canadians, first nations, Métis and Inuit peoples of Canada.

I also want to acknowledge the elders, my fellow panellists and all the good people gathered here today.

I am honoured to be here today in this historic gathering place where the Red and Assinaboine Rivers meet, currently known as The Forks, and to be a guest living here in Treaty 1 territory within the heart of the Red River Métis homeland known as Winnipeg.

My name is Camille Callison and I am from the Crow clan of the Tahltan people, so the Tses' Kiya clan, located in northern B.C., Yukon and Alaska. I'm presenting here today as an individual, so I wanted to introduce myself.

As my late grand uncle, Robert Quock taught me, we belong to the land, so it's important for me, no matter where I am to acknowledge where I come from. We are the people of the Stikine River, Canada's Grand Canyon and the home of the sacred headwaters where the Stikine, Skeena and Nass headwaters flow from, creating northwest B.C.'s biggest salmon-producing rivers.

On October 18, 1910, also known to us as Tahltan Day, my great grandfather Chief Nannock, another chief and 80 Tahltan witnesses delivered the Tahltan declaration signed and delivered to the representatives of the Canadian governments and the British Crown which states that we have never ceded or surrendered our land at the cost of our own blood from time immemorial. This is still true today and we continue to rely on the wealth of our land for subsistence and what lies below it for economic opportunities and employment.

I hope to honour my heritage today by facilitating a better understanding of why the Copyright Act needs to respect, affirm and recognize indigenous ownership of their traditional and living indigenous knowledge thereby facilitating respectful relationships between indigenous people in Canada.

For the purposes of this presentation, indigenous refers to first nations, Métis and Inuit people of Canada.

Currently I am the indigenous services librarian and liaison librarian for anthropology, native studies and social work and a Ph.D student in anthropology at the University of Manitoba. I also am the vice-chair and indigenous representative on the board of the Canadian Federation of Library Associations, CFLA FCAD and in that capacity I chair the indigenous matters committee and I'm a member of the copyright committee.

I also sit on numerous other boards, the International Federation of Library Associations, indigenous matters section, the National Film Board, Indigenous Advisory Board, and the Canadian Commission for UNESCO Memory of the World Committee and Sectoral Commission on Culture, Communications and Information .

I'd like to begin today by talking about why it's important that indigenous knowledge is affirmed, respected and protected under the Canadian Copyright Act. Indigenous knowledge is dynamic and has been sustained and transformed throughout time. Indigenous people continue to produce new knowledge and new media including the music, theatre, dance, photographs, film, poetry, literary expressions, language applications, blogs, social media and digital collections, etc.

Library and archives and other cultural memory institutions often hold indigenous knowledge and traditional cultural expressions in their collection as a result of research or appropriation or participation with indigenous communities and authors. In some cases, under the Canadian intellectual property regime, indigenous people from whom that knowledge originated and all of the traditional intellectual property holders have inappropriately lost their ownership rights to hold the legal copyright to the knowledge or cultural expressions and under the Canadian copyright is often contrary to

indigenous notions of copyright ownership.

Parallel to western culture, indigenous people regard unauthorized use of their cultural expressions as theft. Indigenous world view includes that indigenous knowledge should only be transferred with the owner's permission from the originating people, and should within that method of translation.

As Canada works toward reconciliation, a fair and balanced intellectual property system works for everyone, including indigenous peoples.

🕒 (1630)

In their knowledge systems, indigenous people have developed this wealth of indigenous knowledge, which they rightly wish to protect under their constitutional rights as Canadians. They also wish to create their own knowledge protocols and have those protected under the Copyright Act. Therefore, Canada needs to acknowledge indigenous people such that they can maintain, control, protect, and develop traditional knowledge and traditional knowledge expressions within our current intellectual property right regime in order to access, use, and protect indigenous knowledge. This can be done by developing appropriate protocols with indigenous people. Essentially, reconciliation is about establishing respectful relationships with indigenous people.

I'm noticing the time, so I'm going to skip ahead in my speech and talk about the protection of indigenous knowledge and the truth and reconciliation committee, which was formed in 2016 to address the Truth and Reconciliation Commission's calls to action, and I'll also talk about our recommendation 8, which asked the Canadian government to affirm and protect indigenous knowledge under the existing Copyright Act.

I want to recommend that indigenous knowledge be respected in the public domain, and that we do that in keeping with the UN Declaration on the Rights of Indigenous Peoples, and particularly Article 31. I join with CFLA-FCAB and its indigenous knowledge and copyright statement released last week in asking that the copyright reform include respect, affirm, and recognize indigenous people's ownership of, and living respect for, their traditional indigenous knowledge. This would allow for Canada's diverse indigenous people to develop indigenous knowledge and cultural expression protocol agreements that reflect their diverse cultural heritage and traditions. One nation's protocol concerning the sharing of knowledge and cultural expression will be different from another's, so there needs to be room left for indigenous nations to work with their elders and knowledge keepers to develop these protocols.

[Witness speaks in an aboriginal language]. Thank you for the opportunity to speak with you today, and I ask that you join me and other Canadians on the path towards reconciliation. I ask that you walk not in front of me or behind me, but ask that you walk beside indigenous people to create a new Canada where all people are treated equally and are respected fairly under the law. I welcome the opportunity to answer questions you may have. Thank you.

The Chair: Thank you very much.

We're going to move right to questions.

Mr. Sheehan, you have seven minutes.

Mr. Terry Sheehan: Thank you very much to all our presenters. Of course, I would also reiterate what I reiterated the last time, to acknowledge that we are on the traditional territories of the first nation people of this area, and also of the Métis.

This subject is very important to us as we are trying to review the copyright law. It's been said many times that it's not adequate enough to cover indigenous peoples' art, their culture. It's extremely, extremely important.

I'm not indigenous. My wife and children are Métis. In Sault Ste. Marie, where I'm from, it's a traditional area, where people used to come from all over the Midwest and the Prairies to meet along the St. Mary's River because of the whitefish. It became an area where everyone was coming to fish to bring back to their communities from as far away as here in Manitoba sometimes. It started to happen around that area thousands and thousands and thousands of years

before the Europeans came naturally in powwows and in different form. There would be culture, there would be song, there would be dance, there would, of course, be the elders telling their stories. It became a real interesting area. Sault Ste. Marie and that area had a dark history as well. It was also home to a residential school and the survivors came together, there was a commitment, to create the Anishinaabek Discovery Centre, which the government has funded and is well under way. That's going to house a chiefs' library and some very interesting things.

Your testimony is very, very important because the copyright law has fundamental principles under British and European law, and that doesn't necessarily work to first nations. I think some of you have mentioned it. The first one is that a lot of times copyright is attached to an individual and a lot of times with the indigenous it's the community, it's the people that it's attached to. If I get very very specific about the Copyright Act, it affords exclusive rights to one or more specific persons over an original work fixed in some way. These rights are affordable largely for commercial purposes. The rights holder can transfer these rights to another individual or entity and the rights themselves are temporary. Once they expire the work is freely available to the public. To what extent do these principles conflict with the ways in which indigenous communities understand their cultures and traditional knowledge?

I'll start with perhaps Dr. Lavallee.

🕒 (1635)

Ms. Lynn Lavallee: Indigenous knowledge varies. It's really hard to answer that question depending on the type of indigenous knowledge that you're talking about. I gave you this definition by Marlene Brant Castellano with respect to traditional knowledge passed down to the generations, spiritual knowledge and empirical knowledge usually about our medicines.

I think when it comes to—and I'm going to tell a story to try to get to that—something like the medicine wheel, a lot of people understand the medicine wheel teachings. It's a circle with four quadrants. You might have white, red, black and blue; black and yellow. Black might be replaced with blue if you're in Cree territory but not all indigenous peoples in Canada have medicine wheel teachings. Medicine wheel teachings are vast and they're thousands and thousands of years old. You can not actually cite the original author of the medicine wheel teachings like APA style. It's impossible.

I remember years and years ago, they wanted me to review something. It was a health promotion focus. They used the principles of the medicine wheel to talk about health promotion. They had me review this and nowhere did they acknowledge the medicine wheel teachings. They didn't say where they obtained them, how they obtained them. They might have Googled it. Then they copyrighted that framework based on the medicine wheel. Then nobody can use that framework but it's based on our traditional teachings that are thousands and thousands of years old.

I don't know if that's answering your question really. It really depends on the knowledge. As a researcher and someone in an academic institution, I firmly believe some knowledges should never enter the institutions because it's too vulnerable. An example of that is our traditional medicines and our traditional healing practices. You don't learn about that in a 12-week program or a four-year degree. It's impossible. You go through, for lack of a better term, an apprentice for decades and even then you're not going to have all the knowledge. You never get to the point where you have all the knowledge. You're always learning.

I think there's some knowledges that don't belong in copyright at all. You can't copyright our traditional ... you wouldn't copyright medicines but the teachings. If you think about the Sweat Lodge Ceremony. I've seen students do a dissertation. You have to copyright your dissertation. You're the sole author. That's the whole purpose of doing a dissertation to advance knowledge. They reported on the Sweat Lodge Ceremony. It happened to be somebody who I went to Sweat Lodge with and I said “do you know that somebody actually wrote about this in detail describing exactly what happens in this ceremony” and the elder didn't know. This is a thesis document that's publicly available, not too publicly, because it's in the Ivory Tower.

I know I kind of jumped around and maybe didn't focus on the answer.

Mr. Terry Sheehan: Those are important points I think.

Ms. Camille Callison: Thank you for your question. I first wanted to talk a little bit about ownership. Some indigenous knowledge is owned by an individual, by a clan, by a family or it can be owned by the nation. But it's not all communal ownerships. That's actually kind of a fallacy for people who think about communal ownership in that way because that's not actually appropriate.

Part of what I didn't have enough time to say was talking about indigenous legal and governance systems and our indigenous laws and the funding to be able to make that happen. So one of the reasons why the recommendation that, when we put our heads together and after years of research, is the only way that I wanted to propose some kind of a solution rather than coming with problems all the time.

I felt that a generic statement respecting affirming and acknowledging indigenous ownership would be appropriate. One of the reasons is that because often we'll do, what we in my community Tahtlan, knowledge agreements when we're working with other communities or with government to share knowledge. It lays out whether knowledge is sacred or what we need to do with certain types of knowledge and it's going to be different with every nation across Canada. Here, in treaty 1 territory, they don't tell stories until the snow is on the ground. Well, they wouldn't be what is happening in my community when we're telling stories around the campfire when the salmon is flowing in the river and we tell stories in our [inaudible] all year round. So, it's not going to be the same thing for every community and we're not going to be able to find one size that fits all across Canada with the diversity of so many different nations across this great country that we live in. So, part of that is that we would do Tahtlan knowledge agreements and we see these traditional protocol agreements. I believe in calling it indigenous knowledge because our knowledge is still living, it's dynamic, it's still breathing and we still breathe life into it.

But you see these protocols and I remember signing them with mining companies because that's where in our community we benefited from that employment and economic opportunities but we also shared traditional use with them so they can avoid our sacred areas. They would act like it was a gift because indigenous or traditional knowledge wasn't covered under the Canadian Copyright Act. The reason why I felt passionate about that is because we see this knowledge leaving our communities and it's not being shared in a culturally appropriate way. So it needs to be shared in the cultural context from that originating community. There are some knowledge that women can't see when they are on their moon, not because that's derogatory to women because we honour our women and we think that they are more powerful at that time. There is also knowledge that can't be seen. I can't tell an [inaudible] or wolf story in my community. I can't tell a story that belongs to another family but that's where it becomes that cultural context so it needs to be shared in that culturally appropriate way. So, the only way that I feel that that could happen is through generic statement of respect for a nation and that indigenous people own that knowledge and then work with the indigenous communities to provide funding for their indigenous legal systems to create those protocols. We're already doing this in universities. We're having informed consent. We're having libraries or archives or museums work with people. There are many examples across the country. There are reciprocal research agreements. There are things that we do at University of Manitoba that we can take advantage of to be able to create those for communities. That's part of why I would say that. Some knowledge isn't appropriate to be shared even as a Tahtlan person my uncle would say....

The Chair: We're going to have to move on, sorry. We have a whole bunch of questions that we need to ask but we have to make sure that everybody gets a chance to ask them.

Mr. Lloyd.

Mr. Dane Lloyd: Thank you. Well, it's interesting having another Mr. Lloyd on the committee. Welcome, all members of the committee. Thank you for your presentations. My first question is going to be directed towards the art community, so Ms. Kinloch and Mr. Lloyd.

We've heard from other people, usually publishers and academics and authors, that the universities and libraries are using this 10 percent rule in order to deal with copyright, that they can copy up to 10% without incurring fees. In terms of the visual art world, which is what you deal with, how are they respecting copyright? Do they have a 10%? How would a 10% rule work and how are they interacting with you?

Ms. Alexis Kinloch: I believe it works in the same way. So, visual arts whose work is copied from textbooks also lose out on those payments because it's no longer required in people's eyes because of the change in the 2012 amendments. So I would say that it's very similar. There was no difference.

🕒 (1645)

Mr. Dane Lloyd: How does that practically work? Are they taking 10% of a picture, or is it like an anthology of pictures an artist has put together and they're saying that they can take one out of 10 of these [*Inaudible*]?

Ms. Alexis Kinloch: I don't know the details of that, particularly. I would say specifically that the Winnipeg Arts Council doesn't deal with copyright on a day-to-day basis. As we both stated, we support the upholding of the artist and their knowledge and leadership in this, so we support CARFAC as a group of artists who have been working on this, and we get our information from them.

We would defer to them and Access Copyright to answer the questions we're not able to.

Mr. Dane Lloyd: Thank you.

This question is for Ms. Callison or Dr. Lavallee.

Even the authors and publishers we've talked to in previous committee hearings are not satisfied with the Copyright Act. They're not satisfied with fair dealing. They feel their works are being stolen from them. As well, the indigenous folks we have spoken to are feeling similar things—that their knowledge, art, and copyright is also being taken from them.

Also, you have asked of this committee, I believe, in your testimony that indigenous knowledge also be protected under the Copyright Act. However, wouldn't you agree that it seems that from the perspective of the authors, who are already supposedly protected by the Copyright Act, that protection simply isn't enough? Can you comment on that?

Ms. Lynn Lavallee: The perspective I was providing was of somebody who isn't the holder of that knowledge not having the copyright to that knowledge. An example of that is a researcher who gathers information and traditional teachings from people and writes it down. They are the collector of that information and have copyright over that.

Mr. Dane Lloyd: That is an important issue, as well.

If there were an indigenous author who did create an original work that was being used by somebody without the free, prior, and informed consent, would you view that as an act of theft for that indigenous author?

Ms. Lynn Lavallee: Yes...if it's not cited. If you're talking about written—

Mr. Dane Lloyd: Or...even compensated for that work. Should indigenous authors be compensated for their work under copyright?

Ms. Lynn Lavallee: I'm a researcher. We're never compensated for anything we write, so I think from an art perspective—and you talked about the Inuit art—I think that compensation is needed. From a writing perspective, though, researchers typically, even when they publish a book, might get a little bit of royalties, but in journal publications there's no compensation anyway.

Mr. Dane Lloyd: Thank you.

Ms. Callison, you seem to have a very interesting intersection, because you work in the library sector, so you're a part of the users of copyright, but you're also here representing an indigenous community who are creators of knowledge. How do you balance the needs of the Copyright Act..., which I acknowledge does not really cover traditional knowledge? If there were aboriginal knowledge creators, should their copyright be respected by the Copyright Act?

Ms. Camille Callison: I think I come from the perspective that I'd like to see the exceptions for use still left in the

copyright and left as is. Part of that is because even as an author I expect people to be able to use 10% of a published work. A published work is different from when knowledge is taken without prior consent and approval. If you are publishing something, you fully expect for libraries and the general public to be able to have fair use. That 10% isn't an issue, then.

It's when things are taken without permission and used in the wrong context. As an indigenous person, I wouldn't publish sacred knowledge. I would say that if you want more information on that.... My late great uncle Pat said to me, "If you want the rest of that story, come back next year, and when I've fulfilled those cultural protocols, I might get the end of that story." I wouldn't publish that, then.

I think there is where we need to be to do the acknowledgement but then work with communities. So, what works for the Anishnabe, the Cree, and the Métis is not going to work for the Tahltan. It's going to be different. It's going to be different for the Mohawk. That's where we need to have that kind of openness where we do the general statement and then work with people.

However, as a published author, if something is published and in the public domain and the appropriate safeguards have been taken, then I don't see an issue with that. With some things—and I think I said that in my brief—that are in the public domain currently those protocols were not followed and...need to be retracted from the public domain. That's where we work with individual communities. As well, where there are examples of art pieces or cultural pieces being taken from museums, put into storage, and used in the proper cultural way, instead of being out on display all the time, I answered that for you.

🕒 (1650)

Mr. Dane Lloyd: I'm not talking about sacred knowledge, although that is an important area, but I'm talking about copyright. Let's say, for example, an individual indigenous person were to write an original story and copy it down so it's fixated, and they've copyrighted it. It comes from their experience as an indigenous person, maybe drawing on some of the themes of their community experience. Is it your view that the individual's copyright should be respected? Or if the community feels that the story this person, as an individual, has copyrighted as an indigenous person, they should have rights over that individual?

Ms. Camille Callison: I could answer that.

I think that first of all any book published today in this era of reconciliation, or even for the last five to 10 years, the publishers should have ensured that they had permission from the community before they actually published that. If that has been taken and they have published it.... Even when I would tell a story to my adopted grandma, she would say, "Who told you that?" and I would always have to cite what elder told me that, so it should be cited properly and gone back to the community.

That published material and fair use of that is the same as for any other published material if they followed the same protocols. It's about following those protocols of obtaining that informed consent from community members. And by informed I mean that actually they have to state.... If an elder speaks only in their language, then they need to have a translator who tells them what's going to happen when they publish that story, rather than taking that story. So appropriation of knowledge from any community, even if it's non-indigenous or indigenous, is obviously wrong and that's theft of cultural material. You need to have permission of that community, and hopefully those protocols are taken.

That's the reason we need to go back to the communities and enhance and give them the funding to be able to create those protocol arrangements.

Mr. Dane Lloyd: Just to summarize what you're saying, even if an individual from that community writes a completely individual work, or an almost completely individual work, they still need the permission of the entire community to publish that.

Ms. Camille Callison: I wouldn't say that they need the permission of the entire community. Within our communities

this is where there is that fallacy within non-indigenous people that all information is held communally. I know who owns a story and who has the right to pass on that story and I would go to that person and ask them if I could write that down. That's why you have to work with the communities for their protocols, otherwise you don't know who owns that story and who has the right to pass that down. That's where it's really important.

The Chair: Thank you.

We'll move to Mr. Masse. You have seven minutes.

Mr. Brian Masse: Thank you, Mr. Chair.

One of the things we're hearing from all communities in terms of artists and creators, be it print or we've heard it from television and film, and we've now heard it through series of books and journals, is this disempowerment of the model that's really emerged, especially in the digital age it's been even quicker, and faster. It's to the point where it's interesting, and we're all used to the musician who throws up their song on YouTube and hopes they become a big hit so they can sell albums later. It's part of how they've become successful in terms of YouTube at selling ads and so forth, but it's like a lost leader.

What we heard in testimony the other day, though, is that we actually have academics who are publishing in journals that are quite extensive—everything from medical to social sciences, empirical research, and so forth—just to get notoriety for tenure, or to maintain their tenure, or to get into other publications that would affect their tenure. So it's really a disempowered relationship for the creator.

I'll turn this over. Does anybody have any suggestions as to what can be done about that in general? There is an immense amount of wealth being created through this transition to the digital age here, but it's not reaching the creators. In fact on the previous panel I noted that we have some major publishers internationally that have been the major benefactors. We've heard testimony where universities, colleges, and school boards are spending more and more money, but the publishers or the creators are getting less from the royalty situation.

Does anybody have any suggestions on that, because I think maybe copyright isn't the place to solve that, but what do we do in the meantime?

🕒 (1655)

Ms. Lynn Lavallee: Sometimes I talk about moral ethics when it comes to research ethics and I think it crosses all boundaries. I think the individual who is doing that writing... and in academia it's publish or perish. There are some people who are very prolific and they're out there and they're gathering information. Those are the people who many communities are afraid of, because it's all about the publishing, and then the speed at which that's done. When we work with a community, that takes time, right? I don't know if that's a Copyright Act issue per se. I think it's more of a moral ethics issue. I think that even the Tri-Council Policy Statement with all of the articles in the TCPS can't deal with it as well. I think it's more of a moral issue.

Mr. Brian Masse: Anybody else?

Ms. Camille Callison: [*Inaudible*] librarian.

As a librarian, I am really all about open access to information and I think that's really important. There are many examples when it comes to even sharing of traditional knowledge where there are levels of access, whether it's family, whatever, but we want to get that knowledge out there. Oftentimes we talk a lot about protection, but for indigenous communities, we love sharing our knowledge, we want people to know the language. We want to share those things with people. I think with open access and publishing, it's really about sharing, getting the information out there.

I only experiencing publishing myself. I never made a dime off it, nor did I want to. I wanted the knowledge to go out there to people about indigenous knowledge ownership, because I think that's part of where some academics are coming from. In libraries, of course we love it when there's open access because we're able to provide more services to our

community.

I think it really depends on the author, and we've seen where publishing houses have gotten very wealthy, but we don't want to...Obviously, they're our business partners so we want them to be able to stay in business, so I think it is a complicated situation, but I really believe in open access to information. As a librarian, that's where we come from.

Mr. Brian Masse: Mr. Lloyd.

Dominic Lloyd: I can be really brief. I would add to what's already been said is that in most disciplines there are definitely rights holders or rights organizations in music and in visual and that kind of thing. Those are the people who administer these types of issues, but you also—and I hope...I tried to say this off the top—should speak directly to the artists and speak directly to the people who are going to be affected by that, not necessarily always through the people who tend to speak on their behalf. Make a concerted effort to get to the very— dare I use the word—grassroots of the people who are actually the ones who are being most directly affected by those questions.

Mr. Brian Masse: Would that be a role where, for example, a much stronger, robust, enforceable copyright board and decision-making, enforcement and repercussions maybe come in effect where if you have a misappropriated, stolen, or used and it's been found through the process that there is enforcement of that, there are reparations? It includes maybe even a guaranty of actually inclusion of the original creator even if they've signed over some rights or so forth, as at least they have to be consulted in the process? Is that, perhaps, a way of bridging some greater accountability to the worst of cases and adding some layer of accountability?

🕒 (1700)

Dominic Lloyd: I think that's a question for the artists themselves, as I said, because they are the ones who are going to be affected by that. What do you as an artist...To use your example of the musician who's putting their song up on YouTube, a musician is making a lot less from a YouTube hit than they are from what they would have received from a radio play or something like that years ago.

They're the ones who know the most about the ins and outs and all of the differences of what a Spotify play is worth versus what a YouTube play is worth versus what a Power 97 play is worth. Ask them what how they want to deal with that and how they want to address that.

Ms. Alexis Kinloch: Since you asked if it was something outside of possibly copyright as well, I would suggest that more funding to artists in the first place so that they don't have to be working a bunch of other jobs and can maybe be more informed and spend more time being aware of their rights and protecting their work would probably help things out, in a very general way. I realize it's not getting at the heart of things, but in general, artists get really tied up and can't necessarily devote enough time and space to protecting their craft.

Mr. Brian Masse: That's a good point.

Go ahead.

Ms. Camille Callison: I believe that you have the Canadian Federation of Libraries Association's statement on the creation of a strong copyright board to represent the multiplicity of views. I would add to that I think that when you're dealing with issues around indigenous knowledge, traditional knowledge or cultural expressions that you ensure that you have someone on that board that is well-versed and of indigenous ancestry.

There's a number of academics who have done this. That are lawyers or professors and this is their career. That's where their research area is. If you want those names, I can always help you with that. I think you'll probably hear from them across Canada.

Mr. Brian Masse: We have.

Do you have anything to add there?

How am I doing for time?

The Chair: You are way over.

Mr. Brian Masse: There we go. I'm doing well, from my perspective.

The Chair: Are you finished though?

Great.

I figured the other guys were way over, so I'd let you go way over too.

Mr. Jowhari.

Mr. Majid Jowhari: Am I going way over, or not?

The Chair: I'll signal the times up.

Go ahead. You have seven minutes.

Mr. Majid Jowhari: Okay.

Thank you.

I'm going to start with Ms. Parenteau.

First of, thank you very much all for coming. I also acknowledge the land we are in. Thank you for hosting us today.

Sharon, what you said was that traditional knowledge is passed through story telling. You also said it's more on the knowledge keepers to use oral history to be able to keep that knowledge alive, and pass it on.

Before the copyright [*Inaudible*], these stories were being said, were being repeated for thousands of years. Also, Camille, talked about getting permission from the elders or from the [*Inaudible*] storyteller to be able to pass it on.

What is the protocol in the indigenous nations to be able for us to mimic or at least amend, or consider as we are looking copyright as it relates to indigenous or traditional knowledge?

Mrs. Sharon Parenteau: Okay.

I think you have a couple of different concepts going on at the same time.

First, when we use the word indigenous, we're talking about a lot of different people. What Camille is doing in her community and what Lynn is doing in her community and what I'm doing in my community are very different. They're first nation and Métis. I am Métis. Even Georgina and I, we come from the same community. What she might have learned in her community is different than what I learned in my community.

Knowledge is passed down from generation in families and in communities. You can be an outsider within the community. If I go to Georgina's community, I'm an outsider in her community. I have to be mindful of how I'm gathering that information.

🕒 (1705)

Mr. Majid Jowhari: You come as a knowledge collector there.

Mrs. Sharon Parenteau: Correct.

So if my father, for example, is taking me out into the bush and teaching me which mushrooms are the mushrooms that I can pick. That's information that was passed on to him from his parents, right? It's not the same type of sacred knowledge. It's not something that you.... You do you have to have permission in order to use it, but you also have to be very knowledgeable yourself before you can pass that information down. The knowledge is very complex. There's multiple layers.

Mr. Majid Jowhari: How does that knowledge get out today?

It's not being respected by coming in and asking the knowledge creator or knowledge owner to be fairly compensated or be acknowledged.

How is that knowledge getting out?

Mrs. Sharon Parenteau: I can tell you Joseph Boyden is one really good example of that.

He for one said he was indigenous. He said he was Métis first, which he's not. He's claiming that he's Métis. According to our definition of Métis he is not Métis. Then he went to indigenous knowledge keepers and asked and listened to their stories. I don't know the process that went on. Maybe he was going to tell them he was going to write a book about it. Then he took that information and he wrote it down in a book and made a lot of money off it. He won awards.

That is a really good example of how traditional knowledge needs to be safeguarded for those very reasons. He might have done it in a very honourable way. But you can see from the backlash of the indigenous community in Canada, that that is not acceptable.

That's a good example.

Mr. Majid Jowhari: Anybody else want to make a comment?

Ms. Lynn Lavallee: I think that the challenge we're having, is thinking about indigenous knowledge. We're emphasizing that knowledge are different across all lands, because indigenous knowledge really comes from the land.

The other thing is the variation of the indigenous knowledge. The story telling is one aspect of indigenous knowledge. The medicines are another aspect of indigenous knowledge.

The stories, and as Camille said, there are some stories that we just keep within our family. It's not meant to be shared more broadly. There are teachings with those stories. The reason why we tell those stories is to provide teaching to that next generation.

There are some stories like the stories Joseph Boyden heard. He heard the story about the bear walker—and I'll say that because it's still daytime. That is a very specific story that has many different reiterations. It's something that someone shared with him, and there was no expectation that he was going to write a book about it.

There are these stories, and different prophecy stories, the seven generation teachings...they're almost pan teachings. They are deeply embedded, old, traditional knowledge. Everybody will say it in a different way. Sky woman is talked about in different cultures. These are stories that cross many different nations, that take many different forms.

Then there are very specific indigenous knowledge with respect to healing ceremonies.

I think that's one of the things that's happening right now, we're talking about different things.

Mr. Majid Jowhari: Do we want that knowledge, do the first nations, the Métis, want it shared?

🕒 (1710)

Ms. Lynn Lavallee: Some of it.

Mr. Majid Jowhari: Okay.

Here is where I have a dilemma. You also talked about an indigenous legal system. You didn't get a chance to expand on it. I'm hoping that in the next round of five minutes I'll ask you that question.

Is there something that could be in place? Some formal guideline that we could use? It looks like the spectrum is very wide.

Ms. Camille Callison: First of all, I need to say that I'm not a lawyer. I'm not giving you legal advice. You can talk to my sister, the lawyer, for that. I am not. I can't solve all of the legal dilemmas in about five minutes, but I can give you a good try.

I think in every culture there's private and public information. I'm sure you have stories in your family that you don't necessarily tell out in the public, and when they do come out in the public, it can be a little bit embarrassing. It's the same in indigenous communities. It's really wonderful that people are so interested, and there's this curiosity going on, but there is private information in our families. I think that we have to acknowledge that's here, and it's always going to be present, no matter who it is.

I'm coming from an anthropology background. We know that anthropologists were guilty of this, they went and collected stories, but because they were so concerned with writing down the stories in the era of salvage anthropology—when they felt that indigenous people were dying in Canada and that they would die out—they didn't worry about finding out whether they were private or family stories, or things that can be told in public, or when they could be told. There's an absence there, of the protocols.

I always say to everybody, it's about relationships. Reconciliation is really about relationships, and what we're doing with communities. You have to go back to the communities and form a relationship with them, and then find out from those communities how to access that knowledge, how it's preserved, who owns that knowledge, how it's stored, and how you can share it, or if you have the right to share it.

That's part of the legal system in governance systems, that indigenous communities need the government's help to be able to establish those protocols. When you come and ask that question to an Anishnabe person, they can say “well, we've gone back to our elders and our community, and this is how we deal with this knowledge”. There needs to be that work.

That's part of the reason why I felt, and many other people, that a generic respect, affirming, and recognizing, would be the way to go, and then allow the communities the time to be able to do that work of working with their communities on that knowledge.

I hope I answered your question, there.

The Chair: Thank you. Did I give you enough time? I'm back in the good graces?

Mr. Lloyd, you have five minutes.

Mr. Dane Lloyd: Thank you, Mr. Chair.

This question is going to be for Ms. Kinloch and Mr. Lloyd. The writers have said, you provided some information, the average salary of a writer or artist is about \$33,000 in Canada, which isn't a very impressive number. It's a tough life for an artist in this country. Writers have it even worse. We've been told in multiple testimonies that it's about \$13,000 a year for a writer. I just want to get your perspective, and possibly with some concrete examples, or even anecdotes, of people that you know or have interacted with, Canadian artists or authors. What is the impact of fair use on your cultural—and I hate the use the word “industry” because it really is a passion, but I'm going to use it—industry? Where do you see the future of your industry if these problems aren't addressed properly?

Dominic Lloyd: Thank you, again.

The \$33,000 number, yes, it was the average, and I think, yes, if you're a dancer it's well below that.

In terms of fair dealing in literature specifically, I'm not an expert on that. I know my colleague here provided some examples of sales and royalty numbers that have happened through the visual arts, which is primarily where our research has led.

Did you want to speak to that at all, Alexis? You're the one who has the research on that.

🕒 (1715)

Ms. Alexis Kinloch: Let's see...

Mr. Dane Lloyd: To clarify, I am asking about the visual arts. I'm just using the comparison that writers are facing the same issue, and we've heard from them what the effects are, that they believe that Canadian culture is really at risk if this continues to go this way. I'm wondering what is the perspective of the visual artists?

Ms. Alexis Kinloch: Visual artists on fair use. I don't have personal examples.

I do want to say—I'm sorry, I'm bad at thinking on the spot like that—but I do want to say, though, an example you could potentially look at, and it comes up with your use of deferring to it as passion versus industry, I would say that we've seen that come up as an issue with an artist in the east coast recently, and you may have been aware of this story, where the CRA is charging this artist over \$30,000 I believe it is in taxes because they have deemed his practice to be a hobby, and deemed him a hobby artist.

The Canada Council for the Arts and other arts funders have a definition of a professional artist. It is an industry of sorts. While these people are passionate about their work, I think it's important to recognize the professionalism that goes into it, which is why we keep saying defer to the artist because they have had to become professionals in order to protect themselves. Also, they go to school, or even if they don't they spend their lives doing it and they deserve that recognition. The danger really is that they could also be disrespected in this way of being called a hobby artist, or saying it's a passion rather than a job or their life's work, and then that allows a blurring of lines to give maybe less agency to the artist.

Mr. Dane Lloyd: What is the risk to artists if the issue of fair use and the issues with their community don't get solved?

Ms. Alexis Kinloch: If the issue of fair use doesn't get solved...

Mr. Dane Lloyd: Where do you see this going?

Ms. Alexis Kinloch: With the decline of that 66% between 2013 and 2017, so that's 66% in five years for visual artists, so doesn't it just go to them not getting paid at all? I do think that we're in danger of that. I don't think that's out of the question for something that could happen, considering that payment to visual artists, and grants and opportunities for visual artists have decreased significantly in the past decade.

Mr. Dane Lloyd: I understand that, but do you see them moving to other jurisdictions, as opposed to Canada, if their work isn't respected? Do you see them quitting altogether and not producing art? Those seem obvious, but I want to hear your perspective.

Ms. Alexis Kinloch: God!

Dominic Lloyd: It's almost a loaded question, and I say that with respect. I think nobody knows, perhaps, what will happen.

The fact is that artists are being paid less for the same amount of use of their work. If you look at it as a curve,

eventually the curve is going to go down.

As to whether they're going to leave the country, some probably will, some may not. As Alexis has stated, there's a perfect storm happening now. To use the example she brought up, the CRA looks at one artist, an artist, by the way, with extensive international practice and recognition all over the world, as a hobbyist. He's being looked at by the Canada council as a professional.

We need to get the definitions right. I think that's what it is. And I think there is a danger. What the danger is I don't know. I shudder to think.

Ms. Alexis Kinloch: I just wonder what the point is of knowing the end result of the worst thing that could happen to artists. Do we have to speak about it in those terms? Can't we just support [the fact that] that artists should have more space and more respect, rather than saying, "If we don't, then maybe they'll move away"? Artists have relocated and done all of those things in the past. We've seen, through terrible times in history, that people in general always come up through hope. I just don't think we should talk about that as a.... Let's move in the other direction.

🕒 (1720)

The Chair: Thank you.

These are definitely tough questions.

Mr. Sheehan, you have five minutes.

Mr. Terry Sheehan: Thank you very much.

Cecil Youngfox, is a great painter, a great artist, from my area, Blind River, and has Ojibwa parents, Métis parents. He is fantastic, and I really appreciate his art. He's been inspired by various cultures. He paints. It's just wonderful.

My question is going to be for Dominic and Alexis.

Within different industries—the artistic community—there are residuals, royalties, where when a piece of art is resold, there's money back to the artist. I've talked to a lot of artists about this. Once the artist sells the painting, and then the painting is resold, the original artist does not receive any compensation. Do you think there should be some sort of compensation for visual artists?

Ms. Alexis Kinloch: Yes.

What has been proposed, with extensive administrative possibility and work done behind it, is 5% for the artist. I believe that in the example of Kenojuk Ashevak, the artist would have received \$3,000 for the resale, after the \$58,000 resale. So on top of the \$24 she got for the original, she would have then received \$3,000.

Yes, that 5% is what the artist should receive, and that should be revisited continually for concerns of inflation.

Mr. Terry Sheehan: That's good. I appreciate that. I just wanted to get that on record.

Earlier the committee heard from Professor Bear Nicholas, who appeared before the committee in Halifax. He had made the statement and recommendation that the Copyright Act should be amended to recognize indigenous storytellers as performers.

Would you endorse her particular recommendation?

Ms. Lynn Lavallee: For me, when I think about performance.... It happens right now that when we have events, and we have someone doing a drum.... Right? A performance isn't ceremony. When it becomes a performance, it loses that traditional, in my opinion.... I think there'll be a difference of opinion on this. When I hear a performance, the hair rises on the back of my neck. So for the stories, the terminology "performance" I wouldn't say minimizes it, but for me it just

doesn't fit. I don't know how other people feel about it.

Ms. Camille Callison: Coming from the west coast, we do actually talk about it as performance but it depends on the performance. For example, there's sacred performances that happen in the long house that you're invited to and there's no cameras. Then there's other peace performances that happen in [*Inaudible*] in the north coast that they may say long house in the south. Those are definitely public performances. If you're capturing that on a video or a picture whatever, it's hard to get permission when it's a public performance but if you're reproducing it, you definitely have to get the performers' permission just like you would in any other type of performance. It really depends on the context. I think that's where it has to differ.

When we look at things like indigenous knowledge in ballets that we've had here with the reconciliation ballet and things like that, that is performance. I think it really depends on the contents.

Mrs. Sharon Parenteau: I also think that when you think performance, you think entertainment. So a story teller could be an entertainer at the same time. That's a different kind of story telling than somebody who is telling you the story for the purpose of giving you a teaching. That's a different kind of teaching.

🕒 (1725)

Mr. Terry Sheehan: [*Inaudible*] clarification because under the act, a story teller would eventually become part of a public domain.

I think you'd agree with that statement.

Mrs. Sharon Parenteau: Yes.

Mr. Terry Sheehan: Interesting.

How much more? A little bit.

The Chair: Nothing.

Mr. Terry Sheehan: I had some of the same kind of questions that you had more on the legal stuff but I've got nothing left.

The Chair: Are you good?

You've got nothing left.

Mr. Masse, take us home.

Mr. Brian Masse: Thank you, Mr. Chair.

I'm going to just finish with the Copyright Board again. I know exactly I love sarcasm. It's a life skill.

Maybe we could just go across the comments on the Copyright Board in terms of kind of position or suggestions and/or status quo whatever it might be, I would appreciate maybe starting from yourselves. If you don't have anything, that's fine too. I want to make sure that opportunity is provided.

Mrs. Sharon Parenteau: I think on the day of reconciliation, inclusion is a good word and representation and distinction-based. Those are key words that I would include in thinking about a board.

Mr. Brian Masse: Sorry to interrupt, but would more timely decisions for example also be important for your community as well, sort of decisions lingering on. I'm not being critical of the Copyright Board per se. It's just that the length of decisions are taking long periods of time. Is that important? Maybe it's not. If you don't time to think about it, you can always submit it to us. You're not here on the spot. I want to hear your input.

Mrs. Sharon Parenteau: I don't if it's really affected our community. For us, when you think of copyright, I'll go back again to the MCRAFT which is our own research ethics protocol that we've developed. We've found a way to work with universities and colleges, to work with them as a partner. So then when they come and they say, we have a student that comes and says I want to do a research, I've filled out the [Inaudible] already. I say “that's great that you've done the university's piece but now you're working with us. So you have to talk with us.”

I think part of it—that's not really answering your question about timeliness—but ..

Mr. Brian Masse: You're giving a model that actually works.

Mrs. Sharon Parenteau: That's part of what I call inclusive.

Mr. Brian Masse: I won't interrupt the last panellist.

Ms. Camille Callison: I really support and I know that this has been said earlier that Lynn Lavallee did as well. But I support a really strong mandate for the copyright Board but I also support that there would be indigenous representation on that board. I guess the other thing for me is that you mentioned timely decisions, I also think about the fact that many people going before the Copyright Board are people who are authors, performers, other artistic holders of copyright.

The disadvantage from them is number one, that the time is so long and that they have to obtain legal counsel. So if we can make it more accessible, I think that's important. I think that those are really crucial. I would love to be able to see a really strong Copyright Board in Canada and making decisions and having the funding to be able to make those in a timely manner.

Ms. Lynn Lavallee: I might just emphasize the inclusion piece and ensuring the representation. As you can see, we differed in our opinions on many things, so I think that representation is critical, especially with respect to whatever issue might be coming forward. One person, or even two or three people, will not be able to give you all of the knowledge you need. You have to really seek out the right person, which depends on the issue the board is looking at, to have a strong understanding. I lost my other thought.

Also, maybe there could be some sort of education given to indigenous people. I don't know the status Joseph Boyden and I don't expect us to have a conversation about that, but I know the community feels that this knowledge was taken inappropriately. These are the types of stories.... If he was going to write about this, the person telling the story should have known that. Teaching communities what the Copyright Board is, how it can help them, and how to go about that, would be a huge undertaking, but I think it needs to be done.

🕒 (1730)

Ms. Alexis Kinloch: No, I decline.

Dominic Lloyd: I'll just say that if it continues to work, then great, but that has to be monitored, and as I think we've heard from this fine group of people beside me here, context is really important. What works for one particular scenario today may not be the ideal thing tomorrow, so having some flexibility, and of course representation, is really important.

The Chair: Thank you very much.

I'll take a moment to make a comment. In my riding I have the Katzie First Nation and Kwantlen First Nation, and a couple of years ago the chief invited us to a couple of different ceremonies in the longhouse, and it was amazing to see. The first reaction in this day and age is to pull out your phone and video record it. We didn't. In that situation, when we're talking about performances—although I don't know if it's labelled a performance—that's the culture and history, and I think there's a tendency to want to do this. This is something on which we're going to have to keep asking questions in order to really understand that this is your copyright, and I think that's where the awareness has to start happening.

Having said that, this is just a first step. As we move into the second phase, we will have an indigenous section. This is giving us a platform on which we could.... Our wonderful and amazing analysts are over here. One amazing thing to note is that when witnesses say something pertinent, you see them go crazy on their laptops.

Mr. Francis Lord (Committee Researcher): Everything is pertinent.

The Chair: Yes, but when they get excited, that means you've said something really good.

We're looking forward to tearing this piece apart as we move down in copyright, and I want to thank you all for coming today and sharing your knowledge and expertise with us as we move our way through this.

We're going to adjourn for the day, and we'll be back at seven o'clock tonight for the open microphone session, assuming that people aren't going to watch the hockey game. Thank you all very much.

The meeting is adjourned.