



HOUSE OF COMMONS  
CHAMBRE DES COMMUNES  
CANADA

# SHIFTING PARADIGMS

Report of the Standing Committee on Canadian Heritage

Julie Dabrusin, Chair

MAY 2019  
42<sup>nd</sup> PARLIAMENT, 1<sup>st</sup> SESSION

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# **SHIFTING PARADIGMS**

## **Report of the Standing Committee on Canadian Heritage**

**Julie Dabrusin  
Chair**

**MAY 2019**

**42<sup>nd</sup> PARLIAMENT, 1<sup>st</sup> SESSION**

## **NOTICE TO READER**

### **Reports from committee presented to the House of Commons**

Presenting a report to the House is the way a committee makes public its findings and recommendations on a particular topic. Substantive reports on a subject-matter study usually contain a synopsis of the testimony heard, the recommendations made by the committee, as well as the reasons for those recommendations.



“ I ’m a young artist, and the older generation is telling me about the glory days of getting royalty cheques. I say, ‘Sweet. What’s that? I’ll buy you a coffee with mine.’”

Andrew Morrison, The Jerry Cans  
Standing Committee on Canadian Heritage, 29 May 2018



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# **THE STANDING COMMITTEE ON CANADIAN HERITAGE**

has the honour to present its

## **NINETEENTH REPORT**

Pursuant to its mandate under Standing Order 108(2), the Committee has studied remuneration models for artists and creative industries and has agreed to report the following:



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# LIST OF RECOMMENDATIONS

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*As a result of their deliberations committees may make recommendations which they include in their reports for the consideration of the House of Commons or the Government. Recommendations related to this study are listed below.*

## **Recommendation 1**

**That the Government of Canada increase its support for creators and creative industries in adapting to new digital markets..... 9**

## **Recommendation 2**

**That the Government of Canada develop mechanisms by which streaming services will develop and promote Canadian content. .... 15**

## **Recommendation 3**

**That the Government of Canada create educational materials to raise awareness of copyright provisions and artist remuneration for consumers. .... 16**

## **Recommendation 4**

**That the Government of Canada create educational materials to raise awareness of copyright provisions as well as artists' rights and responsibilities under the *Copyright Act* for artists and creators..... 16**

## **Recommendation 5**

**That the Government of Canada review the safe harbour exceptions and laws to ensure that Internet service providers are accountable for their role in the distribution of content. .... 19**

## **Recommendation 6**

**That the Government of Canada increase its efforts to combat piracy and enforce copyright..... 19**

## **Recommendation 7**

**That the Government of Canada pursue its commitment to implement the extension of copyright from 50 to 70 years after the author's death..... 22**

**Recommendation 8**

That music streaming services be regulated like other Canadian music services. .... 24

**Recommendation 9**

That tariffs for online music services be reviewed by the Copyright Board to ensure royalty payments provide fair compensation for artists..... 24

**Recommendation 10**

That the Government of Canada amend the radio royalty exemption found at section 68.1(1) of the Copyright Act so that it applies only to independent and/or community-based radio stations. .... 26

**Recommendation 11**

That the Government of Canada amend the definition of sound recording found in section 2 of the *Copyright Act* to allow sound recordings used in television and film to be eligible for public performance remuneration. .... 28

**Recommendation 12**

That the Government of Canada review, clarify and/or remove exceptions contained in the *Copyright Act*, ensuring that any exception respects section 9 of the Berne Convention for the Protection of Literary and Artistic Works, to which Canada is a signatory. .... 30

**Recommendation 13**

That the Government of Canada meet international treaty obligations (including Berne Convention for the Protection of Literary and Artistic Works, the Trade-Related Aspects of Intellectual Property Rights Agreement, and World Intellectual Property Organization Copyright Treaty). .... 30

**Recommendation 14**

That the Government of Canada amend subsection 14(1) of the *Copyright Act* so that it reads “from 25 years after assignment.” ..... 31

**Recommendation 15**

That the exception for charitable organizations in subsection 32.2(3) of the *Copyright Act* be clarified to apply strictly to activities where no commercial monetary gain is intended. .... 33

**Recommendation 16**

That the Government of Canada extend moral and economic rights to audiovisual performers. .... 35

**Recommendation 17**

That the Government of Canada amend section 34.1 of the *Copyright Act* to deem the screenwriter and director the co-owners of copyright and co-authors of a television or cinematographic work. .... 37

**Recommendation 18**

That Government of Canada amend the Act to clarify that fair dealing should not apply to educational institutions when the work is commercially available. .... 43

**Recommendation 19**

That the Government of Canada promote a return to licensing through collective societies. .... 43

**Recommendation 20**

That the Government of Canada review, harmonize and improve the enforcement of the statutory damages for infringement for non-commercial use in section 38.1(1) of the *Copyright Act*. .... 43

**Recommendation 21**

That the Government of Canada harmonize remedies for collective societies under the *Copyright Act*. .... 43

**Recommendation 22**

That the Government of Canada establish an artist’s resale right..... 47







# SHIFTING PARADIGMS

## PART 1: INTRODUCTION

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### THE COMMITTEE'S STUDY AND MANDATE

On 29 March 2018, the House of Commons Standing Committee on Canadian Heritage (the Committee) adopted the following motion:

That the Standing Committee on Canadian Heritage, following the letter from the Standing Committee on Industry, Science and Technology conduct a study on remuneration models for artists and creative industries, including rights management and the challenges and opportunities of new access points for creative content. That the Standing Committee on Canadian Heritage call upon a broad range of stakeholders and experts on such matters and that it provide the Standing Committee on Industry, Science and Technology a summary of testimonies and recommendations related to the items mentioned above for the parliamentary review of the *Copyright Act*.<sup>1</sup>

Pursuant to this motion, between 22 May and 6 December 2018 the Committee held 19 meetings and heard testimony from 115 witnesses. It also received 75 briefs. Witnesses included representatives from various cultural industries as well as government officials. The Committee would like to thank all those who contributed to the study.

The first part of this report presents the major themes that are common to all creative industries. The second part examines the challenges and possible solutions proposed by witnesses and is divided as follows:

- a) Issues common to all creative industries;
- b) Issues related to the music industry;
- c) Issues related to the film and television industries;
- d) Issues related to the writing and publishing industries;
- e) Issues related to the visual arts industry.

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1 House of Commons, Standing Committee on Canadian Heritage, *Minutes of Proceedings*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 March 2018.



The third part of the report summarizes the views heard and the recommendations made by the Committee.

## MAJOR THEMES

During its study, the Committee sought to understand the everyday situation of Canadian artists. In addition to the challenges and possible solutions discussed in Part 2 of this report, witnesses told the Committee about the ecosystem in which they work and its transformation in recent years.

Several major themes emerged from the stories of Canadian artists. These themes, which connected testimony throughout the study, are: the increasing value gap, the decline in the artistic middle class, the impact of technology on creative industries, changes in consumer culture and the Indigenous perspective on copyright.

### Increasing value gap

Witnesses from the creative industries spoke about a disparity between the value of creative content enjoyed by consumers and the revenues that are received by artists and creative industries.<sup>2</sup> According to many witnesses, this disparity, which is known as the “value gap,” is growing.

According to Graham Henderson, President and Chief Executive Officer of Music Canada, the origins of the value gap extend back more than two decades.<sup>3</sup> As creative industries shifted with the advent of the internet, copyright policy and protections became outdated and ineffective.<sup>4</sup> Miranda Mulholland, artist and entrepreneur, aptly described, “the biggest reason for [the value gap] is that the laws in place today reflect a time of home phones, of scrunchies, and of buying a CD at a music store instead of today’s world of streaming.”<sup>5</sup>

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2 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 May 2018, 0855 (Graham Henderson, President and Chief Executive Officer, Music Canada).

3 Ibid.

4 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2018, 1215 (Catherine Jones, Executive Director, Connect Music Licensing).

5 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 20 September 2018, 1120 (Miranda Mulholland, Artist entrepreneur).

The inability of policy to evolve with technology has prevented artists from receiving fair market value for their work.<sup>6</sup> According to witnesses, these outdated rules have diverted wealth from creators to large digital intermediaries on which artistic content is consumed. As Paul Novotny, Screen Composer of the Screen Composers Guild of Canada, stated, “The value gap is real. Basically, we're experiencing minuscule copyright remuneration from plentiful media consumption, and it's a woefully disproportionate remuneration.”<sup>7</sup>

### Decline in the artistic middle class

Closely linked to the widening value gap is what many witnesses described as a severe decline in the ability of artists to earn a middle-class income.<sup>8</sup> While there are many highly successful, well-known Canadian musicians, artists, writers and performers, most artists and creators in Canada struggle to earn a living from their art.<sup>9</sup>

According to Music Canada, the impact of the value gap has had a severe impact on the artistic middle class. Music Canada states that “In the music industry, virtually overnight, this once-thriving community of songwriters and performers has seen their chance of entering the middle class as professional musicians nearly vanish.”<sup>10</sup>

Witnesses painted a vivid picture of the “difficult realities”<sup>11</sup> facing the declining artistic middle class; namely, significant decreases in earnings since the 1990s and a growing number of artists living below the poverty line.<sup>12</sup> Damhnait Doyle, Vice-President of the Board of Directors of the Songwriters Association of Canada, said:

- 
- 6 For example, see: CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 May 2018, 0855 (Graham Henderson, President and Chief Executive Officer, Music Canada); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 5 June 2018, 0850 (Alain Lauzon, General Manager, Society for Reproduction Rights of Authors, Composers and Publishers in Canada).
- 7 CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 September 2018, 1115 (Paul Novotny Screen Composer, Screen Composers Guild of Canada).
- 8 CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 16 October 2018, 1100 (Laurie McAllister, Director, Performers' Rights Society and Recording Artists' Collecting Society, Alliance of Canadian Cinema, Television and Radio Artists (ACTRA)).
- 9 See: CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 20 September 2018, 1125 (Miranda Mulholland, Artist entrepreneur). Also see: CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 20 September 2018, 1110 (David Bussi eres, Founder and Spokesperson, Regroupement des artisans de la musique); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 5 June 2018, 0925 (Chris Moncada, General Manager, Last Gang Records/eOne Music, Canadian Independent Music Association).
- 10 Music Canada, [“The Value Gap: Its impacts, origins and a made-in-Canada approach,”](#) Submitted Brief.
- 11 CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 7 June 2018, 0915 (Greg Johnston, President, Songwriters Association of Canada).
- 12 Music Canada, [“The Value Gap: Its impacts, origins and a made-in-Canada approach,”](#) Submitted Brief, p. 29.



I wish I could use the term “middle class,” but the middle class of creators has been eviscerated at this point. I know only one musician in Toronto who has bought a house in the last 10 years; most cannot pay their rent, let alone go to the dentist.<sup>13</sup>

The reality for some witnesses is that not only are their overall earnings low, they are decreasing annually.<sup>14</sup> Consequently, many creators cannot pursue their artistic endeavors full time and must seek other forms of employment.<sup>15</sup>

## Impact of technology on creative industries

Witnesses described the ways that technology has impacted creative industries, with a focus on the opportunities and challenges offered by the Internet. Artists also declared that their remuneration from online content is largely insufficient.

In recent years, the number of digital access points for creative content has seen exponential growth. The rise of illegal file-sharing software and the advent of online streaming platforms have changed the ecosystem. The effects are two-fold: access to content has been greatly increased, but remuneration has not kept up the pace due to new remuneration models from these services as well as piracy.<sup>16</sup> Witnesses said that digital

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13 CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 7 June 2018, 0915 (Damhnait Doyle, Vice-President, Board of Directors, Songwriters Association of Canada).

14 See, for example: CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 31 May 2018, 0845 (Luc Fortin (President, Guilde des musiciens et des musiciennes du Québec); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 November 2018, 1115 (Sylvia McNicoll, Author, Access Copyright); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 December 2018, 1100 (Ariel Katz, Associate Professor and Innovation Chair, Electronic Commerce, University of Toronto).

15 See, for example: Music Canada, [“The Value Gap: Its impacts, origins and a made-in-Canada approach,”](#) Submitted Brief, p. 29; CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 16 October 2018, 1100 (David Sparrow, National President and Performer, ACTRA); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 31 January 2019, 1645 (Robin Metcalfe, President, Director and Curator of Saint Mary’s University Art Gallery); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 November 2018, 1215 (Doreen Pendgracs, Vice-President, Professional Writers Association of Canada).

16 See for example: CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 5 June 2018, 1010 (Jason Klein, Vice-President, Legal and Business Affairs, ole); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 May 2018, 0855 (Graham Henderson, President and Chief Executive Officer, Music Canada); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 5 June 2018, 0850 (Alain Lauzon, General manager, Society for Reproduction Rights of Authors, Composers and Publishers in Canada); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 November 2018, 1120 (Laurent Dubois, General Manager, Union des écrivaines et des écrivains québécois); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 November 2018, 1100 (Eric Enno Tamm, Chair, The Writers’ Union of Canada); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 31 January 2019, 1640 (Julien Castanié, President, Illustration Québec).

technologies can also mean new opportunities, such as in the case of OutTV,<sup>17</sup> an LGBTQ2 television network and streaming service, and the Aboriginal Peoples Television Network.<sup>18</sup>

Stuart Johnston, President of the Canadian Independent Music Association, added that technology can be a “double-edged sword”:

[T]echnology and the digital world has enabled artists and companies to more efficiently record and distribute. It allows artists more of a level playing field; they can get their product into market, but now there is such a volume of product on the market that the challenge now is discoverability, being discovered and being paid for that.<sup>19</sup>

Creators, producers, and others who work in the creative sector do not agree on whether the shift to digital has been a positive or negative change, as it differs by industry. Nathalie Théberge, director general of Creative Marketplace and Innovation and Deputy Director of Investments at the Department of Canadian Heritage, explained that “[through] the emergence of new distributors, new technologies have not only shifted how money is made but also who benefits and how those benefits flow through to creators and rights holders.”<sup>20</sup> She added that digital intermediaries such as on-demand content providers, are gaining in importance; and that technology is also used by some to better manage their copyright.<sup>21</sup>

### **Recommendation 1**

**That the Government of Canada increase its support for creators and creative industries in adapting to new digital markets.**

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17 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 November 2018, 1215 (Brad Danks, Chief Executive Officer, OUTtv Network).

18 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 6 November 2018, 1230 (Sky Bridges, Chief Operating Officer, Aboriginal Peoples Television Network).

19 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 5 June 2018, 0900 (Stuart Johnston, president, Canadian Independent Music Association).

20 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 May 2018, 0905 (Nathalie Théberge, Director General, Creative Marketplace and Innovation and Deputy Director of Investments, Department of Canadian Heritage).

21 Ibid.



## Change in consumer culture

Witnesses said that one of the consequences of technology has been a change in consumer culture. In the past, consumers paid for the product, such as a book or a CD. Today, however, they consider that paying for access to cultural content is sufficient. Johanne Guay, of the Association nationale des éditeurs de livres, explained this shift:

Priorities are shifting from the content to the containers, and the value of goods is moving from the content to the technologies to access that content, and this contributes to the devaluation of cultural goods, and to the loss of income of the rights holders. While the cost of subscribing to these technological services is increasing, the sale of books is decreasing.<sup>22</sup>

According to Mark Schaan, Director General of Marketplace Framework Policy Branch at the Department of Innovation, Science and Economic Development Canada, this shift is reflected by the fact that there is “record-high consumption,” yet the value that consumers are willing to pay for content has diminished, which affects artists’ remuneration.<sup>23</sup> Witnesses told the Committee that the Internet has led many consumers to believe that content should be free. Brad Danks, Chief Executive Officer of the OUTtv Network, said that “free” should not be considered a business model. When content is made available for free, it is often by Internet giants with complementary businesses that can compensate for their costs, not by the artists who produce the content.<sup>24</sup>

In this regard, Suzanne Aubry, President of the Union des écrivaines et écrivains québécois, said that better education would be helpful and that consumers should be taught that “free access will destroy creativity and creators,”<sup>25</sup> if they are not remunerated for their work.

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22 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 November 2018, 1225 (Johanne Guay, Chair, Copyright Committee and Members’ Rights, Association nationale des éditeurs de livres).

23 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 May 2018, 0945 (Mark Schaan, Director General, Marketplace Framework Policy Branch, Department of Industry).

24 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 November 2018, 1215 (Brad Danks, Chief Executive Officer, OUTtv Network).

25 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 November 2018, 1135 (Suzanne Aubry, President, Union des écrivaines et écrivains québécois).



## Indigenous perspective on copyright

Throughout the study, the Committee heard of the importance of considering the Indigenous perspective regarding copyright. Scott Robertson, President of the Indigenous Bar Association, explained that Western views on copyright do not necessarily align with the Indigenous perspective as individual property rights is not a concept shared by all nations.<sup>26</sup> He told the Committee that:

In order to address these historical wrongs and to foster support for [I]ndigenous artists that respects and honours their laws and concepts of intellectual property, this committee should undertake a wide and meaningful consultation with [I]ndigenous peoples. Artists who generate creative work need to be consulted to determine the kinds of protections and amendments needed to ensure them the power to control their knowledge. Failing to do so may lead to untoward and inappropriate taking of knowledge under the guise of artistic reinterpretation.<sup>27</sup>

Ms. Théberge agreed with that perspective and explained that Canada has been working with international partners to develop international norms regarding traditional knowledge and cultural expressions.<sup>28</sup>

William Huffman, marketing manager of the West Baffin Eskimo Co-operative, explained that the Cooperative can help bridge that knowledge gap for the artists it represents.<sup>29</sup> Speaking about the theatre industry, Lori Marchand, representative of the Indigenous Performing Arts Alliance, told the Committee that current structures and practices “do not currently reflect or accommodate an Indigenous way of working.”<sup>30</sup> Speaking to the different approaches regarding stories, she added:

The underlying concept, or value, is that the stories belong to the community.... Any storytelling or sharing of those stories and histories beyond the community is really

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26 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 27 November 2018, 1235 (Scott Robertson, President, Indigenous Bar Association).

27 Ibid., 1240.

28 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 May 2018, 0910 (Nathalie Théberge, Director General, Creative Marketplace and Innovation and Deputy Director of Investments, Department of Canadian Heritage).

29 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 30 October 2018, 1115 (William Huffman, Marketing Manager, West Baffin Eskimo Co-operative, Dorset Fine Arts).

30 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 31 January 2019, 1540 (Lori Marchand, Managing Director, Indigenous Theatre, National Arts Centre, Indigenous Performing Arts Alliance).



through permission and a consultative process in which the community participates fully and has buy-in on the final product.<sup>31</sup>

Artist Andrew Morrison said that any review of the *Copyright Act* should look to the relationship with Indigenous music forms.<sup>32</sup> He asked for “specific attention put to Indigenous art forms to protect them” and to ensure proper remuneration for Indigenous artists.<sup>33</sup>

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31 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 31 January 2019, 1550 (Lori Marchand, Managing Director, Indigenous Theatre, National Arts Centre, Indigenous Performing Arts Alliance).

32 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 May 2018, 0905 (Andrew Morrison, The Jerry Cans).

33 *Ibid.*, 0925.

## PART 2: CHALLENGES AND POSSIBLE SOLUTIONS

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### ISSUES COMMON TO ALL CREATIVE INDUSTRIES

While many of the issues raised by witnesses were specific to their creative industry, some issues were common to all creative industries. These issues are: the creation of Canadian content; copyright literacy and the promotion of copyright; combatting piracy and enforcing existing rules; Copyright Board reform; and copyright term extension.

#### The creation of Canadian content

Canadian artists and creators play a central role in the creation of high-quality Canadian content. Not only does it benefit Canadian consumers, it produces income for Canadian content creators and is an important sector of the Canadian economy.<sup>34</sup> For all creative industries, the Committee heard that changes are needed to create a functioning marketplace for the creation of Canadian content.<sup>35</sup>

Many of the concerns raised by the creative industries were regarding the distributors and distribution channels of Canadian content. For example, Jean-Pierre Caissie, Administrator of the Alliance nationale de l'industrie musicale, asked, "Why do [internet service providers] not have the same responsibility in terms of Canadian content, so that their distribution channels can contribute to new works and distribute new songs from French-speaking Canadian artists?"<sup>36</sup> Jean La Rose, Chief Executive Officer, Aboriginal Peoples Television Network, noted that for many Indigenous artists creating Canadian content, "the main question is still finding opportunities and getting airplay—at all—in mainstream media."<sup>37</sup>

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34 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 7 June 2018, 0850 (Solange Drouin, Vice-President of Public Affairs and Executive Director, Association Québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ)).

35 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 November 2018, 1210 (William Harnum, Chair, Canadian Copyright Institute).

36 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 May 2018, 1005 (Jean-Pierre Caissie, Administrator, Alliance nationale de l'industrie musicale).

37 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 6 November 2018, 1230 (Jean La Rose, Chief Executive Officer, Aboriginal Peoples Television Network).



Some witnesses also noted that declining creation and consumption of Canadian content can lead to the shrinking of creative industries, as well as job losses. For the writing and publishing industries, declining revenues for educational content has led some Canadian publishers of Canadian educational content to decrease or terminate production.<sup>38</sup> For the film and television industries, declining commissions for Canadian content can lead to significant job losses for artists and creators.<sup>39</sup>

For the music, film and television industries, the vast quantity of content coming from the United States makes the continued creation of quality Canadian content more important. Witnesses raised concerns about “over-the-top” platforms such as Netflix, Spotify and Amazon, which have millions of Canadian subscribers and which are not subject to regulations that promote the creation and distribution of Canadian content. Erin Finlay, Chief Legal Officer of Canadian Media Producers Association, noted that this reality creates “an unfair competitive advantage ... [and] is putting immense stress on our funding system for Canadian content.”<sup>40</sup>

Failure to regulate these foreign entities poses a significant threat to Canadian artists and creative industries.<sup>41</sup> According to some witnesses, measures ought to be put into place to level the playing field. These measures include extending Canadian Radio-television and Telecommunications Commission (CRTC) Canadian-content requirements to streaming services and that such services be required to fund Canadian content.<sup>42</sup> Emily Harris, President of the Canadian Association of Film Distributors and Exporters,

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38 See: Association of Manitoba Book Publishers, “Remuneration models for artists and creative industries in the context of copyright brief,” Submitted Brief, 13 December 2018, p. 3; CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 November 2018, 1135 (Suzanne Aubry, President, Union des écrivaines et des écrivains québécois).

39 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 November 2018, 1205 (Emily Harris (President, Canadian Association of Film Distributors and Exporters)).

40 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 23 October 2018, 1150 (Erin Finlay, Chief Legal Officer, Canadian Media Producers Association).

41 Ibid.

42 See: CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 November 2018, 1210 (Emily Harris, President, Canadian Association of Film Distributors and Exporters); CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 31 May 2018, 0940 (Jérôme Payette, Executive Director, Association des professionnels de l'édition musicale); CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 May 2018, 1005 (Jean-Pierre Caissie, Administrator, Alliance nationale de l'industrie musicale); CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 November 2018, 1210 (Emily Harris, President, Canadian Association of Film Distributors and Exporters); CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 23 October 2018, 1150 (Erin Finlay, Chief Legal Officer, Canadian Media Producers Association); CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 May 2018, 0955 (Alan Willaert, Vice-President, Canada, Canadian Federation of Musicians); CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 May 2018, 1005 (Jean-Pierre Caissie, Administrator, Alliance nationale de l'industrie musicale); CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 6 November 2018, 1230 (Élisabeth Schlittler, General Delegate for Canada, Société des auteurs et compositeurs dramatiques).

added that non-Canadian streaming services must contribute to the “cultural ecosystem to ensure Canadian content is discoverable by Canadians.”<sup>43</sup>

The Committee heard the importance of preserving, promoting and developing Canadian culture and creative content in Canada.

The Committee also heard how important a role the CRTC plays in overseeing and helping to develop Canadian cultural industries. The arrival of new media platforms provides the CRTC with great opportunities to further develop creative industries in Canada.

## Recommendation 2

**That the Government of Canada develop mechanisms by which streaming services will develop and promote Canadian content.**

## Copyright literacy

Representatives from across the artistic industries discussed the importance of educating creators regarding copyright, contracts, and their implications.<sup>44</sup> Basic copyright literacy is “absolutely fundamental and goes across all creative sectors.”<sup>45</sup> When creators understand their rights, they are empowered to demand fair remuneration when signing contracts.

Transparent remuneration models for artists and creators requires a basic understanding of copyright within the artistic industries. The Committee heard that informing artists about their rights can be a challenge.<sup>46</sup> Marie-Josée Dupré, Executive Director of the Société professionnelle des auteurs et des compositeurs du Québec, noted that new artists often require support in developing entrepreneurial and business skills, as such expertise is “not a given.”<sup>47</sup>

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43 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 November 2018, 1210 (Emily Harris, President, Canadian Association of Film Distributors and Exporters).

44 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 31 May 2018, 0915 (Marie-Josée Dupré, Executive Director, Société professionnelle des auteurs et des compositeurs du Québec).

45 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 May 2018, 0935 (Nathalie Théberge, Director General, Creative Marketplace and Innovation and Deputy Director of Investments, Department of Canadian Heritage).

46 Ibid.

47 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 31 May 2018, 0915 (Marie-Josée Dupré, Executive Director, Société professionnelle des auteurs et des compositeurs du Québec).



Mr. Huffman noted how some of the artists he represents are unilingual Inuktitut speakers rendering it incredibly “complex and challenging ... for artists to both understand and navigate a copyright and permissions program.”<sup>48</sup>

As such, some witnesses recommended that the Government of Canada create educational materials to raise awareness of copyright provisions as well as artists’ rights and responsibilities under the *Copyright Act*,<sup>49</sup> and about the impacts of the move to digital on artists’ remuneration.<sup>50</sup>

### **Recommendation 3**

**That the Government of Canada create educational materials to raise awareness of copyright provisions and artist remuneration for consumers.**

### **Recommendation 4**

**That the Government of Canada create educational materials to raise awareness of copyright provisions as well as artists’ rights and responsibilities under the *Copyright Act* for artists and creators.**

## **Combatting piracy and enforcing existing rules**

Another issue common to all the creative industries was the need to combat piracy, both by creating new rules and enforcing those already in place in the *Copyright Act*.

As previously discussed, technology has had many impacts on creative industries. It can be used both to increase access to culture, but also to bypass the system and steal content. Mr. Schaan explained that “with every new technological phenomenon, people have found a way to use it both as the law imagined and as the law did not.”<sup>51</sup>

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48 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 30 October 2018, 1115 (William Huffman, Marketing Manager, West Baffin Eskimo Co-operative, Dorset Fine Arts).

49 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 31 May 2018, 0915 (Marie-Josée Dupré, Executive Director, Société professionnelle des auteurs et des compositeurs du Québec).

50 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 May 2018, 0850 (Dominic Trudel, Chief Executive Officer, Conseil québécois de la musique).

51 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 May 2018, 0920 (Mark Schaan, Director General, Marketplace Framework Policy Branch, Department of Industry).

Nevertheless, he said that according to a survey, “the large majority of digital content consumed was consumed legally.”<sup>52</sup>

The Committee heard that the proliferation of unlawful streaming services is inextricably linked with decreased remuneration for creators.<sup>53</sup> Canadians are increasingly and, at times unwittingly, consuming stolen content online.<sup>54</sup> For copyright owners, having their content removed from such sites is an expensive, time-consuming process.<sup>55</sup>

Stream ripping refers to the practice of using a software to illegally copy a file from a streaming service, whether for music, television or other media, which can then be distributed without the copyright holder being aware. In the publishing industry, methods such as torrents are used to counter legal methods and acquire books illegally.<sup>56</sup> As explained by Mr. Henderson of Music Canada, such practices erode “the ability of legitimate services ... to convert subscribers to paid subscribers.”<sup>57</sup> Robert Malcolmson, Senior Vice-President of regulatory affairs at BCE Inc., also noted the *Criminal Code* contains criminal provisions for content theft undertaken for commercial purposes, but they focus on illegal copying, while modern forms of content theft rely on streaming.<sup>58</sup>

Witnesses agreed that the current rules regarding piracy are hard to enforce and that more could be done to aid copyright holders. Recommendations raised by witnesses included additional efforts from the federal government against counterfeiting,<sup>59</sup> the

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- 52 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 May 2018, 0900 (Mark Schaan, Director General, Marketplace Framework Policy Branch, Department of Industry).
- 53 See, for example: CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 16 October 2018, 1115 (Pam Dinsmore (Vice-President, Regulatory Cable, Legal and Regulatory Affairs, Rogers Communications Inc.); CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 November 2018, 1250 (Brad Danks, Chief Executive Officer, OUTtv Network Inc.).
- 54 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 16 October 2018, 1115 (Pam Dinsmore, Vice-President, Regulatory Cable, Legal and Regulatory Affairs, Rogers Communications Inc.).
- 55 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 November 2018, 1245 (Emily Harris, President, Canadian Association of Film Distributors and Exporters).
- 56 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 November 2018, 1235 (Johanne Guay, Chair, Copyright Committee and Members' Rights, Association nationale des éditeurs de livres).
- 57 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 May 2018, 0940 (Graham Henderson, President and Chief Executive Officer, Music Canada).
- 58 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 16 October 2018, 1105 (Robert Malcolmson, Senior Vice-President, Regulatory Affairs, BCE Inc.).
- 59 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 November 2018, 1230 (Arnaud Foulon, President, Association nationale des éditeurs de livres).





review of current criminal provisions in the *Copyright Act*<sup>60</sup> and the creation of an office dedicated to enforcement.<sup>61</sup> Representatives of the publishing industry also argued that increased statutory damages could act as a deterrent and help reduce piracy.<sup>62</sup>

Another approach to combatting piracy that witnesses raised is to involve the intermediaries in content distribution such as Internet service providers (ISPs). Witnesses described different methods to do so. For the Association nationale des éditeurs de livres, ISPs ought to “inform their subscribers about copyright” and “[withdraw] access from non-compliers.”<sup>63</sup> For representatives from the music and the film and television industries, the courts ought to be allowed to force ISPs to block access to the websites that allow piracy.<sup>64</sup>

To further curb illegal copying or streaming, it was suggested profiting from the theft and sharing of rights holders' exclusive and copyrighted content on illegal streaming services be deemed a criminal offence.<sup>65</sup>

Many witnesses also asked for modifications to the safe harbour provisions related to digital intermediaries and ISPs. The Committee heard that these provisions ought to be reviewed to ensure that these online services are held accountable for their role in diffusing content. The recommendation is linked to the theme of Canadian content

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60 See: CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 16 October 2018, 1105 (Robert Malcolmson, Senior Vice-President, Regulatory Affairs, BCE Inc.); and CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 16 October 2018, 1115 (Pam Dinsmore, Vice-President, Regulatory Cable, Legal and Regulatory Affairs, Rogers Communications Inc.).

61 CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 16 October 2018, 1105 (Robert Malcolmson, Senior Vice-President, Regulatory Affairs, BCE Inc.).

62 For details, see the Writing and Publishing section below.

63 CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 November 2018, 1230 (Arnaud Foulon, President, Association nationale des éditeurs de livres).

64 See: CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 27 September 2018, 1105 (Caroline Rioux, President, Canadian Musical Reproduction Rights Agency Ltd.); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 16 October 2018, 1220 (Jennifer Mitchell, President, Red Brick Songs, Casablanca Media Publishing); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 23 October 2018, 1150 (Erin Finlay, Chief Legal Officer, Canadian Media Producers Association); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 November 2018, 1250 (Emily Harris, President, Canadian Association of Film Distributors and Exporters); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 16 October 2018, 1105 (Robert Malcolmson, Senior Vice-President, Regulatory Affairs, BCE Inc.) and CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 16 October 2018, 1115 (Pam Dinsmore, Vice-President, Regulatory Cable, Legal and Regulatory Affairs, Rogers Communications Inc.); Corus Entertainment, “[Statutory Review of the Copyright Act – Remuneration Models for Artists and Creative Industries - Comments of Corus Entertainment Inc.](#),” Submitted Brief, December 2018.

65 CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 16 October 2018, 1115 (Pam Dinsmore, Vice-President, Regulatory Cable, Legal and Regulatory Affairs, Rogers Communications Inc.).

previously discussed. Witnesses told the Committee that the Internet should not be seen as a set of “dumb pipes”<sup>66</sup> and, rather, that ISPs “enjoy and greatly benefit from access to the music they give their clients.”<sup>67</sup>

#### Recommendation 5

**That the Government of Canada review the safe harbour exceptions and laws to ensure that Internet service providers are accountable for their role in the distribution of content.**

#### Recommendation 6

**That the Government of Canada increase its efforts to combat piracy and enforce copyright.**

### Copyright Board reform

Many witnesses said that reform of the Copyright Board is necessary to improve its efficiency, and to ensure that it can play its role as established in part VII of the *Copyright Act*. The Committee recognizes that a reform of the Copyright Board was announced in the [Budget Implementation Act, 2018, No. 2](#). This section is included in the report as most of witnesses’ testimony to the Committee was received before this announcement.<sup>68</sup>

As explained by Mr. Schaan, the need for reform “has been [a] long-standing consensus among stakeholders.”<sup>69</sup> In particular, Mr. Schaan said that the Board’s efficiency has

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66 On July 12, 2012, the Supreme Court of Canada published five separate judgements on cases related to the Copyright Act. The Court ruled that ISPs do not have to pay tariffs to the Copyright Board when their users consume files such as music.

67 See: CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 5 June 2018, 1030 (Gilles Daigle, General Counsel and Head of Legal Services, Society of Composers, Authors and Music Publishers of Canada). For more examples see: CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 31 May 2018, 0855 (Margaret McGuffin, Executive Director, Canadian Music Publishers Association); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 5 June 2018, 1035 (Geneviève Côté, Chief Québec Affairs Officer, Society of Composers, Authors and Music Publishers of Canada); Music Canada, [“The Value Gap: Its origins, impacts and a made-in-Canada approach,” Submitted Brief](#), May 2018, p. 31.

68 In August and September 2017, the Government of Canada held a consultation process for reform of the Copyright Board.

69 CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 May 2018, 0920 (Mark Schaan, Director General, Marketplace Framework Policy Branch, Department of Industry). See also: CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2018, 1115 (Jason J. Kee, Counsel, Public Policy and Government Relations, YouTube, Google Canada).



been identified by many as requiring reform, as “it can take as much as six to seven years to set a tariff.”<sup>70</sup>

Because of the delay in establishing tariffs, some witnesses, such as Greg Johnston, President of the Songwriters Association of Canada, said that the current system cannot adapt to new technologies in a timely manner.<sup>71</sup> This creates a “negative economic impact on creators” compared to other countries when it comes to the digital uses of creative works.<sup>72</sup> This point of view was also expressed by Jennifer Mitchell, President of Red Brick Songs at Casablanca Media Publishing.<sup>73</sup>

The witnesses who discussed the workings of the Board all recommended its reform.<sup>74</sup> In its brief, the Canadian Music Policy Coalition<sup>75</sup> explained that in addition to accelerating Board proceedings, it was also necessary to “codify and clarify specific Board procedures through regulations” and to create well-defined, objective criteria for the Board to follow when setting a new tariff.<sup>76</sup>

While the need for a reform of the Board was expressed primarily by witnesses from the music industry, it was also raised by representatives of the writing and publishing industry.<sup>77</sup>

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- 70 CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 May 2018, 0920 (Mark Schaan, Director General, Marketplace Framework Policy Branch, Department of Industry).
- 71 CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 7 June 2018, 0925 (Greg Johnston, President, Songwriters Association of Canada).
- 72 CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 5 June 2018, 0850 (Alain Lauzon, General Manager, Society for Reproduction Rights of Authors, Composers and Publishers in Canada).
- 73 CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 16 October 2018, 1220 (Jennifer Mitchell, President, Red Brick Songs, Casablanca Media Publishing).
- 74 See, for example: CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 May 2018, 1010 (Alan Willaert, Vice-President, Canada, Canadian Federation of Musicians); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 31 May 2018, 0930 (Margaret McGuffin, Executive Director, Canadian Music Publishers Association); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 31 May 2018, 0910 (Marie-Josée Dupré, Executive Director, Société professionnelle des auteurs et des compositeurs du Québec); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 16 October 2018, 1120 (Pam Dinsmore, Vice-President, Regulatory Cable, Legal and Regulatory Affairs, Rogers Communications Inc.).
- 75 The Canadian Music Policy Coalition brings together Canadian music professional organizations and as well as collective societies. In Fall 2017, it provided the government with a series of recommendations regarding the review of the Copyright Act. Most of its member organizations appeared as individual witnesses during the study.
- 76 Canadian Music Policy Coalition, [“Sounding Like a Broken Record: Principled Copyright Recommendations from the Music Industry,”](#) Submitted Brief, October 2017, p. 10.
- 77 See: Association of Canadian Publishers, [“Remuneration Models for Artists and Creative Industries: Submission to the Standing Committee on Canadian Heritage,”](#) Submitted Brief, October 2018 and CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 November 2018, 1205 (William Harnum, Chair, Canadian Copyright Institute).

## Copyright term extension

The question of the copyright term extension was raised throughout the study by witnesses representing the music industry as well as the writing and publishing industries. Article 6 of the *Copyright Act* says:

The term for which copyright shall subsist shall, except as otherwise expressly provided by this Act, be the life of the author, the remainder of the calendar year in which the author dies, and a period of fifty years following the end of that calendar year.<sup>78</sup>

The proposal made by witnesses was to extend this provision from 50 to 70 years after the author's death to align with Canada's main international partners.<sup>79</sup>

The Committee acknowledges that the new Canada – United States – Mexico Agreement, which was signed on 30 November 2018, requires Canada to modify its intellectual property framework to extend copyright protection to “life plus 70 years.” However, at the time of the study, this new agreement had not completed the legislative process towards ratification and implementation. This section therefore presents witnesses' views on this topic.

The Canadian Music Policy Coalition held that the current term is outdated and disadvantages both creators and Canadian interests in international trade.<sup>80</sup> In his testimony, Jérôme Payette of the Association des professionnels de l'édition musicale explained that the length of the copyright term was meant to protect creators for two generations and that due to an increase in life expectancy, protection should be extended.<sup>81</sup> The economic benefits of term extension for copyright owners would be additional investment “in the career development of Canadian songwriters and composers.”<sup>82</sup>

Artist Miranda Mulholland said that extending the copyright term would be a “legacy move” that would give artists like herself “the ability to leverage their success.”<sup>83</sup> For the

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78 *Copyright Act*, R.S.C. 1985, c. C-42, s. 6.

79 The term of copyright is currently set at 70 years in the United States, the European Union, the United Kingdom, Australia and many other OECD countries.

80 Canadian Music Policy Coalition, “[Sounding Like a Broken Record: Principled Copyright Recommendations from the Music Industry](#),” Submitted Brief, October 2017, pp. 6-8.

81 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 31 May 2018, 0910 (Jérôme Payette, Executive Director, Association des professionnels de l'édition musicale).

82 *Ibid.*

83 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 20 September 2018, 1125 (Miranda Mulholland, Artist entrepreneur, As an Individual).



Canadian Academy of Recording Arts and Sciences, aligning Canada’s copyright term with its major trading partners would ensure “robust compensation” to creators and their families.<sup>84</sup>

No witnesses expressed outright opposition to extending of the copyright term from 50 to 70 years after death. Paul Verhaegh of the Professional Writers Association of Canada told the Committee:

Some will argue that such an extension only benefits the heirs of the creator and not the creator himself or herself. We don't see why that would be a reason not to extend the copyright protection, since in our society it is the rule and not the exception that heirs benefit from what a deceased person created and produced during his or her lifetime.<sup>85</sup>

Brianne Selman of the Cultural Capital Project brought forward a nuanced approach. She explained that there is “no incentive up front to artists to extend term to 70 years after death” and that she sees more value in rights reversion.<sup>86</sup> However, she added that “reversion and ownership of rights do not exclude actual term extension.”<sup>87</sup>

### Recommendation 7

**That the Government of Canada pursue its commitment to implement the extension of copyright from 50 to 70 years after the author’s death.**

## MUSIC INDUSTRY

Over the course of the study, witnesses from the music industry explained how their work has been affected by new access points and made recommendations to improve their remuneration.

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84 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 27 September 2018, 1110 (Jackie Dean, Chief Operating Officer, CARAS, The JUNO Awards, MusiCounts).

85 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 November 2018, 1210 (Paul Verhaegh, Regional Director for the Prairies and the North, Professional Writers Association of Canada).

86 See: CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 27 September 2018, 1150 (Brianne Selman, Secondary Investigator, Cultural Capital Project). Rights reversion will be discussed in more details in the next section of this report.

87 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 27 September 2018, 1150 (Brianne Selman, Secondary Investigator, Cultural Capital Project).

## New distribution models

The advent of streaming platforms has had a profound impact on the music industry. The main issue raised by artists is that the rules have not evolved with technology and that, consequently, artists do not receive their fair share when it comes to remuneration. Ms. Théberge explained that “overall revenues from sound recordings in the Canadian music industry remained relatively stable”<sup>88</sup> between 2010 and 2015 due to an increase in streaming revenues. However, artists’ remuneration has not increased. As explained by Mr. Henderson, “wealth has been diverted from creators into the pockets of massive digital entities.”<sup>89</sup>

A concrete example was raised by artist David Bussi eres, who is also the founder and spokesperson for the Regroupement des artisans de la musique. He explained that the remuneration for one of his popular songs, *Lumi ere*, differed greatly between platforms. He described that his band:

received \$10.80 for 30,000 plays on Spotify, or 0.036¢ per play. For 60,000 views on YouTube, we received \$153.04, or 0.5¢ per play. I compared it to traditional commercial radio, where the song had reached fifth place on the charts after about 6,000 spins: we received \$17,346.89, or about \$2.89 per spin.<sup>90</sup>

Artist Andrew Morrison of The Jerry Cans told the Committee that music production has become “such a small part” of their income generation, and that their remuneration comes mostly from performances.<sup>91</sup>

Dominic Trudel, Chief Executive Officer of the Conseil Qu eb ecois de la musique, raised specific issues faced by classical musicians. He explained:

Concert music is unique in that ensembles vary in size.... Another unique thing about concert music is that it’s a niche market.... The other thing about classical music is that all orchestras share the same repertoire of internationally renowned composers, making it very hard to stand out in the digital landscape.<sup>92</sup>

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88 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 May 2018, 0905 (Nathalie Th eberge, Director General, Creative Marketplace and Innovation and Deputy Director of Investments, Department of Canadian Heritage).

89 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 May 2018, 0855 (Graham Henderson, President and Chief Executive Officer, Music Canada).

90 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 20 September 2018, 1110 (David Bussi eres, Founder and Spokesperson, Regroupement des artisans de la musique).

91 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 May 2018, 0905 (Andrew Morrison, The Jerry Cans).

92 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 May 2018, 0910 (Dominic Trudel, Chief Executive Officer, Conseil qu eb ecois de la musique).



He added that the new platforms are “sometimes ill-adapted”<sup>93</sup> to classical music and that their remuneration models is disadvantageous for classical musicians. Revenues from those platforms remains low.<sup>94</sup>

Witnesses explained that the current royalty rate being paid for streaming is too low.<sup>95</sup> Jean-Pierre Caissie, administrator of the Alliance nationale de l’industrie musicale, told the Committee that the current rate of 0.012 cents per play is 25 times lower than in the United States of America.<sup>96</sup> While the Copyright Board is responsible for establishing royalty rates, Ms. Dupré of the Société professionnelle des auteurs et des compositeurs du Québec, told the Committee that the role of the federal government should be to take “the necessary measures to ensure that creators are adequately compensated for all uses of their work” as “equitable remuneration is essential to the survival of creativity.”<sup>97</sup>

### **Recommendation 8**

**That music streaming services be regulated like other Canadian music services.**

### **Recommendation 9**

**That tariffs for online music services be reviewed by the Copyright Board to ensure royalty payments provide fair compensation for artists.**

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93 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 May 2018, 0845 (Dominic Trudel, Chief Executive Officer, Conseil québécois de la musique).

94 Ibid., 0850.

95 See, for example: CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 5 June 2018, 0845 (Chris Moncada, General Manager, Last Gang Records/eOne Music, Canadian Independent Music Association); CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 31 May 2018, 0920 (Luc Fortin, President, Guilde des musiciens et musiciennes du Québec); CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 31 May 2018, 0910 (Marie-Josée Dupré, Executive Director, Société professionnelle des auteurs et des compositeurs du Québec).

96 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 May 2018, 1000 (Jean-Pierre Caissie, Administrator, Alliance nationale de l’industrie musicale).

97 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 31 May 2018, 0910 (Marie-Josée Dupré, Executive Director, Société professionnelle des auteurs et des compositeurs du Québec).



## Frequent recommendations

Throughout the study, witnesses from the music industry raised several frequent recommendations, which were presented by members of the Canadian Music Policy Coalition<sup>98</sup> as well as by Music Canada.<sup>99</sup>

## Radio royalty exemption

Many witnesses from the music industry recommended the removal of the radio royalty exemption from the *Copyright Act*. Currently, except for a \$100 nominal fee, “radio stations [are] exempted from paying royalties on their first \$1.25 million”<sup>100</sup> in advertising revenue due to the provisions of article 68.1.<sup>101</sup> Witnesses who argued against this exemption said that it helps subsidize profitable businesses,<sup>102</sup> only targets performers and record labels,<sup>103</sup> was only supposed to target “mom-and-pop stations” but now applies to all broadcasters,<sup>104</sup> and that it was supposed to be a temporary measure.<sup>105</sup>

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- 98 See footnote 65. In total, 15 members of the Coalition appeared before the Committee: ACTRA, ADISQ, the Professional Music Publishers' Association, Artisti, the Canadian Federation of Musicians, the Canadian Independent Music Association, the Canadian Music Publishers Association, the Canadian Musical Reproduction Rights Agency, Guilde des musiciens et musiciennes du Québec, Re:Sound Music Licensing Company, Songwriters Association of Canada, Screen Composers Guild of Canada, Society of Composers, Authors and Music Publishers of Canada, Society for Reproduction Rights of Authors, Composers and Publishers in Canada and Société professionnelle des auteurs et des compositeurs du Québec.
- 99 Music Canada brings together three companies: Sony Music Entertainment Canada, Universal Music Canada and Warner Music Canada, as well as various a dozen of smaller Canadian producers. Its report [The Value Gap: Its origins, impacts and a made-in-Canada approach](#) was presented as a brief to the Committee and cited by witnesses from the music industry. Witnesses from other organizations referred to Music Canada’s testimony and brief.
- 100 Music Canada, [“The Value Gap: Its origins, impacts and a made-in-Canada approach,” Submitted Brief](#), May 2018, p. 32.
- 101 Copyright Act, R.S.C. 1985, c. C-42, 68.1 (1)(a)(i).
- 102 See for example: CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 7 June 2018, 0850 (Solange Drouin, Vice-President of Public Affairs and Executive Director, ADISQ); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 5 June 2018, 0845 (Stuart Johnston, president, Canadian Independent Music Association); Canadian Music Policy Coalition, [“Sounding Like a Broken Record: Principled Copyright Recommendations from the Music Industry,” Submitted Brief](#), October 2017, p. 24.
- 103 CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 May 2018, 0900 (Graham Henderson, President and Chief Executive Officer, Music Canada).
- 104 CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 May 2018, 0955 (Alan Willaert, Vice-President, Canada, Canadian Federation of Musicians).
- 105 See: CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 May 2018, 0900 (Graham Henderson, President and Chief Executive Officer, Music Canada); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 5 June 2018, 1000 (Geneviève Côté, Chief Québec Affairs Officer, Society of Composers, Authors and Music Publishers of Canada); Artists and Lawyers for the Advancement of Creativity, [“Submission of ALAC to the Standing](#)



While most witnesses who discussed the radio royalty exemption were in favour of its removal from the *Act*, the Canadian Association of Broadcasters told the Committee that it should remain in the legislation. In their opinion, “[a] balance has been achieved” and they “believe it would be counterproductive for Canada, for radio stations, and for artists”<sup>106</sup> to modify that provision. Corus also asked that the Committee does not recommend removing the exemption as “Canadian broadcasters pay more than their fair share.”<sup>107</sup>

### Recommendation 10

**That the Government of Canada amend the radio royalty exemption found at section 68.1(1) of the Copyright Act so that it applies only to independent and/or community-based radio stations.**

### Definition of sound recording

Another recommendation raised by many witnesses from the music industry was to modify the definition of sound recording.<sup>108</sup> This recommendation was part of Music Canada’s testimony and received approval from artists, producers and other organizations representing rightsholders. Currently, the *Act* states that a sound recording:

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[Committee on Canadian Heritage on Remuneration Models for Artists and Creative Industries](#),” Submitted Brief, November 2018, p. 3.

106 CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 September 2018, 1155 (Nathalie Dorval, Chair, Board of Directors, Canadian Association of Broadcasters).

107 Corus Entertainment, [“Statutory Review of the Copyright Act—Remuneration Models for Artists and Creative Industries - Comments of Corus Entertainment Inc.”](#) Submitted Brief, December 2018.

108 See, for example: Artists and Lawyers for the Advancement of Creativity, [“Submission of ALAC to the Standing Committee on Canadian Heritage on Remuneration Models for Artists and Creative Industries”](#) Submitted Brief, November 2018, p. 3.; CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2018, 1215 (Catherine Jones, Executive Director, Connect Music Licensing); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 27 September 2018, 1110 (Jackie Dean, Chief Operating Officer, CARAS, The JUNO Awards, MusiCounts); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 May 2018, 0900 (Graham Henderson, President and Chief Executive Officer, Music Canada); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 5 June 2018, 1000 (Gilles Daigle, General Counsel and Head of Legal Services, Society of Composers, Authors and Music Publishers of Canada); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 7 June 2018, 0850 (Solange Drouin, Vice-President of Public Affairs and Executive Director, Association Québécoise de l’industrie du disque, du spectacle et de la vidéo (ADISQ)); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 7 June 2018, 0910 (Ian MacKay, President, Re: Sound Music Licensing Company); Screen Composers Guild of Canada, [“Copyright in the 21<sup>st</sup> Century for the Canadian Screen-Composer”](#) Submitted Brief, October 2018.

means a recording, fixed in any material form, consisting of sounds, whether or not of a performance of a work, but excludes any soundtrack of a cinematographic work where it accompanies the cinematographic work<sup>109</sup>

According witnesses the definition must be amended “so that performers can collect royalties when their recorded performances of music on soundtracks of audiovisual works, such as TV programs and movies, are broadcast or streamed.”<sup>110</sup> The Committee heard that the current definition represents over \$45 million in losses for artists every year.<sup>111</sup>

Ms. Mulholland described how she has been affected by the current definition of sound recording. She said:

Even though I played on every episode of CBC's *Republic of Doyle*, which is now syndicated worldwide—I've seen it on TV in Germany—I only received the one-time union rate I got per session, which is about \$280. However, the composer of the songs collects residuals every time that show airs around the world. In 44 other countries around the world, they give artists the right to receive public performance royalties when their sound recordings are used as part of a soundtrack for TV and film.<sup>112</sup>

In its brief, Corus opposed modifying the definition, calling the proposal an “attempt by large foreign conglomerates to ‘double-dip’ at the expense of Canadian media businesses.”<sup>113</sup>

The Canadian Association of Broadcasters opposed this proposal to modify the definition of sound recording. They told the Committee that:

Any consideration of adding new costs on conventional television broadcasters, or on the digital sector, should be rejected as it would diminish Canadian broadcasters' ability to invest in Canadian productions by shifting more than \$50 million into the hands of foreign owned corporations.<sup>114</sup>

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109 *Copyright Act*, R.S.C. 1985, c. C-42, section 2.

110 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 May 2018, 0955 (Alan Willaert, Vice-President, Canada, Canadian Federation of Musicians).

111 See: CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 5 June 2018, 0845 (Stuart Johnston, president, Canadian Independent Music Association); CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 20 September 2018, 1125 (Miranda Mulholland, artist entrepreneur).

112 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 20 September 2018, 1125 (Miranda Mulholland, artist entrepreneur).

113 Corus Entertainment, “[Statutory Review of the Copyright Act – Remuneration Models for Artists and Creative Industries - Comments of Corus Entertainment Inc.](#),” Submitted Brief, December 2018.

114 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 September 2018, 1110 (Nathalie Dorval, Chair, Board of Directors, Canadian Association of Broadcasters).



## Recommendation 11

**That the Government of Canada amend the definition of sound recording found in section 2 of the *Copyright Act* to allow sound recordings used in television and film to be eligible for public performance remuneration.**

### Private copying regime

Another frequently raised recommendation was related to the private copying regime. The private copying regime is a levy paid by manufacturers for the sale of private copying devices. The money is sent to the Canadian Private Copying Collective, which administers its distribution back to artists.

With music consumption changing from physical to digital, artists' remuneration through private copying decreased significantly: 89% less revenue in 2016 compared to 2004.<sup>115</sup> The issue, as explained by the Canadian Private Copying Collective, is as follows:

[The] private copying regime is focused on audio recording media.... The court's interpretation of the term "media" excludes devices or recording media embedded in devices. Although they could understand the desire, the rationale, the logic, in doing so, they felt that word "medium" was too restrictive ... in French it's "*support*" which is a much broader term and could certainly be interpreted to encompass both.<sup>116</sup>

Witnesses recommended that the private copying regime be made "technologically neutral" so that it could apply for all types of devices without requiring the law to be amended whenever a new device is created.<sup>117</sup> The Screen Composers Guild of Canada

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115 CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 May 2018, 0945 (Lyette Bouchard, Chair, Canadian Private Copying Collective).

116 CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 May 2018, 1035 (Lisa Freeman, Executive Director, Canadian Private Copying Collective).

117 The "technologically neutral" argument was raised by many witnesses, see for example: CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 May 2018, 0945 (Lyette Bouchard, Chair, Canadian Private Copying Collective); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 May 2018, 0900 (Graham Henderson, President and Chief Executive Officer, Music Canada); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 31 May 2018, 0855 (Margaret McGuffin, Executive Director, Canadian Music Publishers Association); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 31 May 2018, 0910 (Marie-Josée Dupré, Executive Director, Société professionnelle des auteurs et des compositeurs du Québec); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 31 May 2018, 0930 (Luc Fortin, President, Guilde des musiciens et musiciennes du Québec); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 31 May 2018, 0905 (Jérôme Payette, Executive Director, Professional Music Publishers' Association); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 5 June 2018, 0845 (Stuart Johnston, president, Canadian Independent Music Association); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 5 June 2018, 0950 (Jason Klein, Vice-President, Legal and Business Affairs, ole); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 5 June 2018, 1000 (Geneviève Côté, Chief Québec Affairs Officer, Society of Composers, Authors and Music Publishers of Canada); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 7 June 2018, 0850

told the Committee that the legislation should be “techno-moral”, explaining that “it should be agnostic across all existing and all future technology.”<sup>118</sup>

While some witnesses supported the recommendation to update the private copying regime, others expressed concerns. Oliver Jaakkola, Senior Vice-President and general counsel at SiriusXM Canada, warned that, should the private copying levy be extended, “care should be taken that it does not apply to memory in dedicated devices when the music service is already paying the tariff for such copies”<sup>119</sup> and avoid the double payment of royalties. Jason Kee, representing Google Canada, told the Committee that such a change might not be well-received by consumers as “it would increase the cost ... with respect to their monthly subscriptions.”<sup>120</sup>

In addition to amending the private copying regime, some witnesses suggested the creation of an interim fund to compensate music creators for their loss of revenue until the changes to the regime could be applied. This four-year fund of \$40 million per year would come from the federal government and the money would be administered by the Canadian Private Copying Collective. Witnesses who raised this idea all said that it should be a temporary solution and should not become permanent.<sup>121</sup>

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(Solange Drouin, Vice-President of Public Affairs and Executive Director, Association Québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ)); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 7 June 2018, 0935 (Ian MacKay, President, Re: Sound Music Licensing Company); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 23 October 2018, 1150 (Erin Finlay, Chief Legal Officer, Canadian Media Producers Association); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 16 October 2018, 1100 (Laurie McAllister, Director, Performers' Rights Society and Recording Artists' Collecting Society, ACTRA); and CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 27 September 2018, 1110 (Jackie Dean, Chief Operating Officer, CARAS, The JUNO Awards, MusiCounts).

118 CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 September 2018, 1145 (Paul Novotny, Screen Composer, Screen Composers Guild of Canada).

119 CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 16 October 2018, 1225 (Oliver Jaakkola, Senior Vice-President and General Counsel, SiriusXM Canada).

120 CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2018, 1115 (Jason J. Kee, Counsel, Public Policy and Government Relations, YouTube, Google Canada).

121 See: CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 16 October 2018, 1100 (Laurie McAllister, Director, Performers' Rights Society and Recording Artists' Collecting Society, Alliance of Canadian Cinema, Television and Radio Artists (ACTRA)); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 5 June 2018, 0845 (Stuart Johnston, president, Canadian Independent Music Association); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 May 2018, 0945 (Lytette Bouchard, Chair, Canadian Private Copying Collective); and CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 May 2018, 0900 (Graham Henderson, President and Chief Executive Officer, Music Canada).



## Other recommendations

In addition to these frequent recommendations, witnesses from the music industry also suggested other changes that would support artists.

### Reducing the number of exceptions

Witnesses from the music industry also said that the *Copyright Act* contains too many exceptions, and that their application is unclear.<sup>122</sup> Therefore, many requested that as part of the statutory review of the Act, a thorough review of those exceptions be conducted and that they be clarified and/or removed if needed.<sup>123</sup>

#### Recommendation 12

**That the Government of Canada review, clarify and/or remove exceptions contained in the *Copyright Act*, ensuring that any exception respects section 9 of the Berne Convention for the Protection of Literary and Artistic Works, to which Canada is a signatory.**

#### Recommendation 13

**That the Government of Canada meet international treaty obligations (including Berne Convention for the Protection of Literary and Artistic Works, the Trade-Related Aspects of Intellectual Property Rights Agreement, and World Intellectual Property Organization Copyright Treaty).**

## Rights reversion

When he appeared before the Committee, musician Bryan Adams recommended a modification to another aspect of copyright law: the reversion of rights back to the author of the work.

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122 This was not always followed by a recommendation. See for example: CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 31 May 2018, 0845 (Luc Fortin, President, *Gilde des musiciens et musiciennes du Québec*).

123 See: CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 May 2018, 1005 (Jean-Pierre Caissie, Administrator, *Alliance nationale de l'industrie musicale*); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 31 May 2018, 0905 (Jérôme Payette, Executive Director, *Professionnal Music Publishers' Association*); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 31 May 2018, 0945 (Marie-Josée Dupré, Executive Director, *Société professionnelle des auteurs et des compositeurs du Québec*); CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 5 June 2018, 0855 (Martin Lavallée, Director, *Licensing and Legal Affairs, Society for Reproduction Rights of Authors, Composers and Publishers in Canada*).

Currently, the *Copyright Act* states that authors who assign their rights by contract may only get them back 25 years after their death. Their estate then manages these rights. In his proposal, Mr. Adams suggested to modify the words “death of the author” in article 14 (1) of the *Act* by the word “assignment.”<sup>124</sup> This would, according to Daniel Gervais, professor at the Vanderbilt University Law School and President of the International Association for the Advancement of Teaching and Research in Intellectual Property, would “limit [the] unfairness” that comes from the unequal bargaining position of an artists compared to a producer, and align Canada with its international partners.<sup>125</sup>

This recommendation received support from other witnesses. Dr. Brian Fauteux, primary investigator at the Cultural Capital Project, said that it “does offer some balance to the historically imbalanced relationship between artists and labels, where creators are often pressured to sign away their rights for life.”<sup>126</sup> Brianne Selman, secondary investigator at the Project, added that “rights reversion offers a real incentive to artists” compared to term extension.<sup>127</sup> Artists and Lawyers for the Advancement of Creativity said that this type of measure would “give the author (or author’s heirs) an opportunity to obtain greater benefit from works that may continue to have a market.”<sup>128</sup>

#### **Recommendation 14**

**That the Government of Canada amend subsection 14(1) of the *Copyright Act* so that it reads “from 25 years after assignment.”**

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124 CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 September 2018, 1125 (Bryan Adams, Artist).

125 CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 18 September 2018, 1130 (Daniel J. Gervais, Milton R. Underwood Chair in Law, President, International Association for the Advancement of Teaching and Research in Intellectual Property, Vanderbilt University Law School).

126 CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 27 September 2018, 1115 (Brian Fauteux, Primary Investigator, Cultural Capital Project).

127 CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 27 September 2018, 1150 (Brianne Selman, Secondary Investigator, Cultural Capital Project).

128 Artists and Lawyers for the Advancement of Creativity, “[Submission of ALAC to the Standing Committee on Canadian Heritage on Remuneration Models for Artists and Creative Industries](#),” Submitted Brief, November 2018, p. 4.



## Tariffs

As discussed above, many witnesses agreed on the need to reform the Copyright Board. In addition to its reform, witnesses also recommended other possible changes to its tariffs.

Regarding online performances, both Artisti<sup>129</sup> and the Regroupement des artisans de la musique<sup>130</sup> said that the compensation artists receive for such performances should be increased. Artisti also recommended the creation of a new tariff for broadcasters who would like to use a reproduction of a work.<sup>131</sup>

In addition, Caroline Rioux, President of the Canadian Musical Reproduction Rights Agency, asked that the Board be required “to protect a minimum per use value for the copying of musical work.”<sup>132</sup>

## Additional support from the federal government

Some witnesses also asked that the federal government play a bigger role in supporting music creators. They suggested different ways it could be achieved: through funding, promotion and data collection.

Witnesses recommended different forms of additional funding that could come from the federal government. For the Regroupement des artistes de la musique, a federal tax credit should be created for “producers and self-producing artists”.<sup>133</sup> Guillaume Déziel supported the creation of a new funding system that would favour creative works with more permissive licences,<sup>134</sup> a recommendation that could be applicable for all creative industries.<sup>135</sup>

In addition to new funding, the Conseil québécois de la musique told the Committee that the federal government could further support music creators through promotion and enhanced data collection. It said that to improve the discoverability of Canadian

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129 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 7 June 2018, 0900 (Sophie Prigent, Vice-President, Artisti).

130 Regroupement des artisans de la musique, “*Brief*,” Submitted Brief, November 2018.

131 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 7 June 2018, 0900 (Annie Morin, General Manager, Artisti).

132 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 27 September 2018, 1105 (Caroline Rioux, President, Canadian Musical Reproduction Rights Agency Ltd.).

133 Regroupement des artistes de la musique, “*Brief*,” Submitted Brief, December 2018, p. 6.

134 Guillaume Déziel, “*Brief*,” Submitted Brief, October 2018, p. 1.

135 Mr. Déziel’s brief offers more information on Creative Commons licenses and how they allow creators “to voluntarily relinquish parts of their copyright” for other artists to use, with some caveats.



artists, “promotion initiatives to spread awareness for content available on the large, international platforms”<sup>136</sup> should be created. To ensure that artists are remunerated fairly for their work, the Conseil also recommended the creation of “a uniform system of data collection that would allow people to identify rights holders.”<sup>137</sup> This would be particularly helpful to classical musicians due to the difficulties in correctly identifying “composers, performers and various elements of any given classical music recording.”<sup>138</sup>

### Recommendation 15

**That the exception for charitable organizations in subsection 32.2(3) of the *Copyright Act* be clarified to apply strictly to activities where no commercial monetary gain is intended.**

## FILM AND TELEVISION INDUSTRIES

### New distribution models

Much like the music industry, players in the film and television industries have been affected by the shift to digital streaming services. Foreign-owned platforms such as Netflix, Amazon and Apple have simplified the way that film and television are consumed. As Laurie McAllister, Director of the Performers' Rights Society and Recording Artists' Collecting Society of ACTRA, said: “While it's easier than ever to have your creative work seen and heard around the world, it's harder than ever to be properly compensated.”<sup>139</sup> For the Aboriginal Peoples Television Network, the shift to digital platforms has seen payments for artists decline.<sup>140</sup>

The Screen Composers Guild also noted how the shift to digital has impacted their remuneration. Ari Posner, Screen Composer of the Screen Composers Guild of Canada, raised the example of his work with the television program *Anne with an E*, which aired on CBC and on Netflix. He explained:

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136 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 May 2018, 0855 (Dominic Trudel, Chief Executive Officer, Conseil québécois de la musique).

137 Ibid., 0850.

138 Ibid.

139 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 16 October 2018, 1100 (Laurie McAllister, Director, Performers' Rights Society and Recording Artists' Collecting Society, Alliance of Canadian Cinema, Television and Radio Artists (ACTRA)).

140 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 6 November 2018, 1230 (Sky Bridges, Chief Operating Officer, Aboriginal Peoples Television Network).



It's playing on CBC, and I do see some broadcast royalties from CBC.... Everywhere else in the world, it's on Netflix.

I can tell you that I've seen a staggering drop in the remuneration for that property; I would say it's close to 95%. If it were playing terrestrially in all those places, it would be a massive, massive difference. SOCAN, which is the advocate for someone like me, really has no way to get behind those closed doors of Netflix. Netflix will not give them the data they need in order for them to properly tabulate the views and turn them into a proper remuneration model.<sup>141</sup>

Much of the industry's concern with the shift to digital is its impact on the creation and consumption of Canadian content. Namely, there are no policies to ensure that digital streaming services contribute fairly to the creation of quality Canadian programming.<sup>142</sup>

Canada's proximity to the United States is a key factor to consider as the Canadian market is saturated with American programming.<sup>143</sup> Of particular concern for witnesses from the Indigenous film and television sector was discoverability.<sup>144</sup> "Part of the challenge we're currently facing," said Jonathan Frantz, Producer of Kingulliit Productions at Isuma Collective, "is the ability to get our content out to Indigenous audiences."<sup>145</sup> To further compound this issue, Canadians in northern communities have limited access to online streaming services as internet access is extremely expensive and slow.<sup>146</sup>

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141 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 25 September 2018, 1115 (Ari Posner, Composer, Screen Composers Guild of Canada).

142 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 October 2018, 1220 (Mathieu Dagonas, Executive Director, Documentary Organization of Canada).

143 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 November 2018, 1215 (Brad Danks, Chief Executive Officer, OUTtv Network Inc.).

144 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 6 November 2018, 1300 (Jean La Rose, Chief Executive Officer, Aboriginal Peoples Television Network).

145 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 6 November 2018, 1245 (Jonathan Frantz, Producer, Kingulliit Productions, Isuma Collective).

146 Ibid.

## Recommendations regarding remuneration models

### Extension of moral and economic rights

For performers, a key recommendation was the extension of moral and economic rights in the *Copyright Act* to audiovisual performers.<sup>147</sup> Extension of economic rights would give audiovisual performers exclusive rights to authorize the use of their performances. Moral rights would provide audiovisual performers with the right to be identified as a performer in the performance and the right to object to any material distortion or modification of the performance that would be prejudicial to their reputation.<sup>148</sup>

#### Recommendation 16

**That the Government of Canada extend moral and economic rights to audiovisual performers.**

### Definition of Sound Recording

The Committee heard that for performers, amending the definition of sound recording in the *Copyright Act* to allow sound recordings used in television and film to be eligible for public performance remuneration would be beneficial. ACTRA noted that currently, performers are not compensated when sound recordings are used in film and television productions, resulting in an estimated \$55 million of lost revenue annually.<sup>149</sup>

### Authors of cinematographic works

The Committee heard opposing perspectives on who should have copyright ownership when it pertains to cinematographic works.

Producers were in favour of maintaining the status quo.<sup>150</sup> According to Stephen Stohn, President of SkyStone Media and member of Canadian Media Producers Association,

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147 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 16 October 2018, 1100 (David Sparrow, National President and Performer, ACTRA).

148 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 16 October 2018, 1100 (Laurie McAllister, Director, Performers' Rights Society and Recording Artists' Collecting Society, ACTRA).

149 Ibid.

150 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 23 October 2018, 1150 (Erin Finlay, Chief Legal Officer, Canadian Media Producers Association); CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 31 January 2019, 1530 (Scott Garvie, Executive Producer, Shaftesbury Films Inc.).



“A producer's copyright is the foundation for all private and public funding sources for film and television projects in this country and in the United States.”<sup>151</sup> He added that authorship and ownership of copyright in the cinematographic work is what allows the producer to commercialize the intellectual property and that producers would be unable to perform their role if they are not considered authors of the cinematographic work.<sup>152</sup>

Scott Garvie, Executive Producer, Shaftesbury Films Inc., also cautioned against such amendments, indicating that “the Canadian tax credit system is premised on the producer's ownership of copyright.”<sup>153</sup> In correspondence submitted Committee, Mr. Garvie described that to be eligible for the Canadian Film or Video Production Tax Credit, for example, the Canadian Audio-Visual Certification Office requires that the production company must be the exclusive copyright owner in the production.”<sup>154</sup> The Film or Video Production Services Tax Credit similarly requires that a producer own the copyright in the work.

The Committee also heard that introducing a multiplicity of copyright owners in each individual episode of a television series could be problematic for the industry. Mr. Stohn, President, SkyStone Media, Canadian Media Producers Association, discussed his work producing the *Degrassi* television series in this context. He said:

We have now delivered 525 episodes over nearly 40 years.... To suggest that, for example, a screenwriter we hired to write episode 487, long after the characters, settings, formats, scenes, plot, storylines and music have already been in place for years and years, ought to be considered the author of that episode is simply wrong. However talented that screenwriter may be, she is working off a foundation—an ongoing foundation—and creative expression that has been built up over many years by many different contributors.<sup>155</sup>

Screenwriters and directors asked that the *Copyright Act* be amended so that producers are no longer deemed “authors” of cinematographic works. Specifically, they asked that screenwriters and directors be defined co-authors and first copyright owners of such

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151 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 23 October 2018, 1150 (Stephen Stohn, President, SkyStone Media, Canadian Media Producers Association).

152 Ibid.

153 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 31 January 2019, 1530 (Scott Garvie, Executive Producer, Shaftesbury Films Inc.).

154 Scott Garvie, Correspondence to CHPC, 11 February 2019.

155 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 23 October 2018, 1150 (Stephen Stohn, President, SkyStone Media, Canadian Media Producers Association).

works.<sup>156</sup> As producers are responsible for the financial and administrative facets of a production, they are defined in the current Act as “makers.” According to screenwriters and directors, these roles are not creative in the artistic sense and does not qualify a producer as an author.<sup>157</sup> They added that recognizing screenwriters and directors as joint authors provides support for creators and places them on a more level playing field.<sup>158</sup>

### Recommendation 17

**That the Government of Canada amend section 34.1 of the *Copyright Act* to deem the screenwriter and director the co-owners of copyright and co-authors of a television or cinematographic work.**

### Canadian feature film

Film distributors asked that the government of Canada “update its commitment to Canadian feature film.”<sup>159</sup> Specifically, film distributors suggested that broadcaster be required to air Canadian films on a regular basis.<sup>160</sup>

## WRITING AND PUBLISHING INDUSTRIES

The Committee’s conversation with representatives from the writing and publishing industries centered around fair dealing and education and the impact on remuneration models for artists and creators. Fair dealing is an exception to copyright protection that permits certain activities that might otherwise constitute infringement, provided that the

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156 See: CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 23 October 2018, 1140 (Neal McDougall, Director of Policy, Writers Guild of Canada); Société des Auteurs et Compositeurs Dramatiques (SACD) and the Société Civile des Auteurs Multimédia (SCAM), “[Brief](#),” Submitted Brief, 2 May 2018; CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 27 November 2018, 1135 (Dave Forget, National Executive Director, Directors Guild of Canada); Société des auteurs de radio, télévision et cinéma, “[Brief to the Standing Committee on Canadian Heritage](#),” Submitted Brief, December 2018.

157 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 27 November 2018, 1140 (Samuel Bischoff, Public Affairs Manager, Directors Guild of Canada); CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 23 October 2018, 1140 (Neal McDougall, Director of Policy, Writers Guild of Canada).

158 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 23 October 2018, 1145 (Neal McDougall, Director of Policy, Writers Guild of Canada).

159 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 November 2018, 1210 (Emily Harris, President, Canadian Association of Film Distributors and Exporters).

160 Ibid.



user does so “fairly,” and for one of the purposes listed in sections 29, 29.1 and 29.2 of the *Copyright Act*.

In 2012, the *Copyright Modernization Act*<sup>161</sup> added the term “education” to the permissible purposes for fair uses. This exception has created significant divide between the writing and publishing industries and the education sector, which will be discussed below.

## Perspectives from the writing and publishing industries

Many writers and publishers noted how their incomes have declined since the changes to fair dealing in 2012.<sup>162</sup> The Committee heard that the industry experienced a significant drop in educational copyright royalties paid to writers and publishers as a result of free copying by the education sector.<sup>163</sup> As author Monia Mazigh said, “Our creative work is being used for free. In the meantime, Canadian authors are seeing holes in their incomes getting bigger and bigger.”<sup>164</sup>

Sylvia McNicoll, Author and representative of Access Copyright, described how her income has dropped significantly following 2012 amendments. She noted that in 2012, her income was \$45 000, and in 2018 she would likely earn \$17 000 as an author.<sup>165</sup> She noted that this issue is a direct result of illegal copying in the K-12 education sector.

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161 *Copyright Modernization Act*, S.C. 2012, c. 20.

162 See, for example: CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 November 2018, 1115 (Sylvia McNicoll, Author, Access Copyright); CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 December 2018, 1110 (Matt Williams, Vice-President, Publishing Operations, House of Anansi Press/Groundwood Books); CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 December 2018, 1115 (Monia Mazigh, Author, House of Anansi Press/Groundwood Books); CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 November 2018, 1220 (Arnaud Foulon, President, Association nationale des éditeurs de livres); CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 November 2018, 1100 (Eric Enno Tamm, Chair, The Writers' Union of Canada); Fernwood/Roseway Publishing, “[Brief to the Standing Committee on Canadian Heritage for the Study on Remuneration Models for Artists and Creative Industries](#),” Submitted Brief, 22 November 2018; Union des écrivaines et des écrivains québécois (UNEQ), “[Study of Remuneration Models for Artists and Creative Industries in the Context of Copyright: Brief prepared by the Union des écrivaines et des écrivains québécois \(UNEQ\) for the Standing Committee on Canadian Heritage](#),” Submitted Brief, 11 December 2018, p. 4-5; CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 November 2018, 1205 (William Harnum, Chair, Canadian Copyright Institute); Copibec, “[Collective management: a modern tool for equitable remuneration](#),” Submitted Brief.

163 See, for example: CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 November 2018, 1100 (Eric Enno Tamm, Chair, The Writers' Union of Canada); CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 December 2018, 1115 (Monia Mazigh, Author, House of Anansi Press/Groundwood Books); CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 November 2018, 1150 (Sylvia McNicoll, Author, Access Copyright).

164 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 December 2018, 1115 (Monia Mazigh, Author, House of Anansi Press/Groundwood Books).

165 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 November 2018, 1115 (Sylvia McNicoll, Author, Access Copyright).

To compound the issues, she added that illegal copying does not foster students' interest in reading. She said:

I have nine grandchildren, and they come home with photocopied segments of stories—Canadian stories, Canadian-written, Canadian-illustrated—and not only that, they don't like reading. It is sloppy, crooked, crappy content. Our kids deserve more.<sup>166</sup>

In addition to writers, the Committee heard that Canadian publishers have been negatively impacted by the 2012 amendments to fair dealing. House of Anansi Press/Groundwood Books, an independent publisher from Toronto, noted that there has been a steady decline in revenue from Canadian educational materials.<sup>167</sup> Matt Williams, Vice-President of Publishing Operations at House of Anansi Press / Groundwood Books, noted that “from 2013 through [2018], the drop in revenue has been close to \$200,000. That amounts to a drop of around \$100,000 in author royalties.”<sup>168</sup> Glenn Rollans, President of the Association of Canadian Publishers, described that:

The numbers from my company were down in licensing revenue, about 86% of where we were in 2012. You survive by finding ways to do more with less, but there are sacrifices.... We do fewer titles; we take fewer risks on important titles.<sup>169</sup>

Although there are other streams of revenue—such as books sales and freelance writing<sup>170</sup>—royalties are an important form of remuneration for writers and publishers.<sup>171</sup> Any changes to how these royalties are paid directly affects their incomes.<sup>172</sup>

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166 Ibid., 1140.

167 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 December 2018, 1110 (Matt Williams, Vice-President, Publishing Operations, House of Anansi Press/Groundwood Books).

168 Ibid.

169 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 30 October 2018, 1145 (Glenn Rollans, President of the Association of Canadian Publishers).

170 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 November 2018, 1215 (Doreen Pendgracs, Vice-President, Professional Writers Association of Canada).

171 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 November 2018, 1115 (David Swail, President, Canadian Publishers' Council).

172 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 November 2018, 1100 (Eric Enno Tamm, Chair, The Writers' Union of Canada).



## Impact on Canadian educational content

In addition to the impact that fair dealing has had on remuneration models, witnesses said there are also cultural implications.<sup>173</sup> As revenues in the Canadian educational publishing industry declined over recent years, so has investment in the development of new materials.<sup>174</sup> According to Fernwood/Roseway Publishing,

With publishers no longer developing materials that reflect current scholarship and that meet quality standards, teachers will have to find other resources for their classrooms. It will be a challenge to find such materials, because, as mentioned, quality costs, and expertise must be compensated for. Ultimately, Canadian students are the losers.<sup>175</sup>

## Impact of new digital access points

To compound the loss of income coming from royalties, the Committee also heard about the impact of new digital access points on remuneration models for writers and publishers. One writer noted that with the digital shift, rates of pay decreased<sup>176</sup> and infringement increased due to piracy.<sup>177</sup>

For the broader industry, sales of physical books are decreasing, whereas new technologies are allowing increased access to digital content.<sup>178</sup> Additionally, the digital shift requires the industry to invest in the creation of digital books and the development of new skills and marketing practices.<sup>179</sup>

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173 See: Fernwood/Roseway Publishing, "[Brief to the Standing Committee on Canadian Heritage for the Study on Remuneration Models for Artists and Creative Industries](#)," Submitted Brief, 22 November 2018, p. 3; CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 December 2018, 1110 (Matt Williams, Vice-President, Publishing Operations, House of Anansi Press/Groundwood Books).

174 CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 November 2018, 1135 (David Swail, President, Canadian Publishers' Council).

175 Fernwood/Roseway Publishing, "[Brief to the Standing Committee on Canadian Heritage for the Study on Remuneration Models for Artists and Creative Industries](#)," Submitted Brief, 22 November 2018, p. 3.

176 CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 November 2018, 1215 (Doreen Pendgracs, Vice-President, Professional Writers Association of Canada).

177 Ibid., 1235.

178 CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 November 2018, 1225 (Johanne Guay, Chair, Copyright Committee and Members' Rights, Association nationale des éditeurs de livres).

179 Ibid.



## Recommendations for fair remuneration

In light of declining revenues as a result of the fair dealing provisions, witnesses from the writing and publishing industries made the following four recommendations.

First, the industries asked that the fair dealing provisions regarding education be clarified in the *Copyright Act*.<sup>180</sup> Many authors and publishers pointed to section 29 of the Act, suggesting it should be more narrowly defined so that it does not allow the excessive copying of works.<sup>181</sup> “Without more defined parameters for fair dealing for the purpose of education,” said William Harnum, Chair of the Canadian Copyright Institute, “the door is left open for large-scale infringement.”<sup>182</sup>

Second, many industry representatives recommended that a return to licensing through collective societies be promoted.<sup>183</sup> Since 2012, a “breakdown of collective licensing in

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180 See: CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 November 2018, 1125 (Eric Enno Tamm, Chair, The Writers' Union of Canada); CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 November 2018, 1110 (Roanie Levy, President and Chief Executive Officer, Access Copyright); CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 November 2018, 1125 (Suzanne Aubry, President, Union des écrivaines et des écrivains québécois). CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 December 2018, 1115 (Monia Mazigh, Author, House of Anansi Press/Groundwood Books); Association of Canadian Publishers, “[Remuneration Models for Artists and Creative Industries Submission to the Standing Committee on Canadian Heritage Prepared by the Association of Canadian Publishers](#),” Submitted Brief, October 2018; CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 November 2018, 1210 (Paul Verhaegh, Regional Director for the Prairies and the North, Professional Writers Association of Canada); Fernwood/Roseway Publishing, “[Brief to the Standing Committee on Canadian Heritage for the Study on Remuneration Models for Artists and Creative Industries](#),” Submitted Brief, 22 November 2018; Association of Manitoba Book Publishers, “[Remuneration models for artists and creative industries in the context of copyright brief](#),” Submitted Brief, 13 December 2018, p. 4; Artists and Lawyers for the Advancement of Creativity, “[Submission of ALAC to the Standing Committee on Canadian Heritage on remuneration models for artists and creative industries](#),” Submitted Brief, 28 November 2018, p. 2; Union des écrivaines et des écrivains québécois (UNEQ), “[Study of Remuneration Models for Artists and Creative Industries in the Context of Copyright: Brief prepared by the Union des écrivaines et des écrivains québécois \(UNEQ\) for the Standing Committee on Canadian Heritage](#),” Submitted Brief, 11 December 2018, p. 6; Copibec, “[Collective management: a modern tool for equitable remuneration](#),” Submitted Brief; The Partnership for the Future of Canadian Stories, “[An evidence-based analysis of the education sector’s copying policies and practices](#),” Submitted Brief, 14 December 2018.

181 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 November 2018, 1205 (William Harnum, Chair, Canadian Copyright Institute).

182 Ibid.

183 See, for example: CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 November 2018, 1135 (David Swail, President, Canadian Publishers' Council); Association of Canadian Publishers, “[Remuneration Models for Artists and Creative Industries Submission to the Standing Committee on Canadian Heritage Prepared by the Association of Canadian Publishers](#),” Submitted Brief, October 2018; House of Anansi Press/Groundwood Books, “[Brief to the Standing Committee on Canadian Heritage for the Committee’s Study on Remuneration Models for Artists and Creative Industries in the Context of Copyright](#),” 25 September 2018; Fernwood/Roseway Publishing, “[Brief to the Standing Committee on Canadian Heritage for the Study on Remuneration Models for Artists and Creative Industries](#),” Submitted Brief, 22 November 2018, p. 4; Association of Manitoba Book Publishers, “[Remuneration models for artists and creative industries in the context of copyright brief](#),” Submitted Brief, 13 December 2018, p. 4.



the education sector, outside of Quebec”<sup>184</sup> has occurred, resulting in a significant reduction in royalties. Witnesses noted that the collective licensing model is an effective means of ensuring that students and educational institutions can easily and inexpensively access the copyrighted materials while providing creators and publishers with fair remuneration.<sup>185</sup>

Third, to discourage systemic infringement, writers and publishers also called for increased statutory damages.<sup>186</sup> According to witnesses, the low penalty of \$5,000 per infringement for non-commercial use does little to dissuade large institutions from complying.<sup>187</sup>

Lastly, the writing and publishing industries also asked that remedies for collective societies be harmonized under the *Copyright Act*.<sup>188</sup> According to Roanie Levy, President and Chief Executive Officer of Access Copyright, ensuring that all collectives have access to statutory damages will “make the Copyright Board's certified tariffs meaningful and ensure that writers and visual artists are paid when their works are copied.”<sup>189</sup>

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184 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 November 2018, 1115 (David Swail, President, Canadian Publishers' Council).

185 See, for example: Association of Canadian Publishers, “[Remuneration Models for Artists and Creative Industries Submission to the Standing Committee on Canadian Heritage Prepared by the Association of Canadian Publishers](#),” Submitted Brief, October 2018, p. 3; CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 4 December 2018, 1130 (Matt Williams, Vice-President, Publishing Operations, House of Anansi Press/Groundwood Books).

186 See: Fernwood/Roseway Publishing, “[Brief to the Standing Committee on Canadian Heritage for the Study on Remuneration Models for Artists and Creative Industries](#),” Submitted Brief, 22 November 2018, p. 4; Association of Manitoba Book Publishers, “[Remuneration models for artists and creative industries in the context of copyright brief](#),” Submitted Brief, 13 December 2018, p. 4; Artists and Lawyers for the Advancement of Creativity, “[Submission of ALAC to the Standing Committee on Canadian Heritage on remuneration models for artists and creative industries](#),” Submitted Brief, 28 November 2018, p. 2.

187 Association of Canadian Publishers, “[Remuneration Models for Artists and Creative Industries Submission to the Standing Committee on Canadian Heritage Prepared by the Association of Canadian Publishers](#),” Submitted Brief, October 2018, p. 4.

188 See: CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 November 2018, 1105 (Frédérique Couette, Executive Director, Copibec); CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 November 2018, 1110 (Roanie Levy, President and Chief Executive Officer, Access Copyright); Association of Canadian Publishers, “[Remuneration Models for Artists and Creative Industries Submission to the Standing Committee on Canadian Heritage Prepared by the Association of Canadian Publishers](#),” Submitted Brief, October 2018; House of Anansi Press/Groundwood Books, “[Brief to the Standing Committee on Canadian Heritage for the Committee's Study on Remuneration Models for Artists and Creative Industries in the Context of Copyright](#),” 25 September 2018; CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 November 2018, 1125 (David Swail, President, Canadian Publishers' Council). CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 November 2018, 1205 (William Harnum, Chair, Canadian Copyright Institute); The Partnership for the Future of Canadian Stories, “[An evidence-based analysis of the education sector's copying policies and practices](#),” Submitted Brief, 14 December 2018.

189 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 November 2018, 1110 (Roanie Levy, President and Chief Executive Officer, Access Copyright).

**Recommendation 18**

**That Government of Canada amend the Act to clarify that fair dealing should not apply to educational institutions when the work is commercially available.**

**Recommendation 19**

**That the Government of Canada promote a return to licensing through collective societies.**

**Recommendation 20**

**That the Government of Canada review, harmonize and improve the enforcement of the statutory damages for infringement for non-commercial use in section 38.1(1) of the *Copyright Act*.**

**Recommendation 21**

**That the Government of Canada harmonize remedies for collective societies under the *Copyright Act*.**

## **Perspectives from the educational sector**

Representatives from the education sector held that changes to the current fair dealing provisions would hamper education, research, innovation and creation.<sup>190</sup> They further added that as educational institutions, millions are spent annually on licenses for educational materials.<sup>191</sup> The Canadian Federation of Students added that students

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190 See: CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 November 2018, 1115 (Wendy Therrien, Director, External Relations and Research, Universities Canada); Michael Geist, "[Submission by Professor Michael Geist](#)," Submitted Brief, 14 December 2018, p. 5.; Canadian Federation of Students, "[Submission to the Standing Committee on Canadian Heritage's Statutory Review of the Copyright Act \(included as part of deliberations on Remuneration Models for Artists and Creative Industries\)](#)," Submitted Brief, 14 December 2018.

191 See: Universities Canada, "[Creative Economies in transition: Maintaining balance at a time of digital disruption](#)," Submitted Brief, December 2018; Michael Geist, "[Submission by Professor Michael Geist](#)," Submitted Brief, 14 December 2018.



struggle to afford textbooks and learning materials.<sup>192</sup> In that light, many representatives from the education sector asked that the fair dealing exceptions be maintained.<sup>193</sup>

The Committee heard from the education sector that the financial challenges faced by Canadian authors and publishers are the result of the disruptions caused by digital technologies, not fair dealing.<sup>194</sup> Revenues in educational content are declining because educators are shifting the kind of content they use.<sup>195</sup> For example, the Council of Ministers of Education noted that “the education sector does not purchase as many textbooks as previous years, as digital disruption is shifting the kind of content used by K–12 educators.”<sup>196</sup> Michael Geist, Canada Research Chair in Internet and E-commerce Law at the University of Ottawa, noted a similar shift is occurring in post-secondary institutions. He noted, “As universities and colleges shift to digital course management systems ... the content used changes too.”<sup>197</sup>

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192 Canadian Federation of Students, “[Submission to the Standing Committee on Canadian Heritage’s Statutory Review of the Copyright Act \(included as part of deliberations on Remuneration Models for Artists and Creative Industries\)](#),” Submitted Brief, 14 December 2018.

193 See: Universities Canada, “[Creative Economies in transition: Maintaining balance at a time of digital disruption](#),” Submitted Brief, December 2018; University of Guelph, “[Submission to the Standing Committee on Canadian Heritage \(CHPC\) on Remuneration Models for Artists and Creative Industries](#),” Submitted brief, 13 December 2018; University of British Columbia, “[Brief](#),” Submitted Brief, 10 December 2018; Council of Ministers of Education, “Submission to the Standing Committee on Canadian Heritage regarding the Parliamentary review of remuneration models for artists and creative industries,” [Submitted Brief](#); University of Winnipeg, “[Submission presented to the Standing Committee on Canadian Heritage regarding remuneration models for artists and creative industries](#),” Submitted Brief, 13 December 2018; Lanara College, “[Submission to the Standing Committee on Canadian Heritage](#),” Submitted Brief, 14 December 2018; University of Calgary, “[Submission on remuneration models for artists and creative industries in the context of copyright](#),” Submitted Brief, 2018; Canadian Federation of Students, “[Submission to the Standing Committee on Canadian Heritage’s Statutory Review of the Copyright Act \(included as part of deliberations on Remuneration Models for Artists and Creative Industries\)](#),” Submitted Brief, 14 December 2018; Michael Geist, “[Submission by Professor Michael Geist](#),” Submitted Brief, 14 December 2018.

194 See: CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 22 November 2018, 1115 (Wendy Therrien, Director, External Relations and Research, Universities Canada); Council of Ministers of Education, “Submission to the Standing Committee on Canadian Heritage regarding the Parliamentary review of remuneration models for artists and creative industries,” [Submitted Brief](#), p. 2; CHPC, [Evidence](#), 22 November 2018, 1130 (Allan Bell, Associate University Librarian, University of British Columbia, Universities Canada); Michael Geist, “[Submission by Professor Michael Geist](#),” Submitted Brief, 14 December 2018.

195 CHPC, [Evidence](#), 22 November 2018, 1130 (Allan Bell, Associate University Librarian, University of British Columbia, Universities Canada).

196 Council of Ministers of Education, “Submission to the Standing Committee on Canadian Heritage regarding the Parliamentary review of remuneration models for artists and creative industries,” [Submitted Brief](#), p. 3.

197 Michael Geist, “[Submission by Professor Michael Geist](#),” Submitted Brief, 14 December 2018, p. 4.

## VISUAL ARTS INDUSTRY

The Committee also heard from witnesses from the visual arts industry, including artists, gallery owners and other stakeholders.

### Resale right

One frequent topic mentioned by witnesses was the issue of the artist's resale right. Unlike writers and composers who collect royalties whenever their works are performed or published, visual artists only derive revenue from the initial sale of their work. The artist's resale right would provide that a certain portion, usually around 5% of the resale price of the work by an art dealer or auction house, is returned to the artist.

Some witnesses argued in favour of the addition of an artist's resale right in the *Copyright Act*.<sup>198</sup> In its brief submitted to the Committee, Canadian Artists' Representation / Le Front des artistes canadien (CARFAC) said that it would "offer greater financial independence for artists."<sup>199</sup> Copyright Visual Arts added that it would be additional income for artists "that is not reliant on public funding availability."<sup>200</sup>

Some witnesses gave examples as to how the resale right could benefit artists. Gina Fafard, owner of Slate Fine Art Gallery and representing the Canadian Artists' Representation, mentioned the work of her father, artist Joe Fafard. She explained:

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198 See also: Artists and Lawyers for the Advancement of Creativity, "[Submission of ALAC to the Standing Committee on Canadian Heritage on Remuneration Models for Artists and Creative Industries](#)," Submitted Brief, November 2018, p. 4; Société du droit de reproduction des auteurs compositeurs et éditeurs au Canada, "[Remuneration Models For Artists And Creative Industries Submission to the Standing Committee On Canadian Heritage](#)," Submitted Brief, p. 5; Access Copyright, "[Access Copyright's Submission to the Standing Committee on Canadian Heritage for the Study on Remuneration Models for Artists and Creative Industries](#)," Submitted Brief, December 2018; Tony Belcourt, "[Brief to the Standing Committee on Canadian Heritage \(Statutory Review of the Canadian Copyright Act\)](#)," Submitted Brief, December 2018; and International Confederation of Societies of Authors and Composers, "[Submission to the Standing Committee on Canadian Heritage](#)," Submitted Brief, December 2018.

199 Canadian Artists' Representation/Le Front des artistes canadien (CARFAC), "[CARFAC's Submission to the Federal Government's Standing Committee on Canadian Heritage Remuneration Models for Artists and Creative Industries](#)," Submitted Brief, December 2018, p. 2.

200 Copyright Visual Arts, "[The Canadian Visual Artists and their Remuneration in Relation to the Revision of the Copyright Act](#)," Submitted Brief, November 2018, p. 4.



Over the last 30 years, at least 20 artworks by Joe Fafard sold at auction, which would have been eligible for royalties. The total price value of those works was \$1.5 million. If he had the resale rights, he would have been paid almost \$80,000 in royalties.<sup>201</sup>

The story of Annie Pootoogook, a well-known Inuit artist who died in tragic circumstances, was also mentioned.<sup>202</sup> William Huffman, marketing manager of the West Baffin Eskimo Co-Operative, explained that it was a very difficult situation for the co-operative as they could not find her at times and could not provide her with the remuneration she deserved.<sup>203</sup> Ms. Fafard added that Ms. Pootoogook used the revenue from the sale of her work to take care of family and friends in need. She told the Committee that the added benefits of the resale right would “benefit so many.”<sup>204</sup>

While not against the creation of an artist’s resale right, the Canadian Art Museum Directors Organization recommended that the “[C]ommittee give artist’s resale rights serious consideration, with attention to minimizing any administrative burden it may impose on institutions.”<sup>205</sup>

In its brief, the Contemporary Art Galleries Association told the Committee that they opposed the creation of an artist’s resale right. In their view, it is an “unfair” measure that would lead to decline in revenues for galleries and “the relocation of resold works far from ... Canadian galleries and auction houses.”<sup>206</sup>

Law professors Ariel Katz and Guy Rub said that resale rights are not “copyright” and that their adoption in Canada would “primarily benefit the heir of successful and

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201 CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 6 November 2018 1115 (Gina Fafard, Gallery Owner, Slate Gallery, Canadian Artists’ Representation).

202 Ms. Pootoogook’s artistic works, which depicted contemporary Inuit life, received widespread recognition in the early to mid-2000s. In 2006 after she was awarded the Sobey Art Award, and her drawings were displayed in exhibitions across Canada and internationally. Her works were purchased by major museums and collectors. A decade later, Ms. Pootoogook was found dead in the Rideau River, after she had been living homeless in Ottawa for several years. See: Robert Evertt-Green & Gloria Galloway, “[A remarkable life](#),” *The Globe and Mail*, 30 September 2016.

203 CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 30 October 2018, 1135 (William Huffman, Marketing Manager, West Baffin Eskimo Co-operative, Dorset Fine Arts).

204 CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 6 November 2018 1115 (Gina Fafard, Gallery Owner, Slate Gallery, Canadian Artists’ Representation).

205 CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 31 January 2019, 1650 (Robin Metcalfe, Director and Curator, Saint Mary’s University Art Gallery, and President, Canadian Art Museum Directors Organization).

206 Contemporary Art Galleries Association, “[Statutory Review of the Copyright Act](#),” Submitted Brief, November 2018.

wealthy artists and collection societies” rather than less fortunate artists and would harm the Canadian economy and the art world.<sup>207</sup>

## Recommendation 22

**That the Government of Canada establish an artist’s resale right.**

### Exhibition right

Another issue specific to visual artists is the exhibition right. Currently, the *Copyright Act* says:

For the purposes of this Act, copyright, in relation to a work, means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, to perform the work or any substantial part thereof in public or, if the work is unpublished, to publish the work or any substantial part thereof, and includes the sole right ... (g) to present at a public exhibition, for a purpose other than sale or hire, an artistic work created after June 7, 1988, other than a map, chart or plan....<sup>208</sup>

Due to this section, galleries and public museums are not legally required to remunerate artists for work created before 7 June 1988. Witnesses argued that the cut-off date is discriminatory to older artists and asked that the date be removed from the *Act*.<sup>209</sup>

The Canadian Art Museum Directors Organization opposed this recommendation, arguing that it “could have profound consequences, not only in the cost of exhibition fees themselves but also in the administrative burden of tracking down artists and estates to pay those fees,”<sup>210</sup> which might prevent some works from being exhibited.

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207 Ariel Katz and Guy A. Rub, “[Submission to the Standing Committee on Canadian Heritage for the Study on Remuneration Models for Artists and Creative Industries by Professors Ariel Katz and Guy Rub](#),” Submitted Brief, December 2018.

208 *Copyright Act*, R.S.C. 1985, c. C-42, 3(1)(g).

209 See: CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 6 November 2018, 1115 (Bernard Guérin, Executive Director, Regroupement des artistes en arts visuels du Québec); Société du droit de reproduction des auteurs compositeurs et éditeurs au Canada, “[Remuneration Models For Artists And Creative Industries Submission to the Standing Committee On Canadian Heritage](#),” Submitted Brief, p. 7; Canadian Artists’ Representation/Le Front des artistes canadien (CARFAC), “[CARFAC’s Submission to the Federal Government’s Standing Committee on Canadian Heritage Remuneration Models for Artists and Creative Industries](#),” Submitted Brief, December 2018, p. 6; Copyright Visual Arts, “[The Canadian Visual Artists and their Remuneration in Relation to the Revision of the Copyright Act](#),” Submitted Brief, November 2018, p. 6.

210 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 31 January 2019, 1650 (Robin Metcalfe, Director and Curator, Saint Mary’s University Art Gallery, and President, Canadian Art Museum Directors Organization).





Instead, the organization supports a public lending right to improve the compensation of creators. This view is shared by Public Lending Right International.<sup>211</sup>

## Fair dealing and education

Like the writing and publishing industries, witnesses from the visual arts industry expressed opinions on the fair dealing provisions and the exemptions for the education sector.

Like witnesses from other industries, CARFAC did not ask for the removal of fair dealing provisions but told the Committee that there is a “lack of clarity” that should be corrected.<sup>212</sup> In their testimony, both Copyright Visual Arts<sup>213</sup> and the Regroupement des artistes en arts visuels du Québec<sup>214</sup> proposed a new fair dealing exemption based on international precedents.<sup>215</sup> This new model “would not apply to educational institutions when a work is accessible on the market through a licence issued by a copyright collective.”<sup>216</sup> This recommendation also received support from CARFAC.<sup>217</sup>

## Other recommendations

As explained in the section on the music industry, witnesses often mentioned the private copying regime as an issue. In its brief, the Société du droit de reproduction des auteurs compositeurs et éditeurs au Canada argued that not only should the private copying regime be extended to include digital recording media but also “all categories of works

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211 Public Lending Right International, “[Brief to the Standing Committee on Canadian Heritage](#),” Submitted Brief, December 2018.

212 Canadian Artists’ Representation/Le Front des artistes canadien (CARFAC), “[CARFAC’s Submission to the Federal Government’s Standing Committee on Canadian Heritage Remuneration Models for Artists and Creative Industries](#),” Submitted Brief, December 2018, p. 7.

213 Copyright Visual Arts, “[The Canadian Visual Artists and their Remuneration in Relation to the Revision of the Copyright Act](#),” Submitted Brief, November 2018, p. 3.

214 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 6 November 2018, 1120 (Bernard Guérin, Executive Director, Regroupement des artistes en arts visuels du Québec).

215 This would be a similar model to the one used in the United Kingdom and Australia. According to witnesses, this would also align Canada with the Berne Convention for the Protection of Literary and Artistic Works, of which it is a signatory.

216 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 6 November 2018, 1120 (Bernard Guérin, Executive Director, Regroupement des artistes en arts visuels du Québec).

217 Canadian Artists’ Representation/Le Front des artistes canadien (CARFAC), “[CARFAC’s Submission to the Federal Government’s Standing Committee on Canadian Heritage Remuneration Models for Artists and Creative Industries](#),” Submitted Brief, December 2018, p. 7.



including visual works” for artists to be better compensated for their work.<sup>218</sup> This received support from Illustration Québec.<sup>219</sup> Tony Belcourt made recommendations to better protect Indigenous art and culture.<sup>220</sup>

In addition, the Visual Arts Alliance<sup>221</sup> proposed two other recommendations to support visual artists: the creation of tax incentives for self-employed artists (for example, income averaging), which was also supported by Illustration Québec,<sup>222</sup> and tools “to measure and monitor [their] socioeconomic conditions.”<sup>223</sup> Both these recommendations were supported by Canadian Art Museum Directors Organization.<sup>224</sup>

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218 Société du droit de reproduction des auteurs compositeurs et éditeurs au Canada, [“Remuneration Models For Artists And Creative Industries Submission to the Standing Committee On Canadian Heritage,”](#) Submitted Brief, p. 6.

219 CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 31 January 2019, 1640 (Julien Castanié, President, Illustration Québec).

220 Tony Belcourt, [“Brief to the Standing Committee on Canadian Heritage \(Statutory Review of the Canadian Copyright Act\),”](#) Submitted Brief, December 2018.

221 Visual Arts Alliance, [“Submission to the House of Commons Standing Committee on Canadian Heritage in view of its study of Remuneration models for artists and creative industries in the context of copyright,”](#) Submitted Brief, November 2018.

222 CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 31 January 2019, 1640 (Julien Castanié, President, Illustration Québec).

223 Visual Arts Alliance, [“Submission to the House of Commons Standing Committee on Canadian Heritage in view of its study of Remuneration models for artists and creative industries in the context of copyright,”](#) Submitted Brief, November 2018.

224 CHPC, [Evidence](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 31 January 2019, 1650 (Robin Metcalfe, Director and Curator, Saint Mary’s University Art Gallery, and President, Canadian Art Museum Directors Organization).



## PART 3: CONCLUSION

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During this study, the Committee heard about the current realities facing artists and creative industries in Canada. As technology has evolved, remuneration models for artists and creative industries have not. Currently, artists are not being paid adequately for the use of their works, particularly online.

Witnesses overwhelmingly asked for concrete changes that would address the decline in the artistic middle class. As such, the Committee's recommendations focus on modernizing remuneration models and leveling the playing field for artists and creative industries.

What became apparent throughout the study was that this issue affects not only artists but all Canadians. As Frédérique Couette of Copibec said, "what's at stake here is the dissemination of our culture and our conception of our cultural heritage."<sup>225</sup> The Committee acknowledges that the continued creation of Canadian content depends on adequate remuneration for those who create it. The Committee shares the view of songwriter and musician Damhnait Doyle, who said, "as writers, musicians, and creators, our impact in the culture [of] this country is immeasurable, and we do deserve to get paid for our work."<sup>226</sup>

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225 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 29 November 2018, 1100 (Frédérique Couette, Executive Director, Copibec).

226 CHPC, *Evidence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, 7 June 2018, 0915 (Damhnait Doyle, Vice-President, Board of Directors, Songwriters Association of Canada).



## APPENDIX A LIST OF WITNESSES

The following table lists the witnesses who appeared before the Committee at its meetings related to this report. Transcripts of all public meetings related to this report are available on the Committee's [webpage for this study](#).

Organizations and Individuals	Date	Meeting
<b>Department of Canadian Heritage</b> Ian Dahlman, Manager Creative Marketplace and Innovation  Lara Taylor, Director Creative Marketplace and Innovation  Nathalie Théberge, Director General Creative Marketplace and Innovation and Deputy Director of Investments	2018/05/22	109
<b>Department of Industry</b> Mark Schaan, Director General Marketplace Framework Policy Branch  Martin Simard, Director Copyright and Trademark Policy Directorate	2018/05/22	109
<b>Alliance nationale de l'industrie musicale</b> Jean-Pierre Caissie, Administrator Benoit Henry, Chief Executive Officer	2018/05/29	111
<b>Canadian Federation of Musicians</b> Alan Willaert, Vice-President from Canada (American Federation of Musicians)	2018/05/29	111
<b>Canadian Private Copying Collective</b> Lyette Bouchard, Chair Lisa Freeman, Executive Director	2018/05/29	111
<b>Conseil québécois de la musique</b> Dominic Trudel, Chief Executive Officer	2018/05/29	111
<b>Music Canada</b> Graham Henderson, President and Chief Executive Officer	2018/05/29	111

<b>Organizations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<b>The Jerry Cans</b> Andrew Morrison, Artist	2018/05/29	111
<b>Canadian Music Publishers Association</b> Vince Degiorgio, Chair Board of Directors Margaret McGuffin, Executive Director	2018/05/31	112
<b>Guilde des musiciens et musiciennes du Québec</b> Luc Fortin, President Éric Lefebvre, Secretary-Treasurer	2018/05/31	112
<b>Professional Music Publishers' Association</b> Jérôme Payette, Executive Director	2018/05/31	112
<b>Société professionnelle des auteurs et des compositeurs du Québec</b> Marie-Josée Dupré, Executive Director	2018/05/31	112
<b>Canadian Independent Music Association</b> Stuart Johnston, President Chris Moncada, General Manager Last Gang Records/eOne Music	2018/06/05	113
<b>ole Media Management</b> Jason Klein, Vice-President Legal and Business Affairs	2018/06/05	113
<b>Society for Reproduction Rights of Authors, Composers and Publishers in Canada</b> Alain Lauzon, General Manager Martin Lavallée, Director Licensing and Legal Affairs	2018/06/05	113
<b>Society of Composers, Authors and Music Publishers of Canada</b> Geneviève Côté, Chief Québec Affairs Officer Gilles Daigle, General Counsel and Head of Legal Services	2018/06/05	113
<b>Artisti</b> Annie Morin, General Manager Sophie Prigent, Vice-President	2018/06/07	114

<b>Organizations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<b>Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ)</b> Solange Drouin, Vice-President Public Affairs	2018/06/07	114
<b>Re:Sound Music Licensing Company</b> Ian MacKay, President	2018/06/07	114
<b>Songwriters Association of Canada</b> Damhnait Doyle, Vice-President Board of Directors Greg Johnston, President	2018/06/07	114
<b>As an individual</b> Bryan Adams, Artist	2018/09/18	118
<b>Vanderbilt University Law School</b> Daniel J. Gervais, Milton R. Underwood Chair in Law President, International Association for the Advancement of Teaching and Research in Intellectual Property	2018/09/18	118
<b>As an individual</b> Guillaume Déziel, Digital Culture Strategist Miranda Mulholland, Artist entrepreneur	2018/09/20	119
<b>Regroupement des artisans de la musique</b> David Bussièrès, Founder and Spokesperson	2018/09/20	119
<b>Canadian Association of Broadcasters</b> Nathalie Dorval, Chair Board of Directors Susan Wheeler, Chair Copyright Committee	2018/09/25	120
<b>Entertainment Software Association of Canada</b> Jayson Hilchie, President and Chief Executive Officer	2018/09/25	120
<b>Screen Composers Guild of Canada</b> Paul Novotny, Screen Composer Ari Posner, Screen Composer	2018/09/25	120
<b>Stingray Digital Group Inc.</b> Annie Francoeur, Vice-President Legal and Business Affairs	2018/09/25	120

<b>Organizations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<b>As an individual</b> Brian Fauteux, Primary Investigator Cultural Capital Project Brienne Selman, Secondary Investigator Cultural Capital Project	2018/09/27	121
<b>Canadian Academy of Recording Arts and Sciences</b> Jackie Dean, Chief Operating Officer CARAS, The JUNO Awards, MusiCounts Allan Reid, President and Chief Executive Officer CARAS, The JUNO Awards, MusiCounts	2018/09/27	121
<b>Canadian Musical Reproduction Rights Agency Ltd.</b> Caroline Rioux, President	2018/09/27	121
<b>Border Broadcasters, Inc.</b> Francis Schiller, Canadian Advisor	2018/10/04	123
<b>Connect Music Licensing</b> Catherine Jones, Executive Director	2018/10/04	123
<b>Documentary Organization of Canada</b> Mathieu Dagonas, Executive Director	2018/10/04	123
<b>Google Canada</b> Jason J. Kee, Counsel Public Policy and Government Relations, YouTube	2018/10/04	123
<b>Alliance of Canadian Cinema, Television and Radio Artists</b> Laurie McAllister, Director Performers' Rights Society and Recording Artists' Collecting Society David Sparrow, National President and Performer	2018/10/16	124
<b>BCE Inc.</b> Robert Malcolmson, Senior Vice-President Regulatory Affairs	2018/10/16	124
<b>Casablanca Media Publishing</b> Jennifer Mitchell, President Red Brick Songs	2018/10/16	124



<b>Organizations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<b>Rogers Communications Inc.</b> Pam Dinsmore, Vice-President Regulatory Cable, Legal and Regulatory Affairs Kristina Milbourn, Director Copyright and Broadband, Legal and Regulatory Affairs	2018/10/16	124
<b>SiriusXM Canada</b> Oliver Jaakkola, Senior Vice-President and General Counsel	2018/10/16	124
<b>Spotify</b> Darren Schmidt, Senior Counsel	2018/10/16	124
<b>Canadian Media Producers Association</b> Erin Finlay, Chief Legal Officer Stephen Stohn, President SkyStone Media	2018/10/23	126
<b>Writers Guild of Canada</b> Neal McDougall, Director of Policy	2018/10/23	126
<b>Artist-Run Centres and Collectives Conference</b> Anne Bertrand, Director Jason Saint-Laurent, Artist	2018/10/30	127
<b>Association of Canadian Publishers</b> Kate Edwards, Executive Director Glenn Rollans, President	2018/10/30	127
<b>Contemporary Art Galleries Association</b> Émilie Grandmont-Bérubé, Board Member	2018/10/30	127
<b>Dorset Fine Arts</b> William Huffman, Marketing Manager West Baffin Eskimo Co-operative	2018/10/30	127
<b>Royal Bank of Canada</b> Corrie Jackson, Senior Art Curator Curatorial Department	2018/10/30	127
<b>Visual Arts Alliance</b> Emmanuel Madan, Spokesperson Artist and Director of Independent Media Arts Alliance	2018/10/30	127

<b>Organizations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<b>Aboriginal Peoples Television Network</b> Sky Bridges, Chief Operating Officer Jean La Rose, Chief Executive Officer	2018/11/06	129
<b>Canadian Artists' Representation</b> Gina Fafard, Gallery Owner Slate Gallery Ingrid Mary Percy, National President	2018/11/06	129
<b>Copyright Visual Arts</b> Paddy Lamb, Co-Chair Grant McConnell, Artist and Educator	2018/11/06	129
<b>Isuma Collective</b> Jonathan Frantz, Producer Kingulliit Productions Lucy Tulugarjuk, Executive Producer Nunavut Independent Television Network	2018/11/06	129
<b>Regroupement des artistes en arts visuels du Québec</b> Bernard Guérin, Executive Director Moridja Kitenge Banza, President	2018/11/06	129
<b>Société des auteurs et compositeurs dramatiques</b> Élisabeth Schlittler, General Delegate for Canada	2018/11/06	129
<b>Association nationale des éditeurs de livres</b> Arnaud Foulon, President Johanne Guay, Chair Copyright Committee and Members' Rights	2018/11/22	132
<b>Canadian Copyright Institute</b> William Harnum, Chair	2018/11/22	132
<b>Canadian Publishers' Council</b> Kevin Hanson, Vice-Chair President of Simon & Schuster Canada David Swail, President	2018/11/22	132

<b>Organizations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<b>Professional Writers Association of Canada</b> Doreen Pendgracs, Vice-President Paul Verhaegh, Regional Director for the Prairies and the North	2018/11/22	132
<b>The Writers' Union of Canada</b> John Degen, Executive Director Eric Enno Tamm, Chair	2018/11/22	132
<b>Universities Canada</b> Allan Bell, Associate University Librarian University of British Columbia Wendy Therrien, Director External Relations and Research	2018/11/22	132
<b>As an individual</b> Jeremy de Beer, Full Professor Faculty of Law, University of Ottawa Michael Geist, Canada Research Chair in Internet and E-Commerce Law Faculty of Law, University of Ottawa Howard P. Knopf, Counsel Macera & Jarzyna, LLP Jessica Zagar, Lawyer Cassels Brock & Blackwell LLP	2018/11/27	133
<b>Directors Guild of Canada</b> Samuel Bischoff, Public Affairs Manager Dave Forget, National Executive Director	2018/11/27	133
<b>Indigenous Bar Association</b> Scott Robertson, President	2018/11/27	133
<b>Access Copyright</b> Roanie Levy, President and Chief Executive Officer Sylvia McNicoll, Author	2018/11/29	134
<b>Canadian Association of Film Distributors and Exporters</b> Emily Harris, President	2018/11/29	134

<b>Organizations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<b>Copibec</b> Frédérique Couette, Executive Director	2018/11/29	134
<b>OUTtv Network Inc.</b> Brad Danks, Chief Executive Officer	2018/11/29	134
<b>Union des écrivaines et des écrivains québécois</b> Suzanne Aubry, President Laurent Dubois, General Manager	2018/11/29	134
<b>As an individual</b> Ariel Katz, Associate Professor and Innovation Chair Electronic Commerce, University of Toronto	2018/12/04	135
<b>House of Anansi Press / Greenwood Books</b> Monia Mazigh, Author Matt Williams, Vice-President Publishing Operations	2018/12/04	135
<b>Canadian Art Museum Directors Organization</b> Moirra McCaffrey, Executive Director Robin Metcalfe, President Director and Curator of Saint Mary's University Art Gallery	2019/01/31	139
<b>Illustration Québec</b> Julien Castanié, President	2019/01/31	139
<b>Indigenous Performing Arts Alliance</b> Lori Marchand, Managing Director, Indigenous Theatre National Arts Centre	2019/01/31	139
<b>Shaftesbury Films Inc.</b> Scott Garvie, Executive Producer	2019/01/31	139

## APPENDIX B LIST OF BRIEFS

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The following is an alphabetical list of organizations and individuals who submitted briefs to the Committee related to this report. For more information, please consult the Committee's [webpage for this study](#).

**Access Copyright**

**Adams, Bryan**

**Alliance of Canadian Cinema, Television and Radio Artists**

**Artists and Lawyers for the Advancement of Creativity**

**Association des réalisateurs et réalisatrices du Québec**

**Association nationale des éditeurs de livres**

**Association of Book Publishers of British Columbia**

**Association of Canadian Publishers**

**Association of Manitoba Book Publishers**

**Belcourt, Tony**

**Brush Education Inc.**

**Canadian Art Museum Directors Organization**

**Canadian Artists' Representation**

**Canadian Association of Research Libraries**

**Canadian Association of University Teachers**

**Canadian Federation of Library Associations**

**Canadian Federation of Students**

**Canadian Independent Music Association**

**Canadian Media Producers Association**

**Canadian Music Policy Coalition**

**Canadian Music Publishers Association**

**Canadian Private Copying Collective**

**Contemporary Art Galleries Association**

**Copyright Visual Arts**  
**Corus Entertainment Inc.**  
**Council of Ministers of Education, Canada**  
**Cultural Capital Project**  
**Dalhousie Faculty Association**  
**Déziel, Guillaume**  
**Directors Guild of Canada**  
**Doctorow, Cory**  
**Fernwood Publishing**  
**Front des réalisateurs indépendants du Canada**  
**Geist, Michael**  
**Google Canada**  
**House of Anansi Press / Greenwood Books**  
**Illustration Québec**  
**International Authors Forum**  
**International Confederation of Societies of Authors and Composers**  
**International Federation of Reproduction Rights Organisations**  
**International Publishers Association**  
**Internet Association**  
**Katz, Ariel**  
**Langara College**  
**Moore, Christopher**  
**Mount, Nick**  
**Music Canada**  
**Nair, Meera**  
**ole Media Management**  
**Partnership for the Future of Canadian Stories**  
**Professional Music Publishers' Association**  
**Public Lending Right International**  
**Regroupement des artisans de la musique**

**Regroupement des artistes en arts visuels du Québec**  
**Rogers Communications Inc.**  
**Rogers, Lorraine**  
**Rub, Guy**  
**Schultz, Claire**  
**Screen Composers Guild of Canada**  
**Société civile des auteurs multimédia**  
**Société des auteurs de radio, télévision et cinéma**  
**Société des auteurs et compositeurs dramatiques**  
**Société québécoise de gestion collective des droits de reproduction**  
**Society for Reproduction Rights of Authors, Composers and Publishers in Canada**  
**Society of Composers, Authors and Music Publishers of Canada**  
**The Writers' Union of Canada**  
**Thomson, Leigh**  
**Union des écrivaines et des écrivains québécois**  
**Universities Canada**  
**University of British Columbia**  
**University of Calgary**  
**University of Guelph**  
**University of New Brunswick**  
**University of Winnipeg**  
**Visual Arts Alliance**  
**Writers Guild of Canada**





# MINUTES OF PROCEEDINGS

A copy of the relevant *Minutes of Proceedings* (Meetings Nos. 109, 111 to 114, 118 to 121, 123, 124, 126, 127, 129, 132 to 136, 139, and 151 to 155) is tabled.

Respectfully submitted,

Julie Dabrusin  
Chair



TIME TO WALK THE TALK  
Complementary Report,  
Pierre Nantel, MP for Longueuil — Saint-Hubert  
New Democratic Party

We'd like to thank all parties for the spirit of cooperation which led to this report on the urgent and necessary reforms to the Copyright Act. We thank the members of the Committee for their openness and we contribute our support to the recommendations of this report.

Throughout this process of reviewing the Copyright Act, we have brought to the table the perspective of artists and creators, who have seen their revenues collapse over the last decade.

Many recommendations in this report will allow Canada to live up to its international obligations regarding copyright, for example by reviewing, clarifying or removing exceptions to ensure they respect the Berne Convention, or by clarifying fair dealing exceptions for education institutions.

Certain recommendations clarify important loopholes or flaws; others open a larger discussion on the effects of the internet on the revenues of artists and creators. We stand by these necessary reforms to the Copyright Act and we applaud the work that has been achieved together so far in the interests of creators.

Beyond the many witnesses heard and the briefs submitted to the Committee, as well as campaigns such as *A life without art? Really?*, we would like to point out that the cultural sector has been asking Parliament unanimously, for many years, to simply fulfill its responsibilities with regard to culture.

Through the Coalition for Culture and Media, which represents over forty organisations from those industries in Canada and Québec, the sector has asked for continuity in our cultural policies, rather than the deregulation encouraged by digital multinationals. They have asked for fiscal and regulatory fairness, to ensure that new platforms are subject to the same obligations as traditional broadcasters. They have asked for government support that is adapted to the digital age.

Those are coherent, structural proposals. Over the last 10 years, on the other hand, the federal government – no matter the party in power – has met the changes brought by the digitization of the economy with confused, incoherent policies, and a piecemeal approach that runs counter to the bold approaches of other jurisdictions that have sought to defend workers and industries.

While we support the work accomplished by this report, we must deplore a certain timidity that many will correctly interpret as incoherence. The Committee proposes, for example, that we regulate certain digital broadcasters, and not others. It proposes to regulate music streaming services, like Spotify, but not video streaming services like Netflix. It advises, in other words, that we regulate Youtube Music, but not Youtube. (Concerning video streaming services, the Committee abdicates and proposes that the government “develop mechanisms” so that those services “will develop and promote Canadian content”. This recommendation effectively endorses the permanent tax break given to Netflix, and it is precisely this sort of vague and self-regulating approach that led former minister Mélanie Joly to conclude a deal with that company.)

The Committee bluntly notes in this report that the government's failure to address the influence of web giants like Netflix, Spotify and Amazon has hurt artists', creators' and right holders' revenues: *“failure to regulate these foreign entities poses a significant threat to Canadian artists*

*and creative industries*". But the Committee draws no coherent recommendation from this fact. The digitization of the economy is a real issue, with economic and cultural repercussions, and one would expect that parliamentarians would sense the urgency of addressing this issue head on in order to consider broad solutions.

The businesses (both Canadian and international) that have benefited the most from the digital economy and from lower artist revenues are not being required or encouraged to contribute to the cultural ecosystem they profit from. The government is now using public funds as compensation to allow telecommunications giants to spend less and less on mandatory cultural funds. Further, the government says there will be "no free rides" but continues to distribute free rides to multinationals such as Netflix, Facebook and Google, which are allowed to make a living out of Canada's cultural vitality without having to pay taxes, charge GST or contribute to our cultural ecosystem.

The Heritage Committee is the parliamentary committee that is mandated to defend our culture and ensure the vitality of our cultural industries.

Over the last 10 years, our cultural sector has existed in a state of siege. Revenues are collapsing, vacuumed up by tax-free multinationals like Facebook, Google and Netflix, undermined by vast and poorly defined exceptions inserted into the Copyright Act in 2012, left undefended by the inaction of successive governments faced with the digitization of the economy.

Until this year's mandatory review of the Copyright Act, the Heritage Committee has chosen to mostly ignore the cultural sector's plight. The Committee has passed the most part of four years doing its best to avoid looking at the causes of this crisis. We find this strange and frustrating – as we would if, for example, the Standing Committee on Fisheries and Oceans refused to discuss fish.

We are therefore happy to see that this interlude on copyright has been a chance for the Committee to take note of the collapsing revenues of our artists and our cultural sector, and to consider some urgent and necessary reforms. The cultural sector must be able to rely on us, and on our continued efforts, so that these recommendations lead to real change.