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## **Standing Committee on Canadian Heritage**

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**EVIDENCE**

**Thursday, January 31, 2019**

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**Chair**

**Ms. Julie Dabrusin**



## Standing Committee on Canadian Heritage

Thursday, January 31, 2019

• (1530)

[English]

**The Chair (Ms. Julie Dabrusin (Toronto—Danforth, Lib.)):** We're going to begin our 139th meeting of the Standing Committee on Canadian Heritage. Today we're continuing our study of remuneration models for artists and creative industries.

We have with us Scott Garvie, Executive Producer, Shaftesbury Films; and from the Indigenous Performing Arts Alliance, we have with us Lori Marchand, Managing Director, Indigenous Theatre, National Arts Centre.

We'll begin with you, Mr. Garvie, because you're the first on the list.

**Mr. Scott Garvie (Executive Producer, Shaftesbury Films Inc.):** Thank you very much, Madam Chair.

My name is Scott Garvie, and I am the Senior Vice-President, Business and Legal Affairs, at Shaftesbury Films in Toronto. I am also the current Chair of the Board of Directors of the Canadian Media Producers Association. Thank you very much for inviting me today to speak to you about the importance of copyright to producers. It directly impacts our ability to make great Canadian shows. To fairly remunerate both producers and talent, we must continue to recognize the producer as the author and first owner of copyright in an audiovisual work. I'd like to talk about what producers do to help explain why that's important.

You may already be familiar with Shaftesbury's hit TV shows *Murdoch Mysteries* and *Frankie Drake Mysteries* on CBC. I'm proud to tell you that *Murdoch Mysteries* and *Frankie Drake Mysteries* are two of the top three highest-rated shows on CBC currently. Some of our other projects include the YouTube series and movie *Carmilla*, which enjoys a cult-like popularity with the LGBTQ community; the thriller series *Slasher* on Netflix; and *Emerald Code*, an empowering web series for girls about science and technology. We are currently producing two new prime-time drama series, which will be released later this year, one with Rogers called *Hudson and Rex* and another with Corus called *Departure*.

The producer has many roles. How do we make great content? Frankly, there is a little bit of alchemy in every show we create. Sometimes a show that seems destined for success on its technical merits ends up missing the mark with the target audience while another show will achieve success beyond our original hopes. *Murdoch Mysteries* is a great example of this. Who would have thought that a period drama set in 1890s Toronto would find such a

large global audience? Thanks to the superb storytelling, production values and casting decisions, it's a hit show watched in more than 110 countries, and we're happily going on to our 13th season on CBC.

To make great TV shows and films, we need to wear many hats. We often call ourselves treasure-hunters. We search for an idea, a concept or an original story from a writer. We develop those ideas into the content that you see by engaging and working with creative talent.

In the case of *Murdoch Mysteries*, we optioned a series of novels by little-known Toronto-based author Maureen Jennings. We then spent time developing it, and over the years, we've worked with many writers and directors. In fact, we've had three different sets of head writers or show runners over the 13 years, and have hired over 75 different directors to work on that show. Our in-house creative team played a major role in shaping the series. All this is done under the direction of our in-house team of producers, which includes myself, Christina Jennings—who was just awarded an Order of Canada for her work on *Murdoch Mysteries*—and Julie Lacey.

We're also risk-takers. We invest revenues from our past successes into the R and D that's necessary to create a slate of new shows. For example, we spent 10 years developing our new show *Hudson and Rex* because we believed strongly in the concept—it's a cop-and-dog show—and wanted to get it right. We invested around \$300,000 in development money of our own funds, paying writers and others to get the show to the stage where we could finally get a broadcaster to commission it.

We are also HR managers. We are the key touchpoint for all creative and financial elements and partnerships that make a project successful. Whether we are debating creative notes with directors, negotiating with a writer's agent or convincing our lead actor—in the case of Rex, a dog—to come out of his trailer, we are the connection point for talent. In addition, we have our fingers on the pulse of the market.

In the case of *Murdoch Mysteries*, we have a deal with a U.K. broadcaster; a French broadcaster, France Télévisions; CBC; and a foreign sales agent in ITV. We are in constant dialogue with them about how we can best serve their specific audience bases and ensure that the show is as successful and long-running as possible throughout the world.

We are also accountants. The Canadian tax credit system is premised on the producer's ownership of copyright. We juggle a variety of budgets, tax credit calculations, cash flow and investments to get the show made. At the same time, we ensure that our talent and crew are fairly remunerated for their work. That includes being responsible for administering the waterfall of revenues that flow to investors and creative participants after the show is made.

We are sales people. We are always selling, whether it's selling our idea to a writer or a broadcaster or pitching our vision of a new TV series to the multiple partners that we need to come on board. Shaftesbury has a team of 35 people in Toronto and London who work hard to support our shows like *Murdoch Mysteries* and *Frankie Drake Mysteries*.

There are a couple of things that we're doing to spin off to keep on increasing the audience engagement for the show. We have a *Murdoch Mysteries*-inspired escape room at Casa Loma in Toronto. We've done a behind-the-scenes web series with CBC, featuring the actors in *Murdoch Mysteries* and *Frankie Drake Mysteries* talking about the episodes.

We also have a cross-country tour of the Frankie period costumes going across Canada so people can see and touch the clothing. We're currently developing a theatrical play that will run across Canada based on the Murdoch brand.

Producers are—and must be—the authors and first owners of an audiovisual work. However, during this process you've heard from the Directors Guild of Canada and the Writers Guild of Canada that the Copyright Act should be amended so the screenwriter and the director are jointly named as the author of an episode of a television show or a film. That change, in my view, is not only unnecessary but would severely damage a producer's ability to monetize, license and otherwise exploit an audiovisual work.

Any suggestion that such an amendment would not disrupt the business of making films is wrong; it would completely upend the work we need to do to make a show. Producers and the guilds long ago worked out these issues in our labour agreements, and there is no need to implement a workaround to those agreements now. Infusing the banking and orderly marketplace with a multiplicity of copyright owners who cannot be tracked or are unwilling to grant the necessary exploitation rights would be a disaster. The collaboration required to produce a television series makes it completely different from dealing with the sole author of a novel or the composer of a song.

Producers hire and work closely with all key creative roles. As I just described, we work with screenwriters to turn ideas into scripts; we hire directors to help turn scripts into projects; we hire performers, production designers, composers, musicians, editors and crews to help us shape the project and bring our collective vision to the screen. Everyone has an important role to play, and we deeply value their creative efforts, but it is the producer who brings all these individual creative elements together and takes a project from an idea or concept to the screen and then takes it into the marketplace.

When it comes to TV, rights ownership and exploitation are the foundation of our business models. We are constantly developing new IP by using company resources as that important seed money. In order to have a company of size and scale—one that is able to

compete on the international market and get our shows seen—producers must own the copyright in these shows.

It is impossible to be a viable production company without having a robust development slate of potential new projects. Frankie Drake provides a very good example of this. We were approached by CBC to develop a companion show they could run after Murdoch. Thankfully, we had already been developing the concept of Frankie in-house, so we were able to pivot very quickly to react to that request by the marketplace.

Ownership of copyright by producers is the foundation for remuneration models for artists in creative industries. We invest in development; we bring creative and financial partners together; and we pay artists and creators fairly, both from the budget and from the back-end participation we allow them under our guild agreements.

When it comes to authorship or ownership of an audiovisual work, there is no need to make any changes to the Copyright Act. Producers are—and must continue to be—authors and first owners of the copyright in their TV projects.

Thank you for the opportunity to appear before you today. I'd be pleased to answer any questions you may have.

• (1535)

**The Chair:** Thank you.

We will now hear from Ms. Marchand from the Indigenous Performing Arts Alliance.

Go ahead, please.

**Ms. Lori Marchand (Managing Director, Indigenous Theatre, National Arts Centre, Indigenous Performing Arts Alliance):** *Weykt, hello, bonjour.*

I am Lori Marchand. I am of the Syilx, or Okanagan Nation. I am here as a representative of the Indigenous Performing Arts Alliance. I am currently the Managing Director of the brand new indigenous theatre at the National Arts Centre, where I have been for the past nine months. Prior to that, I was the Executive Director of Western Canada Theatre, a small regional theatre in the traditional and unceded territory of Tk'emlúps te Secwepemc in the city known as Kamloops, B.C.

Working with four different artistic directors over the span of 19 seasons, WCT gained a national reputation for commissioning, developing, presenting and producing indigenous work in a collaborative and respectful way. Of particular interest to this committee may be two specific examples that have gone on to impact other processes, including those at other companies.

In 2000, WCT and the Secwepemc Cultural Education Society, SCES, co-commissioned Cree playwright Tomson Highway to write a play based on a historical document called “the Laurier Memorial”, a document presented to Sir Wilfrid Laurier in the city of Kamloops in August 1910. The document was presented jointly by the chiefs of the Secwepemc, Nlaka'pamux and Syilx Nations, collectively known as the Interior Salish and referenced in the document as the Shuswap, the Thompson and the Okanagan respectively.

The document was dictated to and translated by renowned ethnographer, James Alexander Teit, a Shetlander who married into the Nlaka'pamux Nation. The document articulates 100 years of the relationship between these indigenous nations and the arriving settlers, the traditional protocols for welcoming guests into our houses, and the disrespect offered in return, leading to the erosion of territory and traditional means of living, as well as trust in indigenous relations with the Crown.

As mentioned, the commission of the play was a joint effort between WCT and SCES in recognition of the fact that the play would be based on the history and stories of the Secwepemc. The play was written and developed through multiple workshops with a number of public readings in Tk'emlúps te Secwepemc, with opportunities for community members to participate in the development process.

The development of the play became part of a CURA project funded by SSHRC at Thompson Rivers University. A documentary called *Tomson Highway Gets His Trout* was one of the tangible means of disseminating the results. It aired subsequently on the Bravo network.

Ultimately the play, *Ernestine Shuswap Gets Her Trout*, premiered in January 2004 at the Sagebrush Theatre with representatives from all 17 Secwepemc Nations—and I understand that hasn't happened since—as well as representatives from the Nlaka'pamux and the Syilx Nations. Grand National Chief Phil Fontaine attended on behalf of the Assembly of First Nations.

The commissioning agreement contained two clauses relating to royalties that were anomalous: For every production, 3% of the playwright's royalties would be returned to the Secwepemc Cultural Education Society; and if in any given 12-month period the playwright earned more than \$25,000 from royalties from the play from whatever medium, whether live performance, television, film and so on, then a small percentage—and I apologize that my memory fails me, but it was either 2% or 3%, which didn't ever come to pass, unfortunately—would be returned to the commissioning theatre, which was WCT.

The next project of interest is the commission and development of a play by Kevin Loring, a Nlaka'pamux playwright, currently the artistic director at the NAC indigenous theatre. WCT, in partnership with the Vancouver Playhouse, received a \$95,000 grant from Arts Partners in Creative Development, a fund established in connection with the 2010 Olympics in Vancouver, to commission and develop *Where the Blood Mixes*. The grant enabled notable commissions for the playwright and two indigenous artists: a visual artist to inform design components and a musician to inform the soundscape.

● (1540)

It also enabled a production workshop of the play, a staged workshop with production elements that could tour to communities. In partnership with Tk'emlúps te Secwepemc, the production workshop rehearsed in the Chief Louis Centre, the former Kamloops residential school.

Elders were invited to open the rehearsal process with a welcoming ceremony, and time was allotted after the ceremony for the elders to interact with the cast, creators and WCT team members. The rehearsal process was open, so elders and community members could drop in at any time to watch. There were three public performances at WCT's Pavilion Theatre. There was a nominal ticket price to attend, \$10 to \$15, or admission was free to ensure broad access.

Post-show, the audience had the opportunity to respond and give feedback to Kevin directly. The production workshop toured to Trail, where the audience had the same opportunity. It then went to Lytton, Kevin's home community. The community held a feast and had, again, the same opportunity to respond to Kevin. It was a profound and impactful event for the community, seeing themselves onstage. Ultimately, at the end of the process, the play premiered in Vancouver on June 11, 2008, the day of the federal government's apology for residential schools.

I didn't note it here, but it also went on to win the Governor General's award for drama.

WCT's relationship with Tk'emlúps te Secwepemc has been through direct relational activities such as discussions and requests directly to the chief and council, outreach through the Shuswap Nation Tribal Council, service organizations, and the Nlaka'pamux and Syilx nations.

WCT, and in most instances, the artists directly, have sought permission to tell the stories. Acknowledgement of the permission has been as described above, through payment of a portion of the royalties and/or recognition on promotional material, such as posters, brochures, websites and/or printed versions of the texts.

Through the process of development and production, the consultation and outreach has ensured that the community members see themselves honoured and represented respectfully and authentically on stage. Through pricing structures and engagement, the work is accessible to the community.

In cases where the subject matter may be triggering, WCT has also ensured the presence of trauma counsellors, elders and the availability of safe spaces so that community members can participate in an emotionally supportive environment.

WCT is also a producer. It is a member of the Professional Association of Canadian Theatres, and as such, is a signatory to the corresponding professional agreements with Canadian Actors' Equity Association, Associated Designers of Canada and the Playwrights Guild of Canada. All fees for all artists were governed by these agreements. The agreements set the baseline; financial support for cultural considerations were augmentation necessitated by WCT's internal core values and practices.

WCT is a regional theatre that produces a broad range of work for the southern interior of B.C. My position of leadership within the company helped to inform and establish these practices and, fundamentally, a relationship of trust with Tk'emlúps te Secwepemc and, more broadly, the nations of the interior Salish. Ultimately, it was the generosity of these nations and their community members in granting permissions to share their stories and resources that made the work and the relationship possible.

I hope other speakers are going into more detail about the challenges of artists, writers and researchers coming into a community, publishing the community's stories and then claiming the copyright. I offer the practices of WCT as what I hope is a counterpoint to that practice.

At the national level, there is a great deal of work to be done to enable the work of indigenous artists. Producing theatre requires infrastructure such as performance spaces and facilities in which to rehearse and build. These resources are not in the hands of the indigenous artists and companies. There are no indigenous companies that are signatories to the Canadian Theatre Agreement, in large part because the rehearsal and performance structures do not currently reflect or accommodate an indigenous way of working. Indigenous artists may choose not to join Canadian Actors' Equity Association because the body of their practice is cultural, for example, in powwow.

When doing work with a company required to work under the Canadian Theatre Agreement or its counterpart, the Independent Theatre Agreement, artists must pay fees to CAEA, equity fees that ultimately just mean a reduction in the level of pay to the artist.

● (1545)

In essence these requirements have resulted in exclusion of indigenous companies and artists, a situation that both PACT and Equity have committed to resolve.

Being a rather circular argument, the above situation leaves indigenous companies and artists under-resourced both financially and in terms of dedicated infrastructure.

It is a large and complex issue. On behalf of the Indigenous Performing Arts Alliance and its members, I thank you for taking on this examination.

**The Chair:** Thank you for that.

We're now going to begin our question and answer period.

We are going to begin for seven minutes with Mr. Hogg.

**Mr. Gordie Hogg (South Surrey—White Rock, Lib.):** Thank you very much for your submissions and information.

Mr. Garvie, you talked about a couple of wonderful successes with respect to Murdoch and Frankie. You've talked about the successes that have occurred there and reinforced your statement that the producers must own the copyright or else those things might not have happened.

Can you give us some examples of how things might have been different if the producers had not been in charge of that?

You seem to have highlighted the success. I assume there are a number of failures that would have occurred as well.

**Mr. Scott Garvie:** I think from the beginning, the inception of the project, the true copyright owner of the concept was an author of a series of books. We did an arrangement with her, and she participates in revenues every year from our budget, plus she gets a participation in success. She is making some money alongside with us.

If we were not able to control that IP and the initial writers who we brought on to the show... It wasn't their idea. We went to them and said we have this idea and asked if they would help us develop it. We actually had a couple of missteps with some writers who didn't quite get the tone or the storylines that we wanted to do, so we moved on.

If the first writers who had got involved with our concept then had become the owners of that concept, that would have stopped things in their tracks, if we hadn't progressed because we weren't able to get the show made because nobody bought into their vision. It would have tangled up the development process quite a bit.

When we go to the market and we talk to a U.K. broadcaster, a French broadcaster or even a Canadian broadcaster, there's a package of rights that are derived from the copyright ownership that allows the thing to be exploited in as many ways as possible. If we had carved off with a bunch of different copyright holders, we may not have all those rights or we would not be able to exploit in the most fulsome and efficient way.

I read the presentation made by the CMPA. Stephen Stohn made a comment that struck me as well. We've done more than 200 episodes of *Murdoch Mysteries*. We've had more than 150 writers write scripts. We've had more than 75 directors. If they own the copyright, they can't do anything because we own the underlying project. They can't actually take it to market. They can own the script or the work, but they can't do anything with it. It would turn the business on its head.

● (1550)

**Mr. Gordie Hogg:** Can you tell us about any jurisdiction that might have a different model from this one, which is successful in other countries or other jurisdictions?

**Mr. Scott Garvie:** I'm sorry, sir. I would have to talk to the CMPA, who could canvass the structure outside of Canada.

**Mr. Gordie Hogg:** So with that, do you think the model that currently exists in Canada is favourable to you?

**Mr. Scott Garvie:** I think it's favourable to the industry. I think there's a clear road map on how it's dealt with on the television and film side. The parties have agreements that are negotiated in good faith between them, the writers, the directors, the actors and all the people who are part of it. You know if you've ever been to a television set, there are 200 people working. All those deals are structured with guilds, so that there's protection for the employees or the contractors. There's also a mechanism that makes sure they are rewarded in success.

I think it is working. I think we do need to modernize the copyright system to make it reflective of the new delivery systems that are in place, but I think the basic system is a good one.

**Mr. Gordie Hogg:** So the principles that are in place you think are most appropriate.

When you go, as you mentioned, to England and other places where you've taken some of your shows, is there any difference when you apply there?

Do you fall under any other jurisdiction?

**Mr. Scott Garvie:** Not on the copyright side. There may be different terms of copyright, but basically we own the project and then we sell the exploitation rights for a period of time. All the copyright laws that we deal with sort of align.

**Mr. Gordie Hogg:** At this point, the only privilege you see is some modernizing of the system.

**Mr. Scott Garvie:** Yes, on the retransmission, on just having a more modern, efficient system to track. However, I think the underlying theory is good.

**Mr. Gordie Hogg:** Ms. Marchand, you mentioned that there were some disagreements and that the core values and practices are going to be paramount or will serve as the foundation for setting the guidelines. Can you tell us a little about what the foundation is, what the values are, how you are carrying those out and how that's being done?

**Ms. Lori Marchand:** The underlying concept, or value, is that the stories belong to the community. The way that both Western Canada Theatre and, ideally, the National Arts Centre indigenous theatre are going forward is to recognize that that is where the ownership resides. Any storytelling or sharing of those stories and histories beyond the community is really through permission and a consultative process in which the community participates fully and has buy-in on the final product.

With respect to remuneration or the official copyright, it becomes challenging, particularly in instances where...in many cases, unfortunately, it's a non-indigenous person who has come into a community to learn and has then taken that story and shared it more broadly. Through that copyright, they have actually disenfranchised the community from their own story. Those are the instances we are actively working to prevent.

**Mr. Gordie Hogg:** Mr. Garvie, if you were to take on the stories Ms. Marchand is talking about, and if you were producing some of those stories, would the values she's reflecting fall under the model you're talking about?

**The Chair:** You have about 30 seconds.

**Mr. Scott Garvie:** Yes.

We are developing, with an Indian band, a film institution in northern Ontario. We have made arrangements with the school and with the individual students who are telling...I'm not sure these are historic stories as opposed to current reflections of their lives. We are working with them, and they are part of the creative process.

• (1555)

**Mr. Gordie Hogg:** So you have to have an agreement with them under the values that Ms. Marchand—

**Mr. Scott Garvie:** We don't want to appropriate that story.

**The Chair:** Okay, that's great.

We will now be going to Mr. Yurdiga, please, for seven minutes.

**Mr. David Yurdiga (Fort McMurray—Cold Lake, CPC):** Thank you, Madam Chair. Thank you, Mr. Garvie and Ms. Marchand, for taking the time to educate us, in some respect.

We heard from many groups—creators, artists, producers, right through to distributors. The one common theme seems to be revenue-sharing. There's some debate about who's taking too much and who's not getting enough.

In any business, that happens at the contract point. How do we protect...? From your perspective, Mr. Garvie, as an executive producer, what happens? I'm an artist. You want me to perform, to act in one of your films or whatever it may be. What are the first steps? How is everybody protected? Even if you look at the royalties after the fact, is that all established on day one? How does that work?

**Mr. Scott Garvie:** I'll talk generally. There are some people who aren't governed by collective agreements. We do prime-time drama in Canada. We deal with ACTRA, WGC and the Directors Guild. There are projects that are done outside the protections that those guild arrangements provide, but we still have to come to an arrangement, and I assume that it's a market arrangement. Somebody's willing to provide those services, or get us involved in their content, based on the deal that we do. It's a purely contractual relationship.

The bulk of what we do is within the confines of very structured industrial relations, which deal with the base rates that you have to pay people. Everything's always in negotiation. There's a base rate in the Writers Guild agreement that says, "If you want a script, it's going to cost you  $x$ ." You may have a very hot writer who says, "I don't care. That's the base rate. I want two times that." Then it's a market negotiation. If we can afford him or her, we'll do it. If not, we'll move down the line and find someone we can actually come to an arrangement with.

In those collective agreements that have been negotiated between the CMPA and the various parties, there are various types of buyouts you can do where you get paid up front from a budget. You get work even if the show doesn't get made; you still have a contract and a script fee, say. If it goes on, and you want to change the use that you negotiated, you may have to pay another fee to the particular party—say, the director. If you want to do a DVD buyout as opposed to just television, then there's a mechanism that says, "Here is the price that you have to pay to change that use."

Most of the agreements also have some sort of formula that calculates when the producer has recouped the cost of production, and then there's a sharing of revenues, over and above. That's, again, a negotiation. There are some base rates, but then the marketplace takes place.

We did a show last year with David Shore, who I went to law school with, and who happened to create *House*. He now has a lot of leverage. We did a deal with him that was very, very expensive, but he was a very high-priced piece of manpower and he was able to get that amount.

There are protections in place with floors, and then the ceilings are all based on your negotiation ability, on how badly a person wants to work with us and how badly we want to work with them. I don't know if that's responsive.

**Mr. David Yurdiga:** Thank you for your response. It's complicated, especially if you're just entering into the arts, when you want to be known. Obviously, some people sign away some of their royalties just to get in, and then we hear from those people. That's a challenge. I don't know if copyright alone can solve the issues that a lot of people have been mentioning through many testimonies.

Ms. Marchand, what do you think has to be done in the Copyright Act, and what additional things need to be done to ensure that everyone's protected fairly?

**Ms. Lori Marchand:** No pressure.

I have to admit that I came with a pretty specific lens. In a broader context, I would just say that I agree with you. It is not just the copyright legislation that is at issue, but also ensuring that artists—and individual artists, for example—have the means to live, right? Artists right now, primarily theatre artists, are living below the poverty line. They are important voices in our nation, and we value their contribution.

I just want to reference something, too, that Mr. Garvie said, in terms of the changing landscape. It isn't just about DVDs and copies, of course. There are webcasts, a whole distribution net through the Internet and controls. I would be lying to say I have those answers. I think that those are the huge questions in front of us.

I would love to start thinking outside the box, and finding a way to share some of those resources, and the royalties—a way to compensate artists for their work so that they could ensure that their livelihood can continue. I say that, balancing it as a producer who understands that there is a need for infrastructure in order to produce the work, and that somehow needs to be financially sustainable as well.

I'm sorry, I think I'm just helping paint more questions than answers.

● (1600)

**Mr. David Yurdiga:** Thank you for your answer. It's not a simple solution. Sometimes my questions are general, because there's no magic formula to actually fix it, but we can always strive to do better.

**The Chair:** You're at 7:01, perfect.

[Translation]

Mr. Nantel, you have seven minutes.

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

[English]

If you don't speak French, you may want to grab the earpiece so you can hear the interpretation.

[Translation]

**Ms. Lori Marchand:** I will try to answer in French, but I may have some trouble.

**Mr. Pierre Nantel:** That's kind of you. What matters is the information you provide. Thank you very much.

Ms. Marchand, I would like to know what are the specific copyright issues facing first nations, Métis and Innu. Do they have a broader or more societal concept of copyright?

In the research carried out by the committee's analysts, there is a reference to the testimony of a northern singer who said that throat singing is the subject of a copyright debate. In my world, that's surprising. When culture is very traditional, it is naturally in the public domain. Isn't that the case with you?

**Ms. Lori Marchand:** Certain types of stories or songs have cultural content. As I said, it is up to the community to let people know if it is possible to share those stories and songs.

[English]

If it's okay, I'll switch to English.

**Mr. Pierre Nantel:** It was super good.

**Ms. Lori Marchand:** I want to reference the work of my colleague Kevin Loring. James Alexander Teit created wax cylinder recordings with the permission of Nlakap'amux nation. Kevin is working with the community to bring those songs and stories back into current use. Because they have a specific, cultural relevance, there are even songs that as they are translating—the four or five people who are sitting around and listening to the recordings of the recordings of the recordings of the wax cylinders, and trying to ascertain their meaning—they are wondering whether it's appropriate for them to be sharing those results.

[Translation]

This is very specific to indigenous culture.

● (1605)

**Mr. Pierre Nantel:** Thank you, Ms. Marchand.



[English]

Mr. Garvie, we've heard about the principle of what the Americans now call the showrunner. The showrunner probably has some author's rights. Is it a concept that is applicable here in Canada?

**Mr. Scott Garvie:** It's not one size fits all, unfortunately.

We have shows. To use Murdoch as an example, we developed that show to a certain extent and then we brought in a showrunner who hadn't been involved in the development phase at all. We built the structure and then they came in. They worked two years and then they wanted to go off and do something else. We brought in another team that worked for three years, and now we have our third showrunner. Just so you know, with the showrunner, we will have a room of six or seven writers. They'll sit and come up with—

**Mr. Pierre Nantel:** Next stories.

**Mr. Scott Garvie:** No. We are going to do 18 shows this year. We tell them the stories we want to break out. They workshop ideas and then they allocate who will write which script.

In the Murdoch case, we've had three different head writers who have all done a good job, because the show is still on the air.

There are other cases in which we go to a writer. For example, we do a show called *Slasher*. That's a horror genre. We met over coffee with a showrunner creator we really liked. I asked him what he would really like to do. He was doing family viewing shows. He said he wanted to do a horror genre, like *I Know What You Did Last Summer*. We have an arrangement with him: we optioned the rights and hired him to do the job. We share revenues with him on a very favourable split, because we recognize that it was his passion and his idea.

Everything changes; there's no one size fits all.

**Mr. Pierre Nantel:** Which comes back to the point made by my colleague, Mr. Yurdiga. It is through the contract that you recognize that the level of importance of that creator.

**Mr. Scott Garvie:** The thing I find really important about this is clarity on who owns it and who can exploit it, and a really orderly exploitation of what you've made in the marketplace.

The worst thing is to have any grey area so that you're sitting on your hands because you can't sell things because you don't have the rights. Again, to use Murdoch as an example, I did a deal with the author of the books 16 years ago, for whatever reason. I didn't ever know there was going to be a World Wide Web. We're constantly going back and negotiating new rights.

We never thought that we would do a theatrical play. We went back, and we've just finished negotiations about how we can work with Shaw, and the author is involved. Everything is constantly changing. In a perfect world, we would have had all those rights. We just said that we'll have a good-faith negotiation downstream if there are new things that come up.

**Mr. Pierre Nantel:** This angle that you bring to us is about the perspective of confusion regarding the rights of producers versus the rights of screenwriters or directors. That's the point you came to, interestingly.

Are there issues for you as producers of Canadian content in Canada? This is why we are here. We are here to make sure they can thrive better.

**Mr. Scott Garvie:** Do you mean the challenges of the disruption facing us, writ large, or with respect to copyright?

There are lots of issues, lots of disruptions, lots of different platforms, new ways of doing business and new challenges that we deal with every day, and we have to find ways.

One thing that Canadian producers have always been very good at is that we've never been like the American model, where you have a studio that funds 100%. I would argue that Netflix and those kinds of places are the new American studios because they fund fully, hire talent in Canada for a fee and take all the value out of the country.

The type of company that Shaftesbury is means we've developed our IP, and we've tried to find stories that are reflective of the experiences in Canada we want to tell. We're very proud Canadians. We love our Canadian stories, and we want to take those stories and sell them around the world. We want us in the middle of it. We monitor all this revenue. We're very driven to exploit it as widely as possible because it's good for us, and it's good for the people downstream because we share the revenue downstream, as opposed to letting somebody else take all the back-end value.

•(1610)

**The Chair:** Unfortunately, that's already over our time.

[Translation]

We will now go to Mr. Breton for seven minutes.

**Mr. Pierre Breton (Shefford, Lib.):** Thank you very much, Madam Chair.

Ms. Marchand and Mr. Garvie, thank you for being with us today.

I will continue with you, Mr. Garvie, on the same subject as my colleagues raised.

In recent weeks and months, witnesses who have appeared before the committee have recommended that the Copyright Act be amended so that the screenwriters and directors are considered the first owners of copyright and co-authors of a cinematographic work, and to specifically exclude producers.

What do you think of this recommendation? If this recommendation were implemented, what do you think the implications would be?

[English]

**Mr. Scott Garvie:** Obviously, from my testimony, you will understand that I'm not a supporter of that approach. I think it's a bit disingenuous by a lot of the parties putting forth that argument. I think that if they are going to be the copyright owners, the end result would be that there may not be as much production that gets done unless they're going to do a deal with someone who's going to pay for that content. If we don't own the content and can't control the process, there won't be as much interest in working with those types of people, and we will find other creative outlets to do our thing.

If the writers guild says, "You can't do this unless we own the episode and take control of the revenue stream," there's no interest in us supporting that sort of endeavour—unless they pay us very well. Turn the dichotomy around; they'd have to pay us to develop, help them finance and help them produce.

You have people who aren't in the business of exploiting and developing. They're in the business of being hired by companies like Shaftesbury to write, to direct or to act. It doesn't make sense to me that they'd go to the front of the bus and take control of the process.

There's nothing to stop any of these people. There are some very good writers who are also producers. If they want to take the financial risk to fund development, to take the risk of going to the bank, factoring the papers that are tax credits and raising the money, Godspeed to them. They're more than welcome to do so, and we embrace them in the CMPA. We have a lot of members who do that. However, if you're not going to take that risk, and you're not going to be part of that process, it's a bit disingenuous to say, "We should get the most benefit from it."

[Translation]

**Mr. Pierre Breton:** To what extent do media producers play a role in copyright matters and, above all, in the fair remuneration of our artists and creators?

[English]

**Mr. Scott Garvie:** I apologize. I missed the beginning of your question, sir.

[Translation]

**Mr. Pierre Breton:** Could you tell me what role producers play in terms of copyright and the fair remuneration of artists?

[English]

**Mr. Scott Garvie:** I think that it's a very important role. I think that we have to manage production. We manage the creation process. We manage the production process and we manage the exploitation process. We work with all these people, who are very important to what we do and we need them. We need to work with them and collaborate with them, but that doesn't mean that they need to be controlling the copyright.

We work on a respectful, contractual basis and we think they're very well protected by that.

[Translation]

**Mr. Pierre Breton:** Ms. Marchand, you have answered a number of questions so far. Can you tell us more about the challenges specific to indigenous artists and creators? Various topics have been

discussed, but is there anything else you would like to add? What are the challenges facing your organization?

**Ms. Lori Marchand:** There are many challenges.

[English]

There are so many that I'm not sure where to start. Again, thinking within the context of the committee's work, there are cultural constraints. There are the historical implications of colonization on individuals' lives and realities and I will say that is the primary barrier to success.

As I said in my statement, the historical infrastructure just does not reside in the hands of indigenous companies or artists or producers. Companies in theatre, like the Shaw and Stratford festivals, were producing English and American work and American authors well into the seventies, so the new voices—Canadian and indigenous voices—are really just starting to find their footing now.

The Truth and Reconciliation Commission has impacted our industry as well. I would love to think that maybe the artists were a little bit ahead of that. I come from British Columbia, where on the arts council applications, the companies have to respond to the question, "If you are interacting with the indigenous community, what are the protocols you, as the producer, have in place to engage in this work?"

I would say that there have been efforts at the council level, both federally and in some provinces, to ameliorate that situation and to start to fund the new voices. In the recent round, I can highlight companies, such as Urban Ink, which is the company that co-produced *Children of God*. Some of you may have seen that, either here at the National Arts Centre or in your community. It's a musical based on the experience of residential schools.

Urban Ink was recognized for the experience that they brought to that production, but as I said, really the largest barriers are cultural.

•(1615)

**The Chair:** You'll have to end there because we are now going to Mr. Shields, please, for five minutes.

**Hon. Steven Blaney (Bellechasse—Les Etchemins—Lévis, CPC):** I would like to go.

**The Chair:** We have Mr. Blaney instead, for five minutes.

**Mr. Martin Shields (Bow River, CPC):** Go ahead, Mr. Blaney.

[Translation]

**Hon. Steven Blaney:** Thank you for your flexibility, Madam Chair.

I'm going to speak in French, with braces to boot. Fortunately, we have good interpreters.

Good afternoon and welcome.

Ms. Marchand, let me start with a few words of congratulations on your appointment to the National Arts Centre, where you promote indigenous culture.

Mr. Garvie, you are the producer of a very successful series. I saw on the site that there were two episodes. You are about to start your 13th season. I really enjoyed seeing your passion when answering Mr. Nantel's questions. You are proud to be a Canadian, to produce Canadian content and to tell Canadian stories.

In my case, of course, I am proud to be a Quebecker. We know that our TV series and artists play a very important role in our identity. This also includes the remuneration of our Canadian and Quebec artists. Unfortunately, the Liberals seem to be turning a deaf ear. They're trying to buy time while the fox is in the henhouse.

Mr. Garvie, you mentioned disruptions. We are seeing some major transformations, and all the Liberals have to say is that they will study this issue after the next election. We feel no concrete willingness to protect our creators of Canadian cultural content. I would like to know what you think about that.

We want to amend the Copyright Act. I think you and the various speakers have clearly explained your point of view. As the saying goes:

[*English*]

“If it ain't broke, don't fix it.”

[*Translation*]

We still have a useful model, even if it needs to be improved. You have clearly demonstrated that producers play an important role and that we must be careful not to disrupt this ecosystem. It seems that the pie is getting smaller. You said that American companies were sort of complicating things.

As the Standing Committee on Canadian Heritage, we must make recommendations to protect the remuneration of artists. This means protecting Quebec's and Canada's cultural industry.

I would like to give you an opportunity to comment on this, if you have any comments or thoughts on it.

• (1620)

[*English*]

**Mr. Scott Garvie:** We always look at the production sector in Canada, both domestic production and service production, and we try to do no harm to each other. They're very different business models, but they are very good businesses and create a lot of jobs for artists, directors, actors and crews. While I may not personally believe that the service industry is the one that my company wants to be in for fulfillment, I do believe it has a big, important role in our country and the support that we have been given by provinces and the federal government with respect to tax credits and things has been a very good business tool to create business and create employment.

Where I do take exception is where a foreign studio comes and takes money from the system and doesn't put that money back into the system.

We have a conference right now called Prime Time, and we had quite an animated panel this morning with a member from Netflix and the head of the CBC having a conversation that went down a bit of a rabbit hole into cultural imperialism. I thought that might have been a bit stark for her to have said, but the reality is if we're going to

have Canadian companies and Quebec companies that are telling truly Canadian stories and Canadian reflections, then we need to have strong companies that are supported, and we need to have companies, as you say, that have infrastructure and have the wherewithal to take chances and develop and train new people to join the system.

The service companies, the foreign companies that come in, are using the best of the best. They don't necessarily have any interest in developing talent or youth or expanding Canadian companies.

I really believe that support of independent production companies is important for us to continue to do what we do and to help the next generation of Canadians to continue to do what we do.

**The Chair:** We're giving him 12 seconds.

[*Translation*]

**Hon. Steven Blaney:** Okay.

Thank you very much. What I take from your comments is a warning about those who are skimming the cream off the top of the market. We are clearly concerned by this reality and we must react to this market transformation. We have a responsibility to protect Canadian cultural interests. I have understood your point of view and I share it.

Thank you very much, Madam Chair.

[*English*]

**The Chair:** Just to clarify, I believe you have just said that you support having Netflix contribute to the Canadian system.

**Hon. Steven Blaney:** If I said so, it's probably due to my braces, because this is exactly the opposite of what I said.

**The Chair:** I was just clarifying that point.

[*Translation*]

Ms. Dhillon, you have five minutes.

[*English*]

**Ms. Anju Dhillon (Dorval—Lachine—LaSalle, Lib.):** Thank you to our witnesses for being here today. I enjoyed listening to your testimonies.

I'd like to say to Mr. Garvie that I'm a huge fan of *Murdoch Mysteries*. It's an exceptional show. It's very creative and there's a lot of talent there. I'm glad this was one of the shows you chose. You've been doing this since 1994. I would like to ask you, what is the role played by media producers regarding copyright and fair remuneration to artists?

**Mr. Scott Garvie:** I think we have talked about it a little bit today, so I don't want to repeat myself, but I think the role of a Canadian producer in this system is to develop IP—great stories—that can then find platforms that attract eyeballs and audiences in Canada, to take that content outside of Canada and export it to the greatest extent possible, to both tell stories and generate revenue in the system, and to have it recirculate in the system. Copyright ownership, to me, is a very important part of that important recycling of revenue into R and D and IP creation that's held by Canadian companies.

•(1625)

**Ms. Anju Dhillon:** What are your views on a recommendation that was made to the committee by two other witnesses who said that the Copyright Act should be amended to deem the screenwriter and the director the first copyright owners and co-authors for cinematographic work, specifically excluding producers?

**Mr. Scott Garvie:** Again, I don't think much of that idea. I think it's disingenuous. I think it is opportunistic, and it doesn't reflect the orderly marketplace and the reality of how film and television get produced and financed in Canada.

I think that my colleagues at the Writers Guild and the Directors Guild are trying to take a role in the ownership of content that they're only one part of—an important part, but not the most important part. They certainly don't take any of the financial risk. They want the rewards without taking any risk, which I think is unfair, and I would oppose it strongly.

**Ms. Anju Dhillon:** Thank you.

My next question is for Ms. Marchand. Regarding funding, you spoke about new indigenous voices coming up, before in your testimony, and you spoke about help that was given by the federal and certain provincial governments. How has this aid brought this talent further into the creative area?

**Ms. Lori Marchand:** The infrastructure, as I mentioned, still does not currently reside in the hands of indigenous leaders. Much of the work that has been produced to date has relied on relationships with, we'll say, colonial infrastructure.

There have been—and I would love to reference my work at Western Canada Theatre—some examples of how this work has been undertaken in a respectful and collaborative manner, but going forward we would just love to see that infrastructure and those resources in the hands of the indigenous leaders so that the process is indigenous-led from the beginning.

With the current changes, some of that is starting to happen. Kevin and I are hoping to—I don't want to put anybody on the spot—work with Canada Council and perhaps undertake an investigation of the current infrastructure that is indigenous-led. Where are we missing resources and where could they be augmented? What might be a plan forward for the future? That really is about recognizing the indigenous voice and the necessity to have the indigenous-led process, including from the very initial concept.

**The Chair:** That ends your five minutes and brings us to the end of the panel.

If I can, I'll ask one quick question that you may need to answer in writing, Mr Garvie. In your opening you talked about how Canada's tax credit system is premised on the producer's ownership of copyright. I thought it might be helpful if you clarified that part for us, about how the tax credit system would be predicated on the ownership of copyright by the producer.

**Mr. Scott Garvie:** I will undertake to provide a response to you.

**The Chair:** That would be really helpful, thank you.

With that, we are going to suspend briefly while we move to our next panel. Thank you very much. Your testimony was great.

•(1625)

(Pause)

•(1630)

[*Translation*]

**The Chair:** We'll resume the meeting.

Joining us by videoconference is Julien Castanié, the president of Illustration Québec. From the Canadian Art Museum Directors Organization, we have Robin Metcalfe, who is the President, and Moira McCaffrey, who is the Executive Director.

We'll start with the witness joining us by videoconference.

Mr. Castanié, you have the floor.

•(1635)

**Mr. Julien Castanié (President, Illustration Québec):** Good afternoon, everyone. I am Julien Castanié. I am an illustrator and, as you said, I am the President of Illustration Québec. First of all, I would like to thank this committee for the opportunity it gives our association to express its views on such an important topic as copyright.

Illustration Québec is an association of artists founded in 1983—which happens to be the year when I was born. It represents about 300 members. Its mission is to bring together illustrators, represent them and defend their interests, but also to champion and promote the practice of illustration.

I would like to highlight the unique aspect of illustration, which is a social and accessible art. Illustration is used in all areas of our lives to communicate graphic messages and support ideas. It is an omnipresent art created by an artist who lends his or her work to a given context. Illustrations can be found on cereal boxes, in children's books, or even on the poster of a theatre that has decided to use illustration to communicate.

I would now like to talk about the economic reality of our business.

Illustrators are self-employed and their status is precarious. They do not benefit from the labour standards reserved for wage earners. Nor do they benefit from unemployment in the event of a reduction or cessation of activity during a given period.

Unfortunately, as with many artistic disciplines, our profession remains very challenging. According to our latest survey report from 2018, conducted among Quebec illustration professionals, the situation is truly alarming: 45% of illustrators, almost half, earn a net income of less than \$15,000 annually from their artistic creation. They must therefore turn to other jobs to earn a livable income.

That is why I stress how vital copyright is for us as artists. Every exception, every new distribution platform that does not generate remuneration for authors amputates creators' income.

I would now like to talk briefly about remuneration models for illustrators in the context of copyright. There are five of them.

The first is the sale of licences for the use of creations as part of the orders of clients. This may mean an editorial illustration in a magazine, the creation of a poster illustration or illustrations for a website.

The second model is the royalties on the selling price of an object that reproduces illustrations. We could talk about children's albums, meaning the distribution of illustrations through the object in itself, but we are also talking about operating authorizations, meaning the use of images distributed on a whole bunch of objects, for example coffee cups or pens. In the case of children's books, royalties paid by publishers represent a percentage of between 3% and 5% of the price of each book sold. To give you a better idea, if the book were an apple, the copyright for the illustrator would be like the seeds of the apple.

The third remuneration model is the Canada Council's Public Lending Right Program, which is actually remuneration for the availability of literary works that can be borrowed from libraries.

The fourth model is the royalties that come from copyright collectives, such as Copibec in Quebec.

The last model is exhibition rights, meaning the rights that are paid for the exhibition of original works.

I would like to take this opportunity to talk about a right that does not exist in Canada, but that exists in dozens of other countries. It's the resale right, which is designed to grant visual artists a portion of the income from the resale of a work after its initial sale. It is something that does not exist in Canada, but that we recommend.

• (1640)

So copyright is truly vital for illustrators. Here are our five recommendations for improving the working conditions of artists through this legislation.

The first is to extend the private copying levy to the new digital media and distribute them to artists. The legislation should adapt to new media. Artistic works are regularly shared on digital media, such as cellphones or tablets, and this use is not covered by the legislation. This is really a loss of income for artists, whose situation is already precarious.

The second proposal is to provide remuneration for the use of works on the web. To my knowledge, right now, there is no control over the distribution or reproduction of works on the Internet. Perhaps a system should be found to manage the use of works and the remuneration of artists. So who would be responsible for that task? I'm actually wondering: would it be the responsibility of the collectives, the access providers, the distributors? It's an open question. Without content, the medium actually no longer makes sense. In fact, those who make works available should be required to pay the royalties or, at the very least, to direct the royalties to the rightful owners of the works.

The third recommendation is to create a tax credit. Given the impoverishment of our crafts, we recommend that a copyright tax credit be included in federal legislation. It already exists in Quebec, for example. So having this support would be a fairly powerful lever to support creation.

The fourth recommendation is to look at what is being done abroad to support artists. Let me draw your attention to a creative support measure that exists in France. French copyright collectives, such as the Société des auteurs des arts visuels et de l'image fixe (SAIF) or the Société française des intérêts des auteurs de l'écrit (SOFIA), which are the equivalent of Copibec in Quebec or the Public Lending Right Program in Canada, support artists through grants for the creation and dissemination of works, but also through grants for artist training or the development of artistic and cultural education. Their activities are funded by one quarter of the amount received for private copying, in accordance with the French Intellectual Property Code. We could imagine such a mechanism to support Canadian creations.

The last proposal—

**The Chair:** Mr. Castanié, you are already almost one minute over your time. So please conclude your presentation. You may have time to address the other aspects when you answer questions.

**Mr. Julien Castanié:** That's fine, thank you. I will wrap up.

The last point is to create a resale right in Canada, because not having one is a form of discrimination against Canadian artists who wish to sell their works internationally.

In conclusion, I would say that Quebec illustrators are in a relatively small provincial market, demographically. The licensing system proportionate to the distribution of a work, and therefore copyright, is very fragile in this very small market. In my opinion and that of Illustration Québec, we must both consolidate current copyright, through the resale right and digital private copying rights, extend it to digital and, at the same time, support artists' creative activities through tax credits or support for creation. That is very important.

Thank you very much.

• (1645)

[English]

**The Chair:** Thank you.

We'll now go to the Canadian Art Museum Directors Organization with Robin Metcalfe and Moira McCaffrey, please.

[Translation]

**Mr. Robin Metcalfe (Director and Curator of Saint Mary's University Art Gallery, and President, Canadian Art Museum Directors Organization):** Good afternoon, everyone.

Thank you for having us, Madam Chair.

[English]

The Canadian Art Museum Directors Organization represents more than 85 art museum directors who lead a diversity of visual arts institutions across Canada, from sea to sea to sea. It is a lean organization, with a volunteer board and one employee, our executive director, Moira McCaffrey, who is with me today.

[Translation]

Our mission statement asserts that “CAMDO-ODMAC strengthens the ability of Canadian art museum and public art gallery directors to champion art and its significance in society”. It is in this spirit that we address the committee today.

[English]

Artists are the foundation of the visual arts ecosystem. Without their creative work, we would have nothing to present to the public. Other organizations, such as Canadian Artists' Representation, have documented the unsatisfactory economic conditions under which many Canadian artists work. It benefits diverse Canadian publics and all those working to bring visual art to them if artists can work in conditions of economic security.

CAMDO-ODMAC was a key initiator of the visual arts summit in 2007. It sought to bring the visual arts sector together to advocate for common interests. Our membership in the Visual Arts Alliance reflects that commitment. We support the alliance's call for a solution that embeds copyright reform within a “holistic set of measures... brought to bear...to...address the ongoing systemic socio-economic precarity of this country's independent and professional artists.”

[Translation]

We are encouraged that this committee is working in tandem with the Standing Committee on Industry, Science and Technology, and is focused, not solely on the Copyright Act, but on the larger question of artists' remuneration.

[English]

Many in the visual arts sector struggle to secure the resources needed to provide cultural value to Canadian communities. Art museums must protect their financial and administrative sustainability in order to deliver on their core mandates. We may easily find ourselves in a defensive position, holding on to a small wedge of a pie that, depending on local circumstances, has often not kept pace with the growth of either visual arts production and presentation in Canada or the demonstrated desire of Canadians to experience visual art.

Visual artists rarely earn a living from their artistic practice. It is generally only through other employment, such as teaching, that they enjoy job security, benefits and pensions. Revenue Canada tends to treat them as independent business people. That model is seriously flawed. Artists produce objects and experiences of intangible cultural value for the public good, a value only imperfectly reflected in the price their works command on the open market.

[Translation]

Artists are professional collaborators with museums in presenting their art to various publics. They have a right to fair compensation for the value they provide, through the purchase of art for public collections, and through fees paid for temporary exhibitions, performances, residencies, workshops and presentations.

[English]

Our members are guided by a recommended fee schedule agreed upon between CAMDO-ODMAC, the Canadian Museums Associa-

tion, Canadian Artists' Representation and the Regroupement des artistes en arts visuels du Québec.

However, compensation models that seem to work well for one group may have unforeseen and unintended consequences for another. For example, the recommendation to delete the phrase “created after June 7, 1988” from part I, 3(1) of the Copyright Act would, if implemented, have varying consequences for our members' institutions.

[Translation]

For some, the effects might be negligible. For museums that focus entirely on temporary exhibitions of contemporary art, distinguishing between works in an exhibition on the basis of the date of creation may seem arbitrary. Some may prefer to pay all artists on an equal basis, regardless of the date of creation of their works.

• (1650)

[English]

On the other hand, for museums with major historical collections, particularly of mid-20th century and modern art that remains under copyright protection, removing this distinction 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. Such administrative costs can easily exceed the amount paid to artists themselves. Increasing such costs might prevent some museums from exhibiting works from their own collections and force others to reduce exhibition programming and invest more in administration, both of which defeat the purpose of getting money into the hands of artists.

Shifting financial burdens between artists and museums may be robbing Peter to pay Paul, when both Peter and Paul require appropriate support to provide that public good.

One copyright mechanism currently in effect in Canada may provide a model for effective deployment of public funds to improve the compensation of creators. Public lending right compensates authors, translators, illustrators, photographers and editors for public access to their work in Canadian libraries.

Under this system, libraries, beyond the purchase cost of a book, do not have to pay creators, nor to track them down to negotiate contracts for the use of their work. The PLR commission samples cataloguing data in selected libraries across Canada, and calculates payments to published creators registered with the program, based on the estimated circulation of their works. Canada was the 13th country to establish such a program in 1986, with an initial budget of \$3 million. By 2017, there were 33 countries with comparable systems.

The virtues of the PLR system are: one, it does not impose a financial or heavy administrative burden on institutions within which Canadians access copyright material; two, it minimizes transactional costs by centralizing administration in one commission with which creators simply register, rather than them having to negotiate individual copyright licences; and three, it maximizes the extent to which program costs translate directly into payments to creators.

[Translation]

PLR is a relatively frictionless model. Its characteristics could well be emulated in the administration of other copyright licences. Recommendations for copyright reform need to be considered in the context of other legislation and policies, and the mechanisms used to realize them. Public institutions must have the resources to cover increased costs. Regimes to manage copyright must minimize paperwork and administrative burden, simplify processes, and maximize the delivery of resources to their intended beneficiaries.

[English]

We recommend that the Standing Committee on Canadian Heritage advise the House to take an integrated approach that balances institutional sustainability with economic security for artists, and that deploys copyright law, taxation policy and funding in a holistic manner; and that the committee consider public lending right as a possible model for management of some payments for uses of artists' copyright.

[Translation]

We echo Visual Arts Alliance's recommendations that the committee work with the Canada Revenue Agency to ensure that the Income Tax Act be interpreted in a way that is consistent with the realities of self-employed artists. It also recommends that the committee equip itself with the appropriate tools to measure and monitor the socioeconomic conditions of working artists.

[English]

Those tools should measure and monitor the operational conditions of Canadian museums, so that solutions are institutionally sustainable, and win the support of museum professionals in solidarity with Canadian artists. Further, the committee give artist's resale rights serious consideration, with attention to minimizing any administrative burden it may impose on institutions.

[Translation]

We are willing partners in any conversations or research towards the design of successful models for a renewed copyright regime. A successful reform, we believe, will be an integrated model deploying copyright law, taxation policy and funding, that is financially and administratively sustainable for all parties concerned.

Thank you.

[English]

**The Chair:** We are now going to our question and answer period, and we'll begin with Mr. Long, for seven minutes, please.

**Mr. Wayne Long (Saint John—Rothesay, Lib.):** Thank you, Madam Chair, and thank you to our presenters this afternoon. It's very informative.

I come from the riding of Saint John—Rothesay, in southern New Brunswick, and it's the home of the New Brunswick Museum, which is Canada's oldest continuing museum, and a growing arts and culture community that's actually exploding. It's really refreshing to see what's happening in southern New Brunswick.

For any industry to survive, grow, flourish, expand or what have you, there needs to be, obviously, health, and there needs to be fair compensation. That's why we're around these tables here talking about this.

Mr. Castanié, you talked about the tax credit and its impact. Can you just elaborate on that, and about the Quebec model for compensation?

• (1655)

[Translation]

**Mr. Julien Castanié:** Of course.

In Quebec, the Act respecting the professional status and conditions of engagement of performing, recording and film artists grants a tax deduction to professional artists, which allows them to avoid paying tax on the first \$15,000 in royalties they receive. This tax credit has a major impact. Earlier, I mentioned some figures on the income of our illustrators: the situation is quite dramatic. Such tax measures are powerful enough levers to help our creators. This tax credit exists only at the provincial level for now, and there is no Canadian equivalent. However, it has proven its worth in providing provincial assistance to creators.

[English]

**Mr. Wayne Long:** Can you tell me what impact you think this had for visual artists living in poverty? Did it help pull them out of poverty?

[Translation]

**Mr. Julien Castanié:** The outcome is to pay less tax. Any tax credit has an impact on the low-income people, including artists. This deduction in particular helps greatly in this regard for the many artists who manage to earn a little money.

[English]

**Mr. Wayne Long:** What lessons do you think can be learned? If the federal government went forth to implement some kind of a tax credit for visual artists, do you feel it should follow the Quebec model?

[Translation]

**The Chair:** Please provide a brief answer, Mr. Castanié.

**Mr. Julien Castanié:** The models are quite different in each province. I understand that in Ontario, it is the first \$20,000 in royalties collected that is not taxable. It seems that several provinces have decided to act in a similar way while adapting to the reality of their economies. This seems to have been quite effective.

[English]

**Mr. Wayne Long:** Thank you very much.

Mr. Metcalfe and Ms. McCaffrey, thank you again for your presentation. Can I get your input too? In your view, how can the Copyright Act be improved in order to help ensure that Canadian visual artists are able to earn a livable wage in a visual art industry? Mr. Castanié talked about the tax credit in Quebec. Can you just tell me, first, what you think about the tax credit that's used in Quebec and how we might be able to implement something federally?

**Mr. Robin Metcalfe:** I have to preface this by saying that it's not something that we've examined in any detail in our organization.

**Mr. Wayne Long:** Just your opinion.

**Mr. Robin Metcalfe:** I see no objection to it. It sounds in line with what we're recommending. That's what we said in our presentation. Much of what artists do is a public good and the value of it to the public is not fully represented by the compensation they receive. In keeping with that, the tax policy should reflect a recognition of that contribution that is made by creative artists to Canada.

**Mr. Wayne Long:** Ms. McCaffrey, do you have anything you'd like to add to that?

**Ms. Moira McCaffrey (Executive Director, Canadian Art Museum Directors Organization):** No. I'm in full agreement with our president.

**Mr. Wayne Long:** Obviously, we've seen a market transformation over the last several years. I just want to hear about the impact on contemporary artists and how they're affected by digital technology.

• (1700)

**Mr. Robin Metcalfe:** I think it probably affects visual artists the way it affects other creative individuals. I'll say that I am a writer myself, so I'm a creator in that realm. I know that the rise of digital technologies has entirely changed the landscape that existed for recompense for creators based on previous copyright models.

**Mr. Wayne Long:** How do we catch up? What do you envision?

**Mr. Robin Metcalfe:** I think there are a number of models that have been proposed. For example, modest charges could be applied to the means of access to the Internet and might then be redistributed in a way similar to what I described for public lending right. It's important. Any such program needs to be modest in the individual charges, so it's not a heavy burden on consumers. If applied across the board and those amounts are collected and then distributed to distributors in a mechanism that is efficient and that minimizes administrative costs and maximizes the flow-through of resources to creators, then I think that it's an appropriate model to look at.

**Mr. Wayne Long:** My background is sports and hockey management, and business also. I'm learning as I go on this committee.

I've not seen such a disparity, and so many artists and people contributing to arts and culture who absolutely live day to day to try to get by.

What do you think would have a bigger impact to help artists? Do you think it would be the tax credit, or amendments to the act?

**The Chair:** I'm unfortunately going to have to hold the answer to that question because you are out of time. You are always open, if it doesn't come through another question, to submit something in writing.

We are now going to Mr. Shields, please, for seven minutes.

**Mr. Martin Shields:** Thank you, Madam Chair.

I appreciate the witnesses being here. Every time we get a new panel there are things that we learn that hadn't come up before. Illustration Québec has 300 members, and some bring in about \$15,000. That's \$4.5 million.

Are they basically controlling the market? Is there more work that's contracted in Quebec from outside? Is the money leaving that the 300 aren't accessing? What is the market share of the 300? Do you have any idea?

[*Translation*]

**Mr. Julien Castanié:** Quebec is the main market for Quebec illustrators. As I explained earlier, the Quebec market is demographically small. Quebec is a small francophone market. For example, a children's book printed in French will not have the same distribution as a children's book printed in English, which may be distributed in English-speaking Canada or the United States.

Our 300 members work mainly in Quebec, but the income they receive from this market isn't enough. They are forced to seek additional income elsewhere, including certain parts of English-speaking Canada, Europe and the United States. Foreign markets are more difficult to penetrate, particularly in the United States, where there is a form of protectionism. Even if, on paper, we can work for the whole world through the Internet, in reality, our market is mainly in the region where we live.

[*English*]

**Mr. Martin Shields:** Thank you.

I think Mr. Long started down a line that I wanted to go to next, and that's the digital and transformation piece.

You were very specific on your answer, and I think a couple of times we've had people very specifically saying this. I think if we're looking at copyright, we need terms that are broader than just saying a couple of pieces of technology.

Would you have any suggestion of broader terms that you might use for technology in the copyright? If this is going forward, it has to be broader than just identifying a couple of pieces of technology.

Julien.

• (1705)

[*Translation*]

**Mr. Julien Castanié:** Excuse me, but I didn't quite understand your question. Could you please rephrase it?

[*English*]

**Mr. Martin Shields:** You mentioned, specifically, a couple of pieces of technology equipment when we were talking about digital, but if we're going to do it in copyright it needs to be broader if it's going to be of any use in the future, in 10 to 15 years.

Would you have any broader terms that you might want to use for copyright?



[Translation]

**Mr. Julien Castanié:** You want me to talk about things more generally. That's a good question, but I can't talk to you in more global terms than I have so far.

[English]

**Mr. Martin Shields:** Okay. Thank you.

I'll move on to CAMDO.

My grandson fixed up a truck and he thought the value of the truck was this, and I said the value of the truck is what somebody is willing to pay for it. It doesn't matter what price you put on it, it's what people are willing to pay for it. It was an interesting lesson for him that you can put a zillion hours into something, but if people aren't willing to pay for it...

You have an extensive list of recommendations here. Can you narrow that down to copyright, and what is the most important one going forward for you?

**Mr. Robin Metcalfe:** I think the key point we're trying to make is the necessity of the various channels going forward at the same time, because one will affect the other. What we're concerned about with museums is that a copyright change that doesn't consider the impact on institutions may have unintended negative effects, not just for institutions, but for artists.

If it's copyright, then I would say that the most important thing is that the models being used are ones that minimize administrative burden on those who are employing or presenting copyrighted works, and that maximize the ability of resources to go through to the creators, without imposing an undue financial or administrative burden on other cultural institutions.

Does that answer your question?

**Mr. Martin Shields:** Is the lending right an example of that?

**Mr. Robin Metcalfe:** The public lending right is an example of that, because of the way it's structured, yes. It does not apply an undue administrative or financial burden on libraries, but it does direct funds to writers and illustrators, etc., for the use of their work in public libraries. We're saying that a comparable system could be applied to some types of copyright for public museums and art galleries.

**Mr. Martin Shields:** How will the digital affect your world?

**Mr. Robin Metcalfe:** Did you want to answer that, Moira?

**Ms. Moira McCaffrey:** Perhaps I could mention the huge impact social media has on museums. There was a time when museums were famous for not allowing photography in exhibitions. Of course, part of that was to protect the works, because of flash and so on, but the other part was to protect the copyright of artists, who were not paid to allow the distribution of images.

We all know that time is over. It's impossible to control photography in exhibitions, and in fact, most major contemporary artists who have the means to allow photography to happen encourage it.

The reality is that many contemporary artists suffer because of the fact that their works are photographed and distributed widely on the Internet, and they are not recompensed in any way for that. That's

going to be an important factor any time you mention the word "digital". Museums struggle with that.

**Mr. Robin Metcalfe:** May I also add that putting collections online is a challenge, unless there's a mechanism, like the PLR mechanism, that allows artists to be recompensed for the use of their work without it being an administrative and financial cost to museums.

**The Chair:** Thank you.

[Translation]

We continue now with Mr. Nantel for seven minutes.

**Mr. Pierre Nantel:** Thank you, Madam Chair.

I would like to thank the witnesses for being here.

Mr. Castanié, I would like some clarification. Is most of your members' illustrative work created on commission or on their own initiative?

**Mr. Julien Castanié:** Illustration has the particular feature of responding to both of these notions. It can be both a commission, for example a poster, but the artistic creation born from this commission is a work of art, in fact. It is interesting to rethink this notion of control. Think about the royal commissions that have been made to great European artists over the centuries. It tells a lot about how these artists were funded.

• (1710)

**Mr. Pierre Nantel:** You're saying here that all of Mozart's work was created in the name of an Austrian emperor or whoever.

With this in mind, your works are subject to a contract, where the method of payment is agreed upon with the user. The work remains yours, but a licence is granted under certain conditions to the professional user, who may be an author. That's what they say.

Are illustrators' rights better defended in other countries? Is there a resale or a moral right to their works? I can't help but think about the comic strip *Astérix*. Even if it isn't as popular in the English-speaking world, I think everyone here knows that it was illustrated by Uderzo and written by Goscinny. Is the copyright on the illustrations clearer in other countries?

**Mr. Julien Castanié:** Is there a moral right? Yes. It is intrinsic to the issue of copyright. Is there a resale right? Not in Canada, as far as I know. However, this famous resale right exists in more than 90 countries around the world, including France. More broadly, a resale right is when the original creator of a work receives a percentage of about 5%. This right is levied on successive sales of a work, when it passes from buyer to buyer. If the original artist sold a work of art for \$100, then sold it for \$1,000 later, or perhaps even \$1 million later, the artist has an interest in this speculation.

**Mr. Pierre Nantel:** I wouldn't want to look like I'm being funny, but you're getting me more involved. You return to the status of a work of art, not to the status of a commissioned illustration.

**Mr. Julien Castanié:** An illustration is a work of art. It's an idea that may be particular to understand. The work of art can be expressed in the creation of an illustration stemming from a commission, but also in the creation of an illustration at the sole initiative of the creator. I'm thinking of children's books, which may be the initiative of a writer-illustrator who decides to write a book and illustrate it. As such, it is a work of art subject to copyright, as are the works of all visual artists.

**Mr. Pierre Nantel:** I'm going to make a hash of the issue. You are an illustrator, and you make illustrations for a children's book written by an author. It is a work that you make and that belongs to you, for which you grant a licence to the publisher or the author, or both. In such a case, is there a resale right that applies? If so, in what context does this apply?

**Mr. Julien Castanié:** There is no resale right in the case of such illustrations. When I was talking about resale right in Canada, I meant creating an illustration and selling it as an original. In the case of a children's book, as you pointed out, there is really a contract, where a user licence is granted and subject to a temporality, geographic space and support conditions. This corresponds to the copyright that is attached to the creation of the illustrations that have been made on the pages.

**Mr. Pierre Nantel:** Even if I know this subject well enough, I find it complex to see what applies and what doesn't. Even your answers gave rise to some misunderstandings.

Mr. Metcalfe and Ms. McCaffrey, on the topic of copyright, how resale rights are applied and, most importantly, your proposed public lending right, are there other countries where these changes have been made and where it works well?

• (1715)

[English]

**Mr. Robin Metcalfe:** The model I mentioned of PLR is one that has definitely been used in many other countries. I think one of the challenges for finding models in other countries for issues like exhibition right is that Canada has actually been a leader in exhibition right internationally. I think other countries are looking to us to see how we move forward with that and how it might develop over time.

[Translation]

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

**The Chair:** We will continue with Ms. Dhillon for seven minutes.

**Ms. Anju Dhillon:** Thank you, Madam Chair.

I would like to inform you that I will share my time with Mr. Boissonnault.

My question is for you, Mr. Castanié.

During your testimony, you mentioned five remuneration models. You also talked about the works of illustrators that appear on websites. In today's digital era, what can the federal government do to ensure that artists and creators receive fair remuneration?

**Mr. Julien Castanié:** It's certainly one of the issues that your committee needs to consider. It's a difficult question. We are wondering how we could pay for the use of images on the Internet. I developed my thinking on this aspect in the form of an open-ended

question precisely because I didn't have a ready-made answer to these real and quite important issues. Images are used, copied and distributed, yet no remuneration is associated with them.

**Ms. Anju Dhillon:** Have you done anything in the past to improve the situation?

**Mr. Julien Castanié:** No, our association has done nothing. I don't have the exact reference, but I know there are systems that would act as a kind of key to identify the image of one of our creations and find it on the Internet. Since the Web is extremely vast, it is one of our major challenges.

**Ms. Anju Dhillon:** Do you think the situation has improved in the past five years, or has it gotten worse?

**Mr. Julien Castanié:** Digital technology has completely changed our practices. This has presented some advantages, such as allowing us, as self-employed workers, to communicate more quickly, and it has made it much easier for us to create at various stages. However, digital technology has also created uncertainty. The great difficulty, indeed, is to adapt to the new developments we are experiencing on a daily basis at an accelerated pace.

An example I can give is the creation of an illustration for the cover of a novel. The remuneration for this type of contract has always been \$800 to \$1,000; there is a licence for the book. When digital technology arrived, books began to be published in PDF or other electronic formats, without changing the remuneration for the book cover. No additional licences were granted, on the grounds that, according to the publishers, the market for these new formats was in its infancy and so there was no need to change the remuneration arrangements. However, in recent years, we've seen that sales of books in digital format can be good and, so, the focus needs to be adjusted.

**Ms. Anju Dhillon:** Thank you very much.

I will give the rest of my time to my colleague.

**Mr. Randy Boissonnault (Edmonton Centre, Lib.):** Thank you very much, dear colleague.

Mr. Castanié, it is clear that there are more artists in Quebec because of the tax treatment they receive. Thank you for sharing all your thoughts and ideas on this.

[English]

Mr. Metcalfe, Ms. McCaffrey, I'm trying to understand a little more about the public lending right. I just want to be straight up. Who loses and who wins in that model? Is it that everybody gives a bit and everybody comes out feeling like they traded off but they also benefited, and it makes the system more efficient? I'd like to know that.

As we've been on this study for several months, I've found that there are some examples where artists' rights—we need to respect them—can also prevent a work from being shared more broadly in other languages. If we take, for example, a work of art that's originally in French or a work of art that's originally in English, and you want to translate that, you have to get everybody's permission. You have to get everybody's sign-off to simply take what's there in the first language and add another language to it—even if you did subtitles, especially if you did a voice-over. I find this very interesting because it's a bilingual country. If we want to have educational materials from coast to coast to coast, it even makes it difficult for museums to share the information with a broader public unless we can track down all of those artists and get their sign-offs. I find that curious.

How does the public lending right help in your space? What do we need to be mindful of to consider it in the review?

• (1720)

**Mr. Robin Metcalfe:** Well, I think we need to distinguish between kinds of uses. One is the kind of use where it's appropriate to have a one-on-one contract with the creator. So, for example, if we're doing an exhibition of an artist's work, a solo exhibition, then that's something that should be worked out between the museum and the artist. That's already built into our operating system.

For usages like showing a work online, for example, as part of our collection, let's say in a low-resolution image, there is an undue administrative burden if we have to get permission from every artist. If there's a system that centralizes that, and that artists would register for and be recompensed for, and with certain controls on it—as I said, a low-resolution image so it can't be reproduced in a money-making way—then something like a public lending right model would mean that the museum would not have to undergo a lot of administrative work, but the artist would get recompense for the appearance of their work in a public medium.

**Mr. Randy Boissonnault:** To either of you, in your opinion, what led 33 countries—or 20 countries after us, because we were 13th—to adopt the model? What is it about the model that is so appealing? Are you aware of any parts of the world where this is baked into copyright and artist protection?

**The Chair:** You have half a minute.

**Mr. Robin Metcalfe:** The advantages are what I said in my presentation, which is that it minimizes the transactional costs and that it recognizes the value to the public of what writers do. In line with what our other presenter has said, the value of cultural work often goes beyond what creators are paid for when it's first created.

[Translation]

**Mr. Randy Boissonnault:** Thank you.

[English]

**The Chair:** We will now go to Mr. Yurdiga, please, for five minutes.

**Mr. David Yurdiga:** Thank you, Madam Chair, and thank you to the witnesses for being here today.

Quite honestly, I never thought about this aspect of the art community or the performances. I always think about television, radio and that type of thing. We talked a lot about remuneration and

about copyright, but there hasn't been a lot of conversation on enforcement. You can have copyright all you want, but if you have weak enforcement, the infringement will continue to happen.

I've heard many artists complain that it's so costly to go through this, and a lot of times they can't do anything about it. They don't have the financial ability to pursue it.

As a general question to all our participants today, give me your viewpoint on what has to be done on the enforcement side of things.

**Mr. Robin Metcalfe:** Speaking for museums, again, talking about the two types of relationships, in terms of paying an exhibition right or proper exhibition right to artists, that is actually policed through the funding system. If we were not paying proper exhibition fees to artists, if we were not having proper contracts with artists, that would be known to our funders and we would be chastised for that, or our funding would be refused. Obviously, artists have the legal right to pursue us in that case, but it's already policed through the funding system.

In terms of the other types of rights, the ones that are better managed through a more collective system, such as the PLR system, there the point is to get all players registered with the system, the creators and the users of copyright, so that there's a seamless system for the flowing through of resources.

Does that answer your question?

**Mr. David Yurdiga:** Yes.

Mr. Castanié.

• (1725)

[Translation]

**Mr. Julien Castanié:** I will bounce back to the testimony that had just been given. It is indeed true that the public lending right only works if all authors register their works.

[English]

**Mr. David Yurdiga:** When we're looking at a global network, no longer policed just within our borders, within Canada, that's not the issue, because it's a lot more effective within your own country. I'm talking about a lot of things that happen outside our borders. As we know, infringement happens; copyright infringement happens all the time. Monitoring of it is a challenge and actually pursuing individuals who continue to use other people's work for their financial benefit is a challenge.

I haven't heard a number. We don't even know the value in terms of how much that has cost our industry yearly in copyright infringement. Various countries will take your work, mass-produce something and send it out, and that actually affects the bottom line of a lot of the creators and the artists. Therefore, in your view, how should the government help pursue these people who continually violate the Copyright Act?

**Mr. Robin Metcalfe:** In terms of people outside of Canada, one of the virtues of a system such as the PLR system for that type of copyright is that then agreements can be signed with other countries that have a similar system in place. Then Canadian artists are recompensed for use of their material in the other country, and artists from that country are recompensed for the use of their material in Canada. The commission in Canada and the commission in, say, Germany form an agreement, and it's only two bodies that have to come to an agreement to make it work.

**Mr. David Yurdiga:** Mr. Castanié, do you have an opinion on it?  
[*Translation*]

**Mr. Julien Castanié:** Actually, I'm also going to bounce back to the testimony about collectives. They are in touch and discuss with each other all over the world in order to pay back the rights. This is the case with the Société québécoise de gestion collective, or

COPIBEC, which has agreements in France with other sister societies, if I can call them that, including SOFIA and SAIF. There are international agreements of this type.

The other reality is that this doesn't exist in all countries of the world. There are about 10 countries, mainly in Europe, that have these links and that exchange copyright information with Canada. In the case of Quebec, these fees are paid through COPIBEC.

**The Chair:** I would like to thank all of today's witnesses.

Your ideas were very interesting and very helpful.

[*English*]

On that note, that will bring this meeting to an end.

The meeting is adjourned.

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