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• (1635)

[English]

The Chair (Mr. Joël Lightbound (Louis-Hébert, Lib.)): Ladies and gentlemen, friends and colleagues, I call this meeting to order.

[Translation]

Welcome to meeting number 59 of the House of Commons Standing Committee on Industry and Technology.

Pursuant to the order of reference of Wednesday, November 30, 2022, we are considering Bill C-294, an act to amend the Copyright Act (interoperability).

Today's meeting is taking place in a hybrid format, pursuant to the House order of Thursday, June 23, 2022.

During the first hour of our meeting on Bill C-294, we are fortunate to have with us the sponsor of the bill, the member for Cypress Hills—Grasslands, Jeremy Patzer.

Thank you for being here this afternoon, Mr. Patzer. The floor is yours.

[English]

Mr. Jeremy Patzer (Cypress Hills—Grasslands, CPC): Thank you very much, Chair.

Thank you very much to the members of the committee.

It's an honour to be here. I was a member of the committee previously, so it's fun to be back here and, in particular, to talk about a bill that I think we have all already found some semblance of agreement on.

The House of Commons already voted unanimously to pass this bill at second reading, and I believe there is good reason and enough public support as well to keep the momentum going through the remaining stages ahead.

Many people are not familiar with the concept of interoperability, but it is fairly easy to understand the problem we have right now in Canada. It's the result of rapid technological changes, especially over the last few years.

The federal government updated the Copyright Act 10 years ago in response to new developments back then, which gave us the current version of Canadian copyright law. Since 2012, the act includes a new section for the enforcement of technological protection measures, or TPMs for short.

At the time, there was a clear need to better protect the copyrighted works of artists and entertainers. That is why there is language that specifically mentions “performers” and “sound recordings”. Digital locks and similar technology were created to combat piracy and related issues, and the Copyright Act backs them up with enforcement and legal penalties.

The wording of section 41 made sense for what was happening 10 years ago, but we all know that has a lot has changed since then.

Now there are other industries that have incorporated digital features and software into their products. This has allowed digital locks to appear in places that were unimaginable when the law was put in place. It has opened our eyes to how common something like interoperability is.

For the benefit of the committee, and for anybody who might be listening online today, when we think of the concept of interoperability, one of the simplest forms to describe it.... For those of you who have Surface Pros, if you use an external mouse and you plug it in via USB, it just works. It doesn't matter what brand your mouse is. You plug it in, it downloads the driver and it interoperates. It's basically a plug-and-play concept. That's one of the simplest ways to describe what interoperability is and how it should seamlessly work.

For something like computer hardware, though, there hasn't been as much of an issue. The market incentive favours allowing interoperability between different brands, and everyone is better off for it. However, other industries are starting to lose ground with letting people enjoy interoperability.

I have already said a lot—in my speech, back at second reading—about how there are problems with using agricultural machinery for farmers and short-line manufacturers, and I would be happy to talk about more of the details during your rounds of questions. Obviously, machinery for farming and heavy construction is not the same thing as copyright for music or movies. The nature of the business and products involved are quite different. Restricting interoperability in these areas has more practical consequences because there is more at stake with these sectors.

It is also important to remember that interoperability existed and was practised before these new conditions came along. What Bill C-294 proposes to do is not anything new. Instead, it is trying to close a loophole and bring back what farmers and manufacturers were always allowed to do. It's an acceptable and perfectly normal thing that should not be treated as if it were part of a black market. Until we return to the clarity of a simpler time, we are leaving people in an awkward, arbitrary and inconsistent position.

Bill C-294 is our opportunity to update the Copyright Act with a small, limited amendment. As far as I'm concerned, it's just common sense. With your support, and that of the rest of our colleagues in the House, we can make a simple fix that will support Canadian consumers and industry.

I look forward to responding to your questions.

[*Translation*]

The Chair: Thank you very much, Mr. Patzer.

Starting off the discussion will be Mr. Perkins for six minutes.

[*English*]

Mr. Rick Perkins (South Shore—St. Margarets, CPC): Thank you, Mr. Chair.

Thank you, Mr. Patzer, for being here. Thank you, and congratulations for making it this far. As members of Parliament, it's always quite a special thing to be able to get a private member's bill moving through the House and to the committee stage, so congratulations on having the initiative to bring forward a bill that, I think, has a lot of interest from all sides.

The interoperability part, for those who are watching, applies to a wide variety of things. With regard to another private member's bill, Bill C-244, we've been dealing a lot with the impacts on agricultural equipment.

In your work in preparing this bill and making sure that it was achieving what you hoped it would achieve, what are some of the industries you've consulted with, and how do they feel about it?

Mr. Jeremy Patzer: The concept definitely applies broadly to many different industries and interested groups. Whether it be manufacturing groups and companies or different sectors like forestry or heavy construction, they are definitely interested in what this bill has to offer.

When you're looking for the best product to do the best work for whatever your specific industry is, that's where interoperability is important. You might have a main OEM machine or piece of equipment, and then you might have a specialty attachment that you want to use, whether it be for mining, forestry or agriculture, depending on what season you're in or what type product you're trying to harvest or mine.

We had some good conversations with heavy construction and with some of the forestry and mining folks as well.

Mr. Rick Perkins: The Copyright Act and your bill talk about this term "technological protection measure" or TPM.

These were originally, as I understand, put in place in the Copyright Act to really protect copyright works of entertainment, indus-

try performing arts and that kind of thing. There has been some discussion that as technology has advanced and as the knowledge-based economy has advanced, the Copyright Act hasn't kept up with the fact that these areas are a problem. It's creating, in some cases, what I'll call a monopolistic use of technology to prevent competitors from directly competing in the same space, as I understand it.

I'm wondering if you could comment a bit on that issue of interoperability.

• (1640)

Mr. Jeremy Patzer: One main component of the bill is to redefine what interoperability means.

The reason we're doing that is that right now, the Copyright Act envisions interoperability as being simply between two computer programs. Think about even the example I gave in my opening remarks about a computer mouse. Your computer mouse itself doesn't have a computer program inside of it. When you plug it in, your computer recognizes an interface inside of it, so it downloads the appropriate software to the computer. It doesn't download it the mouse; it downloads it to the computer. You have a software program and then you have a mouse with a little interface or a little chip inside of it.

Then you make that comparative analysis on larger scale. In agriculture, the prime example came from a combine header. You have your main combine and then you have the header that you attach to the front of it to harvest your grain. There are many short-line manufacturers out there that only make the header. They don't make the combine, so they're looking for some certainty to be able to operate on the platform of the main OEMs.

Again, they don't put computer software into their header. There might be an interface. It is an attachment.

That's why we're redefining what interoperability means. We're also adding in the provision that's going to allow a manufacturer to circumvent a TPM for the sole purpose of making that product interoperate.

The reason the language is so important there is...obviously there is proprietary software. The manufacturers don't want access to the proprietary software. They just want to know what information—basically what ones and zeros—they are going to need to make the reel on the header turn or make the knives go back and forth to cut the crop. It's being able to send those signals. That's the information that they are looking for—what the signals are. They are not worried about the proprietary side.

The protection still exists so that even if someone were to be adversarial and try to access that proprietary software, they would be in violation of the act.

Mr. Rick Perkins: Your bill proposes to deal with that whole software connection.

We read recently about how in Europe, they mandated that cell phones must all have the same plug in the actual hardware or the physical thing.

Does your bill deal with that part of interoperability?

Mr. Jeremy Patzer: It makes sure that something physical can be realized in the term of what interoperability means.

By adding in the term “attachment” or “interface”, generally that is a more physical thing as compared to software. While it wouldn't explicitly be a phone plug, it does still deal with and reference something that is a little bit more physical.

Mr. Rick Perkins: I think my time is up.

We'll get you on the next round.

The Chair: It is indeed, Mr. Perkins.

We'll now move to Mr. Fillmore for six minutes.

Mr. Andy Fillmore (Halifax, Lib.): Thanks so much, Mr. Patzer, for being here and for your work on the bill. This is something the committee has studied in different forms over the last year or so. Thanks for your contribution to moving this necessary issue forward.

We've learned that there are potentially some conflicts with CUSMA. The government would like to ensure the bill is compliant with CUSMA and that we don't create difficulties in international trade with our partners.

Is this something that you have heard? Do you have any thoughts about this? Would you be supportive of amendments that would bring your bill into compliance with CUSMA?

Mr. Jeremy Patzer: Yes, I'd definitely be happy to consider some amendments if there are issues that have arisen with some trade deals.

We definitely looked at that right from the very beginning, though, because some of the people who reached out to me about looking to do the private member's bill on this actually came from witness testimony at the CUSMA hearings. Part of what was acknowledged then and is still the case now is that Canada lags behind what the Americans are doing. We're also behind the European Union. Australia has been very progressive on this as well. I think that even France has more progressive language on interoperability. This bill will basically put us back up onto a level playing field with our international competitors.

When we worked with the analysts of the Library of Parliament on this, we did a lot of extensive research as to how it would impact our trade deals. At the time, we found there didn't appear to be any issues, but if there is more legal analysis out there that would suggest there are some tweaks to be made, I'd be happy to entertain those tweaks.

● (1645)

Mr. Andy Fillmore: Okay. Thanks for that. I think we'll have a chance to discuss this in more depth in the second half of today's meeting, and I look forward to that.

Another part of the question around right to repair, which the committee has embraced with some vigour, I would say, is around the circular economy: keeping things out of landfills and extending the life of things. I had a very expensive palm sander that I dropped off my bench and was able to fix myself, to my great delight. I didn't have to put it in a landfill.

As it pertains to supporting a circular economy, what would you share with the committee on that?

Mr. Jeremy Patzer: Right to repair and interoperability are similar, yet they're different in a lot of different ways. What this does is help to drive innovation. We kind of dubbed the bill “the right to innovate”. For example, when you dropped your sander and broke it, you might not have been able to get the exact part from the original manufacturer, but you might have been able to get an aftermarket piece that would work.

What we're working on here.... Again, I'm coming at it more so from an agricultural background. We're looking to create—or to preserve, I guess—a situation where these manufacturers can drive innovation so that we have better products that are going to work longer, hopefully, and so we just continue to drive that innovation. That way, we're not left with a situation where maybe a monopoly takes over and the quality of the product deteriorates.

When we create an environment that allows these short-line manufacturers to innovate and to make these products, it keeps the quality of the products higher, which is going to make those products last longer. People could use them for much longer than they would if that same quality weren't being driven by the short-line manufacturers.

Mr. Andy Fillmore: Okay. Thanks for that.

The impacts of your bill will be felt not just by users, which is a good thing: It will be felt very likely by provincial regulators, provincial governments and private sector manufacturers and so forth. What do you see out there in terms of work that needs to be done or those points of interface? Are there any concerns? Is there anything to share there?

Mr. Jeremy Patzer: I've had a few conversations with some of the provincial governments as well, just around what their thoughts were on this. Being that some of the issues we broadly see with industry fall more into the competition side, that's where some of the provincial angles might come into play. I know there is a federal framework, but a lot of it can be enforced on the provincial side of things.

By putting this framework into place, it does create a bit more room and an ecosystem out there where, again, innovation can be driven by our provincial partners. It will give MLAs and provincial governments a bit more certainty, I think, to be able to make sure their laws also work alongside and similar to this to protect that.

Mr. Andy Fillmore: Thanks very much.

I'm probably just about out of time, am I not, Mr. Chair?

The Chair: Yes.

[Translation]

Thank you for keeping yourself in check, Mr. Fillmore.

Over to you, Mr. Lemire, for six minutes.

Mr. Sébastien Lemire (Abitibi—Témiscamingue, BQ): Thank you, Mr. Chair.

Thank you, Mr. Patzer, for being here. It's nice to see you again, here at the Standing Committee on Industry and Technology.

I want to build on something Mr. Fillmore mentioned. Quebec unanimously passed similar legislation in 2019, Bill 197, an act to amend the Consumer Protection Act to fight planned obsolescence and assert the right to repair goods.

What I take from Bill C-294 is that it would prevent manufacturers from using the federal Copyright Act to thwart efforts to make Quebec the number one place in the world for consumer protection against these types of practices. That's how we see it, anyways. In that regard, I commend you on your leadership.

Why do you care so much about planned obsolescence?

[*English*]

Mr. Jeremy Patzer: When I look at the general economy in Saskatchewan, Manitoba, Ontario, Quebec and every province, manufacturing is a very big part of the local economies and—this gets a bit more to what Mr. Fillmore was getting at—each province might have a different sector or a different part of the economy that they are manufacturing for particularly.

In the small town my parents farmed around, Frontier, for example, there is a business called Honey Bee Manufacturing. I spoke about it at length in my speech. Were it not for Honey Bee, the big source of employment for the region would be gone. In many small towns all throughout the country, that is what the jobs are.

If you look at Quebec, you guys produce some fantastic aluminum there. There are other aspects of manufacturing that are going to be beneficial to that. This is providing more opportunity for more Quebec aluminum, per se, across the country to be utilized and used, but predominantly, it's about choice.

It comes down to the end user. We have innovation from our manufacturers. They are world class on that side, but when it comes down to choice for the consumer, for the farmer or for the companies in forestry and mining to be able to have the products that they need to do the best job that they can do, that's what this is all about. It's giving them the tools they need to succeed.

• (1650)

[*Translation*]

Mr. Sébastien Lemire: In 2019, the sponsor of Quebec's bill, Guy Ouellette, drew inspiration from European solutions, including measures to prohibit planned obsolescence and French legislation on labelling indicating a good's sustainability rating. France's legislation also added a repairability index based on five criteria, including the availability of documentation; disassembly, access and tools; the availability of spare parts; and the price of spare parts. The fifth criterion refers to subcriteria specific to the product category concerned.

Did you use the European legislation on planned obsolescence as a model?

[*English*]

Mr. Jeremy Patzer: As far as the issue of planned obsolescence is concerned, the more competition you have in the marketplace,

the better the product you're going to get, so hopefully, those products are going to last longer.

One of the key drivers to this is innovation. If we want to avoid things like planned obsolescence, there are a couple of things. There's being able to get the parts you need to make repairs. At the end of the day, hopefully, we can just buy products that are initially going to last longer, so that you don't have to buy parts to repair every year. It would be even better if the original pieces lasted longer.

Think of a deep-freeze, for example. Technologies change and the way they are made or manufactured is very different. My parents bought a house that was built in the seventies that still had a deep-freeze. I swear the house had been built around the deep-freeze, because we couldn't get it out of the basement, but it was still running and it was 40 or 45 years old. I wish you good luck buying a deep-freeze today that will last 40 or 45 years.

When you look at some of the names of the companies back then that were making these things, there was lots of competition. Now it seems to have dwindled. There might be a few different names, but when you look at the back, it's the same parent company that's manufacturing under a few different names. We don't really have as great competition as we would need to help push some of these products to be made better than they are right now.

We can address the issue of planned obsolescence in part by driving innovation. That's what this bill will hopefully do.

[*Translation*]

Mr. Sébastien Lemire: The World Bank released a report entitled "What a Waste: A Global Review of Solid Waste Management", which identifies numerous initiatives around the world to reduce the amount of electronic goods that end up in landfills.

Adherence to the principle of interoperability would reduce the number of electronic devices that give rise to connection issues. We know that Apple changed its connectors, obviously to force customers to buy more Apple products.

Is that also one of the objectives of your legislation, Bill C-294?

[*English*]

Mr. Jeremy Patzer: Yes, I would say so. There are definitely environmental benefits to this—for sure. Again, you want to have an environment that exists where, yes, you can make those repairs but you can also get the parts you're going to need to do that.

On the one hand, the committee is already dealing with the right to repair legislation as put forward. My bill is going to be more so about making sure there's innovation in the sector to make sure that for the original piece that you're going to have, there will be innovation to grow and push the development of those products that are going to last longer and be better going forward.

Generally when you provide consumers with the option to buy a couple of different objects of the same kind, yes, they're going to buy a cheaper one sometimes, just simply because it's cheaper, but the reality is that you're going to buy the same thing three times, whereas if you would have paid a bit more for the higher-quality, quality-built product, it would have lasted longer.

If there's more competition, if there are more people pushing and driving that innovation, we should, hopefully, have more high-quality pieces that people can buy, but that also bring down the cost of purchasing. That way, the people who are buying the cheaper pieces could afford to buy the higher-quality ones because there are just more pieces available. They would be more apt to buy something that lasts longer at a better price.

• (1655)

[*Translation*]

Mr. Sébastien Lemire: Basically, that would require buying more products made in Quebec or Canada, as opposed to China.

Thank you.

[*English*]

The Chair: Thank you very much.

Next is Mr. Masse.

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

Thank you, Mr. Patzer, for coming back to committee.

I worked on the CASIS agreement. That was my original legislation here, on the aftermarket for the auto sector. It was a voluntary agreement that was put in place. One of the problems we have now is the digital component to it. It was expected to be a problem.

One of the arguments against this.... For those who aren't aware, the bill was to provide the proper tools, training, materials and software to the aftermarket to fix automobiles: It's a public safety issue, an environmental issue and consumer choice issue. It was argued that this would be actually out of NAFTA too. I worry about that type of reasoning, because the reality was that the U.S. actually could have better legislation, because their Environmental Protection Act, outside of our trade agreement, actually gave consumers in the United States a better choice.

I'm wondering what you think about that and whether or not there's the high degree of concern or what the concern is. We refer to it as the "Canada-United States-Mexico Agreement" here. They refer to it as the "U.S.-Mexico-Canada agreement", because Mexico signed it before us. We actually had to go back and sign it a second time.

They also have the Buy American Act, which is restrictive for Canadian companies. We have the Buy American Act, the softwood lumber dispute, dairy.... Buy local is also used against Canadians in

terms of procurement from municipalities. On procurement, the U.S. defence industry is notorious for that, and there's also bus manufacturing. They all have restrictions on Canadians.

I'm wondering what concerns you might have if this is going to be used—as I guess a trade argument—against Canada. I'm a little less skeptical of the reasons not to go forth with, I guess, comprehensive legislation, because I'll conclude with this: The problem in my legislation is that it resulted in a voluntary agreement after there was agreement with the government, but it now has to be revisited because it's basically out of date. We're back to square one in many respects.

I'll turn it over to you. I thank you for your efforts.

Mr. Jeremy Patzer: I definitely appreciate that.

In looking at the trade, again the big thing is that we're playing catch-up here because our laws are behind and outdated. When we have a 10-year review for copyright and then it takes a few years to implement and make those changes, it puts us at risk of being a little bit further behind. I think that's why the committee is seeing Bill C-244, why we're seeing my bill.... I know you drafted one on similar issues around copyright as well. We need to have a bit more agile legislation now as technology grows and advances, and we have to do so in line with our trade agreements.

When we look at CASIS, it's good to get that sharing of information, but when it's voluntary, it makes it tough. That's why we have to do something like this. That way, the manufacturer is trying to build those pieces and have the certainty they need to go forward and get the information they need to just make their product work, and nothing more than that.

I think what this bill does is that it provides certainty for the main OEMs. Again, they can develop proprietary software that's going to work, yet they can't block out the short-line manufacturers from being able to access the information they need to make other products that will work on their platform.

When it comes to the trade side of things, I think this bill is in a good position.... Again, as I alluded to earlier, I am willing to make amendments if there are things that need to be done to make it more compliant when it comes to trade deals and agreements.

This bill came out of a need for change, which we saw in the CUSMA negotiations anyway. Again, we're playing catch-up here to what the U.S. is doing. There shouldn't be an issue, but that's....

Mr. Brian Masse: I think the point you're also making is about innovation and competitiveness. One of the first things I worked on here was with James Rajotte on this committee. It used to be allowable for companies to deduct environmental fines and penalties, and other malfeasance fines and penalties, as business-related expenses. We got that stopped.

It was unbelievable. It was like you were driving to work and got a ticket and you'd just claim, "Well, I had to get to work quicker, so I can write it off." Drug companies were doing that—all kinds of different organizations. Some fines were up to \$11 million.

At any rate, the point is that it took away from the good actors having to compete against the bad actors, who used that as a business-related expense for advantages.

My last question for you in regard to this is that this will have a chance to go through the Senate later. If, later on, there were an issue over trade agreements, that's going to get another analysis in the Senate that would be more robust. Perhaps it might give the government some backbone to deal with some of these other contentious issues that I listed with the United States.

• (1700)

Mr. Jeremy Patzer: Absolutely. We have an opportunity to do what's right by consumers and what's right by business. We need innovation, which is the best way to get products built and made and developed here. It can help on all of those fronts.

If it's the forestry sector, it's going to benefit from this bill. Until we can get the softwood lumber agreement dealt with, this will give the industry extra products that they need to continue to make the world-class products we make here in Canada, in every province.

What we're going to continue to focus on with this bill is driving that innovation. You're right. We want to make sure that the good actors get rewarded, get what they need. There's the enforcement side for the bad actors out there as well. We're focused on creating a framework. That way, the good actors can continue to do what they do best and that's innovate. It will prevent them from being squeezed out by other people who are trying to eliminate the competition from the workplace.

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

The Chair: Thank you very much.

We'll now turn to Mr. Vis for five minutes.

Mr. Brad Vis (Mission—Matsqui—Fraser Canyon, CPC): Thank you, Mr. Chair. Thank you, Mr. Patzer.

You mentioned earlier that the enforcement of technological protection measures was originally introduced to protect copyrighted works from the entertainment industry and performing artists.

To be clear, would you agree that these mechanisms themselves are not the problem but that they are now being misused in a way that was unforeseen when the rules and maybe legislation were originally written?

Mr. Jeremy Patzer: They definitely are. Again, just the way they're defined under the Copyright Act, where it's between two computer programs, doesn't necessarily allow the flexibility and certainty they need. That's allowed some of the big OEMs to hide

behind the Copyright Act, in part because of the definition of "interoperate" within the frame of the Copyright Act. But also, when we look at TPMs and the different exemptions that are out there to circumvent, it has to be more agile to better reflect how technology has changed and advanced.

It used to be that what was thought of as a written work was a play or a novel or music, but now, in the digital world, we're seeing that it is also code written for how machines are going to operate. The first thing you do when you hop into a tractor or combine now is to accept the user terms and conditions. You don't just turn a key and go anymore, right? You have to accept what it says. When you hit that "accept" in the machine, it says that you acknowledge that you do not own the software inside that machine. Therein lies part of the problem because copyright is based on ownership. If you don't own the software, you don't own a copy of it, and therefore basically you do not have the right to make a product interoperate. That's why we got the exemption included in this bill: to allow people to circumvent a TPM for the sole purpose of making a product interoperate with another product.

Mr. Brad Vis: Well, maybe on that point, you're suggesting there's some form of monopoly starting to take shape and getting in the way of competition and innovation, that basically there's a danger that our copyright law is working against its original intention and the spirit of protecting copyright in the first place.

You gave one example of a tractor, but what other examples can you provide, real-world examples, of where this takes place?

Mr. Jeremy Patzer: Again, in their original form, the original goal of TPMs was to provide certainty for artists but also to help make sure there were more products, more written works available to the general public. That is, in essence, the goal of both copyright law and TPMs.

Again, it just comes to those aftermarket pieces, right? Those don't necessarily have to be on the agricultural side. They can be in any industry you look at. If you have a tractor, a piece of mining equipment or a piece that might be used on the forestry side of things, that's where you're going to buy those other products to do your work because they're more specialized to the industry you're working in. When you look at it from the technological side, there's the simple analogy to a computer mouse or other pieces you're trying to put together to build something, and quite often there can be a barrier there, too.

For all intents and purposes with this particular bill, our focus is the agricultural side, but the benefits do definitely exist for many other industries as well.

• (1705)

Mr. Brad Vis: How does it work if the company has terms of service for using the software in a product, which they still own, and which are treated as something separate from the physical hardware of the same product? You see an issue with how the software ownership works in the context you've provided already.

Mr. Jeremy Patzer: Exactly. Basically, right now, in order to make products interoperate, you have to get over a whole separate hurdle. You have to have a digital box that's going to do the work for you, because you can't access that software since right now the act doesn't allow you to do that. Again, you're just trying to get the signalling information you need to send signals back and forth. That's all these people are looking for. But you can't get that information easily. If things are based on getting licences, you're always at the whim of a software update and a software upgrade, and then you have to repurchase or reapply to get those licences and those agreements. That's where creating a system and an environment in which people have that ability and regardless of how many software updates come out they can access that information by circumventing the TPM becomes important. That's what we're trying to create here.

Mr. Brad Vis: Thank you, Mr. Chair.

The Chair: Thank you very much.

[Translation]

Go ahead, Ms. Lapointe. You have five minutes.

Ms. Viviane Lapointe (Sudbury, Lib.): Thank you, Mr. Chair.

[English]

MP Patzer, you and I have the opportunity to work together. We're both members of the natural resources committee, to which mining and forestry are very important sectors. In your opening statement, you talked about those sectors and about how you've had some engagement with them and how they've indicated that this bill would be beneficial to them.

Can you expand on that point?

Mr. Jeremy Patzer: Yes, for sure. I can't pull a company name off the top of my head right at the moment. You think about attachments that would be needed for say, road construction. If you are looking at the mining industry, there are going to be different components and pieces that you might be able to get. People are always selling different teeth, for example, for mining. There might be a different piece that they're going to be able to attach to a machine that would use that.

It's making sure that there's innovation in different sectors. That's where it matters.

There are different loader attachments, for example, for forestry, with grappling hooks, different things like that, which would provide a better function. It's more geared towards a specific use. The main OEMs don't always have that niche or specific thing in mind. They make a general product and try to use that for other purposes.

When you have these short-line companies that specialize in making just mining equipment or agricultural attachments or road construction equipment or attachments that are going to help with road construction...that's what this bill is aimed at trying to do.

Ms. Viviane Lapointe: During our study on Bill C-244, there were opposing views on the bill. Original equipment manufacturers have been quite opposed to right-to-repair frameworks for a number of reasons. They cite safety concerns and IP theft.

What are your thoughts on this?

Mr. Jeremy Patzer: Part of it is the right to innovate...or the safety concerns. A lot of that comes down to enforcement in other jurisdictions. It's not copyright that would be the enforcement mechanism for a lot of those things. Safety isn't copyright. When you're talking about motor vehicle safety acts or environmental protection, that's not the Copyright Act.

Both Bill C-244 and my bill, Bill C-294, which we're talking about today, are not going to allow people to alter or make substantive changes to an already existing piece of equipment. When you look at the very definitions of "diagnose", "maintenance" or "repair", you're maintaining it to what the original state was or you're repairing it to the original state. In order to do that safely, you have to be able to access information to restore it to the original state.

What we're trying to do with my bill is to make more products available to the consumer to use, to have the choice and the options for what they want. Again, that's not going to violate environmental protection laws. It's not going to alter motor vehicle safety. There are standards in place that still have to be respected.

All of these companies are certified companies; they're making good products. Are there going to be some bad actors or other people who are black market or whatever? Yes. With or without this, that's going to exist.

• (1710)

Ms. Viviane Lapointe: Do you think there should be classes of products that are exempt from this bill?

Mr. Jeremy Patzer: No, I don't. I think the bill respects the protections that people would have, again, for developing proprietary software. When you look at various industries, part of what makes one product possibly superior to another is that they might have some cutting-edge software that they use to operate a machine, or how it calculates things or does things for them. It's not about providing access to that proprietary software. It's more about making sure that people have the information they need to build the attachment that is required for that machine anyway.

Going back to my farming example, John Deere makes a John Deere header, but you can also buy a Honey Bee, a MacDon, a New Holland. You could buy lots of different types of headers that are going to attach to the front of it.

Exempting one group over the other, I don't think is what we're looking at. We're trying to create an ecosystem where people can innovate and do so without fear of having the Copyright Act chasing them down because they unlawfully circumvented TPM. This provides the protection that the big companies want and need, but it still also provides a certainty for the short-line guys to do the work that they want to do.

Ms. Viviane Lapointe: Quickly, it's becoming more and more apparent that the Copyright Act was not designed for our current digitized world. I think I heard you say that OEMs do take advantage of the Copyright Act to protect their own financial interests.

How would your bill better protect consumers but also give them that wider range of choice and options?

Mr. Jeremy Patzer: What this does is get towards the manufacturers. This bill is about allowing manufacturers to access the information they need to make a product for the end consumer.

If our innovators don't have an environment in which they can do what they do best, which is to innovate and drive that innovation level higher, that will reduce the amount of choice that consumers have. We want more and more choice. We want more products available for consumers, so we need to create an ecosystem in which they can do that.

Again, when the Copyright Act was implemented in 2012, it met the needs and the demands of the day, but as we all know, the minute you buy a phone, it's obsolete. The Copyright Act also needs to recognize that things have changed since 2012. The review is under way. There are going to be changes coming, and this is one of many things that need to be done to update the Copyright Act. Hopefully we can get this done before the updates are done.

[Translation]

The Chair: Thank you.

Over to you, Mr. Lemire.

Mr. Sébastien Lemire: Thank you, Mr. Chair.

This is my last turn, Mr. Patzer, so I have a challenge for you. It's the same challenge you gave me when you were speaking to your bill. I'm talking about saying the word "interoperability" in French three times in a row.

[English]

Mr. Jeremy Patzer: Interoperability, interoperability, interoperability.

Mr. Sébastien Lemire: *Non—en français!*

Some hon. members: Hear, hear!

[Translation]

Mr. Sébastien Lemire: It's a bit harder in French. It was a tongue-twister for me, and we had a bit of a laugh, so I just wanted to get even.

I'd like you to comment on the technology of tomorrow. We can all agree that we will become increasingly reliant on artificial intelligence, digital technology, quantum technology and all the rest.

How much will your bill help us prepare for the massive influx of these technologies into the market?

How might it help us protect ourselves from being invaded by different technologies from other countries?

Do we have to have the same technologies, which would boost their ability to flood the Canadian market? If not, would less interoperability protect us, at least when it comes to artificial intelligence?

• (1715)

[English]

Mr. Jeremy Patzer: Yes, as industry grows and develops, changes do happen. This bill is hopefully going to help industry and manufacturers to be a little bit more nimble, a bit more agile.

That being said, this will happen, and then a year or two down the road, something else will happen, and then more changes will be required.

I do feel that my bill is a good start to getting the Copyright Act and just technology in general on a better path to being able to better change and adapt to technology as it changes and emerges. You're right: as artificial intelligence becomes more prominent and has a bigger role to play, our existing framework isn't going to match that, so we are going to have to make some changes.

My bill is one step of many steps that I think are going to be needed to properly address that, so there is definitely more that can and should be done when it comes to changes. If we try to do them all in one private member's bill, it probably will never pass. That's why with our private members' bills we chip away a little bit at a time to hopefully get us into a better spot so we can be more agile and respond better to changes like that.

AI is definitely going to present a very unique and interesting twist and challenge to all of this, but I think my bill puts us into a better position to be able to respond to that.

[Translation]

Mr. Sébastien Lemire: Thank you for your initiative on this.

The Chair: Thank you.

We now go to Mr. Masse.

[English]

Mr. Brian Masse: Thanks, Mr. Chair.

I just want to briefly say this.

Mr. Patzer, you were pulled early in the draft—it's like winning the lottery—and so was I. You didn't come forth with a motion.

For those who are watching this, a motion is non-binding in the House of Commons. It can be, depending on whether or not the government lives up to it, but most of the time it's not.

You've put together serious legislation on something, and I just want to commend you for that because you're making the most of your opportunity, and it's not the easiest path to go down.

I'll just conclude by saying that, Mr. Chair, because it's not to say that when a member uses their opportunity for a motion it's wrong; it's just that doing that is entirely different, and this is a different road to go down for you and your staff. I just want to say thank you for doing that.

Mr. Jeremy Patzer: Thank you for that.

Yes, you're right. When we get these bills early in the draw, or when people use motions, sometimes motions and even private members' bills are used for partisan reasons. This bill is non-partisan. It doesn't matter what party you're from or what part or region of the country you're from. It's a concept that I think we can all get behind, because it doesn't benefit one region over another.

I did have a study done on the benefits of interoperability, with an overview of the western perspective, but when we looked at it, we also looked at the financial implications that it has not just for Saskatchewan, Alberta and Manitoba, but also for Ontario and Quebec. We looked at where all these small manufacturing companies exist. They're all across the country.

When you're looking at agricultural manufacturing companies, there are physically more of them in Ontario per capita. Most are in the Prairies, for sure, but there are more companies in existence in Ontario. There are some in existence in Quebec. There are some—not very many—in existence in the Atlantic provinces as well.

When you look at how big and vast agriculture is, for example, you see that it touches every province and every province uses it. For this bill, again, I come at it from an agricultural perspective, so it has that benefit for ag, but it's going to have that benefit whether you're in the fishery, in forestry or in mining. The benefits are there. For technology in general, the benefits are going to be there and realized with this bill.

We tried to design it in a way so that it didn't matter what party you're from, you could support it, because at the end of the day, this bill is about trying to do what's right not just for one industry but for all of industry and for the entire country. It's born from people who live in my riding, but at the end of the day, it's geared towards the entire country.

I view it as a nation-building project, right? When you look at manufacturing products in Saskatchewan, you see that we have a use for Quebec aluminum and we have a use for components that are manufactured in the Windsor area and are going to be used to build the greater piece that you're going to be attaching. This is a good way and, post COVID as well, this is a regulation that's going to help to drive the economy back into full force and help us fulfill the potential we have here in Canada for a more active and robust manufacturing sector. This helps us to support the key industries we have in this country.

The Chair: Thank you, Mr. Patzer.

Mr. Williams, you have five minutes.

Mr. Ryan Williams (Bay of Quinte, CPC): Thank you very much, Mr. Chair.

For people who perhaps are watching, and maybe even for some people in the room, can you explain the difference between interoperability and another bill that we're looking at for the Copyright Act, which is right to repair, something we're studying today. In other words, does interoperability interoperate with right to repair?

Some hon. members: Oh, oh!

• (1720)

Mr. Jeremy Patzer: As for the mechanism of what the two bills are doing, they're very similar. The concept is definitely a lot different, but the mechanism for how both are going to be achieved is very similar, right? With regard to interoperability, it's driving innovation. It's driving competition going forward. The right to repair bill is more so about a product that's already in existence and about making sure that people have the choice to repair where they need to.

I'm going to focus on my bill in a sense, though, when we look at our rural communities and at what this means to all the small towns all across this country that have these small manufacturing shops in existence. It might be a town of 200 people, but that shop might employ half the town, and because it employs half the town, the benefits to the rest of the community are there, because you have people buying groceries in the grocery store.

In Frontier, the town I grew up in, there were 300 people, but we had two independent grocery stores. The Co-op had just a gas station. That was it. Now, in lots of places, the Co-op is your grocery store, your gas station and your lumberyard. It's everything.

In Frontier, because we have a company like Honey Bee in existence and had Friggstad Manufacturing prior to that, it allowed private industry to grow and to thrive. For a lot of our small towns, it's fantastic that we have the Co-op to keep things going, but these other companies do exist. Other private industries do succeed and do thrive. That's what we want to focus on with this bill, because it helps to preserve those companies and those businesses that exist in the small towns and also incentivizes new ones to open up. Hopefully, they'll do so. If they're going to be in a city, great, but if they want to be out in a small town somewhere, where they can have the room to operate, yes, there's a need for them in the small towns too. Hopefully, this will keep the ones that are there but also incentivize more to want to join the market.

Mr. Ryan Williams: Besides Frontier and the rest of Canada, what other jurisdictions in the world have implemented interoperability? Is the U.S. working on this? Has Europe completed this? Which jurisdictions have studied this?

Mr. Jeremy Patzer: The Americans have a completely different mechanism for how they would get an exemption from a TPM. There's a copyright librarian in the U.S. that has already carved out an exemption for agricultural manufacturers to be able to circumvent TPMs to make their products interoperate. There is an atmosphere in the United States for some manufacturers to be able to do what we're trying to do with this bill here. It's a different mechanism, but it puts us at the same capacity as what the U.S. has in terms of getting that exemption to circumvent the TPMs.

Mr. Ryan Williams: How long are those exemptions good for?

Mr. Jeremy Patzer: I believe in the U.S. it's every three years. Every three years you have to go back and reapply or prove your case as to why you still need to be able to circumvent that TPM.

Mr. Ryan Williams: Have you studied that in Canada? If it's the copyright librarian in the U.S., what's the equivalent here in Canada?

Mr. Jeremy Patzer: I don't know if we have a comparable thing, but maybe through an order in council they might be able to do something to that effect. I'm not entirely sure. I think that would be where they might be able to have something similar.

Mr. Ryan Williams: Europe has implemented this. Is that right?

Mr. Jeremy Patzer: In the European Union, I don't know how fully integrated it is at this point, but yes, they're continuing to push the issue on it. France has a framework they're working on, as does Australia. There are other places that are working on this and pushing beyond even what my bill would do.

Mr. Ryan Williams: In Europe, then, looking for the restrictions, who would approve that? Have you looked at that at all?

Mr. Jeremy Patzer: Yes. I don't know their mechanism off the top of my head. I'd have to go back through my documents and see what they did, but yes.

Mr. Ryan Williams: Not to confuse everyone by bringing another bill in, because I think it's still important, but Bill C-27 is about our privacy legislation. I think we've heard some witnesses on the right to repair. There have been concerns or looking at the restrictions for privacy, especially around the data that sinkhole the system.

This is copyright law, so it's not privacy law, but is there anything we would be using, looking at Europe with the GDPR and the Americans with their state privacy law, in interoperability that would be interoperable with the Bill C-27 that we're bringing to Parliament?

Mr. Jeremy Patzer: I think the words we use when we draft legislation are extremely important. When we say that the sole purpose for this bill is to interoperate, it respects that there are certain parts of software that aren't going to be accessible to the short-line manufacturer. It does ensure that there's still that privacy component, but it will still protect the end-user's privacy too.

Again, this is more so around manufacturing, so it shouldn't be as much of an issue. The general privacy concerns that would arise from this are going to be around the proprietary software that OEMs do have. Because of the wording we're using in this bill to make sure that it's the sole purpose to make a product interoperate, it will protect certain data.

• (1725)

Mr. Ryan Williams: Okay.

This is the last question, sir. Does any jurisdiction in the world oppose interoperability? Have you heard of any companies or anyone opposed to this? Has this generally been approved by every jurisdiction that's looked at it?

Mr. Jeremy Patzer: Of the ones that are looking at it, yes, they're looking to figure out how they can be more open with this. Yes, it's been approved in most places that have done it. I'm not

aware of anybody who's looked at it and said no thanks. I think everywhere it's been looked at, they've implemented something or are actively moving to implement something.

The Chair: Thank you very much.

For our last round of questions, we go to Mr. Dong.

Mr. Han Dong (Don Valley North, Lib.): Thank you, Chair.

MP Patzer, thank you very much for bringing this forward. Very much like my NDP colleague Mr. Masse, I admire your determination and the energy you're putting into this bill.

Earlier you talked about a comparison or similarities with Bill C-244. Can you break it down a little bit for the audience? What does your bill do that is different from Bill C-244?

Mr. Jeremy Patzer: Yes. Bill C-244 allows you to circumvent a TPM for the purpose of a product that would make something...or allow you to have a device that would diagnose, maintain and repair. There's an ability to circumvent a TPM to accomplish that. With my bill, the circumvention of the TPM is so that you can access the information you need to make your product interoperate. The information you would be getting to make your product interoperate wouldn't be used for right to repair. It would only be to make your product interoperate with another.

Again, it's trying to get the signalling information from a combine to make all the components on your header work. That way, you can change the speeds. Just the way technology has changed, a header is a lot more complex than it used to be. You need that signalling information.

That's what these companies are looking for. This bill enables them to circumvent a TPM to get the signalling information they need to make their product work, whereas right to repair is to get the data you need to be able to diagnose, maintain or repair a product.

Mr. Han Dong: Right.

Mr. Jeremy Patzer: It's similar but quite different in the same breath.

Mr. Han Dong: Part of the reason I'm asking this is that, during the testimony from different witnesses on Bill C-244, we heard quite a bit of concern around warranties and whatnot. Would this void warranties? What's your view on that?

Mr. Jeremy Patzer: Well, there are a few issues there. Obviously, if somebody tells you that you can only repair here, that's anti-competitive. Tied selling is also not allowed. There's already a framework against tied selling. If you're going to say that if you buy this machine, you can only use this product on it, that's tied selling. You're technically not allowed to do that in this country.

It's the same with warranty. As a consumer, when you buy a product, you have the right to get that fixed wherever is suitable for you. Now, whether you're going to your local repair shop or to the OEM repair shop, both technicians are going to be certified technicians. They know how to work with individual components, right?

When you're innovating, when you're building something, innovation is quite often born from necessity. Many farmers are the ones who have developed and built a product because they realize, in using other products, that, boy, those don't actually match the needs of what they need on their farms.

Again, going back to the example of Honey Bee, the company started in two brothers' shop on their farm in Bracken, Saskatchewan. They wanted to build a product that actually worked better for what the growing conditions were. They had many other products that they built just out of their shop, too.

Many companies have that same start, where it's like, "This issue isn't.... I can't do this, or I can't do that." Then it's like, "Okay, well, I'm going to make the product that is going to do that."

My bill is about allowing people like that who think like that to have the capacity to be able to identify a problem and make a product that's going to fill the gap. It allows them to do that. With their being able to do that, it also pushes the big guys to make better products, as well, because people are going to buy other products. Everybody starts making better products because you get the small guy making a product that is superior to the big guy's. Then the big guy has to step his game up, too.

• (1730)

Mr. Han Dong: I represent an urban community. We don't have large manufacturing in my riding. We don't have farming equipment producers right now. I know we can make the argument that everything is connected, but what kind of benefit would my constituents see if this bill does pass?

Mr. Jeremy Patzer: In the digital world, I mean, interoperating.... Take your phone and see how many devices you can connect to with your phone. Make your phone do work on something else. That in and of itself is interoperability right there.

When you look at the digital scape, there are a lot of different things out there. This would help drive innovation in the digital sense, as well. Smart homes, making your home more efficient....

Mr. Han Dong: The Internet of things.

Mr. Jeremy Patzer: Yes, the Internet of things. There are definitely benefits there to be had.

You know, at the end of the day, if you're in an urban riding like yours, basically all of the products that the people in your riding have come from rural Canada or rural somewhere because the food had to be produced somewhere. The products used to build their homes didn't just come from the hardware store; they, obviously, came from out in the forest somewhere. It's about enabling industry outside of the city to do what needs to be done to allow those products to flow into the city, into the urban areas. That way consumers and users have products. They have choice. They have innovation that can be utilized. Again, it's not always going to be combines and headers. It might be your phone and the way it airplays to your

TV, the way that it connects to your Chromecast. It might be different things like that.

Again, this bill is just about driving innovation. It's making sure that if you want to have a product that's on here that's going to work on a completely different brand name.... It might help and aid with that because that's interoperability. It let's you get the information you need from that product to make your product work with that product.

Mr. Han Dong: Sounds good. Thank you.

Thank you, Mr. Chair.

The Chair: Well, that concludes the first hour.

Thank you, Mr. Patzer, for your thoughtful presentation to the committee. On behalf of all of us, I commend you for your work on this. We look forward to studying it in more detail.

I will now briefly suspend for us to prepare for the second hour.

• (1730)

(Pause)

• (1735)

[*Translation*]

The Chair: Honourable members, we are back.

[*English*]

Pursuant to the order of reference of Wednesday, October 5, 2022, this is Bill C-244, an act to amend the Copyright Act (diagnosis, maintenance and repair). We are going to go through it clause-by-clause.

I want to highlight that we have with us, from the Department of Industry, Patrick Blamar, director, copyright and trademark policy directorate, joining us by Zoom; and Pierre-Luc Racine, policy adviser, copyright and trademark policy directorate, also with us by Zoom, to answer any questions we may have.

You are all familiar with the process. It's not the first time you have gone through this, and hopefully it will go smoothly as we go through clause-by-clause.

We have gone through this only once, so bear with me. I am still relatively inexperienced.

(On clause 1)

The Chair: Shall clause 1 carry?

Mr. Rick Perkins: Yes.

The Chair: Thank you, Mr. Perkins.

[*Translation*]

Go ahead, Ms. Lapointe.

• (1740)

Ms. Viviane Lapointe: Thank you, Mr. Chair.

[*English*]

I had some IT issues.

I would like to recommend that we remove this clause in its entirety. The Copyright Act already prohibits the circumvention of TPMs. When we talk about “work”, it includes computer programs. The clause is unnecessary and the recommendation is that it be removed.

The Chair: There is a proposition to remove clause 1 entirely.

Yes, Mr. Perkins.

Mr. Rick Perkins: I have a question. Isn't it adding “computer program”? The underlying part of the bill is the new part of the provision in the act, right?

The Chair: There is a proposition by Madame Lapointe to vote down clause 1 of Bill C-244. Do we need to go through a vote, or is there a—?

Mr. Andy Fillmore: I could take a—

The Chair: Yes, Mr. Fillmore.

Mr. Andy Fillmore: Thanks so much.

When you're writing public policy and so forth, you try to avoid duplication. Duplication creates confusion and opportunities for misunderstanding.

The point is that this clause in particular is unnecessary because it already exists in the Copyright Act. It's already considered under the term “work”. This is, again, good housekeeping, good clean public policy writing. It shouldn't be in two places simultaneously.

There doesn't appear to be any need for it at all. As this bill itself amends the Copyright Act, why would you amend an act to add something that duplicates something that's already in the act? It's just clean housekeeping to avoid confusion.

The Chair: Okay.

Monsieur Masse.

Mr. Brian Masse: I just want some interpretation on whether that is the only repercussion of that. If not, I am not going to support that at the moment.

I want that independently verified either by our analyst or legislative clerk.

Mr. Andy Fillmore: Why, you don't believe me?

Mr. Brian Masse: It's not a question of that. It's just that I've looked at your other decisions and I might believe you, but I may not want to do what you want me to do.

The Chair: Thank you.

Perhaps we can direct that question to Mr. Blonar or Mr. Racine.

Do you want to jump in?

Mr. Patrick Blonar (Director, Copyright and Trademark Policy Directorate, Department of Industry): Thank you, Mr. Chair.

Ultimately, if you look at section 2 of the Copyright Act, there is a definition of “literary work”, which is a subset of works that includes computer programs. Adding “computer programs”, then talking about “works and computer programs”, has the potential to create some confusion in the act about whether “works”, in this section, includes computer programs, in general.

A voice: It's inconsistent wording, in other words.

The Chair: Does that clarify it? If there are no further questions, I will proceed.

Shall clause 1 carry?

A voice: On division.

The Chair: I'll go to a vote, then. I'll presume it's a no from the Liberals.

(Clause 1 agreed to: yeas 6; nays 5)

(On clause 2)

The Chair: Thank you. We're now moving to clause 2.

We have G-1.

Go ahead, Mr. Fillmore.

• (1745)

Mr. Andy Fillmore: Thank you, Mr. Chair.

I'll try to put this in the simplest terms I can. I've done some work trying to “de-legalese” it a little. I might look to some of our friends—Mr. Blonar or Mr. Racine—to help us.

The Chair: Mr. Fillmore, I'll interrupt you for one second. Before you go more in depth, I'll advise colleagues of the following.

[*Translation*]

According to legislative counsel, if the government amendment is adopted, CPC-1, CPC-2, CPC-3, CPC-4 and BQ-1 cannot be moved because of a line conflict. I want everyone to be clear on that before we move on.

Over to you, Mr. Fillmore.

[*English*]

Mr. Andy Fillmore: Thank you.

As you can see, the title of this amendment is removing the exception to the device prohibition. I want to explain what that's about.

CUSMA features three categories of TPMs, of those measures. The first one is the service prohibition. The second is the device prohibition. The third is the circumvention prohibition.

Now, when you look at those three prohibitions with regard to the diagnosis, maintenance and repair issues that this bill is focused on, CUSMA actually limits Canada to only introducing an exception from one of those three TPM prohibitions that I've just listed, namely, the circumvention prohibition. CUSMA only allows this bill to have a circumvention prohibition.

The challenge this amendment addresses is that Bill C-244, in clause 2, currently includes an exception to another of the three prohibitions—the device prohibition—and, as I've said, that exception is not permitted under CUSMA. The amendment eliminates that problematic exception, and I will say that the bill's author is supportive of the amendment as well.

If we look at the three proposed paragraphs that we're talking about here, in the first, subsection 41.121(1), this change makes it clear that the exception only applies to a “work”, “performance” or “sound recording” that forms part of a product in need of repair or maintenance. In other words, it applies to the circumvention prohibition.

If we go to the next proposed one, which is 41.121(2), this is called the “for greater certainty” paragraph. It reads:

For greater certainty, subsection (1) applies to a person who circumvents a technological protection measure in the circumstances referred to in that subsection for another person.

The purpose of this change is to provide certainty that the exception would apply to owners of products and third party repair assistance. It just supports the exception that we've created in the first part.

The third one is actually a new one: 41.121(3). It's called “the non-application paragraph”. It says:

A person acting in the circumstances referred to in section (1) is not entitled to benefit from the exception under that subsection if the person does an act that constitutes an infringement of copyright.

In other words, you don't get to have the act apply to you if you're doing the wrong thing. This change clarifies that the exception applies only if it does not constitute an infringement of copyright. This is important, because it not only helps to ensure that the bill is compliant with CUSMA, but it also builds support for Bill C-244 from copyright owners.

It's a complicated one, but really, it's just about bringing this into alignment with CUSMA, eliminating what I will call the “illegal exception” and putting in place the permitted exception, which is, again, the circumvention prohibition.

• (1750)

The Chair: Thank you, Mr. Fillmore.

Go ahead, Mr. Williams.

Mr. Ryan Williams: It seems clear. It seems like it's a good exception. The problem with it is that when we look at an act, is it nimble or dynamic enough for any exemption? The example I would give is that if there is a trade agreement that is changed, if something were to change with CUSMA or any other trade agreement, you'd have to reopen the act to change the exemptions.

Amendment CPC-1, which we're going to deal with next may look at a better way to look at exemptions, and what we're trying to do. I brought that question to Mr. Patzer here during interoperability on what other jurisdictions are doing for exemptions that is more nimble or dynamic, meaning that, in the U.S., it's the copyright librarian, and every exemption is reviewed every three years.

There might be a better way to do that. In that case, for this one, because it's not nimble or dynamic, we risk putting fences around

any kind of exemption within the bill without having a different method in which we can deal with exemptions. You'll see in the next one. I recommend that it's the minister. Maybe there's a better way we can do that, but in the U.S., when they do look at this, it is reviewed by the copyright librarian every three years. If we put fences on exemptions, like this does.... It's not like they're bad exemptions but if they were to change, you'd have to reopen the bill to change the exemptions, and that's a lengthy process. That is not easy to do.

It's simpler to have a different process. I'm not suggesting a tribunal or anything more cumbersome than maybe having an order in council or having the minister look at exemptions, rather than having it embedded in the bill.

For that, we're going to vote no to this one, perhaps just because I think that there's a better process we can look at.

The Chair: Yes, Mr. Fillmore, and then I'll go to Mr. Lemire and Mr. Masse.

Mr. Andy Fillmore: I wonder, Mr. Chair, if you might invite the officials to offer an opinion on the importance of the amendment.

The Chair: Sure.

Mr. Blonar, do you want to intervene?

Mr. Patrick Blonar: Absolutely. Thank you very much, Mr. Chair.

I think, ultimately, the objective here is to be as compliant with our international obligations as possible. Ultimately, it is our view that the inclusion of the device, the ability to trade in devices or to provide devices that allow for circumvention is not consistent with our CUSMA obligations.

It's a pretty complicated issue within CUSMA because of the way it's framed across multiple different articles. Ultimately, there are three different types of prohibitions contained in CUSMA. One is a prohibition on access to works protected by TPMs. The second is a prohibition on providing services that are mainly for the purpose of accessing works or circumventing TPMs. The third is to provide devices that allow for the circumvention of TPMs.

One concern that we have is that.... Sorry, I'm just going to take a step back.

There are some specific exclusions that are listed within CUSMA. There's a set of seven of them. Unfortunately, none of those actually address repair. Repair falls under a catch-all provision. That catch-all provision only allows exceptions to circumvention of the first of those three restrictions, which is to access.

The fact that Bill C-244 and, I believe, many of the other motions maintain that device prohibition creates problems for CUSMA compliance.

• (1755)

[*Translation*]

The Chair: Thank you, Mr. Blonar.

We now go to Mr. Lemire.

Mr. Sébastien Lemire: Thank you, Mr. Chair.

I have a technical question.

If BQ-1 is deemed out of order, would it be possible to somehow turn it into a subamendment to G-1?

I ask because the Entertainment Software Association of Canada raised concerns in a letter it sent the committee. The association is concerned about Bill C-294's impact on the video game industry and requested an exclusion for video game consoles because the nature of the industry is such that it produces data that can be copied and exported online.

They need a specific exclusion. Obviously, it's not the same as repairing a tractor. There are legal precedents in some U.S. states, including Washington.

I think this is important because it's about protecting the content and intellectual property of numerous video game companies. Not only do they have a presence in almost every province in Canada, but they also are part of a flagship industry in Quebec.

The safety and security of consumers and data are at stake. Gaming platforms are increasingly moving to the web, so removing this safeguard would make it possible to copy and share games. This has repercussions for the funding of the video game industry because companies could see their intellectual property being copied.

For that reason, I propose including our amendment in G-1, between proposed subsections 41.121(1) and 41.121(2). That would exclude the video game industry.

The Chair: All right.

Next on my list, I have Mr. Masse, Mr. Patzer and Mr. Dong, in that order.

Go ahead, Mr. Masse.

[*English*]

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

I will try to do this politely, but I think it needs to be raised.

I'm comparing this process with what I've done on my private member's bill and others. I have had very little communication about this bill. We've had a couple of meetings here at committee. This amendment tells me that the government is basically tanking this piece of legislation. It's essentially gutting the bill. It has such a temperance against what we need to do.

I mentioned, during Mr. Patzer's previous testimony... I didn't even mention the Inflation Reduction Act in the United States. I've heard for a long time the fearmongering about our being against CUSMA, USMCA, or whatever you want to call it. Again, they have the Buy American Act, along with softwood lumber, dairy and buy local. I didn't even mention the 18% tariff on solar panels.

They're even going against our syrup. There is a series of things going on.

At the same time, it's always said that, if we put in something a little more bold—it's at this stage in the House, right here—we are going to affect our trade relationship with the United States.

I am not going to capitulate, here. I really believe this is....

Again, I haven't had much communication. I don't know whether the member supports this or not. I don't understand why there's a significant amendment like this to a private member's bill, at the last minute. It's quite shocking.

I am going to continue to advocate for real changes. I can't support this amendment. Again, I feel this indicates—I am not trying to be rude.... The reality is that I believe the government is tanking this piece of legislation. That's just how I feel, because, when I look at how other members approach their bills, how communication was done for this one, and so forth.... When you have all of this, it reduces the bill to a motion, in my opinion.

I am not going to support the amendment.

Thank you.

The Chair: Before we move to our next speaker, I'll remind you there is a subamendment on the floor, right now, by Mr. Lemire, which we'll have to rule on before we move to G-1.

Debate can continue.

I have Mr. Dong, then Mr. Patzer, if I am not mistaken.

Mr. Han Dong: Thank you, Mr. Chair.

First of all, could you clarify whether the subamendment is to the proposed government amendment?

• (1800)

The Chair: I apologize, Mr. Dong.

I believe Mr. Lemire has not formally proposed the subamendment, but he might at a later stage.

Mr. Han Dong: Could I ask Mr. Lemire to clarify that?

Is the subamendment to the government's amendment?

[*Translation*]

Mr. Sébastien Lemire: I would like to insert our amendment after proposed subsection 41.121(1) in G-1, so just before subsection 41.121(2). Proposed subsection 41.121(1.1) in BQ-1 reads as follows: “(1.1) Subsection (1) does not apply to video game consoles or to their components or peripherals.”

The Chair: Is everyone clear on Mr. Lemire's subamendment? It looks like it.

[English]

Wait one second, because I see a hand from someone who wants to speak. I am not sure whether he is done. Then, I have Jeremy.

[Translation]

Please hold on.

[English]

We just want to clarify how we can properly frame Mr. Lemire's subamendment.

Mr. Han Dong: Mr. Chair, I have a point of order.

There is a lot of talking happening among us, and with staff. May I ask for a suspension of about five minutes?

The Chair: Okay. We'll suspend for two and a half minutes. That gives you 50%.

• (1800) _____ (Pause) _____

• (1810)

The Chair: Friends and colleagues, let's resume. It's been a longer two and half minutes than I had anticipated.

A voice: [Inaudible—Editor]

The Chair: Yes, I'm liberal with my time. Very good.

[Translation]

Do you want to move your subamendment, Mr. Lemire?

If so, I'm going to ask the analysts to make sure that everyone understands what you're proposing.

Mr. Sébastien Lemire: As I said, my subamendment reuses the language in BQ-1.

The proposed language in item (a) of BQ-1 would become subsection 41.121(1.1) and read as follows: “does not apply to video game consoles or to their components or peripherals.”

Furthermore, subsections 41.121(3) and 41.121(4) being proposed in item (b) of BQ-1 would become subsections 41.121(4) and 41.121(5).

Is that clear?

The Chair: It's clear to me.

[English]

Is everyone clear on what the subamendment moved by Mr. Lemire is?

I will ask our legislative counsel to explain it again. With his wealth of experience, maybe it will be a little clearer.

Mr. Scott McTaggart (Committee Researcher): Thank you, Mr. Chair.

For Mr. Perkins, who is looking at me, I'm just going to read what amendment BQ-1 by Mr. Lemire would do.

Basically it reads that amendment G-1 be amended by adding after paragraph 1 the following: “(1.1) Subsection (1) does not apply to video game consoles or to their components or their peripherals”.

That would be the first change.

The second change by BQ-1 would add new subsections (3) and (4) to amendment G-1.

• (1815)

The Chair: Essentially it incorporates BQ-1 into G-1.

Are there any comments on the subamendment moved by Mr. Lemire?

Mr. Masse, then Mr. Patzer and Mr. Perkins.

Mr. Masse.

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

I won't be supporting the subamendment. I understand the intent is to protect the video game industry, which I am well versed in as a player and as a legislator, so I appreciate that. I can understand why it is that we do punch above our weight in the video game industry. I come from the auto sector. We watched it wither away. The video game sector is important.

The bottom line for me is that this essentially would gut the bill. It really would require another piece of legislation to come to the chamber either through a private member's bill or another government bill and we would start all over again.

For those reasons, I will not be supporting the subamendment, because it would go as a package deal with the main amendment which then would make this process not fulsome for Canadians.

Thank you.

[Translation]

The Chair: Thank you, Mr. Masse.

Over to you, Mr. Patzer.

[English]

Mr. Jeremy Patzer: I have listened to many of the same concerns, and I've read through all the briefs that the committee has received as well. I don't think it's in the right spirit of the bill to start installing goalposts or setting markers down on certain industries, because then the next industry is going to come in and say they need this, and then the next one is going to come in.

Who else are we going to have to prescribe this for right now if we start picking favourites as to who is and who isn't going to be allowed and exempted from this?

To Brian's point, I see the danger of what adding little bits in like this is going to do the bill. I'm afraid that, yes, it would gut the bill.

The Chair: Mr. Perkins.

Mr. Rick Perkins: I also sympathize what Mr. Lemire is doing. HB Studios, a large gaming company, is in my riding, in Lunenburg. It's an important employer and player in my riding.

As Mr. Patzer said, we heard a lot of testimony, but it wasn't exhaustive from every industry. There are a lot of other industries, I'm sure, that would have enjoyed an opportunity to be before this committee, discussing whether they should or should not be included in a legislated exemption. That's why we've proposed some other amendments further down that deal with giving the government a little more authority and flexibility to explore this a little more. I'm not keen on an individual callout.

I preface this by saying I'm not a lawyer, and I'm certainly not a copyright lawyer, but the third point in this amendment, proposed subsection (3), is the one that's the most bothering. In my reading of it, that's the one that basically says you can't benefit from a right to repair, which means I can't do it. I'm not sure why an amendment counter to the intent of the bill is in order. To me, it appears to run totally contrary to the intent of the bill, which is to allow the right to repair. That paragraph basically says no.

I'll be opposing the amendment, not because I don't support the gaming industry being protected from this, but because I think the broader proposal is a problem.

[Translation]

The Chair: Thank you, Mr. Perkins.

Are there any other comments before we vote on Mr. Lemire's subamendment?

• (1820)

[English]

I'm giving my colleagues some time to make sure.

There are no more speakers, so we'll move to the vote.

Shall the subamendment proposed by Mr. Lemire carry?

I'll ask the clerk to proceed to the vote.

Mr. Han Dong: Oh. We're voting. What Mr. Patzer said—

The Chair: Mr. Dong, I'm sorry. I offered the opportunity to speak to the subamendment. We are voting now, so the answer we're seeking is yea or nay.

Mr. Han Dong: I'll abstain.

The Clerk of the Committee (Mr. Michael MacPherson): It's five and five.

[Translation]

The Chair: I'm being told that, as chair, I must vote against the subamendment, so that other amendments can be moved.

(Subamendment negatived: nays 6; yeas 5 [See Minutes of Proceedings])

The Chair: That brings us to the main amendment, G-1, moved by Mr. Fillmore.

Are there any comments before we proceed with the vote?

The floor is yours, Mr. Perkins.

[English]

Mr. Rick Perkins: I just wonder if officials would agree with my interpretation that the third paragraph basically makes the right to repair not possible.

[Translation]

The Chair: Go ahead, Mr. Blanar.

Mr. Patrick Blanar: Thank you, Mr. Chair.

[English]

Is that the third paragraph of G-1?

Mr. Rick Perkins: That's correct. It's new proposed subsection 41.121(3) in G-1, in the original motion.

Mr. Patrick Blanar: Okay.

No. If anything, it clarifies that a right to repair is permissible so long as there is no copyright infringement. It actually goes very much to the point, I believe, that many of the other...and especially amendment G-1, which seeks to ensure that, at the end of the day, you have the right to circumvent the TPM for the purpose of repair, but that right is limited in that if it involves copyright infringement—which is completely distinct from the TPM circumvention—you then cannot exercise the TPM circumvention or the exception if your purpose is also to infringe copyright.

[Translation]

The Chair: Go ahead, Mr. Lemire.

After that, we will hear from Mr. Patzer.

Mr. Sébastien Lemire: In parallel, what is the real impact of proposed subsection 41.121(3)?

Does it conflict with subsection 41.121(2)? Subsection 41.121(2) seeks precisely to circumvent the circumstances in question relating to technological protection measures for another person.

Mr. Patrick Blanar: Subsection 41.121(2) seeks to broaden the exception by making sure that third parties can carry out repairs on behalf of the product owner. Really what it's doing is broadening the right.

Subsection 41.121(3) seeks precisely to ensure that, if the purpose ultimately infringes on copyright, the exception does not apply and protection measures are not permitted for infringement.

• (1825)

Mr. Sébastien Lemire: Let's go back to the much-cited John Deere example.

Can the tractor be repaired or not if the company considers it to be a copyright infringement?

Does subsection 41.121(3) override subsection 41.121(2)?

Mr. Patrick Blanar: You wouldn't be allowed to copy the software and start distributing it. That said, as long as the software licence stays in the user's hands, we believe the repair would be allowed.

Mr. Sébastien Lemire: Thank you.

The Chair: Thank you, Mr. Lemire.

Go ahead, Mr. Patzer.

[English]

Mr. Jeremy Patzer: From what I understand, the original intent of Bill C-244 was to somewhat broaden how the Copyright Act applies. Just from reading amendment G-1, it talks a lot more about “performer's performance fixed in a sound recording”. Again, it's talking a lot more about musical works. It's not recognizing or realizing that that's not necessarily what we're talking about here.

The vagueness of the Copyright Act is that a work can be anything. It can be computer code. It can be a musical piece. It can be a book. It can be a museum and archives. That's the vagueness issue with the term “work”.

I think the original intent of Bill C-244 was to try to address that vagueness. I feel that this amendment doesn't fix that problem with regard to what Sébastien was just asking about: “Does this enable somebody to fix a John Deere tractor?” I mentioned this earlier. When you hop in that John Deere tractor and hit “start” on the screen, it's expressly written right there that you do not own a copy of the software. You have a licence to operate it, but that licence does not give you the ability to access that software. What this bill was originally intended to do was to allow a repair shop the ability to import a device that would allow somebody to get the information they'd need to complete the repair on that tractor.

The amendment that's been provided here by Mr. Fillmore.... I feel like it's completely gutting the entire purpose of trying to get a right-to-repair bill because, again, it doesn't address the vagueness of the term “work”.

I'll leave my comments there for now.

I guess the only other thing I would add is this—and this would be my question: Do you, as the experts, have any comments on that? Would you like to comment on that?

The second point I'd like to touch base on is that, obviously, there are 14 or 15 states in the United States that have already passed and implemented right-to-repair legislation. What's stopping those states from...? They're obviously not concerned about CUSMA. Is that because it's done at the state level and not the federal level? If it were a province doing this, would it be at risk of violating the trade deal? If so, what's the difference between an individual state's doing it versus what we're doing here today?

Mr. Patrick Blonar: If I may, Mr. Chair....

First, the definition of a “work” in the Copyright Act is, in fact, very broad. That is why we believe that by talking about “work, performer's performance fixed in a sound recording or sound recording to which” we actually cover the entire universe of the types of works that could be covered and that could be protected. Thereby, we believe this actually better covers and provides more clarity over the ability to circumvent a TPM for the purpose of repair.

This actually doesn't try to restrict it. It is using, as you've said, the broad definition of a work in the Copyright Act and using it to empower the section.

With respect to the distinction between what's happening at the federal level in the U.S. and the state level, at the federal level they have created exceptions for the copyright law. The librarian of copyright has created certain exceptions for the circumvention of TPMs in order to allow the circumvention of TPMs. These do not create a positive right to repair. All they do is clear a barrier that could be created by the copyright law. This is to enable, at the states' level, if they wish to create positive rights to repair.... At that point, that could be achieved.

We're seeing some of that happening in some states where they not only are relying on the exception in the TPM regime but are going further by mandating that parts, repair manuals, and potentially contracts don't prevent people from actually being able to effect repairs on their devices.

I think it's worth remembering that, in the Copyright Act, all we can do here, really, is eliminate a potential barrier to repair.

• (1830)

The Chair: Thank you very much.

Did you have any follow-up, Mr. Patzer?

It has to be a quick one, if you do. We are almost out of time.

Mr. Jeremy Patzer: We heard from Mr. Fillmore about putting this in. If the original one was going to put us offside with our trade deal, my question is on what the States is doing.

Now that the barrier is removed at the federal level in the U.S., are the individual states in contravention of CUSMA, or is what they're doing perfectly allowable? What makes what we're doing here not allowable in contrast to what the States is doing?

The Chair: Mr. Blonar, I'm not sure we are going to have the time because we have a hard stop at 6:33.

An hon. member: Let's vote.

An hon. member: No, I think we should wait. There's more clarity required.

The Chair: If there's still debate, I can't put it to a vote. I had Mr. Dong who wanted to speak.

You, Mr. Perkins, raised your hand earlier.

In any event, we'll have to adjourn. Hopefully there can be discussions amongst the parties during the two weeks of constituency meetings that we will have, and then we can come back and proceed swiftly on Bill C-244.

On that note, thanks to everyone—the analysts, the clerk, the interpreters, the support staff, everyone.

Thank you very much. Have a great two weeks.

The meeting is adjourned.

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