

HERITAGE COMMITTEE

APRIL 2010

I'd like to thank the committee for the opportunity to appear today and to acknowledge the daunting task facing its members as it makes its way through this process.

As some of you may know, I am a singer and composer, and the sole owner of my one-artist record label Quinlan Road, which encompasses both audio and visual production companies.

I have often been characterized as one of the early artists who went 'independent' as I began my career in 1985 busking on the streets. After 5 years of a do-it-yourself approach, I signed a licensing agreement and now have a mixture of licensing and distribution deals around the world with a variety of companies. These have realized sales of over 13 million recordings. Presently, not only do I continue to function as an artist, but I also manage both the creative and business side of the operations of Quinlan Road on a daily basis and on an international level.

I appear today out of concern for present and future creators of many disciplines and their respective industry infrastructures. What I hope to offer the Committee is a bird's eye view from a smaller player in the music business, who in this way stands somewhat apart from my colleagues presenting here today.

I have been fortunate throughout my 25 year career to own and control all aspects of my recordings and image rights. Subsequently, my revenue sources exist not only through CD or digital sales, but through performance revenues and licenses. Because of the way I have invested in my career and business, it has allowed me to own my masters and directly license them for use in film, theatre, dance or other kinds of media. At the same time, this does not prevent me from granting permissions without fee in selective situations.

It is very difficult to look to the future in new digital technology without establishing a firm consensus on the real value of intellectual property and who actually owns it. For years it has been clearly established and accepted that the individuals who create it own it, and the medium in which it is experienced does not diminish that principal.

USER RIGHTS

Which brings me to the novel and newly crafted term of 'user rights'. It is my view that we should be extremely careful with this kind of language, because it isn't a matter of 'user rights' but rather 'user permissions'. Once we dispel the notion that in this respect there is no such thing as user rights, or that people own

the music in a CD or a digital download, we can cease worrying about how to 'balance these rights.' Many things the public wishes to do with what they purchase can all be accomplished within the framework of permissions and personal use.

In my company, we confront the new business realities every day and we have been hard at work trying to offer new products in new ways and fully leverage the new technologies, but I am here to tell you that making predictions and investments is impossible without some stability in the fundamental recognition and protection of intellectual property.

And it is not just my own revenue stream that is affected, but the jobs of many talented people I have employed over the years.

They would include: recording studios who no longer exist, engineers who specialize in recording classical or acoustic instruments, technicians, their suppliers and administrative staff, graphic artists, photographers, make-up artists, mastering companies, CD manufacturers such as Americ Disc in Quebec, retailers large and small, many now defunct such as Sam the Record Man, or printers such as the Stratford Beacon Herald, publicists, travel agents, airlines, musical equipment suppliers, insurance companies, and local media advertising outlets, caterers, merchandisers, lawyers, accountants and on it goes.

And I know there are those who advocate a proposed business model which would see artists touring all of the time. Not only is this not always viable, (either from a monetary sense or from a human sense once people start having families), but for many artists such as myself, touring was always a loss leader in order to promote my recordings. Even now, parts of the touring industry are starting to see the erosion of their businesses. This has an impact on venues, promoters, their local crews and even popcorn sellers who are all struggling to stay alive.

Nor should one be misled by equating fame with business viability as there are many famous people through the new technologies who are still unable to make a living. This can hardly be viewed as a business model.

It may be fashionable in some corners to say the arts don't really provide much employment or revenue to society, but when I look at my small company which once had 15 employees and now has five, and then extrapolate that to the whole industry, the scope of the calamity which presently exists cannot be underestimated.

How has this devastation been accomplished? Although some folks would like you to think otherwise, it is not because, like some sort of buggy whip, copyright has become obsolete and owners of content property should just "get over it". Although it might be true that we, as creators, have been slow to enforce our ownership rights, we have counted on our representative organizations, the legal

system and policy makers to protect our fundamental rights and ensure that our international obligations in this regard are upheld.

Regardless of the details of any future regulation, as the law exists now, everything recorded is copyrighted by the creator of that work, and it is not anyone else's property unless licensed or authorized in some way by the creator. Others cannot claim it and watch us scramble to claw it back.

Let me give you a snapshot from my own situation.

The ***Iso Hunt*** site has a full inventory of my audio and video catalogue. This would amount to 10 studio albums, 2 live albums and various video presentations including a live concert DVD. This site operates as a facilitator/bridge to those who want to download my music for free. As many of you will know, the business model of many websites is to offer content (which costs little or nothing to them) but which has value to the public, so that they can then sell the advertising real estate on the side.

Iso Hunt, having been driven over the Canadian border by judgments against them in the US, has recently brought a lawsuit in Canada asking for their aiding and abetting of piracy to be declared ***legal!*** In the current vacuum of uncertainty over copyright reform many operators are staking claim to territory that is simply not theirs.

The second site I would like to mention is ***Mini Nova***. When this example was brought to my attention in November of last year, they too carried my full audio and video catalogue. This site was very helpful because it proudly boasted a calculator (installed for the purposes of attracting advertising dollars) which indicated that my full catalogue had been downloaded over 4,100 times in the previous 53 days.

Of course, this does not address single album downloads, or the rest of the year, or the previous years, nor any of the other sites undertaking this practice in Canada or around the world.

It is interesting to note that at the end of November the Mini Nova site was forced, by a decision of the Court of Utrecht, to completely alter their business model to feature only those creators who deliberately wished their content distributed for no charge, or as others would put it, for 'free'. Today, the search for Loreena McKennitt will bring up several album titles with corresponding links to Amazon where one might purchase in the legitimate way.

So you see that progress ***can*** be made. And it is essential that Canada not be considered a pirate nation when it comes to both regulating and realizing the full advantage of new media. It simply cannot be right that what is produced after years of training and large investments by individuals, business and governments, will suddenly be devalued by a change in the rules.

Nor must we allow clever manipulation of language and media to create confusion in the minds of the public as to what the real issues are, especially by those who may have hidden vested interests or who operate in theory and not in the reality of actual business.

The watchdogs must be able to see through the smokescreen created by those who are operating, not by permission, not even by forgiveness, but from a strategy of taking what they can get away with before someone gives notice and takes them down.

In closing, I would like once again to thank this committee for all of their hard work and diligence and I would welcome any questions should you have them.

Loreena McKennitt, April 22, 2010