

To the House of Commons Legislative Committee on  
Bill C-32, An Act to amend the Copyright Act

Mr. Chairman, members of the Committee:

I would like to address two of the shortcomings in the draft Bill C-32, now being examined by your committee. The first is the omission of a resale royalty right for visual artists.

In the debates on this bill in the House of Commons, members of all political parties repeatedly expressed the desire to reach a balance between the rights and needs of both producers and consumers. The omission from the bill of a resale royalty right for visual artists reflects a lack of awareness of the working conditions of visual artists that will prevent such a balance from being achieved.

The profit made on the resale of a work of visual art results from the artist's accomplishment, not just in the work in question, but in creating a context for it in the totality of her career and reputation. This entails the continual production, promotion and exhibition of new works. In addition, every artist subsidizes her creative work with income from other employment or self-employment, sometimes throughout the whole of her career as an artist. Subsidies from other sources, such as government grants, are small by comparison. But when a work is re-sold, everyone involved with the transaction gets some portion of the profit, except for the artist. The janitor who cleans up after the auction sale is a beneficiary through his salary, but the artist receives nothing. This is not balanced. It is not just. In recognition of this fact, fifty-eight countries around the world now provide for a resale royalty right in their copyright laws.

The concept of moral rights, which already exists in copyright legislation in Canada and elsewhere, itself points to the justice of the resale royalty, in that it recognizes that the artist has a continuing relationship with any and all of her works in the context of her career and reputation.

I have seen the claim made in print that a resale royalty right would be detrimental to small businesses. The artist is, herself, the ultimate small business, being in most cases simultaneously employer and employee. She is also the primary producer, and without her, there are no other businesses, big or small, that will make money from works of art. Every business and every public institution whose purpose is to promote, exhibit and/or sell works of art has an interest in ensuring that the artist's skilled labour is properly recognized through fair exchange in the economy.

However, it has been the norm until very recently to exploit the artist's vulnerability in the economy by offering intangibles such as "exposure" instead of remuneration. As you know, in self-defense, artists created organizations such as Canadian Artists' Representation/ Le Front des artistes canadiens (CARFAC) to act on their behalf. I have been a member of CARFAC since 1971, and I support the "Recommendations For An Artist Resale Right In Canada" submitted to your committee in November by CARFAC and Le regroupement des Artistes en arts visuels du Québec (RAAV). The document is thoroughly researched and well presented, and includes a number of examples of widely known and recognized artists who should have had a share in the profits made by others from their labour. It also includes information on the economics of being

a visual artist in Canada today. Again, I refer to the debates in the House on this bill for numerous statements about the necessity of a healthy economic environment for artists if Canadians are to enjoy and benefit from the arts in Canada.

The recommendations made by CARFAC and RAAV include the use of the Canadian Artists' Representation Copyright Collective (CARCC) and the Society for Reproduction Rights of Authors, Composers, and Publishers (SODRAC) as collection and distribution mechanisms for the resale royalty. As a CARFAC member, I have found CARCC to be thoroughly efficient and effective in caring for my interests in contractual arrangements of all kinds associated with the exhibition and reproduction of my works.

The draft bill C-32 also falls short of the MPs stated objectives in that it does not extend the Exhibition Right to all living artists for the whole of their careers. As an example, I have a number of works in public and private collections in Canada that were produced before 1988, the year I turned forty-one years of age. I find it odd that I could have no exhibition right in the works I made up to that point, but I do have that right in the works I've made since. It may be considered practical in legal terms, but it is not at all practical in terms of my professional life.

In closing, I urge you to amend Bill C-32 to correct these shortcomings, in order to create a more balanced copyright environment for visual artists.

Respectfully submitted,

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cc. CARFAC  
CARCC  
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