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The Case for the Inclusion of an Artists Resale Right (*Droit de suite*) in the Copyright Act

What is the Artists Resale Right ?

- The Artists Resale Right (also known as *Droit de suite*) aims to provide Visual Artists with a share of revenue from sales of their work after initial sale of that work to a dealer or other buyer.
- The Artists Resale Right relates only to resales by art dealers and auction houses and covers work above a specific value.
- The Artists Resale Right would provide that Visual Artists, or their estates, receive a royalty on the resale of artworks; that royalty is usually between 3% to 5% of the price of the work, with individual payments being made to copyright collecting societies on behalf of the artists.
- The Artists Resale Right is concerned with the resale of physical entities - for example a painting, a sculpture, a work on paper - and is independent of other rights like Reproduction Rights and Exhibition Rights.
- The Artists Resale Right lasts while a work is in copyright (in Canada, 50 years after the original creator's death), thus benefiting the families and heirs of the artists.

Why do Canadian Visual Artists need the Artists Resale Right?

- Even among Artists, whose income are generally lower than average Canadians', the income of Visual Artists are among the lowest. ¹

¹ According to Statistic Canada, between 2000 and 2005, the income of visual Artists has dropped by close to 30%. Hill's Strategies reported in Feb. 2009 that the average income of a Visual Artist in 2005 was \$13 976, therefore about \$ 7000 below the poverty level.

- One of the reasons for this is that once their art works are sold for the first time, generally at a very low price, especially those of younger artists and those of First Nations artists, they will never benefit from the plus value their works acquire over time, and so won't their families.
- Even more, if their art works are resold in one of the 59 countries in the world that have adopted the Artists Resale Right, they won't benefit from this right because their country, Canada, is not part of this club of more advanced countries.
- So, while Visual Artists in other countries may hope for a better future deriving from the increase in value of their creative works for themselves and their families, Canadian Visual Artists cannot.
- A better income for Visual Artists also means an increased autonomy towards federal, provincial and territorial cultural granting agencies, as well as health and welfare systems.
- Finally, the Canadian Government, as well as the provincial and territorial governments, need the Artists Resale Right too in order to obtain a more accurate reporting of all art sales in the country, allowing thus a better collection of sales and income taxes.
- Even more, the Artists Resale Right will cost nothing to the government.

How would the Artists Resale Right work in Canada ?

- The adoption of the Artists Resale Right (*Droit de suite*) in Canada will require its inclusion in the Copyright Act.
- The Artists Resale Right should apply to works of art that are resold after the legislation takes effect ; it should not be restricted to works created after that date.
- The Artists Resale Right would cover original works of graphic or plastic art, such as a painting, a collage, a drawing, a limited edition print, a sculpture, a ceramic, an item of glassware or a photograph. This definition reflects similar arrangements in the EU and other countries.
- A bill of sale would be issued by the merchant or auction house to the purchaser for every sale of an artwork, making it obligatory to declare all sales and pay the appropriate taxes.
- When the artwork is sold again to another buyer by a merchant, an auction house or in any commercial situation, a resale right royalty of 5% would be collected before taxes and remitted to the artist or the artist's estate through a collective copyright management organization.

- The Artists Resale Right would be inalienable and unwaivable, meaning that an artist would not be able to sell or licence this right.
- Resale royalties would be paid to artists who are Canadian citizens or permanent residents, or their heirs, if they are Canadian citizens or permanent residents.
- It would cover works being resold during an artist's lifetime and for 50 years after the artist's death.
- Joint and several liability – where the seller and the other 'relevant person' in the resale are jointly and severally liable to pay. The 'relevant person' is taken to be, in sequence, the agent of the seller, or the agent of the buyer, or, the buyer.
- The Artists Resale Right would include all re-sales involving art market professionals, public institutions or organisations, and all re-sales subsequent to the first transfer of ownership, regardless of whether the first transfer was made by sale, gift or any other means.
- The applicable rate to all resale of art works in Canada after the legislation enters into effect would be of 5%, uncapped.
- The minimum resale price before a royalty is imposed could be \$1000.
- The scheme would be managed by a collecting organisation, appointed by the Canadian Government following an open tender selection process.
- Works by Canadian artists sold overseas, and works by foreign artists whose country has adopted the Artists Resale Right that are sold in Canada, would also be eligible for royalty payments under the multilateral copyright treaty, the *Berne Convention for the Protection of Literary and Artistic Works*.

Who might object to the Artists Resale Right and why ?

It is possible that private gallery owners, art merchants and auction houses might object to the adoption of the Artists Resale Right for diverse reasons.

- Claims will be made that it will hinder and eventually reduce the local market of original art works, and induce a decline in the market. In every country where it is applied this prophecy did not realize itself because the Artists Resale Right applies only on « re-sales », the secondary market, and not on the primary market (sales of original works).
- The Artists Resale Right will be presented as just another tax unfairly imposed on art collectors, but the Artists Resale Right is not a tax, it is an intellectual property royalty rewarding and encouraging creativity.

- Some will argue that buyers will refrain from purchasing art works in Canada and will purchase them in other countries. More and more countries are adopting the Artists Resale Right and in those countries who have adopted it this prophecy did not realize itself either because international movements affect only those art works whose market is primarily international in the first place. Moreover, transport and insurance costs, as well as border crossing duties and differences in exchange rates, are sufficient to protect the internal market of lesser priced local art works.
- Other opponents will present the Artists Resale Right as yet another administrative burden added to the numerous reports merchants have to fill, but it will only be just one more bill to pay to the collective copyright agency which will be in charge of locating the artists and remitting them the monies collected.
- Finally, some others will claim that the Artists Resale Right will be helping the wrong artists at the wrong time of their career, meaning those who are already « stars », but the Artists Resale Right will be helping the numerous successful artists, Aboriginal Artists in the first place, all along their career, especially when they reach their retirement.