Written Submission for the Pre-Budget Consultations
in Advance of the Upcoming 2025 Federal Budget

By

Canadian Artists' Representation – Le Front des artistes canadiens
(CARFAC)

And

Regroupement des artistes en arts visuels du Québec
(RAAV)

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Recommendation:

1. That the Government of Canada amend the *Copyright Act* to adopt the Artist's Resale Right to benefit Canadian visual artists in the secondary art market.

2. That the Government of Canada invest $1 million to educate and inform artists of their rights and all players in the art market of the existence and implementation of this new Right.

3. That the Government of Canada implement the recommendations made by the Canadian Arts Coalition, the Canadian Artist Network, and the Visual Arts Alliance during the FINA pre-budget consultation process.

Recommendation 1 : That the Government of Canada amend the *Copyright Act* to adopt the Artist's Resale Right to benefit Canadian visual artists in the secondary art market.

The **Artist's Resale Right (ARR)** is a royalty for visual artists that CARFAC and RAAV propose should be added to the *Copyright Act*. Visual artists protected under the term of copyright would receive 5% each time their work is resold for more than **$1,000** in the secondary market through an intermediary such as an auction or commercial gallery.

In 2018, the Canadian Heritage Committee acknowledged in its *Shifting Paradigms* report that the ARR would maximize Canadian artists' contributions to Canada's economic growth and productivity. In 2021, the Mandate Letters to the Ministers of Canadian Heritage and Innovation, Science, and Industry included the directive "to amend the *Copyright Act* to further protect artists, creators and copyright holders, **including to allow resale rights for artists**." In 2022 and 2023, the Department of Canadian Heritage conducted extensive consultations, roundtable discussions with stakeholders, and a public opinion poll to support this initiative.

Adding the ARR to Canadian law would contribute to **a more sustainable cultural workforce without ongoing costs to the government**. The ARR is a royalty, not a tax. The government would not collect it, nor would it be disbursed by the government. Furthermore, the government would not be involved with collecting, distributing, or monitoring the payment of royalties. We recommend that a copyright management organization collect and distribute royalties for administrative and financial simplicity. **We propose that Copyright Visual Arts - Droits d'auteur Arts visuels** take responsibility for this task, as they are the only copyright management organization that exclusively represents visual artists in Canada. They have over 30 years of experience distributing exhibition, reproduction, and reprography royalties.

In 2011 and 2018, CARFAC and RAAV submitted briefs, and we gave presentations to the Standing Committees on Canadian Heritage and Innovation, Science, and Industry, asking the Federal Government to add the Artist's Resale Right to the *Copyright Act*. We have also submitted briefs with the same request to the Standing Committee on Finance since 2013.

We respectfully request that the Federal Government fulfill its Mandate Letter commitments and introduce ARR as an amendment to the *Copyright Act* through the Federal Budget, ideally in the 2024 Fall Economic Statement.

How does ARR respond to challenges faced by visual artists?

The ARR will assist in addressing poverty experienced by many Canadian visual artists. According to the 2016 Census, over **21,000 visual artists** in Canada work in mediums such as painting, sculpture, printmaking, photography, and more. **Half of visual artists earn just $20,100/year** from all sources of income, including the day jobs that most artists need to

support themselves. This is less than half of what the average Canadian worker earns and 18% less than other types of artists. In Canada, **66% of visual artists are self-employed workers**, and their creative income often varies significantly among different sources from year to year.

The ARR is a royalty that enables artists to share the wealth they create, mainly for others, in the marketplace. It is common for art to grow in value over time as the artist's reputation grows. For example, renowned Inuit artist Kenojuak Ashevak sold *The Enchanted Owl* in 1960 for $24. When it was resold at auction in 2018 for $185,500, Ashevak received nothing from this secondary sale. Artworks like this grow dramatically because of career-long dedication and output contributed by artists throughout their careers.

The pandemic exacerbated the income disparity between artists and most Canadians when cultural organizations closed their doors and opportunities to exhibit and sell art dried up. The rising cost of living has compounded this issue. The ARR will provide a marketplace solution to visual artists recovering from the pandemic by expanding sources of much-needed income for artists whose works sell on the secondary market.

The Artist's Resale Right is particularly beneficial to Indigenous, senior, and female artists and aligns Canada with our trade partners.

The ARR is an opportunity for economic reconciliation for Indigenous artists. The median annual income of Indigenous visual artists is only **$13,500**, and the exploitation of First Nations, Inuit, and Métis artists is common in the secondary commercial market. Artwork is often purchased directly from an artist at a low price, only to be sold again later at a much higher value without compensation to the artist. The ARR will help correct this wrongdoing and ensure Indigenous artists will share in the profits made on their work. In 2015, the Inuit visual arts and crafts economy in Canada contributed over **$64 million** to the Canadian GDP; much of this value includes works of art sold in the secondary market, and these artists deserve compensation**.**

Canada has an aging population. It is often taken for granted that artists thrive once they become established. However, even established, senior artists struggle to make a living from their art. Since most artists are self-employed **without employer contributions to CPP and EI**, saving for retirement or collecting pensions is difficult, if not impossible. Studies from other countries where ARR exists show that senior artists receive significant revenues from the ARR. It would provide greater financial independence for our senior artists, many of whom are in need.

The ARR would increase the income potential of female Canadian artists. According to Hill Strategies' study of the Canadian Census, *Demographic Diversity of Artists in Canada in 2016*, **56% of visual artists are women with median earnings of $17,509**. Female artists such as Kenojuak Ashevak, Daphne Odjig, Mary Pratt, Milly Ristvedt, Dorothy Knowles,

and Wanda Koop make profitable art in the secondary market and deserve an equitable share of those sales.

There is international precedence for the ARR. France first implemented it in 1920, and we base our proposal on best practices from over 90 other countries, including Australia, the United Kingdom, and all European Union members. More recently, Korea and New Zealand have implemented legislation in the last two years. The ARR is an opportunity for Canada to align with our international partners, especially as it is often an item of discussion in trade negotiations.

Canadian artists would receive royalties from secondary sales of their work here and in countries with reciprocal legislation. According to a recent report from CISAC, 50 million Euros were collected worldwide in 2022, reflecting a 7.2% increase from 2021 sales.

Australia is a positive case study on the benefits of the ARR and how it can benefit Indigenous artists, in particular. Since 2010, over **$14 Million (AUD)** has been distributed to over 2,700 Australian artists, from nearly 32,000 sales of art in Australia alone**.** According to Copyright Agency in Australia: "Artists use resale royalties to pay for studio costs, materials, and other expenses. It helps them to keep making art. Over **$1.4 million** in resale royalties was generated by the scheme in 2021/22. The number of artists benefitting from resale royalty continues to grow, with over 200 artists having their first resale royalty in 2021/22. Artists' estates use resale royalties to pay for publications and activities that support our ongoing engagement with the artist's work. It is often the only income they receive. 65% of the artists who have had a resale royalty are Aboriginal and Torres Strait Islanders. They have received 40% of the royalties, and of the 50 artists who have received the most resale royalties, 18 are Aboriginal and Torres Strait Islanders. Artists say receiving reports of their resales keeps them involved in the journey their art is taking and is useful for provenance, and it supports them to create new work. The scheme has a strong impact in remote and regional locations with 35% of the artists residing in the Northern Territory and central Australia."

Further details about our proposal are available through CARFAC and RAAV.

Recommendation 2 : That the Government of Canada invest $1 million to educate and inform artists of their rights and all players in the art market of the existence and implementation of this new Right.

While the Federal Government would have no ongoing program costs to administer and distribute the ARR, the Australian government provided start-up funding to help Copyright Agency establish a collecting mechanism. It is recommended that Canada should provide compensation to help COVA-DAAV prepare for the management of this new right, and that all stakeholders are well informed about their rights and responsibilities. It is expected that start-up costs will be incurred between the time the law is passed and royalties are collected and paid.

Recommendation 3 : The Government of Canada implement the recommendations made by the Canadian Arts Coalition, Canadian Artists Network, and Visual Arts Alliance during the FINA pre-budget consultation process.

In particular, we support the recommendations that:

- the budgets of the Canada Council for the Arts and the Department of Canadian Heritage be increased by $140 million and 130 million respectively;

- the Federal Government provide a Basic Income Guarantee for all Canadians, which visual artists may have access to a social safety net that employed workers may access;

- professional artistic income up to $10,000 be eligible for a refundable tax credit of 15%, and that income averaging be reintroduced to ensure tax fairness for creators; and

- that Fair Dealing be amended in the Copyright Act in the context of education, so that it only applies to visual and literary artworks when they are not commercially available under a license by the rightsholder or a collective society.

Further details about these recommendations are available through CARFAC, RAAV, and the above-mentioned organizations.

In conclusion, CARFAC and RAAV request to appear before the Finance Committee during its Budget Consultation, and we look forward to presenting our recommendations to the Committee.

About Canadian Artists' Representation – Le Front des artistes canadiens (CARFAC):

Founded in 1968, CARFAC is Canada's national professional membership association with 4,000 visual artist members. We believe that artists, like professionals in other fields, should be paid fairly for their work, and we educate the visual arts community about artists' economic and legal rights.

About the Regroupement des artistes en arts visuels du Québec (RAAV):

With over 1,600 members, RAAV is the only association legally mandated to represent visual artists in Quebec. The main mission of RAAV is to work in the improvement of the living conditions and professional practices of artists in visual arts in Quebec.