

U.S. Copyright Office

101 Independence Ave. S.E.

Washington, D.C. 20559-6000

To Whom it May Concern;

As a visual artist and graduate student pursuing a Master in Non-Profit Administration at Baruch School of Public Affairs, I welcome the opportunity to comment on the current legislation aimed at introducing *droit de suite* into U.S. law. Examples of artists *not benefiting* from the downstream increase of the value their work as a result of resale are easy to find. For instance on November 13, 2012, Sotheby's auctioned off Takashi Murakami's "The Castle of Tin-Tin for \$4,226,500. Originally, the work was sold for \$25,000 at Blum & Poe in Los Angeles in 1999. While both the collector and Sotheby's benefitted from the spectacular increase in the value of the Mr. Murakami's work, Mr. Murakami received no royalty. My gut instinct is to agree with Thomas Goetzl when he stated "Why should artist be the only socialists in this capitalist society?"

Visual artist do not receive the remuneration that is available to song writers, composers, authors, and playwrights. The Equity for Visual Artist Act (EVAA) attempts to offer visual artists a royalty collection scheme that works similar to schemes used by authors of other creative works. The sales of posters, postcards, and other copies of original works of visual art are not substantial sources of income for visual artists. Income from display of work is also limited because the original is held by the collector.

The EVAA as presented has serious flaws. This resale royalty is to be calculated on the gross sale of art work at auction. The threshold price for the *droit de suite* is set for sales in excess of \$10,000. The auction houses that are required to collect such a premium of 7% are art resellers with proceeds in excess of \$25M. The net royalty, once the arts right society has deducted fees will be split between artist and non-profit museum purchase funds. This EVAA scenario is an honorable attempt to balance the benefit between artist and the art auction market. However, in its attempt to maintain the robust auction market and provide a share of a percentage of the profit to artist, the EVAA will miss a large number of resale transactions in the U.S. that occur privately and in smaller galleries. Both of the studies by Tom Camp (1980) and Jeffrey C. Wu (1999) indicate a resale market based on the proposed law will compensate a very small percentage of successful artists late in their career. A law that *benefits a tiny percentage of the intended recipients* is not good public policy.

A system whereby all galleries are required to register all sales transactions and make this data public might have a beneficial effect on the art market. This type of transparency is, however, not a requirement of this legislation.

I respectfully submit that the Equity for Visual Art should not be voted into law unless there are substantial revisions: 1. The rate of 7% is too high and should match the rate set by EU Directive 2001/84/EC. 2. The royalty should be calculated on the net profit between the first and subsequent sales and all sales of visual art work at professional galleries, auction houses, and for-profit museums should be made public. The balance that always exists within copyright law is between fair remuneration of the author and providing works to the public domain.

Sincerely,

Robert Telenick

Grandview-on-Hudson, NY