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Comment to the U.S. Copyright Office

On the Federal Resale Royalty Concept

California Lawyers for the Arts (CLA) supports the concept of a federal resale royalty for visual artists. CLA, then Bay Area Lawyers for the Arts, advocated for the passage of the California Resale Royalty Act, which was enacted in 1976. Our organization has worked to defend the law vigorously because we believe that it provides an important economic incentive as well as remuneration for visual artists whose work increases in value over time. Through US copyright protection, statutory and industry standards, musical, literary and performance artists benefit from the continuous resale of their works. Singularly, visual artists have not had a national framework for reaping such rewards. More than 80% of the visual artists who responded to our recent survey about the resale royalty said that the law is an important incentive for them to continue working as a visual artist.

California Civil Code Section 986, the California Resale Royalty Act, provides that an artist is entitled to a resale royalty of 5% if the work is resold for a profit and for a gross sale price of at least \$1,000. The royalty can only be waived in a written agreement for a higher royalty. The work must be an original work of visual art (defined as a painting, drawing, sculpture or original work of glass) if the seller resides in California or the sale takes place in California. The artist must be a US Citizen or a California resident for at least two years.

Arguments that this law would drive the art business outside the state have not been validated over time. A federal resale royalty law will obviously eliminate any remaining arguments that the resale royalty interferes with interstate commerce. Furthermore, a federal law would align the United States with Article 14ter of the Berne Convention, "Droit de Suite" in Works of Art and Manuscripts, which provides the following provisions:

- (1) The author, or after his death the persons or institutions authorized by national legislation, shall, with respect to original works of art and original manuscripts of writers and composers, enjoy the inalienable right to an interest in any sale of the work subsequent to the first transfer by the author of the work.
- (2) The protection provided by the preceding paragraph may be claimed in a country of the Union only if legislation in the country to which the author belongs so permits, and to the extent permitted by the country where this protection is claimed.
- (3) The procedure for collection and the amounts shall be matters for determination by national legislation.

It is time for the United States to take its place in the community of nations on this issue

Alma Robinson,  
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