



**Comment submission for the
*Equity for Visual Artists Act of 2011 (EVAA)***

submitted to the U.S. Copyright Office

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From

**The Society for reproduction rights of authors,
composers and publishers in Canada (SODRAC)**

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The Society for reproduction rights of authors, composers and publishers in Canada (*Société du droit de reproduction des auteurs, compositeurs et éditeurs au Canada/SODRAC*) is a collective management society that represents the music reproduction rights held by a significant roster of authors, composers and publishers of national and international musical works. SODRAC also manages all copyrights in Canada for more than 40,000 Canadian and international creators in the field of visual arts and crafts. SODRAC exclusively represents the copyrights held by members of the U.S.-based Artists Rights Society (ARS) and the Visual Artists & Galleries Association Inc. (VAGA), in addition to those held by some 30 other societies around the world. ARS represents the copyrights for SODRAC members' artistic works in the U.S. under a reciprocal representation agreement.

SODRAC supports the comments submitted by ARS for the *Equity for Visual Artists Act of 2011*. Rather than simply repeating ARS's highly relevant remarks concerning the importance of adopting a federal resale royalty right in the U.S. so that visual artists can benefit from residual payments for their works, as do creators in other sectors, we would like to offer our own perspective on the adoption of resale royalties in the U.S. and Canada with a view to building on synergies between the Canadian and U.S. art markets.

Currently, no provision is made for artist resale royalties in Canada's *Copyright Act*. However, during the recent legislative review process that led to the adoption of the *Copyright Modernization Act* (S.C. 2012, c. 20) on June 29, 2012, SODRAC and various other organizations representing visual artists argued in favour of adopting a resale royalty right in Canada. It should be noted that the introduction of artist resale royalties was not among the measures proposed by the Canadian government to achieve the specific objectives that it had established for this legislative reform, which was primarily aimed at adapting the legislation based on issues relating to the digital economy.

Most of the arguments in favour or against a resale royalty right put forward during the recent legislative review in Canada were similar to those expressed in other parts of the world when artist resale royalties were being adopted, e.g. in the UK. These arguments include the need to restrike a balance in favour of visual artists whose works are resold without their benefiting in any way from the increase in their works' value. Fears (which in the U.K. recent example turned out to be unfounded) were also expressed that the art market would relocate to a country in which a resale royalty right did not exist or would be seriously affected by the introduction of resale royalties.

However, in November 2011, in briefs submitted during the process of adopting the *Copyright Modernization Act*, the Art Dealers Association of Canada (ADAC) and the Contemporary Art Galleries Association (*Association des galeries d'art contemporain/AGAC*) agreed, while noting that the resale royalty right has not yet been adopted in the U.S., that the U.S. is the main export market for Canadian artistic works.

In turn, the works of U.S. artists also find a natural market in Canada. For example, some important U.S. galleries from New York and Los Angeles are a recurring presence at the annual event Art Toronto, also known as the Toronto International Art Fair, where hundreds of artworks are sold to collectors from across Canada and the U.S. each year. In addition, Canadian museums regularly acquire U.S. works, while Canadian auction houses take a special interest in certain American artists. Furthermore, if the U.S. represents a market of choice for the initial sale of Canadian artworks, some U.S. collectors also choose to entrust the resale of these works to Canadian auction houses, which organize auctions dedicated to Canadian art, as often illustrated by the provenance of the works listed in their sales catalogues.

In Canada, various studies demonstrate that visual artists' revenues derived from their artistic practice generally come from sales on the primary market, from leasing out their works, from copyright royalties for use of their works, from commissioned works, from professional fees (e.g. for speaking at conferences) and from grants. Artists derive only limited benefit from the initial sale of their works, compared with resale, which often generates significant financial gains that accrue exclusively to collectors, auction houses and art galleries. In addition, commissioned works, fees and grants are all limited or sporadic revenue sources that tend to diminish over time.

As regards copyright, in other artistic sectors, the execution or public representation of creative works and the mass sale of reproductions thereof enable creators to authorize use of their works in exchange for often substantial copyright royalties. In contrast, visual artists, due to the fact that their works are generally produced only once, do not benefit from copyright royalties to the same extent. In addition, although Canada adopted in 1988 a public exhibition right for purposes other than the selling or leasing of works created after June 7, 1988, this right and other rights to use works are now being challenged by certain museums that question the utility of purchasing artworks, when the public exhibition, reproduction and public communication of these works requires subsequent copyright negotiation and potential royalty payments.

These issues highlight the importance of ensuring that visual artists reap the financial benefits associated with not only with the use, but also the resale of their works for as long as they are copyright-protected. In the end, opponents of resale royalties are usually those who profit from the increase in a work's value and it is only fair that they be responsible for paying resale royalties.

The potential adoption of a federal resale royalty right would allow American visual artists to receive additional compensation when their works are resold in the U.S. In an international context, since resale royalties must exist in national legislation in order for artists to benefit from the resale of their works in a foreign country, the adoption of a federal resale royalty right in the U.S. would also enable American visual artists to collect resale royalties if their works were resold in other countries where a resale royalty right already exists.

In addition, in the perspective of harmonizing markets and legislative frameworks between U.S. and Canada, the adoption of a federal resale royalty right by the U.S. will no doubt be a major factor in favour of its adoption in Canada. As in the future, Canada's *Copyright Act* will be reviewed every five years, SODRAC will continue to make representations aimed at ensuring the adoption of resale royalties, thereby benefiting visual artists in Canada and in all countries that have introduced a resale royalty right, including, as we hope, visual artists in the U.S.