

The undersigned, Javier Gutiérrez Vicén, General Manager of Visual Entidad de Gestión de Artistas Plásticos (VEGAP), I make representation before the U.S. Copyright Office and with regard to the instigation of the resale right in the United States, present in this written submission the following

DECLARATIONS:

One. Regarding the art market in the United States and the positive effects of recognition of the resale right

The art market in the United States occupies a prominent position in the country's economy. There are well-known museums and cultural institutions which hold major art collections, while sponsorship activities are likewise firmly established.

As a result, in our opinion recognition of the resale right represents a particularly favorable element for the US art market and its stability, and even its development to the extent that it provides incentives for plastic artists to continue with their creative activity.

Two. Regarding the situation of the resale right in the United States

Under the terms laid down in the Proposed EU Directive on the resale right, a public consultation process was staged in the United States in 1992 with regard to the suitability of introducing the resale right at the federal level, in accordance with the 1990 Visual Artists Rights Act. This consultation was, among other aspects, based on the experience of California, which has had regulations in this field since 1977, along with those of France, Germany and Belgium with regard to the practical effects of receipt of the right. The corresponding Copyright Office report reached the conclusion that there were not sufficient economic and political grounds at that time to introduce the resale right in the United States. However, according to the aforementioned report, Congress could be forced to reconsider the introduction of this right in the event of harmonization in the European Community, as indeed did occur as a result of the approval of Directive 2001/84/EC, on the resale right for the benefit of the author of an original work of art.

Likewise, the Copyright Office prepared a model intended to facilitate application of a system which would better serve to protect artists, without thereby causing any substantial harm to the interests of the art market.

The report was drawn up by Mr William F. Patry, following a study undertaken both in the United States and in Europe. The study was performed by conducting numerous surveys among artists, art dealers, auction houses, art collectors, investment consultants and museum curators.

Two hearings were held, the first on January 23, 1992, in San Francisco, and the second on March 6, 1992, in New York.

Information was also gathered in European countries, both through societies representing the authors involved, and at the Commission of the European Communities.

This study took into consideration the existing background in the United States. Both the Resale Royalty Act of the State of California of 1976 (which establishes that 5% of the resale price is

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payable to the author of the work if it is resold in California or beyond California by a resident in California), and also the bills sponsored by Congressman Henry Waxman in 1978 and Senator Edward Kennedy and Congressman Edward Markey in 1986 and 1987.

The conclusions of the study revealed that the Copyright Office did not thereby recommend the introduction of the Resale Right into US domestic law.

Nonetheless, bearing in mind the possibility of harmonization of the Resale Right within the European Union, the Copyright Office recommended that the Congress of the United States should revisit the issue in the future, in particular if the European Union were to establish the harmonious extension of the right with regard to EU countries, as indeed did occur by means of the approval of the aforementioned Directive 2001/84/EC.

The Copyright Office in any event suggested that, should Congress decide to include the Resale Right in federal law, the model should have the following characteristics:

- Mandatory collective management of the resale right, recommending the specific characteristics contained in the French and German administrative models.
- Application at an initial stage only to sales undertaken at Auction Houses.
- Establishment of the percentage, on the basis of the experience of the State of California, at between 3% and 5% applied to the resale price, rather than the profit generated.
- Extension of the period of protection to 50 years after the author's death in accordance with the period of protection for other economic rights. However, if the European Union were to decide to extend the period of protection to 70 years after the decease of the author (as has indeed occurred), then it would be justifiable to grant a similar period of protection.
- The benefits for heirs would follow the same rules as for economic rights.
- Application of the right to foreign authors on the basis of reciprocity, in accordance with the Bern Convention.
- Provision that the right could not be alienated or waived.
- Extension of the right to all visual creations recognized under paragraph 101 of the 1990 Visual Artists Rights Act, with one exception, solely in the case of unique or limited edition works, the proposal in this latter case being that the right apply only in the event of editions of no more than 10 new copies.
- No retroactive rights.

Bearing in mind that the resale right applies in all member countries of the European Union pursuant to Directive 2001/84/EC, on the resale right for the benefit of the author of an original work of art, it would be consistent to take into consideration the recommendation of Mr Patry, who was commissioned to prepare the study, and to recognize this right in the United States by means of the bill presented.

Three. Conclusion

In light of all the above, it is our belief that, following harmonization of the resale right in the European Union with the approval of Directive 2001/84/EC, this right should be recognized in the United States, and that this would have very positive consequences in that it:

1. Re-establishes a balance between the economic situation of the authors of graphic and plastic works, whose distribution rights are terminated upon the sale of their original work, and that of other authors, who benefit from the successive exploitation of their works.

2. Guarantees authors an appropriate and uniform level of action, in that it contributes to artworks being valued as an additional source of human creation expressed by means of one single material medium.

3. Makes an economic contribution to the development of creative activity by plastic artists.

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These are the arguments which I, on behalf of Visual Entidad de Gestión de Artistas Plásticos (VEGAP) present before the U.S. Copyright Office.

Madrid, November 29, 2012



Mr Javier Gutiérrez Vicén
General Manager

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