



# Recommendations for an Artist Resale Right in Canada

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## Executive Summary

Canadian Artists' Representation / Le Front des artistes canadiens (CARFAC) is incorporated federally as an association that is the national voice of Canada's professional visual artists. The Regroupement des Artistes en arts visuels du Québec (RAAV) is the professional association that represents and collectively defends the interests of the visual artists of Québec. CARFAC and RAAV are partners in defending artists' economic and legal rights, and educating the public on fair dealings with artists. Together they represent all artists in Canada, as sanctioned by the Status of the Artist Act. As such, CARFAC and RAAV are certified as the sector representatives for over 18,000 visual artists, 4,000 of whom are members of the associations.

As part of their core mandate, CARFAC and RAAV are concerned with improving the economic condition of visual artists, and to help them achieve a living income. In 1988, CARFAC's lobbying resulted in a federal *Copyright Act* Amendment, which recognizes artists as the primary producers of culture, and gives artists legal entitlement to public exhibition royalties. In the last two years, we have closely examined campaigns undertaken in other countries which accomplish this through the legislation of a *Droit de suite*, or Artist Resale Right (ARR). The ARR entitles an artist to receive a percentage royalty payment from all subsequent public sales of their work.

It is common for visual art to appreciate in value over time, and in countries where the ARR is not in place, the artist does not benefit financially from further sales of that work, even though its increased value is usually based on the experience and reputation of the artist. For example, acclaimed Canadian artist Tony Urquhart sold a painting, *The Earth Returns to Life* in 1958 for \$250. It was later resold by Heffel Fine Art auction house in 2009 for approximately \$10,000. Similarly, his mixed media piece, *Instrument of Torture*, originally sold in 1959 for \$150, fetched \$4,500 in the same auction. Without an ARR, the artist did not benefit from the increased value of his work.

Article 14 of the Berne Convention, to which Canada is a signatory, recognizes that creators of works of art have the inalienable right to benefit from the resale of their works in countries that provide for this in their copyright legislation. CARFAC and RAAV put forward that the *Copyright Act* be amended to include an ARR that would be an inalienable and non-transferable right in the original artwork, giving the creator an economic interest in successive re-sales of the work concerned.

## **Overview of the Artist Resale Right**

The Artist Resale Right (ARR) entitles visual artists to share in the ongoing commercial successes of their work by entitling them to a percentage of the sale price each time their work is resold through an auction house or commercial gallery. The ARR was first introduced in France in 1920. This initiative was subsequently widely adopted by the European Union, and today, 59 countries world-wide (see Appendix A) have endorsed the ARR. In September 2001, the European Parliament and the Council of Europe issued a directive requiring member states to institute the ARR in their copyright policies. A number of European countries – including, recently, the United Kingdom and Ireland – have introduced it into their legislation. In North America, California has adopted such a provision, and Australia recently adopted an ARR into legislation.

An implication of the ARR is that it allows for a significant income potential for Canadian artists, who currently rely primarily on other sources of income to make a living, and secondly on sales and exhibition fees. The establishment of this new right will allow artists to achieve a more sustainable living income based on the value of their own work, and in a way that will not be taxing on public funding availability. The ARR provides a valuable income source for artists; in the UK alone, over £10.5 million in resale royalties have been collected for over 1800 artists since 2006. The development of an ARR in Canada will put Canadian artists on a more equal footing with artists in other countries which already have it and have benefited from its implementation.

## **An Artist Resale Right for Canada**

### **How the Artist Resale Right benefits Canadian artists**

The ARR is of particular importance to Canadian visual artists because the average income of an artist is low and their income potential is even lower than that of artists from other disciplines. Between 1990 and 2005, the average earnings of artists decreased by 11% while the earnings of the average labourer increased by 9%. Visual artists, by comparison, earn 61% less than the average Canadian worker, and their average earnings (\$13,976) are much reduced from the \$18,700 reported in 2001.<sup>1</sup> Visual artists generally do not produce multiples; they are usually the creators of a singular, original object. By comparison, writers and performing artists have the ability to

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<sup>1</sup> Hill Strategies. *A Statistical Profile of Artists in Canada, Based on the 2006 Census*. (Canada Council for the Arts, Department of Canadian Heritage, and Ontario Arts Council, 2009).



**The Earth Returns to Life**

Tony Urquhart

Colborne, Ontario

Sold: November 2009

Price: Approximately \$10,000

What the artist would have received: \$500

Original selling price: \$250

disseminate mass quantities of their copyright materials through books, CD, DVDs, etc., and are thus able to receive royalty payments for as long as copies of their work sells, and as their fame grows.

Artist Adrian Göllner asserts: "The resale right is important, if not the most important right we could have. Having living artists receiving dividends when a painting resells validates their career, gives their career currency and restates the primacy of the artist in the financial equation... [The implementation of an ARR] would signal a change in how the artist is regarded in society. It would be an official validation that they, the artist, and their ideas might ascend and that if they do, then they may see a well-deserved dividend from it. Therein lies the real value: it is a change in attitude to the living artist."

While all Canadian artists would benefit from an ARR, Canada's Aboriginal artists would potentially have the most to gain. Aboriginal artists have established themselves in the international art market as a unique identity and brand, yet are losing out on the tremendous profits being made on their work in the secondary market. Many artists, particularly those living in isolated northern communities, live in impoverished conditions, while their work dramatically increases in value. This same situation motivated the Australian government to implement the ARR, after the late Clifford Possum Tjapaltjarri's painting, *Warlugulong*, sold for \$2.4 million in 2007, thirty years after the artist sold the work to the Commonwealth Bank for a mere \$1200. The artist and his estate received nothing from the recent sale.

Senior established artists would also receive the benefit of an ARR. Recent research shows that senior visual artists (over 65) have median arts earnings of about \$5,000, which is the lowest of any artistic discipline,<sup>2</sup> and that 32% of elder artists are at a high financial risk<sup>3</sup>. An initiative such as the ARR would provide a substantial benefit to Canada's senior artists, in particular. It is often taken for granted that artists thrive once they become established, but CARFAC has found that even Governor General Award winning artists find it difficult, if not impossible, to make a living from their art. The implementation of an ARR in Canada would provide greater financial independence for our senior artists, many of whom are in need. Renowned Canadian artist Mary Pratt sold a painting in 1966 for a mere \$40, which is now valued at \$20,000. As an established senior artist with growing health concerns, she now struggles to find the energy to produce enough work to maintain a decent living, and without an ARR, she is unable to benefit from the drastically increased value of her early work.

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<sup>2</sup> Joysanne Sidimus and Kelly Hill, *Senior Artists in Canada. (Senior Artist Research Project: February 2010). P.59.*

<sup>3</sup> Hill Strategies. *At Risk Senior Artists. (Senior Artist Research Project, February 2010), P.2*

## The Artist Resale Right and the Canadian Art Market

In 1999, the Department of Canadian Heritage commissioned a study on the size and scope of the Canadian art market, in order to determine the value of Canadian and foreign art sold within Canada over a period of three years. Between 1996 and 1999, art market professionals reported that sales of Canadian art had increased by 44%, and that an additional 28% remained at current rates.<sup>4</sup> On average, 303 works of Canadian art were sold per venue in the period of one year, and 86% of total sales were of works by living Canadian artists.<sup>5</sup> While the study indicated that the art market is unpredictable and did not always note an increase, CARFAC's own limited research in this area indicates that several sales records for Canadian art have been smashed dramatically since 2005.

According to the study: "The total final demand for visual art within Canada was \$478 million and \$549 million including exports. The final demand for original work by Canadian visual artists (living and deceased) was \$414 million including within Canada and \$477 million including exports...<sup>6</sup> The total sales from all channels for visual art in 1998 were approximately \$603 million.<sup>7</sup> First sales in the primary market were approximately \$523 million and resales in the secondary market were approximately \$80 million."<sup>8</sup> While the majority of Canadian art is sold through commercial galleries and dealers, we can surmise that the most important source of income for the secondary resale market will be generated from auction houses. The study also noted that within auction houses: "The majority of sales (96.7%) are resales, which are \$20 million for all visual art and \$19 million for Canadian art."<sup>9</sup>

While the Canadian art market grows in value, it is the collectors and art market professionals that profit from its increased worth, rather than the artist. In 2006, Joyner Waddington's Canadian Fine Art Auction house sold Ron Bloore's *Byzantium Sign #5* for \$55,200, smashing the artist's previous auction record of \$4,700 and its expected sale price of \$2000-2500. The artist received nothing from this sale, and despite exhibitions of his contemporary work being shown around that time, he was not selling work in the primary market.

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<sup>4</sup> TCI Management Consultants Limited. *Study of the Market for Canadian Visual Art* (Ottawa, Department of Canadian Heritage, August 1999). Page 28.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid, p.5

<sup>7</sup> Ibid, p.6

<sup>8</sup> Ibid, p.7

<sup>9</sup> Ibid, p.30



**Byzantium Sign #5**

Ron Bloore

Toronto, Ontario

Sold: May 2006

Price: \$55,200

What the artist would have received: \$2760



## **Incorporation into the Canadian *Copyright Act***

CARFAC and RAAV are recommending that an ARR be added to the Canadian *Copyright Act*. The *Copyright Act* is the preferred route for this legislation due to several important factors:

- The proposed term of the ARR is the same as copyright protection.
- The works that are to be covered by the ARR are identical to those works listed in the visual arts works identified by the Act.
- The artist and their heirs are determined in the same manner as set out in the *Copyright Act*.

The ARR is also well placed within copyright legislation as it relates to an artist's moral rights, as it recognizes an artist's continuing relationship with his or her work. The right to receive an ARR is derived from the right of attribution of authorship, as it connects the creator with the work after the physical work is sold.

By adding the ARR to our *Copyright Act*, we are consistent with most other international copyright laws. While some countries chose to create a new stand-alone Act, at least 22 members of the European Union have included it through their copyright and intellectual property laws. This allows for comparative studies on the implementation of the legislation and its impact to be undertaken with ease. Canada will also have the ability to consult with other nations who have adopted the ARR legislation regarding issues of drafting and implementation.

### **Eligibility of beneficiaries and works**

As it is intended that the ARR be incorporated into the *Canadian Copyright Act*, it is suggested that the eligible original artistic works for remuneration be those defined by the Act for the application of the Exhibition right. The ARR could be extended to other forms of works with artistic merit as determined necessarily by those drafting the legislation, but for the purposes of simplification, the ARR would apply to:

*An artistic work – other than a map, a chart, or a plan.*<sup>10</sup>

In adherence to the *droit de suite* clause of the Berne Convention<sup>11</sup>, all artists and their estates would be eligible for compensation inasmuch as it is provided for in Canadian legislation. It is proposed that amendments to the Canadian *Copyright Act* make the

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<sup>10</sup> *Copyright Act*, R.S., c. C-30, s. 2.

<sup>11</sup> *Berne Convention for the Protection of Literary and Artistic Works*, Article 14ter (1).

ARR available to every Canadian artist whose work is protected under the Act. In addition, the ARR should be available to the estates of artists whose works are sold within the usual copyright limitation period; in Canada, an artist's rights extend to 50 years after the death of the artist.<sup>12</sup> The *droit de suite* was first created in France as a response to the outrage caused when the sale of Jean-Francoise Millet's painting "The Angelus" sold for a huge profit for the seller, while Millet's widow and children lived in poverty after his untimely death. While our primary concern for the ARR rests with living Canadian artists, we also know that there are many costs involved in maintaining an artist's estate, including storing an inventory or archive, organizing retrospective exhibitions, and restoring work.

CARFAC and RAAV strongly advocate that the right be inalienable (not transferable or waivable), on the basis that it protects artists from being persuaded to assign, waive or sell the right under overt or subtle forms of duress. Artists are almost always in a weak bargaining position and are frequently pressured not to exercise their rights. It is often argued that they will gain other kinds of career benefits instead of monetary compensation when they donate a work to a museum, rather than selling it or receiving ongoing royalties when it is shown or reproduced, for example. By making the right inalienable, we can ensure that artists who have assigned their copyrights to another party will retain the ability to claim payments on future sales. Furthermore, CARFAC and RAAV are unaware of any country with an ARR that does not require it to be an inalienable right.

## **Proposed Rates**

It is recommended that artists whose works are sold for \$1000 or more are eligible for compensation. This is consistent with what has been accepted in Australia, and in most European countries. The fee recommended to be paid to the artist is 5% of the gross sale prior to taxation. For example, if a piece of art sold at a gallery for \$4500, the artist, or their heirs would be entitled to \$225. We propose a rate of 5% because it concurs with most other ARR schemes worldwide, and it provides reasonable returns to artists without placing an undue burden on the seller or purchaser. While some countries have adopted a rate based on a sliding scale related to sale price, we feel that a flat rate is preferable, given that the Canadian art market rarely sees high sale prices of the sort found in the UK and America, and this differentiation is an unnecessary administrative burden.

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<sup>12</sup> *Copyright Act. R.S., c. C-30, s. 7.*



**Ouvri**

Marcel Barbeau  
Montreal, Quebec

Sold: May 2008

Price: \$86,250

What the artist would have received: \$4,125

It is up to the discretion of the seller of the work to determine how to manage this additional fee. They may incorporate this fee into the base cost of the art thereby putting the fee on to the purchaser, split the fee with the purchaser, or absorb the cost themselves. Art vendors in the UK have reported engaging all three approaches with ease and with no harmful deterrent effects to their business.

## **Administration and Collection**

In many countries where the ARR is in place, it is required by law that an artist collects the ARR through a collecting society, and that art market professionals (auction houses, dealers, etc) report on all sales. It is proposed the administration of the ARR in Canada be allocated to one organization, and that reporting enforcement measures be put in place. The facilitation of the program by one agency would allow for cost efficiency and effectiveness in the process. It is easier to maintain a register of artists and art market professionals if they must all subscribe or report to one central agency, and it is more efficient for dealers to report sales and turnover to a single organization.

The Canadian Artists Representation Copyright Collective Inc. (CARCC) is well situated to take on the intake and redistribution of fees related to the program. CARCC currently has a database of Canadian artists and administers the negotiation and payment of fees to artists resulting from royalties, exhibitions, reprography and other copyright related use of their works. Alternatively, SODRAC (Society for Reproduction Rights of Authors, Composers, and Publishers) based in Quebec is similarly situated to CARCC and may jointly administer a *droit de suite* for artists in Quebec.

In the UK, DACS (Design and Artists Copyright Society) sends out requests for information to art market professionals on a quarterly basis, asking them to declare the artworks they have resold in that quarter. By law, all art market professionals must respond within 90 days. Once the form is submitted to DACS, they invoice them for the appropriate amount owed to the artist. Royalties are then paid to artists within 30 days of collection, and an administrative fee is collected by DACS for this service. Similarly, in Denmark, art market professionals are obligated by law to report once a year on all sales of art which apply to the ARR. The report must be certified, and either COPY-DAN or Billedkunst arrange procedures for reporting sales to their respective memberships.

To facilitate the collection of the levy in Germany, VG Bild-Kunst concluded a blanket agreement in 1980 with the Association of German Art Dealers and Auctioneers, along with other gallerists and art publishers to aid the administrative process. Under this agreement each sale must be reported to a commonly instituted independent body, *Ausgleichsvereinigung Kunst*, which calculates the sums due to artists and their

successors on annual net sales of art created after 1900. In Germany, a portion of the ARR is paid to 'Kunstler Sozialkasse' (KSK), a partially publicly funded social-security scheme for self-employed artists which provides health insurance and pension schemes for living fine artists.

Once an ARR is established in Canada, artists would be able to benefit from reciprocal arrangements with other countries where the ARR exists, and where that artist's work may be resold. CARCC is a member of CISAC, the International Confederation of Societies of Authors and Composers, a long established network of collecting agencies in over 30 countries world-wide, many of which collect the ARR relating to sales made in their country. CARFAC proposes it is time for Canada to legislate the ARR in order to strengthen its merit within the international community, and to generate greater income potential for Canada's visual artists.

## **Comparison of the implementation of the ARR in other countries**

### **Europe**

The implementation of Article 14, the *droit de suite*, of the Berne Convention in each European Union country has been mandated within a European Union Directive. The 2001 Directive proposed methods for implementing the *droit de suite* which would result in a harmonized effect amongst the member states and ensure that all member states complied by putting some form of *droit de suite* into their legislation by January 1, 2006. It also requires that the member states continually update the European Union of their progress and the laws effect.

### **United Kingdom**

The ARR was put into place in the United Kingdom in 2006. Currently the benefits of ARR are only enjoyed by living artists, but the ARR is expected to be extended to estates of deceased artists by 2012. Applicable fees are paid to the artists according to a scale range from 0.25% to 4% based on sales price, to a maximum of €12,500; the minimum threshold sale price is €1000. The distribution of the ARR to artists is administered primarily by the Design & Artists' Copyright Society (DACS). DACS charges a 15% administrative fee on all royalties collected. Research undertaken on behalf of DACS and by Imperial College has indicated that that the implementation of the ARR has not had a negative impact on the art market, despite initial fears from the art trade.

## Denmark

In Denmark, the ARR was introduced to the Danish Copyright Act in 1990. COPY-DAN was appointed by the Ministry of Culture to administer the right, and they charge an administrative fee of 15%. The minimum threshold of €3000 has been set, and a rate of 5% is collected for all public sales. Living artists as well as estates are entitled to collect the right. Royalties are distributed once a year to Danish and foreign artists, and the author or their estate have the right to claim royalties up to three years after the sale has taken place. In 1998, approximately 2,507 Danish works were eligible for ARR collection, at a value of €8.3 million.

## Germany

Germany introduced the *droit de suite* in 1965, with further amendments made to the *Law on Copyright and Neighbouring Rights* in 2006, following the EU directive. VG Bild-Kunst is the German collecting society, which charges a 10% administration fee. In order to be eligible, a work must be resold for a minimum threshold sale of €400, and rates paid to artists and their successors are set at 5%. In 1998, approximately 8,000 artworks were sold under the ARR in Germany, amounting to a value of about €44.7 million.

## France

France is the birthplace of *droit de suite*, where it has been in place since 1920. The law was put into place through the *Intellectual Property Code*, and royalties are collected through ADAGP (Association for the Defence of Graphic and Plastic Arts). In 2001, the law was subject to some change in order to conform to the uniformity requirements of the *European Directive*. The *droit de suite* applies to any sale of an artwork valued over €750. The administrative cost of the program is 20% of all fees collected. In 1998, France sold the most *droit de suite* eligible items in the EU, with a total of around 9,000 items worth €76.2 million.

## Australia

After much debate, the *Resale Royalty Right for Visual Artists Bill* was introduced in 2008, and passed by Parliament in 2009. The ARR is inalienable in Australia and as in Europe, the interest vests with the artist's estate for 70 years after the artist's death. A work is eligible if it is sold for more than \$1000; the royalty being 5% of the sale price with no maximum capped fee. The Minister of the Department of Environment, Water, Heritage and the Arts is now charged to select a collecting agency to fulfill this purpose according to the guidelines set out in the *Bill*.

## **United States of America**

### **State of California**

California is the only State to recognize an ARR, which it has done since 1977 through the *California Resale Royalty Act*. The minimum threshold for an artwork to be eligible is \$1000 and a 5% royalty is applied. In order to qualify, the artist must be a Californian resident or a US citizen and the sale must take place in California or be associated with a seller who is a resident of California. The artist, or their estate, is eligible for the fee as long as the sale is within 20 years of the artist's death. The royalty is not payable if the sale is between art dealers. In California, the burden is on the seller to locate the artist and pay the appropriate fee. However if the artist cannot be located within 90 days of the sale, the fee is given to the California Arts Council. The California Arts Council then collects and distributes fees within 7 years of the sale. If the artist cannot be found at this time, the money is reallocated for art in public places.

## **Appendix A – Countries that operate an Artist Resale Right**

### **Members of the European Union**

Austria	Belgium	Bulgaria	Cyprus
Czech Republic	Denmark	Estonia	Finland
France	Germany	Greece	Hungary
Ireland	Italy	Latvia	Lithuania
Luxembourg	Malta	Netherlands	Poland
Portugal	Romania	Slovakia	Slovenia
Spain	Sweden	United Kingdom	

### **Countries outside the European Union**

Algeria	Australia	Bolivia	Brazil
Burkina Faso	Chile	Congo	Costa Rica
Croatia	Ecuador	Guinea	Iceland
Iraq	Ivory Coast	Laos	Liechtenstein
Madagascar	Mali	Monaco	Mongolia
Morocco	Norway	Paraguay	Peru
Philippines	Russia	Senegal	Serbia and Montenegro
Tunisia	Turkey	United States (CA)	Uruguay

## Appendix B – Stakeholder Endorsements

Visual Arts Alberta  
Visual Artists Newfoundland and Labrador  
The Nunavut Arts and Crafts Association  
The Royal Canadian Academy of Arts  
The Artist-Run Centres and Collectives Conference  
The Alliance of Canadian Cinema, Television and Radio Artists,  
The Canadian Federation of Musicians  
The Canadian League of Composers  
The Creators Copyright Coalition  
Access Copyright  
CARFAC British Columbia  
CARFAC Saskatchewan  
CARFAC Manitoba  
CARFAC Ontario  
CARFAC Maritimes  
Illustration Québec  
DAMIC – a Quebec coalition of artists and copyright collectives.

### What people are saying about the Artist Resale Right:

*One of the works I produced in 1956, which I had given to a friend was sold by his heir at auction for a little more than \$86,000. I did not receive one cent from this sale. Others are getting rich on my works, while my situation remains very insecure at 85 years of age.*

-Marcel Barbeau, artist, Officer of the Order of Canada, Montreal

*I have seen my work escalate in value by quite a big percentage. A painting done in 1966 fetched \$40 and is valued now at \$20,000. As we get older it gets harder and harder to find the energy to produce enough work to maintain a decent living.*

-Mary Pratt, artist, Companion of the Order of Canada, Newfoundland

*As many Inuit artists will agree, they have been getting the wrong end of the price point for years. Many Inuit artists have sold their work for lower than average prices, only to see the same piece in a gallery or on a website in today's market at four or five times the amount they were paid.*

-The Nunavut Arts and Crafts Association



*This is a wonderful way for artists to benefit from their hard work and dedication to, in many cases, their life's work. In my case it was not until later in life that I have achieved a semblance of success, and at 92 yrs of age and surviving on a small pension and returns on dwindling investments it would definitely have been helpful to have had a small stream of extra income.*

-Daphne Odjig, Order of Canada, Governor General Award Winner

*The resale of art is also a new issue that has not really had a lot of attention, but it is one that leaves Canadian artists in a position of distinct disadvantage... At committee, we may wish to explore the European model or the European experience and see how Canadian artists can be better compensated for their work.*

-The Honorable Dan McTeague, Member of Parliament for Pickering—  
Scarborough East

*It seems this is long overdue – there is no current means to support artists still working but in the latter part of their careers.*

-Tony Urquhart, recipient of the 2009 Governor General's Award in Visual and Media Arts for Outstanding Contribution, Ontario

*The resale right would mean respect for my position as artist, a share in increased value of my work.*

- Milly Ristvedt, Royal Canadian Academy, Ontario

*The Artist's Resale Right is an equitable means for artists to earn income and is completely in line with the government's goal of modernizing the copyright act.*

-Gerald Beaulieu, CARFAC National President, Prince Edward Island

*Every artist knows there are those rare gems that shine apart from the others and help build one's reputation. Our potential masterpieces are usually the first to sell at an exhibition but the full value of an artwork often isn't realized on the initial sale – time is needed to determine if they and the artists' importance rises substantially in value.*

-Julie McIntyre, CARFAC BC President, Vancouver

*The resale right is important, if not the most important right we could have.*

-Adrian Göllner, artist, Ottawa

## **Appendix C – Frequently Asked Questions about the Artists’ Resale Right:**

### **Will the right only benefit a few wealthy heirs of deceased famous artists?**

No. While the ARR was initially set up to assist destitute families of deceased artists in France in the 1920s, most countries have changed their legislation since 2001, in order to have a greater impact for living artists, especially those with lower incomes. It is for this reason that we recommend a minimum threshold of \$1000, so that as many as 60% more artists can benefit from the right – not just those who command high sales prices. Recent statistics show that the average yearly earnings of visual artists is a mere \$13,976, and this new royalty will help improve that situation. It also provides resale income to artists whose work often receives lower prices, such as photographers, illustrators and craftspeople. Furthermore, many Aboriginal artists, particularly those living in isolated northern communities, live in impoverished conditions, while their work dramatically increases in value.

### **Will all sales be eligible for the right?**

No. The right only applies to secondary sales of original works of art protected by copyright. It does not apply to first sales, or sales between private individuals. It does not apply to sales of works outside copyright. It does not apply to works that sell for less than the qualifying threshold of \$1000. It does not apply when a work is sold in a country without the ARR, or if an artist is from a country without the right. It is for this reason that Canada must adopt an ARR, as Canadian artists are currently losing out on significant sales, both at home and abroad.

### **Will the right be difficult to administer?**

No. The right has been successfully administered in countries such as the UK, France, Germany, Denmark, Belgium, Sweden and Hungary for decades. In each country, the right is administered by a collecting society, and it is for this reason that we recommend that collective management be compulsory because it has been demonstrated to keep costs down for the art trade, while also ensuring maximum compliance with the law. In Canada, we recommend that CARCC be the collecting society. CARCC has 20 years of experience administering the negotiation and payment of fees to artists resulting from royalties, exhibitions, reprography and other copyright related use of their works. They have systems in place that will enable them to successfully administer the ARR.

## **Will the ARR be costly for the art market?**

In order to keep costs low, we will endeavour to work with tried and established systems to administer the right. We recommend that quarterly submissions from the art market would assist in keeping costs low, and that the collecting society would absorb the administrative fees involved in locating artists, and distributing the submission requests, invoices, and payments to artists. In Europe, the cost of administering the royalty range between 10% and 25% of the royalty – an amount that is deducted from the royalty itself, not paid separately by the art market. This is significantly less than the 50% commission that dealers typically charge on sales. In other countries, the costs to the art market are relatively low. In 2007, DACS commissioned Maven Research to conduct independent surveys of artists and art market professionals in the UK on the subject of the ARR. Over 60% of art market professionals surveyed by DACS say that the paper work for the ARR takes them less than five minutes to fill out and costs them less than £10 per quarter in administration. 87% of art market professionals say that the resale right has not damaged their business.

## **Won't the right drive the art market to places like New York, where there is no ARR?**

No. This trend has never materialized in other countries which already have the right, including the UK, which has the largest art market in Europe. The royalties are too modest to remove incentives to relocate in order to avoid paying it. Other associated costs will be more influential when deciding where to buy or sell an art work. The cost of exporting an artwork is invariably higher than the royalty. For example, a work sold for \$5000 would generate a royalty of \$250, at the proposed rate of 5%. If it was sold for \$1000, the rate would only be \$50. The cost of packing, insuring and shipping an artwork would outweigh the benefit of avoiding the royalty. Similarly, the rates of commission commonly charged to sellers and buyers by art market professionals are considerably higher, often amounting up to 20%.

Art will always be sold where it's likely to get the best price. In December 2004, an American art collector sold his important collection of modern German art through an auction house in Cologne. Though he could have chosen any country in the world to host this important sale – including his own native USA, where the resale right does not exist, he opted for Germany, where resale royalty legislation has operated since 1960. The collection achieved high prices, including a world record price for a work by Kurt Schwitters. We see no real threat of the art market moving abroad as a result, as the art market has expertise that no one else has, and buyers are more likely to purchase Canadian work in Canada. While the United States may be close by, there are

movements to introduce the right at the national level there, to supplement what already exists in the state of California.

### **Isn't it true that some artists themselves are against the right?**

We have never met an artist who feels this way. A number of consultations with artists on the issue of the resale right have taken place across the country, and all have been in favor of it. Additionally, we have been contacted by several artists to pursue the right, and have received several endorsements from artists and other artists' associations. In the UK, a handful of vocal artists spoke out against the ARR as it was being debated but since it has become law, there have been no artists who have refused to cash their royalty cheques. The artists who spoke out may have felt pressure from their dealers to denounce it. It is for this reason that we recommend the right be inalienable so that artists, who are almost always in a weak bargaining position and are frequently pressured not to exercise their rights, cannot be pressured to waive it. It is often argued that they will gain other kinds of career benefits instead of monetary compensation when they donate a work to a museum, rather than selling it or receiving ongoing royalties when it is shown or reproduced, for example. By making the right inalienable, we can ensure that artists who have assigned their copyrights to another party will retain the ability to claim payments on future sales. If an artist truly disagrees with the right, there is nothing to stop them from donating the fee as they see fit.

### **Is this just a cash grab?**

No. The right enables artists to earn a living from their work as its value increases and their reputation grows. Visual artists generally do not produce multiples; they are usually the creators of a singular, original object. By comparison, writers and performing artists have the ability to disseminate mass quantities of their copyright materials through books, CD, DVDs, etc., and are thus able to receive royalty payments for as long as copies of their work sells, and as their fame grows. The right puts artists on a level playing field with writers and composers, who have higher average earnings than visual artists. The recommended royalty rate, at 5%, is very low compared to the other overhead costs absorbed by the art market, as standard practice. Even modest royalties can make a difference to an artist's ability to survive and continue to make art.

## Appendix D – Artists Resale Rights – A Northern Perspective Discussion Paper by the Nunavut Arts and Crafts Association

The Nunavut Arts and Crafts Association has been asked to submit an opinion about the creation of an Artist Resale Right, recommended as an addition to Bill C-32, which is likely to go to committee in early October. The basis of this opinion is derived from examples of how such a right would assist northern artists, and Inuit artists, in particular. From the early beginnings of Inuit art, the Inuit people have been selling or bartering their arts and crafts items for payment, in one form or another. This type of barter system was common in the north, generally. Hunters used to pile their pelts to the height of the desired gun they wished to purchase; when the pelts' height reached the height of the gun, the gun was theirs. Similarly, Inuit carvings and prints have been used as a revenue stream for many decades for the Inuit people. For example, a carving may have been offered to the Hudson Bay Company, as a payment of someone's local grocery store credit bill.

In the past 50 years, the age of the Cape Dorset print collection, we have seen many changes in how the sector works. As many Inuit artists will agree, they have been getting the wrong end of the price point for years. Many Inuit artists have sold their work for lower than average prices, only to see the same piece in a gallery or on a website in today's market at four or five times the amount they were paid. One such famous example is the carving that was purchased in Innujuak:

*"A piece by famed artist Joe Talirunili sold at auction in Toronto on Monday night for what is believed to be the highest price recorded for an Inuit sculpture.*

*The Migration, a 30-centimetre wide work in grey soapstone, went for \$278,500, more than four times the pre-sale price set by Waddington's auction house."*<sup>13</sup>

It is estimated that this piece would have been purchased directly from the artist at an amount of about \$400-600 when it was originally sold in the 1970's.

There are many such stories from our Inuit artists. It is very prevalent in the Inuit art world to purchase a piece directly from artists, and the piece would be subsequently sold at a wholesale location for at least four times that amount. Another famous example is from Cape Dorset artist, PAUTA SAILA (1916-2009). His bear carvings were purchased at approximately \$1000 per inch after he became a more famous artist in the late 1960's, for his depiction of a Dancing Bear with growling teeth – an image that he was so widely recognized for. For a piece that was 12 inches high, he would have

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<sup>13</sup> Source: CBC.ca [http://www.cbc.ca/toronto/story/to\\_inuit20060425.html](http://www.cbc.ca/toronto/story/to_inuit20060425.html)

received approximately \$10,000-12,000, depending on the quality. That same bear was auctioned at Waddington's in 2007 for \$51,600.

JUDAS ULLULAQ (1937-1998), Gjoa Haven, is another example of a master carver whose work sells for high prices in today's market. His piece, "*Hunter over Blow Hole*" would have been purchased for \$500-600 in the 1970's. The estimated price at auction was \$6000-\$9,000 and the actual price realized was \$15,600.<sup>14</sup>

The difference in price between the primary and secondary sale is astronomical. With a 96% increase from the original price to today's auction price, it is unjust that no portion of the inflated sale price is returned to the artist or their estate.

This in itself is reason to support an Artist's Resale Right campaign, as Nunavut is among the most prolific territories of talented artists. In fact, research indicates that 37% of people living in the north consider themselves to be professional artists. While many examples of inflated sales prices on Inuit art involve deceased artists, living artists who struggle to make ends meet have much to gain from the Artist Resale Right.

Many artists sell their work to the Northern and the Co-op stores, and the shipping and transfer model that is currently in place puts these artists at an immense disadvantage. These locations will typically buy a carving that is 7 to 8 inches tall and of good quality for about \$200-240, or more if the artist is well known. This piece is then packaged and shipped to the wholesaler, most likely located in Toronto. It is then inventoried and catalogued, and the wholesale price is doubled, listed at \$ 540. This piece is then purchased by a gallery in Canada or internationally, and then the gallery increases the price with their mark-up of 50-55% above wholesale price plus they add on an additional 10% for shipping and handling charges, to the final retail price of \$920. In the end, this artist only receives 25% of the sale price, and without an Artist Resale Right, they receive nothing from future sales, which are likely to be much higher.

We feel that a royalty rate of 5% is a sufficient amount to be considered, as it will help significantly to increase the artist's value when they are compensated fairly for their work. Some artists feel a higher amount is warranted, perhaps closer to a 20% rate; however, we know that amount is not realistic in today's environment, and that to a certain extent, higher sale prices cover the overhead of wholesalers and Galleries alike. We understand the Wholesaler and the Gallery both have overhead costs involved in the selling of the piece, and they may need to hold on to a piece for many years before they sell it to the end user. However, it does seem very unfair to the artist to see their piece selling for at least four times as much as he/she received directly.

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<sup>14</sup> Source: Waddington's [waddingtons.ca](http://waddingtons.ca)

As many of our artists are not proficient at the marketing side of their career, they do have a tendency to get taken advantage of on a daily basis. They find that they are selling their work for less than minimum wage, and the time and energy they have put into the creation of such unique art is not properly compensated. Our artists are just looking for fair compensation. It is discouraging to the artistic community to see a piece sell today at \$100, knowing that it will sell for \$6000 in ten years time.