



Written Submission for the Pre-Budget Consultations
in Advance of the Upcoming Federal Budget 2023

By

Canadian Artists' Representation – Le Front des artistes canadiens
(CARFAC)

And

Regroupement des artistes en arts visuels du Québec
(RAAV)

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Recommendation:

1. That the Government of Canada adopt the Artist's Resale Right to benefit Canadian artists by amending the *Copyright Act* as an economic marketplace solution for individual artists.
2. That the Government of Canada invest \$3 million to educate and inform artists of their rights and all players in the art market of the existence and implementation of this new Right.
3. That the Government of Canada implement the recommendations made by the Canadian Arts Coalition and Access Copyright during the FINA pre-budget consultation process.

Context for Recommendation:

The Artist's Resale Right (ARR) would entitle visual artists to receive a royalty payment each time their work is resold publicly through an intermediary such as an auction or commercial gallery.

In 2018, the Canadian Heritage Committee acknowledged in its *Shifting Paradigms* report that the ARR would maximize Canadian artists' contributions to Canada's economic growth and productivity. In 2021, the Mandate Letters to Ministers Rodriguez and Champagne included the directive "to amend the *Copyright Act* to further protect artists, creators and copyright holders, **including to allow resale rights for artists.**" Since the Fall of 2022 the Department of Canadian Heritage has conducted extensive consultations and roundtable discussions with stakeholders, to support this initiative.

Recommendation 1

CARFAC and RAAV recommended that the government implement an Artist's Resale Right in Canada for eligible secondary sales of artwork and include:

- that it applies to secondary sales of original artworks for the lifetime of the artist, and their estates covered under the term of copyright;
- that it applies to works sold in the secondary market for at least \$1,000;
- that the rate paid to rightsholders is 5%;
- that the art market agent and seller of the artwork are jointly responsible for the payment of the royalty; and
- that royalties be managed and paid through the copyright collecting society, Copyright Visual Arts - Droits d'auteur Arts visuels.

The ARR is a poverty issue. According to the 2016 Census, there are over **21,000 visual artists** in Canada, working in such mediums as painting, sculpture, printmaking, photography, and more. **Half of visual artists earn only \$20,100/year** from all sources of income, including the day-jobs that most artists need to support themselves. This is less than half of what the average Canadian worker earns, and 18% less than other types of artists. In Canada, **66% of visual artists are self-employed workers**, and their creative income often varies significantly among different sources from year to year.

Income disparity for artists was exacerbated during the pandemic when businesses and cultural organizations had to close their doors. The ARR will provide a marketplace solution to visual artists recovering from the pandemic by expanding sources of much needed income for artists whose works sell on the secondary market.

The ARR would have a positive impact on the Indigenous art community in Canada.

Indigenous artists may receive more equitable compensation for their work in the secondary market. It is common that First Nations, Inuit, and Métis artists are exploited by commercial secondary markets. Artwork is often purchased from an artist at a low price, only to be sold again later at a much higher value. The ARR will help correct this wrongdoing and ensure Indigenous artists will share in the profits made on their work. For example, a 2010 economic impact study from the Government of Nunavut indicated that Nunavut's arts and crafts sector contributes **\$33.4 million to the territory's GDP**; much of this value includes works of art sold in the secondary market, which artists are not currently compensated for.

Canada has an aging population. It is often taken for granted that artists thrive once they become established, but even established, senior artists find it difficult, if not impossible, to make a living from their art. Since most artists are self-employed **without employer contributions to CPP and EI**, it is difficult for them to save for retirement or collect pensions. Studies from other countries where ARR exists show that senior artists receive significant revenues from the ARR. It would provide greater financial independence for our senior artists, many of whom are in need.

The ARR would increase the income potential of female Canadian artists. According to Hill Strategies' study of the Canadian Census, *Demographic Diversity of Artists in Canada in 2016*, **56% of visual artists are women**, which is a higher proportion than the overall labour force (42%). Women who have a career as a visual artists have **median earnings of \$17,509**. Female artists such as Kenojuak Ashevak, Daphne Odjig, Mary Pratt, Milly Ristvedt, Dorothy Knowles, and Wanda Koop make art that is profitable in the secondary market, and they deserve an equitable share of those sales.

There is an international precedence for the ARR. It was first introduced in France in 1920, and we base our proposal on how it has best been applied in over 90 other countries, including: Australia, United Kingdom, and all European Union members. Most recently, New Zealand committed to implementation by 2024. The ARR is an opportunity for Canada to align with our international partners, especially as it is often an item of discussion in trade negotiations, and Canadian artists would receive royalties from secondary sales of their work here and in countries that have legislation.

Australia is a good case study on the benefits of the ARR, and how it can have a beneficial impact on Indigenous artists, in particular. Since 2010, over **\$12 Million (AUD) has been paid to 2,450 Australian artists**. According to Copyright Agency in Australia: "Artists use resale royalties to pay for studio costs, materials, and other expenses. It helps them to keep making art. **Over \$1.4 million in resale royalties was generated by the scheme in 2021/22**. The number of artists benefitting from resale royalty continues to grow, with over 200 artists having their first resale royalty in 2021/22. Artists' estates use resale royalties to pay for publications and activities that support our ongoing engagement with the artist's work. It is often the only income they receive. **65% of the artists who have had a resale royalty are Aboriginal and Torres Strait Islanders**. They have received 38% of the royalties, and of the 50 artists who have received the most resale royalties, 18 are Aboriginal and Torres Strait Islanders. Artists say receiving reports of their resales keeps them involved in the journey their art is taking and is useful for provenance, and it supports them to create new work. The scheme has a strong impact in remote and regional locations with 35% of the artists residing in the Northern Territory and central Australia."

The addition of the Artist's Resale Right to the *Copyright Act* would contribute to **a more sustainable cultural workforce without ongoing costs to the government**. The ARR is a royalty, not a tax. It would not be collected by the government, nor would it be spent by government. Furthermore, the government would not be involved with collecting, distributing, or monitoring the payment of royalties. For administrative and financial simplicity, **we recommend that royalty collection and distribution be managed by Copyright Visual Arts - Droits d'auteur Arts visuels (COVA-DAAV)**, a non-profit copyright collecting society. They have over 30 years experience distributing copyright royalties exclusively to visual artists.

Recommendation 2

That the Government of Canada invest \$3 million to educate and inform artists of their rights and all players in the art market of the existence and implementation of this new Right.

While the Federal government would have no ongoing program costs to keep the ARR running, the Australian government provided start-up funding to help Copyright Agency establish a collecting mechanism. It is recommended that Canada should do something similar for COVA-DAAV for the first two years of implementation, to ensure they are prepared to manage this new right, and all stakeholders are well informed about their rights and responsibilities.

Recommendation 3

The Government of Canada implement the recommendations made by the Canadian Arts Coalition and Access Copyright during the FINA pre-budget consultation process.

Further details about these recommendations are available through CARFAC, RAAV, the Canadian Arts Coalition, and Access Copyright.

About Canadian Artists' Representation – Le Front des artistes canadiens (CARFAC):

Founded in 1968, CARFAC is Canada's national professional membership association with 4,000 visual artist members. We believe that artists, like professionals in other fields, should be paid fairly for their work, and we educate the visual arts community about artists' economic and legal rights.

About the Regroupement des artistes en arts visuels du Québec (RAAV):

With over 1600 members, RAAV is the only association legally mandated to represent visual artists in Quebec. The main mission of RAAV is to work in the improvement of the living conditions and professional practices of artists in visual arts in Quebec.