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14 November 2012

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2012-10]

Resale Royalty Right

Comments Submitted by the Graphic Artists Guild

by electronic filing

Re: Federal Register /Vol. 77, No. 182 /Wednesday, September 19, 2012 /Notices

INTRODUCTION

The Graphic Artists Guild wishes to express gratitude to the Copyright Office for studying the establishment of national resale royalty rights for artists. As an organization composed entirely of artists, we look forward to sharing more of the rights enjoyed by our European colleagues.

The Graphic Artists Guild supports the European concept of *droit de suite*, VARA, and the California Resale Royalties Act. The Guild supports the establishment of national artist resale royalties in the United States by federal legislation.

Many illustrators and graphic artists still work in what is now termed “traditional media”: paint, pastels, pencil, ink, etc. on paper, board or fabric. Some illustrators and graphic artists create “originals” using a variety of traditional printing methods including wood or linoleum block, silk screen, etchings, etc. Some illustrators work with three-dimensional materials including clay, fabric, found objects, and collage to create a complete work that is then photographed for reproduction. Many illustrators and graphic artists still produce original, unique works of art that are photographed or scanned to produce a digital copy for commercial use. Illustrators and graphic artists sometimes sell their original works as fine art, or create limited edition fine art prints that they sign and sell to art buyers, either directly, through an agent, or through a gallery. Anyone who has watched the PBS



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television show, "Antiques Roadshow," has seen original illustrations, as well as limited edition prints of works such as posters, appraised at considerable value, based on sale prices as works of fine art.

As an advocacy organization for American artists, the Graphic Artists Guild supports the legal and economic rights of all American artists, regardless of the medium in which they work or how many or what sort of original works and limited-edition fine art prints they sell. We believe that the right to earn royalties from the increased value of our original works through resale to subsequent owners is as justified and important as the right to earn a licensing fee or royalties from the commercial use and reproduction of any art work. We have all seen original fine art works licensed for reproduction for commercial use. As artists, we see no substantive distinction of the original work as "fine art" or "commercial art." Any "fine art" work has the potential to be reproduced for commercial purpose.

We want to state clearly that, consistent with the practice in Europe and California, the reproduction of an original work of art in a book, magazine, catalog, or online, does not disqualify the original physical artwork from VARA or a potential resale royalty right.

THE GUILD'S RECOMMENDATIONS

For the most part, the Graphic Artists Guild approves of, and supports, the European Union Directive 2001/84/EC for resale royalties adopted in 2001. Considering that there is so much collecting of American artworks by Europeans and vice versa, we believe it makes sense to adopt resale royalty provisions very similar to the European Union Directive.

The Guild does not support the *Equity for Visual Artists Act of 2011* [EVAA] for a number of reasons, as explained below. The Guild agrees with most of the California Resale Royalty Act inasmuch as can be applied at the national level.

Scope and Applicability of a Royalty:



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The Guild supports the European Union Directive's scope of applicability.

Contractual Considerations:

The Guild agrees that any artist should be paid resale royalties from the sale of his/her work directly by the seller. If for any reason, the artist or his/her heir does not want to participate in the resale royalty rights process, they should be able to decline either by stating so in the original first bill of sale (contractually), or when contacted after a sale. Artists or their heirs should also have the option to appoint a separate entity acting as a collecting society to handle the royalty payment transactions. The collecting society would by default manage the transaction only if the artist or heirs could not be located by the seller.

Duration of Term:

The Guild supports the European Union Directive's term that mirrors the term of copyright ownership; life of the author + 70 years.

Threshold Values:

The Guild supports the California Resale Royalty Act threshold of \$1,000. This amount will need to be adjusted periodically according to inflation. We do not support the EVAA threshold value of \$10,000. We feel a threshold that high would benefit only a small percentage of extremely successful fine artists.

Payment and Enforcement:

We agree with a statutory requirement for royalty payment.

Calculating a Royalty:

We recommend that the resale royalty be calculated based on the present sale price of the work; the same basis as the California Resale Royalty Act.



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Royalty Rate:

The Graphic Artists Guild supports the flat royalty rate of 5% as has been in practice in the USA under the California Resale Royalty Act. At this time, we do not recommend the sliding scale in the European Directive. We do not support the EVAA royalty rate of 7%.

Administration of a Royalty:

The Graphic Artists Guild strongly supports the collective management of default royalty payments (for artists or heirs who could not be found by the seller) by a non-profit public agency. Considering existing public agencies, at this time we suggest that the Copyright Office or the National Endowment for the Arts could act as the collecting agency. The agency would establish an escrow account for royalties, to function in the same manner as the California Arts Council under the California Resale Royalty Act. Interest earned on the escrow account and unclaimed royalty payments for artists or their heirs that cannot be found may be kept to fund the operating expenses of the program.

We specifically oppose the EVAA proposals for: a private for-profit business to act as the collecting society (neither for all royalties nor default payments when sellers cannot find the artists/heirs); the collecting society keeping 50% of the royalty payments; and the distribution of any portion of royalty payments, including unclaimed royalty payments to private entities or museums to fund purchases for private collections.

ABOUT THE GRAPHIC ARTISTS GUILD

In the course of its 45-year history, the Graphic Artists Guild has established itself as the leading advocate for the rights of graphic artists on a wide range of economic and legislative issues, from copyright to tax law. Through its publication of the *Handbook: Pricing & Ethical Guidelines* (now in its 13th edition), the Guild has raised ethical standards in the industry, and provides an invaluable resource on pricing information that is relied on by both artists and clients. The Guild's newsletter, the *Guild News*, provides lively, provocative, and useful coverage of developments in the visual communications industry for its readers.



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The Guild also provides a wealth of services and benefits for its members, including educational programs, discounts on a multitude of products and services, a legal referral network, and grievance handling. The Guild's website offers up-to-date information on Guild activities, updates on advocacy issues, members' portfolios, individual chapters, and links to related organizations.

Thank you for your consideration.

Respectfully,

Haydn Adams, President
Todd Lemieux, National Advocacy Committee Chair
Lisa Shaftel, National Advocacy Committee
Tricia McKiernan, Executive Director
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