



ANNOUNCEMENT

from the Copyright Office, Library of Congress, Washington, D.C. 20559

NOTICE OF INQUIRY

REQUEST FOR INFORMATION; STUDY ON RESALE ROYALTIES FOR WORKS OF ART

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LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 91-1]

Request for Information; Study on Resale Royalties for Works of Art

AGENCY: Library of Congress, Copyright Office.

ACTION: Notice of inquiry.

SUMMARY: This Notice of Inquiry advises the public that the Copyright Office is conducting a study on the feasibility of legislation requiring purchasers of works of art to pay to the artist a percentage of the resale price of the art work. This notice invites comments and information that will assist the Office in understanding the issues involved in such a requirement. The Office particularly invites comment from groups or individuals involved in the creation, exhibition, dissemination, and preservation of works of art, including artists, art dealers, auction houses, investment advisors, collectors of fine art, and curators of art museums.

DATES: Initial comments should be received by June 1, 1991. Reply comments should be received by August 1, 1991.

ADDRESSES: Interested persons should submit ten copies of their written comments to Office of the Register of Copyrights, Copyright Office, James Madison Building, room 403, First and Independence Avenue, SE., Washington, DC 20559.

FOR FURTHER INFORMATION CONTACT: William Patry, Policy Planning Advisor to the Register of Copyrights, Copyrights Office, Library of Congress, Washington, DC 20559. Telephone: (202) 707-8350.

SUPPLEMENTARY INFORMATION: On December 1, 1990, President Bush signed into law Public Law 101-650. Title VI of this legislation contained provisions according certain rights of attribution and integrity to works of the visual arts. The title is generally effective on June 1, 1991. Section 608(b) of the legislation also mandated that

(1) The Register of Copyrights, in consultation with the Chair of the National Endowment for the Arts, shall conduct a study on the feasibility of implementing—

(A) A requirement that, after the first sale of a work of art, a royalty on any resale of the work, consisting of a percentage of the price, be paid to the author of the work; and

(B) Other possible requirements that would achieve the objective of allowing an author of a work of art to share monetarily in the enhanced value of that work.

The report is to be presented to Congress 18 months after the date of enactment (June 1, 1992). The present notice is designed to assist the Copyright Office in fulfilling this mandate.

Droit De Suite

Resale royalty rights, commonly called *droit de suite*, were developed in Europe as a method of permitting artists to share in the increased value of their works. The Berne Convention permits member countries to extend *droit de suite*, but does not require them to do so. Article 14ter. Few countries have *droit de suite* regimes. In the United States, federal copyright law does not provide a resale royalty right, and among the states, only California has enacted a *droit de suite* provision. There are a number of different approaches to *droit de suite*, taking into account factors such as the type of work, the sales price, who is selling the work, and whether the sale is public or private. The

effectiveness of the laws in achieving their desired goals has been the subject of dispute.

During the 100th Congress, hearings were held on H.R. 3221 and S. 1619, predecessors of Public Law 101-650. Section 3 of the bills contained a *droit de suite* provision. Due to opposition to the provision, it was dropped from subsequent bills with the understanding that the present study would be undertaken.

In order to assist it in completing the study, the Copyright Office seeks comments on the following questions:

1. Would resale royalty legislation promote or discourage the creation of new works of art, and if so, how? How would the legislation affect the marketplace for works of art subject to such a requirement?

2. If resale royalty legislation is appropriate, what form should it take? For example, what categories of works of art should it cover? Should there be a threshold value for works to be subject to the requirement, and, if so, what should that amount be? Should there be a threshold requirement for an increase in value for the requirement, and, if so, what should the increased amount be? What should the amount of the resale royalty be and how should it be measured; by a percentage of the resaler's profit, the net sales differential, or some other measurement? Should the net sale differential be adjusted for inflation?

3. Who should benefit from the requirement? For example, should it be limited to works created in the United States, or should it also include works of foreign origin sold in the United States? What are the international implications

of such decisions? How is the issue handled in foreign countries and in California?

4. What should the term of any resale requirement be? Should it be coextensive with the copyright in the work? Should the right be descendible? Should or can the right be applied retroactively to works in existence at the date of enactment of any legislation?

5. Should there be any enforcement mechanisms, central collecting societies, or registration requirements? What are the experiences in foreign countries and

in California with these problems? Who should record the initial and subsequent sales price? How will the system work if a work of art is presented as a gift, donated, or exchanged in a barter transaction?

6. Should the right be waivable or alienable?

7. Should the California law be preempted in the event of a federal law?

Interested parties are free to comment on other issues not raised in these questions.

Copies of all comments received will be available for public inspection and copying between the hours of 8:30 a.m. and 4 p.m., Monday through Friday, in room 401, James Madison Memorial Building, Library of Congress, First and Independence Avenue, SE., Washington, DC 20559.

Dated: January 24, 1991.

Ralph Oman,

Register of Copyrights.

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