



Visual Artist's Resale Right / Droit de Suite in Canada

November 3, 2010 by Bob Tarantino

The *Globe and Mail* last weekend ran an interesting article by Kate Taylor: Visual artists seek a percentage of resale riches (hat tip: Stikes). As the article notes:

In 59 ... countries including most of Europe, [painter Mary] Pratt would get a small percentage (from a fraction of one per cent to five per cent, depending on the sale price) of the hammer price of her resold painting thanks to a principle known as "*droit de suite*," or the artist's resale right.

The right, which has existed in France for decades but was only introduced to the U.K. in 2006, means that an artist, who has previously sold works for low prices, can profit from rising prices on subsequent sales of those pieces. The law applies after death too, so that an artist's heirs would get a share until copyright expires, 75 years after death in most of these countries.

"The whole value of an art work is not made on the original sale," said April Britski, national executive director of the Canadian Arts Representation (CARFAC). "Visual artists are at a great disadvantage compared to writers or musicians who keep getting money from recordings or books. [With art,] you sell it once and it's gone." Britski said the right would be particularly valuable to older artists and to Canada's aboriginal artists, who may sell works for much less than urban collectors eventually pay for them. Australia has just adopted the right specifically to address the exploitation of its aboriginal artists.

CARFAC has published information regarding the resale right (see their brief backgrounder and detailed Recommendations). Also worth reading are this very detailed treatment of the Australian resale regime (along with some international comparisons) prepared by Caslon Analytics, Mara Grumbo's "Accepting Droit de Site as an Equal and Fair Measure under Intellectual Property Law and Contemplation of Its Implementation in the United States Post Passage of the EU Directive" 30 *Hastings Comm. & Ent. L.J.* 357 (2007-2008) and the California Arts Council's online resources about the California Resale Royalty Act.

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