



Art Dealers Association  
of Canada      Association des  
marchands d'art  
du Canada

Evidence demonstrates that Artist Resale Royalty (ARR) programs enrich collecting agencies and heirs of successful artists, and do not help struggling artists as claimed.

*"I think most artists struggle to make their FIRST sale - the ones making regular RE-SALES are not struggling or starving. To really help artists in need, we need to look at ways to help encourage sales in the primary market. The majority of ARR paid out goes to a tiny fraction of artists, most of whom are already wealthy. It seems to be continually misunderstood that the real starving artists get nothing from this (and it potentially damages their market). The key beneficiaries are collecting societies generating commissions, wealthy artists and heirs."*

-Clare McAndrew, Ph.D., Founder of Arts Economics (2014)

*"ARR has done nothing of significance to help artists on lower incomes or early in their careers, when they are in most need of financial support, even though they were its intended beneficiaries. It has been the heirs of recently died, highly sought after and well-known artists who have gained the most."*

-Clare McAndrew, Ph.D., Founder of Arts Economics (Art Market Report, 2014)

*"The arrival of this levy will do little or nothing for the vast majority of British artists. It will undoubtedly envelop the market, on which we as artists depend, in red tape, and it will discourage art dealers from buying particularly the work of emerging artists."*

-David Hockney, Artist

*"Indeed, we are not surprised that collection societies promote resale royalty schemes. We can imagine it being good for their businesses."*

-Ariel Katz and Guy Rub, Law Professors & Specialists in Copyright Law ([link](#))

*"So here's the upshot: in a resale royalties scheme, 99% of artists will likely lose, so that the top 1% can win. This reverse-Robin Hood story is not some bug in the system -- it is its main feature."*

-Guy Rub and Christopher Sprigman, Law Professors ([link](#))



Art Dealers  
Association  
of Canada

Association des  
marchands d'art  
du Canada

## Misinformation about ARR

### Promoters of ARR make the following core claims:

1. *“Many people profit when an artwork is resold – but not the artist... The full value of an artwork often isn’t seen on the first sale. It is common for visual art to increase in value over time, as the reputation of the artist grows.” (CARFAC)*

This is false. It is the extraordinary exception when an artist’s work rises in value over time. For the overwhelming majority of artists, their work is not saleable in the primary market, and it will never have a resale market that exceeds its first sale price. Professional calibre artists with primary and secondary markets are typically those who benefit or benefitted from representation by professional art dealers like ADAC members. These represent a small fraction of artists in Canada.

2. *ARR does not harm art markets.*

“Auction data from 2002 to 2018 shows the ARR has...potentially been a factor contributing to the decline of the EU’s global share.” ([McAndrew & Ginsburgh, Handbook of Cultural Economics, Third Edition, 2020](#), Abstract, accessed 4 Oct, 2021). ARR jurisdictions like the EU have been persuaded that ARR encourages art markets to relocate to non-ARR jurisdictions. The BAMF has been clear that ARR has “certainly” contributed to the relative decline of the UK and EU art markets compared to the US and China. ([Report on the Implementation and Effect of the Resale Right Directive 2001/84/EC, as reported in Response by The British Art Market Federation to the European Commission’s Consultation on the Implementation and Effect of the Resale Right Directive, p. 3 and 8](#)).

3. *The purpose of ARR is to help struggling and marginalized living artists.*

The evidence demonstrates that ARR primarily benefits collection agencies/societies and the wealthy heirs of deceased artists, people who were not the creators of the artwork sold. Beyond that, these schemes benefit a tiny group of already successful living artists. By definition, struggling artists do not have strong demand for their work in the primary market, let alone demand in the exclusive resale market. Nevertheless, ARR schemes are typically promoted as beneficial to poor and marginalized artists.

“Auction data from 2002 to 2018 shows that ARR has been...severely anti-redistributive, with over 95 per cent of the royalties accruing to the top 50 artists in each country analyzed” ([McAndrew & Ginsburgh, Handbook of Cultural Economics, Third Edition, 2020](#), Abstract, accessed 4 Oct, 2021).



Art Dealers Association of Canada  
Association des marchands d'art du Canada

4. *ARR is a copyright issue, and art resales should be treated like royalties for recording artists.*

No. When an art business sells a work of art on behalf of an artist in the primary market, the artist receives payment for the object, and retains copyright, for a period extending to 70 years (2022) in Canada. Copyright is often raised by promoters of ARR schemes to suggest that creators of fine art are disadvantaged compared to peers in other industries such as music and recording. In reality, this is a conflation of two different businesses: (1) The outright sale of artwork objects vs. (2) the licensing and distribution of content. Creators of fine art in Canada already enjoy strong copyright protections.

## The Truth about ARR

**ARR primarily benefits collection agencies and wealthy heirs, people who have not created the work of art from which they wish to benefit. ARR does not benefit struggling or marginalized living artists.**

- A 2010 study commissioned by the European Art Market Coalition found that of the artist resale royalties distributed in continental Europe:
  - 74% went to artists' heirs - people or institutions who did not create the work of art
  - 20% went to collection agencies/societies
  - 6% went to living artists.
- The artist societies/collection agencies are typically the single biggest beneficiaries of ARR schemes. The Canadian artist society CARFAC has proposed one of its affiliates as the collection agency in a future Canadian ARR scheme. These collection agencies typically keep a significant percentage of the royalties, despite not creating any works of art.
- ARR increases inequality between wealthy and struggling artists:
  - 54% of the total estimated ARR payout went to the estates of just 30 deceased artists in the UK
  - 73% of the total estimated ARR payout went to the top 50 artists in the UK
  - 73% of the above figure (73%) was paid to heirs of deceased artists
    - ([McAndrew, The Art Market 2018 Report](#))([Chesters, 2019](#))
  - In France only “six or seven artists” (and their estates) received 70% of the royalties that have been collected, with Matisse and Picasso’s descendants having massively disproportionate shares
    - ([BAMF 2000, as reported in McAndrew & Dallas-Conte, p. 34](#); Sanders, A, op cit [note 7], at 451).
  - In the UK, “...less than 2% of British artists have received payments from the leading collecting society (DACS) since ARR was introduced in 2006”.
    - (Response by [British Art Market Federation \[BAMF\], 2014](#))
  - In Canada, we can only assume that a similarly small percentage of already established living artists would benefit from ARR.
    - “...Most artists struggle to make their FIRST sale” (McAndrew, email), and therefore have no resale market. An initiative truly concerned with helping struggling living artists would focus on encouraging primary market sales, not on the tiny percentage of high-profile artists already successful enough to benefit from a resale market.



Art Dealers  
Association  
of Canada

Association des  
marchands d'art  
du Canada

### **ARR is an attack on private property rights.**

Art is a tangible good. If you as a consumer bought and fully paid for a bicycle, couch, car or house, you own that property. If manufacturing a work of art entitles the manufacturer to a percentage of its resale proceeds, then there is no reason why the manufacturer of your bicycle, couch, car or house should not also be entitled to benefit from the resale of that property, regardless of whether you sold at a gain or loss. We urge the public to consider the broader implications of resale royalty schemes.

### **ARR is an issue of private property ownership. It is not a copyright issue.**

“...because ARR is in fact a personal property right associated with a tangible good, rather than an intangible asset, the ARR does not belong to copyright and falls rather under provincial jurisdiction.”

- Katz & Rub to House of Commons Canada, [Statutory Review of the Copyright Act, p. 42.](#)

When an art business sells a work of art on behalf of an artist, the artist receives payment for the object, and the artist also retains copyright. Copyright is often raised by promoters of ARR schemes to suggest that visual artists are disadvantaged compared to peers in other industries such as music and recording. In reality, this is a conflation of two different businesses: (1) the outright sale of artwork objects vs. (2) the licensing and reproduction of content or objects. Visual artists in Canada already enjoy strong copyright protections.

### **Certain facts about ARR have been known for years, with evidence from many countries.**

It is not in doubt that ARR is of no benefit or bad for most art market participants, that it is of no benefit (“and potentially damaging”) to the overwhelming majority of living artists, of no benefit to collectors, and it is costly for businesses and taxpayers.

- ARR is bad for the art market.
  - ARR is an inefficiency. Leading art economists and ARR jurisdictions such as the European Union were persuaded that ARR schemes potentially influence the location of art markets. One of the reasons that the EU suggested its members adopt ARR in the first place was to level the playing field between member countries. However, the market was not confined to the EU. By 2014, the UK and EU’s share of the resale market for work by living artists had dropped by 14%, and the market share in non-ARR jurisdictions like the USA and China had risen. A number of notable observers and scholars have implicated ARR in this decline. ([Response by BAMF, 2014](#))
- ARR is of no benefit to the overwhelming majority of living artists, and only a risk to their markets.
  - As reported previously, by 2014 in the UK, “...less than 2% of British artists have received payments from the leading collecting society (DACs) since ARR was introduced in 2006.”
    - (Response by [British Art Market Federation \[BAMF\], 2014](#))

- As has been the case in other countries with ARR schemes, a very small number of living Canadian artists would benefit from one. Among that very small number, the beneficiaries would primarily be a tiny minority of already successful artists. The benefits from resale royalties are not to be confused with net benefits, with the potential loss of business to more competitive and efficient markets.
- ARR schemes would discourage art dealers from purchasing artwork from their artists because the first sale to a retail client would then become a resale. Purchasing select artwork from artists instead of taking it on consignment is a mechanism by which art dealers may offer artists expedient money.
- ARR acts as a tax on the sale of works by marginalized living artists, a tax which does not exist in other markets, including the market for stocks, or even in other art markets consisting of older artwork. An ARR scheme will encourage buyers to focus on more established and efficient markets.
- Any number of artists oppose ARR schemes, including some who stand to profit greatly from it (*Artists Against Droit de Suite*). Karel Appel is one such example. Celebrity artist David Hockney has referred to ARR as a scheme that promotes “shameful inequality”.
- ARR raises the cost of business for art dealers, disproportionately affecting small businesses, small business owners and their families.
  - Art dealers are mostly independently owned and operated small businesses. ARR schemes cost art businesses time and resources, particularly administrative resources. If applied in Canada, this increase in the cost of business, and the additional administrative burden could result in the demise of some art dealing businesses, further reducing sales for the artists they represent.
  - ARR is opposed by most of the major associations of art dealers and merchants globally.
  - ARR schemes will benefit big businesses and large auction houses at the expense of small businesses, the latter constituting the leading marketers of work by living artists in the primary market. The administrative burden of ARR will be easier to absorb with the larger administrative staff of those large businesses, which focus almost exclusively on resales, and not on the desperately needed primary market sales largely generated by galleries.
  - In the UK, “the overall cost of distributing £10.5 million to a small minority of artists was in the region of £2.58 million - 24.5%.” (BAMF 2014)
- ARR schemes are also costly for taxpayers.
  - Introducing ARR will require the government to set up costly infrastructure for accountability and enforcement primarily for the benefit of a small number of successful artists, heirs and, and a collection agency.



Art Dealers  
Association  
of Canada

Association des  
marchands d'art  
du Canada

- ARR would encourage resellers of valuable artwork to avoid transactions through Canadian-based art dealers and businesses, either by selling their artwork through American auction houses and dealers, or by transacting them in unregulated collector-to-collector sales. Additionally, in Canada, losses to jurisdictions like the US would mean a weaker visual arts and culture business, and a loss in tax revenue to the Government.
- The EU and UK are the only major art market jurisdictions which have implemented ARR. The retention of ARR schemes in countries is not testimony to the success of these programs, but of their political convenience. In addition to failing those they claim to help, ARR schemes are some of the most divisive and costly in today's art community.
- ARR is bad for artwork owners, and “moves the goal posts” on collectors.
  - ARR would represent a special tax on certain artwork in Canada, a tax which is an inefficiency to transacting art, to the detriment of all stakeholders.
  - Most artwork does not rise in value, so even when select works of art can be resold in the secondary market, one should not assume that the seller profited from the sale. Artist societies currently promoting ARR frequently wish to require collectors or businesses to pay ARR regardless of whether they made or lost money.
  - Many ARR promoters would also wish to impose this tax on art world stakeholders retroactively. Even if owners bought works of art by struggling artists years ago, in an ARR-free environment, artist unions and ARR promoters wish to “move the goalposts”, requiring ARR to be applied on the sale of those works.

#### **Defining an “artist” vs. an “artist whose work merits sale and resale”.**

- The artist association CARFAC, a promoter of ARR, says on its website that a person may become a member artist if he/she pays a membership fee and:
  - *earns a living through art making;*
  - *or possesses a diploma in an area considered to be within the domain of the fine arts;*
  - *or teaches art in a school of art or applied art;*
  - *or whose work is often seen by the public or is frequently or regularly exhibited;*
  - *or is recognized as an artist by consensus of opinion among professional artists.*
- Some international artist societies require that members draw their primary source of income from art market sales. As far as we can tell, CARFAC has no such requirement. This would mean that their members could have other sources of income.
- Teaching art, or having a diploma does not make one a visual artist meriting income from the sale of one's artwork. Therefore, of CARFAC member artists, very few may merit earning income from the sale of their art. The market ultimately decides which artists merit an income from this, relying in part on the advice of expert professional art dealers.



Art Dealers  
Association  
of Canada

Association des  
marchands d'art  
du Canada

### **“Artists” have other sources of income.**

Teachers, professors, illustrators etc., may also be members of artist societies. This implies that for CARFAC’s members, their primary sources of income may be drawn from elsewhere. Therefore, the statistics about what these artists earn can be misleading.

There is an implicit claim that simply being an artist, or teaching art, automatically entitles one to make a living from selling art in the marketplace. This is not a norm. The consumer public decides this, partly relying on expert art dealers for advice and protection in their pursuit of authentic works of superior quality. As in most professions, many artists are simply not of sufficient ability to earn a living from art market sales, and their artwork will likely never be saleable. To offer an analogy, there were 621,000 hockey players registered in Canada in 2019 ([Link](#)). However, only a small number of those players may be able to earn a living playing hockey in Canada. The rest are simply not good enough and ultimately earn their living in other professions. They remain amateurs. Promoters of artist resale royalties would lead you to believe that all 621,000 registered participants deserve to be considered professional artists and earn a wage in the open marketplace.

### **SUMMARY**

- The societies/agencies lobbying for ARR also stand to be the largest single beneficiaries of ARR schemes.
- The research shows that the vast majority (74% in the EU) of ARR goes to a small group of heirs of successful artists, people who are often wealthy and who did not create the work of art that was resold.
- Only 6% of ARR collected in the EU was paid to living artists. In the UK, less than 2% of artists had received ARR payments over a period of years since the scheme was established (BAMF 2014), mostly those who were already successful enough to enjoy a resale market.
- Artists and their heirs already retain copyright and may benefit financially from the sale of works created and that remain within their possession or estates.

### **Art Dealers are the “Front Line” Promoters for Living Artists**

ADAC’s membership is composed of art galleries specializing primarily in the sale of work for living artists. Our success as businesses is predicated on our ability to sell artwork by living artists, earning a living for them and their families, while earning a living for ourselves, our families, paying our rents and all expenses related to running a business. The financial interests of living artists are naturally aligned with the interests of our members.



Art Dealers Association  
of Canada      Association des  
marchands d'art  
du Canada

## **Constructive Ways to Help Struggling Artists**

### **Encourage primary market sales from expert art dealers**

Create financial and other incentives for collectors to purchase artwork by living artists from expert art dealers. Do not create disincentives, or make the transaction of these works of art more costly, cumbersome or complicated. The latter will only discourage collectors and businesses.

### **Artists can keep a percentage of their output to sell at a later date**

If artists and societies representing artists contend that the values of works by a significant number of artists rise in value over time, they can invest in this claim by saving works from various stages in their careers and sell them in the market if/when there is a large demand at higher values at a later date.

### **Artist societies can use member fees to store artwork for artists, for the artists to sell at a later date.**

Similarly, if the societies representing artists contend that the values of work by a significant portion of its members rise in value. CARFAC could use the membership fees of its subscribers to provide storage facilities to its members. If what CARFAC implies is accurate, and that artwork by living artists commonly rises in value, it should be easily remunerated when the artists sell the stored works.

### **Distribute a portion of the existing Capital Gains Tax to artists**

Have the CRA distribute a portion of the capital gains tax it collects when the owner of a work by a living artist sells it for a profit. This avoids punishing small art gallery businesses and also ensures that ARR is only charged to resellers if they made a profit. However, this scheme has the same fundamental flaw as ARR: The artists benefitting from resale markets are still the tiny minority of already successful and affluent artists, and heirs. This scheme does nothing to encourage primary market sales of work by struggling artists, which is what it actually needed.

## **Conclusion**

ADAC is committed to promoting a thriving art market for artists, art dealers and art collectors. For this reason, we will continue to oppose Artist Resale Royalty schemes.