

113TH CONGRESS  
2D SESSION

# S. 2045

To amend title 17, United States Code, to secure the rights of visual artists to copyright, to provide for resale royalties, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 26, 2014

Ms. BALDWIN (for herself and Mr. MARKEY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend title 17, United States Code, to secure the rights of visual artists to copyright, to provide for resale royalties, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “American Royalties  
5       Too Act of 2014”.

6       **SEC. 2. DEFINITIONS.**

7       Section 101 of title 17, United States Code, is  
8       amended—

9               (1) by inserting after the definition of “archi-  
10       tectural work” the following:

1           “An ‘auction’ means a public sale at which a  
2 work of visual art is sold to the highest bidder and  
3 which is run by an entity that sold not less than  
4 \$1,000,000 of works of visual art during the pre-  
5 vious year.”;

6           (2) by inserting after the definition of “Pic-  
7 torial, graphic, and sculptural works” the following:

8           “For purposes of section 106(b), ‘price’ means  
9 the aggregate of all installments paid in cash or in-  
10 kind by or on behalf of a purchaser for a work of  
11 visual art as the result of the auction of that work.”;

12           (3) by inserting after the definition of “reg-  
13 istration” the following:

14           “For purposes of sections 106(b) and  
15 701(b)(5), ‘sale’ means transfer of ownership or  
16 physical possession of a work of visual art as the re-  
17 sult of the auction of that work.”; and

18           (4) in the definition of “work of visual art”, by  
19 striking “A ‘work of visual art’ is—” and all that  
20 follows through “by the author.” and inserting the  
21 following: “A ‘work of visual art’ is a painting,  
22 drawing, print, sculpture, or photograph, existing ei-  
23 ther in the original embodiment or in a limited edi-  
24 tion of 200 copies or fewer that bear the signature  
25 or other identifying mark of the author and are con-

1       secutively numbered by the author, or, in the case  
2       of a sculpture, in multiple cast, carved, or fabricated  
3       sculptures of 200 or fewer that are consecutively  
4       numbered by the author and bear the signature or  
5       other identifying mark of the author.”.

6 **SEC. 3. EXCLUSIVE RIGHTS.**

7       Section 106 of title 17, United States Code, is  
8 amended—

9           (1) by inserting “(a) IN GENERAL.—” before  
10       “Subject to sections 107 through 122”;

11          (2) in paragraph (5), by striking “and” at the  
12       end;

13          (3) in paragraph (6), by striking the period at  
14       the end and inserting “; and”; and

15          (4) by adding at the end the following:

16           “(7) in the case of a work of visual art, to col-  
17       lect a royalty for the work if the work is sold by a  
18       person other than the author of the work for a price  
19       of not less than \$5,000 as the result of an auction.

20       “(b) COLLECTION OF ROYALTY.—

21           “(1) IN GENERAL.—The collection of a royalty  
22       under subsection (a)(7) shall be conducted in accord-  
23       ance with this subsection.

24           “(2) CALCULATION OF ROYALTY.—

1           “(A) IN GENERAL.—The royalty shall be  
2 an amount equal to the lesser of—

3                   “(i) 5 percent of the price paid for the  
4 work of visual art; or

5                   “(ii) \$35,000.

6           “(B) ADJUSTMENT OF AMOUNT.—In 2015  
7 and each year thereafter, the dollar amount de-  
8 scribed in subparagraph (A)(ii) shall be in-  
9 creased by an amount equal to the product of—

10                   “(i) that dollar amount; and

11                   “(ii) the cost-of-living adjustment de-  
12 termined under section 1(f)(3) of the In-  
13 ternal Revenue Code of 1986 for the year,  
14 determined by substituting ‘calender year  
15 2015’ for ‘calendar year 1992’ in subpara-  
16 graph (B) thereof.

17           “(3) COLLECTION OF ROYALTY.—

18                   “(A) COLLECTION.—Not later than 90  
19 days after the date on which the auction occurs,  
20 the entity that conducts the auction shall—

21                   “(i) collect the royalty; and

22                   “(ii) pay the royalty to a visual art-  
23 ists’ copyright collecting society.

24                   “(B) DISTRIBUTION.—Not fewer than 4  
25 times each year, the visual artists’ copyright

1 collecting society shall distribute to the author  
2 or his or her successor as copyright owner an  
3 amount equal to the difference between—

4 “(i) the net royalty attributable to the  
5 sales of the author; and

6 “(ii) the reasonable administrative ex-  
7 penses of the collecting society as deter-  
8 mined by regulations issued under section  
9 701(b)(5).

10 “(4) FAILURE TO PAY ROYALTY.—Failure to  
11 pay a royalty provided for under this subsection  
12 shall—

13 “(A) constitute an infringement of copy-  
14 right; and

15 “(B) be subject to—

16 “(i) the payment of statutory damages  
17 under section 504(c); and

18 “(ii) liability for payment of the full  
19 royalty due.

20 “(5) RIGHT TO COLLECT ROYALTY.—The right  
21 to collect a royalty under this subsection may not be  
22 sold, assigned, or waived except as provided in sec-  
23 tion 201.

24 “(6) ELIGIBILITY TO RECEIVE ROYALTY PAY-  
25 MENT.—The royalty shall be paid to—

1 “(A) any author of a work of visual art—

2 “(i) who is a citizen of or domiciled in  
3 the United States;

4 “(ii) who is a citizen of or domiciled  
5 in a country that provides resale royalty  
6 rights; or

7 “(iii) whose work of visual art is first  
8 created in the United States or in a coun-  
9 try that provides resale royalty rights; or

10 “(B) the successor as copyright owner of  
11 an author described in subparagraph (A).”.

12 **SEC. 4. NOTICE OF COPYRIGHT.**

13 Section 401 of title 17, United States Code, is  
14 amended by adding at the end the following:

15 “(e) NON-APPLICABILITY TO WORKS OF VISUAL  
16 ART.—The provisions of this section shall not apply to a  
17 work of visual art.”.

18 **SEC. 5. COPYRIGHT OFFICE.**

19 Section 701(b) of title 17, United States Code, is  
20 amended by—

21 (1) redesignating paragraph (5) as paragraph

22 (6); and

23 (2) inserting after paragraph (4) the following:

1           “(5) Issue regulations governing visual artists’  
2           copyright collecting societies described in section  
3           106, that—

4                   “(A) establish a process by which an entity  
5           is determined to be and designated as a visual  
6           artists’ copyright collecting society, that—

7                           “(i) requires that a visual artists’  
8                           copyright collecting society authorized to  
9                           administer royalty collections and distribu-  
10                           tions under this title shall—

11                                   “(I) have prior experience in li-  
12                                   censing the copyrights of authors of  
13                                   works of visual art in the United  
14                                   States; or

15                                   “(II) have been authorized by not  
16                                   fewer than 10,000 authors of works of  
17                                   visual art, either directly or through  
18                                   reciprocal agreements with foreign  
19                                   collecting societies, to license the  
20                                   rights granted under section 106; and

21                                   “(ii) prohibits an entity from being  
22                                   designated as a visual artists’ copyright  
23                                   collecting society if, during a period of not  
24                                   less than 5 years that begins after the date  
25                                   on which the entity is designated as a vis-

1 ual artists' copyright collecting society, the  
2 entity does not distribute directly to each  
3 author, or to the successor as copyright  
4 owner of each author, the amount of the  
5 royalties required to be distributed under  
6 section 106(b)(3)(B);

7 “(B) determine a reasonable amount of ad-  
8 ministrative expenses that a visual artists' copy-  
9 right collecting society may deduct from the  
10 royalties payable to an author of a work of vis-  
11 ual art under section 106(b)(3); and

12 “(C) establish a process by which—

13 “(i) not less frequently than annually,  
14 a visual artists' copyright collecting society  
15 may request from any entity that conducts  
16 auctions a list of each work of visual art  
17 sold in those auctions that is by an author  
18 represented by the collecting society; and

19 “(ii) an author of a work of visual art  
20 may obtain from a visual artists' copyright  
21 collecting society any information re-  
22 quested by the collecting society under  
23 clause (i) that relates to a sale of a work  
24 of visual art by the author, including the



1 amount of any royalty paid to the col-  
2 lecting society on behalf of the author.”.

3 **SEC. 6. STUDY REQUIRED.**

4 Not later than 5 years after the date of enactment  
5 of this Act, the Register of Copyrights shall—

6 (1) conduct a study on—

7 (A) the effects, if any, of the implementa-  
8 tion of this Act, and the amendments made by  
9 this Act, on the art market in the United  
10 States; and

11 (B) whether the provisions of this Act, and  
12 the amendments made by this Act, should be  
13 expanded to cover dealers, galleries, or other  
14 professionals engaged in the sale of works of  
15 visual art; and

16 (2) submit to the Committee on the Judiciary  
17 of the Senate and the Committee on the Judiciary  
18 of the House of Representatives a report on the  
19 study described in paragraph (1), including any rec-  
20 ommendations for legislation.

21 **SEC. 7. EFFECTIVE DATE.**

22 This Act and the amendments made by this Act shall  
23 take effect on the date that is 1 year after the date of  
24 enactment of this Act.

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