

115TH CONGRESS
2D SESSION

S. 3488

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.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 25, 2018

Mr. HATCH (for himself and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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 2018”.

6 **SEC. 2. DEFINITION.**

7 Section 101 of title 17, United States Code, is
8 amended by inserting after the definition of “architectural
9 work” the following:

1 “An ‘auction’ is a public sale at which a copy
 2 of a work of visual art is sold to the highest bidder
 3 and which is run by a person that sold not less than
 4 \$1,000,000 of copies of works of visual art during
 5 the previous year. A person that conducts all sales
 6 exclusively online does not conduct an ‘auction’ for
 7 purposes of this title.”.

8 **SEC. 3. EXCLUSIVE RIGHTS.**

9 (a) EXCLUSIVE RIGHTS IN COPYRIGHTED WORKS.—
 10 Section 106 of title 17, United States Code, is amended—

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

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

15 (3) 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 sale of a copy of the work if
 18 the copy is sold by a person other than the author
 19 of the work or, if applicable, the author’s successor
 20 as copyright owner for a price of not less than
 21 \$5,000 as the result of an auction.”.

22 (b) COLLECTION OF RESALE ROYALTY FOR VISUAL
 23 ART.—

1 (1) IN GENERAL.—Chapter 1 of title 17, United
2 States Code, is amended by inserting after section
3 106A the following:

4 **“§ 106B. Collection of resale royalty for visual art**

5 “(a) DEFINITIONS.—In this section—

6 “(1) the term ‘price’ means the aggregate of all
7 installments paid in cash or in-kind by or on behalf
8 of a purchaser for a copy of a work of visual art sold
9 as the result of the auction of that copy; and

10 “(2) the term ‘sale’ means a transfer of owner-
11 ship of a copy of a work of visual art as the result
12 of the auction of that copy.

13 “(b) COLLECTION GENERALLY.—The collection of a
14 royalty under section 106(7) shall be conducted in accord-
15 ance with this section.

16 “(c) CALCULATION OF ROYALTY.—

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

19 “(A) 5 percent of the price of the copy of
20 the work of visual art as sold at auction; or

21 “(B) \$35,000.

22 “(2) ADJUSTMENT OF AMOUNT.—In 2019 and
23 each year thereafter, the dollar amount described in
24 paragraph (1)(B) shall be increased by an amount
25 equal to the product of—

1 “(A) that dollar amount; and

2 “(B) the cost-of-living adjustment deter-
3 mined under section 1(f)(3)(A) of the Internal
4 Revenue Code of 1986 for the year, determined
5 by substituting ‘the C–CPI–U for calendar year
6 2017’ for ‘the CPI for calendar year 2016’ and
7 all that follows in clause (ii) of that section.

8 “(3) JOINT WORKS.—In the case of a work of
9 visual art that is a joint work, each author of the
10 work or, if applicable, author’s successor as copy-
11 right owner shall be entitled to an equal share of
12 any royalty for the sale of a copy of the work.

13 “(d) COLLECTION AND PAYMENT OF ROYALTY.—

14 “(1) COLLECTION.—Not later than 90 days
15 after the date on which the final payment of the
16 price of the copy of the work is made, the person
17 that conducts the auction shall pay the resale roy-
18 alty calculated under subsection (c) to a visual art-
19 ists’ copyright collecting society designated by the
20 Register of Copyrights under subsection (h).

21 “(2) DISTRIBUTION.—Not fewer than 4 times
22 each year, a visual artists’ copyright collecting soci-
23 ety to which payments are made under paragraph
24 (1) shall distribute to the author or the author’s suc-

1 cessor as copyright owner an amount equal to the
2 difference between—

3 “(A) all royalties attributable to the sales
4 of copies of works by the author; and

5 “(B) the reasonable administrative ex-
6 penses of the collecting society as determined
7 by regulations issued under subsection (h).

8 “(3) UNCLAIMED ROYALTIES.—

9 “(A) ESCROW.—Subject to subparagraph
10 (B), if, after a good faith effort, a visual artists’
11 copyright collecting society is not able to make
12 a timely distribution under paragraph (2) be-
13 cause the copyright collecting society is unable
14 to locate the author or author’s successor as
15 copyright owner, the copyright collecting society
16 shall—

17 “(i) deposit the amount that would
18 have been distributed to the author or au-
19 thor’s successor as copyright owner into an
20 interest-bearing escrow account until the
21 author or author’s successor as copyright
22 owner has been identified and located; and

23 “(ii) upon locating the author or au-
24 thor’s successor as copyright owner, dis-
25 tribute the amount described in clause (i),

1 including interest, to the author or au-
2 thor's successor as copyright owner.

3 “(B) TRANSFER.—If the author or au-
4 thor's successor as copyright owner of a work
5 of visual art is not identified and located during
6 the 3-year period beginning on the date on
7 which the sale of the copy of the work of visual
8 art occurs, the amount that would have been
9 distributed to the author or author's successor
10 as copyright owner under paragraph (2) shall
11 be transferred to the Copyright Office for the
12 purposes of developing and conducting pro-
13 grams, symposia, and education initiatives in
14 support of artists in the United States.

15 “(4) ADMINISTRATION.—A visual artists' copy-
16 right collecting society shall administer all amounts
17 collected under this subsection in accordance with
18 generally accepted accounting principles.

19 “(e) FAILURE TO PAY ROYALTY.—

20 “(1) RIGHT OF ACTION.—Except as provided in
21 paragraph (2), if a person fails to pay or distribute
22 a royalty in accordance with subsection (d), the per-
23 son to which the royalty is due may bring an action
24 in an appropriate district court of the United States
25 to recover either—

1 “(A) the amount of the royalty; or

2 “(B) statutory damages in an amount
3 available under section 504(c).

4 “(2) EXCEPTION.—

5 “(A) IN GENERAL.—Except as provided in
6 subparagraph (B), a person shall not be liable
7 in an action brought against the person under
8 paragraph (1) if, not later than 60 days after
9 the date on which the royalty was due, the per-
10 son pays or distributes an amount equal to the
11 sum of—

12 “(i) the royalty due; and

13 “(ii) a late fee determined in accord-
14 ance with appropriate regulations as may
15 be promulgated by the Register of Copy-
16 rights.

17 “(B) WILLFUL OR REPEATED FAILURE TO
18 PAY.—Subparagraph (A) shall not apply if the
19 failure of the person to pay or distribute a roy-
20 alty in accordance with subsection (d) was will-
21 ful or repeated.

22 “(3) EXCLUSIVE REMEDIES.—The remedies
23 provided under this subsection shall be the exclusive
24 remedies for a failure to pay or distribute a royalty
25 in accordance with subsection (d).

1 “(f) TRANSFER OF RIGHT.—The right to collect a
2 royalty under this section may not be sold, assigned, or
3 otherwise transferred or waived except as provided in sec-
4 tion 201.

5 “(g) ELIGIBILITY TO RECEIVE ROYALTY PAY-
6 MENT.—A visual artists’ copyright collecting society that
7 collects a royalty under this section for the sale of a copy
8 of a work of visual art shall distribute the royalty to—

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

10 “(A) who is a citizen of or domiciled in the
11 United States;

12 “(B) who is a citizen of or domiciled in a
13 country that provides a royalty for the resale of
14 a copy of a work of visual art; or

15 “(C) whose work of visual art is first cre-
16 ated in the United States or in a country that
17 provides a royalty for the resale of a copy of a
18 work of visual art; or

19 “(2) the successor as copyright owner of an au-
20 thor described in paragraph (1).

21 “(h) REGULATIONS.—The Register of Copyrights
22 shall issue regulations governing visual artists’ copyright
23 collecting societies described in this section, including reg-
24 ulations that—

1 “(1) establish a process by which a person is
2 determined to be and designated as a visual artists’
3 copyright collecting society, which process shall—

4 “(A) require a visual artists’ copyright col-
5 lecting society authorized to administer royalty
6 collections and distributions under this title
7 to—

8 “(i) have prior experience in licensing
9 the copyrights of authors of works of vis-
10 ual art in the United States; or

11 “(ii) have been authorized by not
12 fewer than 500 authors of works of visual
13 art, either directly or through reciprocal
14 agreements with foreign collecting soci-
15 eties, to license the rights granted under
16 section 106; and

17 “(B) provide that a person shall no longer
18 be designated as a visual artists’ copyright col-
19 lecting society if, during a period of not less
20 than 5 years that begins after the date on
21 which the person is designated as a visual art-
22 ists’ copyright collecting society, the person
23 does not distribute directly to each author, or to
24 the successor as copyright owner of each au-

1 thor, the amount of the royalties required to be
2 distributed under subsection (d);

3 “(2) determine a reasonable amount of adminis-
4 trative expenses that a visual artists’ copyright col-
5 lecting society may deduct from the royalties payable
6 to an author of a work of visual art under sub-
7 section (d)(2); and

8 “(3) establish a process by which—

9 “(A) not less frequently than annually, a
10 visual artists’ copyright collecting society may
11 obtain from any person that conducts auctions
12 a list of each copy of a work of visual art sold
13 in those auctions that is by an author rep-
14 resented by the collecting society; and

15 “(B) an author of a work of visual art or,
16 if applicable, an author’s successor as copyright
17 owner may obtain from a visual artists’ copy-
18 right collecting society any information in the
19 possession of the collecting society that relates
20 to a sale of a copy of a work of visual art by
21 the author, including the amount of any royalty
22 paid to the collecting society on behalf of the
23 author or the author’s successor as copyright
24 owner.”.

1 (2) TECHNICAL AND CONFORMING AMEND-
 2 MENT.—The table of sections for chapter 1 of title
 3 17, United States Code, is amended by inserting
 4 after the item relating to section 106A the following:

“106B. Collection of resale royalty for visual art.”.

5 **SEC. 4. NOTICE OF COPYRIGHT.**

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

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

11 **SEC. 5. STUDY REQUIRED.**

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

14 (1) conduct a study on—

15 (A) the effects, if any, of the implementa-
 16 tion of this Act, and the amendments made by
 17 this Act, on the art market in the United
 18 States; and

19 (B) whether the provisions of this Act, and
 20 the amendments made by this Act, should be
 21 expanded to cover dealers, galleries, or other
 22 professionals engaged in the sale of copies of
 23 works of visual art; and

24 (2) submit to the Committee on the Judiciary
 25 of the Senate and the Committee on the Judiciary

1 of the House of Representatives a report on the
2 study conducted under paragraph (1), including any
3 recommendations for legislation.

4 **SEC. 6. EFFECTIVE DATE.**

5 This Act and the amendments made by this Act shall
6 take effect on the date that is 1 year after the date of
7 enactment of this Act.

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