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CISAC Statement on the Resale Right Campaign

Made at WIPO's Standing Committee on Copyright and Related Rights (SCCR) on Friday 13 May 2016

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Thank you Mr Chairman.

On behalf of the global community of creators, and in particular on behalf of the visual artists we represent across the world, CISAC strongly supports discussions in WIPO, by the Standing Committee on Copyright, on the resale right.

We would also like to express our sincere appreciation for the statements made by Senegal, France, Latvia, Russia, UK, Nigeria, China and Group B for their support to this important initiative.

The resale right is a fundamental right for visual artists. It ensures that the artists, and their heirs, receive a small share in the proceeds made from the resale of their works in auction houses or galleries.

While the resale right represents only insignificant sums to the sellers and to the auction houses, for many visual artists, this remuneration is a vital part of their income.

And for all of them, the resale right is much more than that.

The resale right is the only legal instrument that allows visual artists to maintain a connection with the unique artworks that they create.

It forces the art market to be more transparent, and therefore helps visual artists to know where their works are, and who owns them.

It addresses the imbalance that exists today in the art market, between the weak position of artists and the strong power of those who exploit their works and commercially benefit from this exploitation.

The resale right makes sense.

When a work of art increases in value, it increases in value because of the artist.

It is the artists' growing reputation and popularity that leads to an increase in the value of his or her work. And it is only fair that the artist himself, or herself, will be able to share in that.

Ultimately, it is the artist's growing reputation that determines the value of their work; therefore, it is only just and equitable that the artist and his or her family benefit from the work's appreciation.

A work of art increases in value also because of another important thing: there is only one copy.

In music, or film, when the work is successful, more copies are sold, downloaded, streamed or communicated to the public. This results in more royalties to the creator. In visual art this is not the case. In visual art a work increases in value primarily because it is the only copy available of that work.

The resale right was first introduced into law in 1920, in France. The need for the right became clear when a collector made a significant amount of money from the sale of Jean-François Millet's painting "The Angelus," while the artist's family was living in extreme poverty. Since then, it has been gradually spreading around the world and is today available in 80 countries.

Indeed, the US intervention mentioned that some countries do not have the right, but this group is becoming smaller and smaller.

The right is also recognized under international copyright law, but in a manner which is basic and insufficient.

It is included in article 14ter of the Berne Convention, which remains the principle blueprint for global authors' rights. However, it is not compulsory and it is subject to the requirement of reciprocity, "to the extent permitted by the country where this protection is claimed".

This particular nature of the right in the Berne Convention represents a major obstacle for visual artists worldwide.

Practically, it means that artists do not get the right – even in countries that recognize it – if the right does not exist in the artists' own country.

The situation is, therefore, that the availability of the right, and the level of protection, varies from one country to another and depends upon the nationality of the author or his/her place of residence. Some countries representing major art markets have not incorporated the right, impeding in this way its application to a considerable number of artworks.

Today, with the increasing implementation of the right, it has proven to be an important tool to foster creativity in visual arts. But there is important progress to be made in order to achieve an effective harmonization of the resale right and secure its availability around the world.

This Committee has already agreed to discuss the right. We now invite it to commence with in-depth analysis of the shortfalls of the existing international framework on the right, and address any needed updates to ensure that all creators, wherever they are, benefit from the same protection and receive a share when their works are sold by auction houses or galleries.

This Committee should not miss the opportunity to discuss the issue, identify the problems, and determine the solutions that need to be found at an international level, for the sake of the visual artists worldwide - a fragile community that represent the creativity and the cultural heritage of each country around the world.

During the last session of this Committee, we have listened carefully to the suggestion of some of delegations that WIPO carries out a study on the impact of the resale right on the art market.

As many delegations will know, a recent comprehensive study on the right was published by a renowned copyright expert – Professor Sam Ricketson. The study clarified why the resale right is fundamental for visual artists. It outlined the international legal protection currently in place and provided a framework for a future agreement to update this framework.

The Ricketson study was presented here in WIPO during the 30 SCCR, at a side event.

Since then, it raised the interest and attention of copyright specialists all over the world. It was also published in a prestigious legal journal – the *Revue Internationale du Droit d'Auteur*.

We believe that this study could serve as a good basis to start meaningful exchanges and substantive discussions within this committee on this important topic.

We invite all delegations to review the study and invite the Secretariat to circulate it to Member States.

The Committee may want to invite Prof Ricketson to present his research and share his conclusions. That presentation could provide valuable information that will assist the committee in exchanging information on this issue and deciding on the best way forward.

We are encouraged by the support of many Member States to the idea of inviting Sam Ricketson to make a presentation on his study.

Mr Chairman, this committee can change the situation of visual artists worldwide, and give them the protection they truly need, and deserve.

We strongly encourage all Member States to start discussions on the basis of the Ricketson study, towards a meaningful outcome.

Thank you, Mr Chairman.