

[DISCUSSION DRAFT]

FEBRUARY 18, 2014

113TH CONGRESS
2D SESSION**H. R.** _____

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 HOUSE OF REPRESENTATIVES

Mr. NADLER introduced the following bill; which was referred to the Committee on _____

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”.

1 **SEC. 2. DEFINITIONS.**

2 Section 101 of title 17, United States Code, is
3 amended by—

4 (1) inserting after the definition of “architec-
5 tural work” the following:

6 “An ‘auction’ means a public sale run by an en-
7 tity where a work of visual art is sold to the highest
8 bidder and the entity is one that sold not less than
9 \$1,000,000 of such work during the previous year.”;

10 (2) inserting after the definition of “Pictorial,
11 graphic, and sculptural works” the following:

12 “For purposes of section 106(b), ‘price’ means
13 the aggregate of all installments paid in cash or in-
14 kind by or on behalf of a purchaser for a work as
15 the result of auction of that work.”;

16 (3) inserting after the definition of “registra-
17 tion” the following:

18 “For purposes of sections 106(b) and
19 701(b)(5), ‘sale’ means transfer of ownership or
20 physical possession of a work as the result of the
21 auction of that work.”; and

22 (4) amending paragraph (1) of the definition of
23 “work of visual art” to read as follows:

24 “(1) a painting, drawing, print, sculpture,
25 or photograph, existing either in the original
26 embodiment or in a limited edition of 200 cop-

1 ies or fewer that bear the signature or other
2 identifying mark of the author and are consecu-
3 tively numbered by the author, or, in the case
4 of a sculpture in multiple cast, carved, or fab-
5 ricated sculptures of 200 or fewer that are con-
6 secutively numbered by the author and bear the
7 signature or other identifying mark of the au-
8 thor; or”.

9 **SEC. 3. EXCLUSIVE RIGHTS.**

10 Section 106 of title 17, United States Code, is
11 amended—

12 (1) by inserting “(A) IN GENERAL.—” before
13 “Subject to sections 107 through 122”;

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

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

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

19 “(7) in the case of a work of visual art, to col-
20 lect a royalty for the work, sold by someone other
21 than the artist who is the author of the work, for
22 a price of \$5,000 or more as the result of an auc-
23 tion.

24 “(b) COLLECTION OF ROYALTY.—

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

4 “(2) CALCULATION OF ROYALTY.—

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

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

9 “(ii) \$35,000.

10 “(B) ADJUSTMENT OF AMOUNT.—In the
11 case of any year beginning after 2014, the dol-
12 lar amount in subparagraph (A)(ii) shall be in-
13 creased by an amount equal to such dollar
14 amount, multiplied by the cost-of-living adjust-
15 ment determined under section 1(f)(3) of the
16 Internal Revenue Code of 1986 for the calendar
17 year, determined by substituting ‘calendar year
18 2015’ for ‘calendar year 1992’ in subparagraph
19 (B) thereof.

20 “(3) COLLECTION OF ROYALTY.—The royalty
21 shall be collected by the entity that conducts the
22 auction and shall be paid to a visual artists’ copy-
23 right collecting society not later than 90 days after
24 the date on which the auction occurs. The visual art-
25 ists’ copyright collecting society shall distribute no

1 fewer than 4 times per year, the net royalty attrib-
2 utable to the sales of the author to the author or his
3 or her successor as copyright owner less the reason-
4 able administrative expenses as determined by regu-
5 lation issued pursuant to section 701(b)(5) of the
6 collecting society.

7 “(4) FAILURE TO PAY ROYALTY.—Failure to
8 pay a royalty provided for under this subsection
9 shall constitute an infringement of copyright and
10 such infringement shall be subject to—

11 “(A) the payment of statutory damages
12 under section 504(e); and

13 “(B) liability for payment of the full roy-
14 alty due.

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

19 “(6) REQUIREMENTS TO RECEIVE ROYALTY
20 PAYMENT.—The royalty shall be paid to, and royalty
21 rights are enforceable by, any author of a work of
22 visual art—

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

1 “(B) who is a citizen of or domiciled in a
2 country that provides resale royalty rights; or

3 “(C) whose work of visual art is first pub-
4 lished in the United States or in a country that
5 provides resale royalty rights.”.

6 **SEC. 4. NOTICE OF COPYRIGHT.**

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

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

12 **SEC. 5. COPYRIGHT OFFICE.**

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

15 (1) redesignating paragraph (5) as paragraph
16 (6); and

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

18 “(5) Issue regulations governing visual artists’
19 copyright collecting societies described in section
20 106, that—

21 “(A) establish a process by which entities
22 are determined to be and designated as visual
23 artists’ copyright collecting societies, that—

24 “(i) requires that a visual artists’
25 copyright collecting society authorized to

1 administer royalty collections and distribu-
2 tions under this title shall—

3 “(I) have prior experience in li-
4 censing the copyrights of authors of
5 works of visual art in the United
6 States; or

7 “(II) have been authorized by no
8 fewer than 10,000 authors of works of
9 visual art, either directly or through
10 reciprocal agreements with foreign
11 collecting societies, to license the
12 rights granted under section 106; and

13 “(ii) excludes any entity from being
14 considered a visual artists’ copyright col-
15 lecting society that, after having been des-
16 ignated a visual artists’ copyright col-
17 lecting society, the royalties collected for at
18 least 5 consecutive years have not been dis-
19 tributed directly to authors after deduction
20 of administrative expenses;

21 “(B) determine a reasonable amount of ad-
22 ministrative expenses that may be deducted by
23 the visual artists’ copyright collecting societies
24 from the royalties payable to an author of a
25 work of visual art; and

1 “(C) establish a process by which—

2 “(i) each visual artists’ copyright col-
3 lecting society may, no less frequently than
4 annually, request from the entities con-
5 ducting auctions a list of works sold by au-
6 thors of a work of visual art represented
7 by the collecting society; and

8 “(ii) an author of a work of visual art
9 may obtain information requested by a vis-
10 ual artists’ copyright collecting society
11 under clause (i) relating to any sale of
12 work by the author of a work of visual art,
13 including the amount of any royalty paid
14 to the collecting society on behalf of the
15 author.”.

16 **SEC. 6. STUDY REQUIRED.**

17 Not later than 5 years after the date of the enact-
18 ment of this Act, the Register of Copyrights shall—

19 (1) conduct a study on—

20 (A) the effects, if any, of the implementa-
21 tion of this Act, and the amendments made by
22 this Act, on the art market in the United
23 States; and

24 (B) whether the provisions of this Act, and
25 the amendments made by this Act, should be

1 expanded to cover dealers, galleries, or other
2 professionals engaged in the sale of visual art;
3 and

4 (2) submit to the Committee on the Judiciary
5 of the Senate and the Committee on the Judiciary
6 of the House of Representatives a report on the
7 study described in paragraph (1), including any rec-
8 ommendations for legislation.

9 **SEC. 7. EFFECTIVE DATE.**

10 This Act and the amendments made by this Act shall
11 take effect on the date that is 1 year after the date of
12 the enactment of this Act.