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Visual Arts Alliance / Alliance des arts visuels

Submission to the House of Commons Standing Committee on Canadian Heritage in view of its study of *Remuneration models for artists and creative industries in the context of copyright*.

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1) Summary of remarks delivered orally to the Committee

Introduction

My name is Emmanuel Madan. I've been a professional artist for the last twenty years, my works have been shown in major galleries and museums around the world as well as domestically.

Since 2014, I've also been the director of the Independent Media Arts Alliance, or IMAA. IMAA is the national representative of the Canadian independent film, video, digital art and sound art sectors. Through our nearly 100 member organizations spanning 10 provinces and 2 territories, we serve over 16,000 independent media artists and cultural workers.

I've been asked to appear today on behalf of the **Visual Arts Alliance**, a consortium of national arts organizations of which IMAA is one. The Visual Arts Alliance comprises 14 national arts service organizations in the domains of visual art, media arts, and craft. Our constituent groups represent artists, curators, art museums, artist-run centres and art dealers. We've been in operation since November 2007 when we first convened at a national Visual Arts Summit.

For the visual arts, the model was never viable

I'd like to echo and build on the statements just presented by my colleague Anne Bertrand, whose organization ARCA is also a member of the VAA. I've been following the proceedings of this committee and the testimony of your previous witnesses. Many have noted the immense challenges they face in the new copyright environment as a result of digital transformation and the consequent increase in mobility of content across borders. These huge shifts are not alien to me or my own organization, as they pertain to audiovisual content. They threaten the viability of the existing model for ensuring equitable and sustainable remuneration for creators. But what stands out for us in the Visual Arts Alliance is that for independent artists engaged in contemporary visual arts and related fields, that model was not sustainable to begin with, even before the current pressures on the copyright regime.

This is why so many contemporary artists rely on a diverse range of income in order to make ends meet, as has been documented repeatedly, for example in the Waging Culture report from Michael Maranda which Ms. Bertrand cited in her brief. Exhibition royalties are certainly part of that revenue mix for some artists. But so also are other revenues related to the artist's practice, such as sales, teaching or other arts-related employment. And so also are micro-gigs, contracts and part-time jobs that are not directly related to their artistic career. That is my own experience, and it's the experience of many artists working in the field, be they emerging, mid-career or often even established or senior artists.

The solution lies beyond copyright

We at the Visual Arts Alliance therefore believe that solutions to the problem of remuneration for professional artists and content creators, while certainly affected by changes in the copyright landscape, cannot be solved exclusively through modifications to copyright legislation. A more holistic set of measures must be brought to bear in order to effectively address the ongoing, systemic, socioeconomic precarity of this country's independent and professional artists.

At the moment, two committees are working in parallel on the revision of the *Copyright Act*. I understand that here at the Standing Committee on Canadian Heritage, your priority is the well-being of Canadian artists and creators. The Visual Arts Alliance is therefore confident that the holistic approach it advocates, which certainly involves, but is not limited to, revising the *Copyright Act*, will appeal to the members of the committee.

Socioeconomic conditions of artists

This is the very spirit of what Ms. Bertrand was just saying, namely, that we must ensure the social and economic security of creators themselves. After all, they are the starting point for the entire creative chain and are therefore the key element of the cultural industry as a whole.

Most independent artists in visual arts, media arts and crafts have the status of self-employed workers. They manage their businesses like any other small business owner. However, given the great instability of income sources, they are subject to major fluctuations, with good years often following years of significant losses. While the *Income Tax Act* sets the “reasonable expectation of profit” as the determining criterion for carrying on a business, it must be recognized that, for many artists, this expectation may take many years to materialize and that, when the benefit finally arrives, it does not necessarily last forever.

I’ll note here we’ve been in discussions with your colleagues at National Revenue in the aftermath of the Steve Higgins case last spring, regarding the importance of applying the Income Tax Act correctly and equitably for self-employed artists.

The need for strategic foresight and evidence-based policy

The existing mapping of artist remuneration and the broader socioeconomic context of artists is incomplete. A report commissioned by our Alliance in 2011 from Guy Bellavance of INRS pointed out a range of gaps and blind spots, and recommended a clear path to address these gaps through a strategic foresighting process that would enable us to measure, analyze and track the evolution of a comprehensive set of data and trends over the long term. The existing statistical tools, such as the Culture Satellite account, are inadequate for achieving a thorough understanding of artist remuneration and artists’ socioeconomic conditions. As Mme. Bertrand pointed out, even the Canadian art data system CADAC, initiated by public art funders across the country, cannot differentiate between royalties and other forms of payments to artists.

2) Recommendations with regard to remuneration models for artists

First Recommendation

That the Standing Committee on Canadian Heritage work with the department of National Revenue to ensure that the Income Tax Act be interpreted in a way that is consistent with the realities of self-employed artists. In addition to providing better assurances that the existing law correctly and appropriately, tax relief measures such as income averaging would be another measure to investigate further.

Second Recommendation with regard to remuneration models for artists:

That the Standing Committee on Canadian Heritage equip itself with the appropriate tools to measure and monitor the socioeconomic conditions of working artists.

We therefore support the recommendation stated by ARCA advocating for statistical tools that rise to the challenge of monitoring and analyzing the Canadian visual arts landscape, tools that are explicitly geared to understanding and improving the socioeconomic conditions of artists and cultural workers. We believe that PCH and Statistics Canada have a central role to play in this work and would advocate in the near term for the formation of a working group in which the Visual Arts Alliance could also play a role.

3) Written responses to questions posed by Committee members on Oct. 30

Gordie Hogg (South Surrey—White Rock, Lib.):

Are there other practices that we can learn about from other jurisdictions, from other parts of the world that would help us in terms of addressing this? Where are the best practices, and what are they?

Members of the VAA note two innovative models in use in the UK: the Own Art program which provides short-term, interest-free loans as an incentive for individual art buyers: <http://www.ownart.org.uk/what-is-own-art/>. Another, known as Art Fund, assists museums in the acquisition of artworks: <https://www.artfund.org>.

Other policies of interest from international jurisdictions:

- The Norwegian Visual Arts Association (NBK) administers a system that provides long-term (three to five years, renewable) basic salaries to working artists. Long-term grants are awarded based on a rigorous adjudication process. This program is funded from revenues from the Artists' Resale Right, which is implemented in Norway. The NBK has strategically directed these funds to address gaps in equity in the visual arts economy, for example creating a dedicated program for senior artists.
- Tax relief measures, such as exemptions on capital gains tax on proceeds from art sales if profits are reinvested in the arts community.
- A key best practice relates to the just remuneration of artists for the exhibition of their work. Visual arts associations the world over, including in Canada, have advocated successfully for the payment of standard minimum artist fees when works are exhibited in galleries and museums. As a result, the principle of just remuneration for artists for the use of their work enjoys broad consensus in the Canadian visual arts sector, although more can still be done to ensure ever-wider compliance and raising the minimum recommended rates.
- A UBI (universal basic income) policy, as is being tested in multiple jurisdictions around the world, represents another possible path to improving socioeconomic conditions of working artists.

Pierre Nantel (Longueuil—Saint-Hubert, NDP):

Could you summarize the copyright issues in digital arts? Are any royalties paid? Is there copyright theft? We know the music industry well and we know about film piracy and so on, but on your side, what is the main issue?

Piracy is certainly a threat to purely digital works, which are susceptible to unauthorized copying. It is important to remember that many digital works also have a material component (hardware), but for artists that produce 100% digital works (such as video games), piracy and illegal copying are issues.

More generally, since copyright in the digital industry brings in so little compensation, tackling piracy will not result in decent remuneration for creators. It is the very model of online distribution that poses a problem: its economic functioning is structured in such a

way that it can never provide for the needs of creators. Moreover, the major VOD and SVOD platforms do not provide Canadian independent artists with a showcase of choice, and so the problem of discoverability is worsened rather than solved by the practices of these platforms.

In this regard, I would refer the Committee to the report produced by the Conseil québécois des arts numériques (*Pistes de solutions pour un plan numérique culturel porteur*, 2015), which recommends a fundamental reorganization of the copyright model in the digital context, adopting open copyright management models and innovative methods of remuneration for the creators of online content (<http://www.cqam.org/files/pdf/plan-culturel-num.pdf>).

I will make a comment here. All the issues of piracy on the web are therefore the same, and concern you as much as other works in other formats and from other disciplines. However, you have just mentioned the potential impact on the transaction that the artists are hoping for.

What is that transaction? To whom and how do you sell your works?

The digital art market is an emerging one in Canada. Each artist tends to operate in their own unique ways. There are many obstacles to the acquisition of technologically-based art work. These range from issues of perception and attitude, to questions of technological longevity, to purely logistical concerns. One of the reasons that the Visual Arts Alliance is advocating so strongly for a comprehensive strategy of measurement and analysis is to better track these transactions and interactions as they evolve, in order to develop appropriate policy that will understand and overcome challenges in the art market and contribute to its development.

Randy Boissonnault (Edmonton-Centre, Lib.):

I would like Mr. Madan, from the Visual Arts Alliance, and Ms. Bertrand to tell me about the link between better data and better income for artists.

This is the first time we have heard that this committee must partner with Statistics Canada, or with Statistics Canada and the government, to collect better socio-economic data in order to put more money into the hands of artists.

All governments, whether they be Conservative, Liberal or another stripe, sometimes use the data argument as a defensive strategy because they don't want to move: "If you get better data, then maybe we can do something, but without the data we can't do anything. Our hands are tied."

Of course we're aware of the reflex of commissioning studies as a temporizing tactic that can deflect or deter from concrete action. However, this is not at all what the Visual Arts Alliance is proposing.

What we envisage is not a one-time study, but rather the development of an integrated set of monitoring tools that will permit a comprehensive and holistic overview of the visual arts and related sectors over the long term. This will create the conditions for all stakeholders who participate in the visual arts ecosystem to maintain an ongoing strategic analysis (“veille stratégique”), tracking the health and evolution of the sector and shaping their interventions based on the best possible evidence and analysis. Given that

My advice to you is to hook your wagon to minority communities. We know that minority communities are overrepresented in the arts community. People of colour, LGBTQ2, indigenous, women, francophones in the west, anglophones in Quebec—find the minority communities that we know are overrepresented among artists and make sure that this is also a way to get their data story told, through the data.

[Translation]

This will give you a very strong argument.

[English]

Is that part of your plan?

Absolutely, foregrounding and centering the experiences of minority and marginalized communities is among the many positive outcomes that an integrated, systemic analysis of the visual arts sector would enable.

Monsieur Madan, you made a very interesting argument that you wanted the CRA to apply the rules better. Could you include that in your submission? What do you mean, and do you have examples of when the rules have not been applied, defavourizing your members? That would be helpful for us to understand. Can you give us an example of how not applying the rules properly has affected your members?

Members of the Visual Arts Alliance, as well as our colleagues representing other arts disciplines, have heard clearly from our membership that the CRA has been reassessing and auditing artists at an increased rate over the last four years. Notably, many artists' tax returns are reassessed when they claim Canada Council for the Arts project grants or awards. The grant amount received is initially reported in Box 105 on a T4A form. However, reporting grant income in Box 105 equates [artist's project grants](#) with [scholarships](#) and does not facilitate the reporting of both revenue and expenses on grant-related projects (which helps establish that an artist is involved in a professional practice, as outlined in [IT504R2](#), section 5 for visual artists and writers, or [IT-525R](#), section 7 for performing artists). Professional artists are more likely to report grant revenue on a

professional or business return, where both revenue and expenses are more explicitly itemized.

Although the CRA has confirmed that they are not specifically targeting artists for audit assessment, we believe it is happening more commonly lately because of confusion in the way that grants are reported by the Canada Council and interpreted by the CRA. We want to clarify that Canada Council project grants are part of an artist's business income, and by receiving a grant they have already met the Council's requirements for status as a [professional artist](#). Using Box 105 to report grant income appears to result in an increase in reassessments that are an unnecessary use of resources on both sides. It is important for artists to deduct related expenses as any other business would, and we recommend that CRA's procedures be reviewed to better align with the realities of professional contemporary artists accessing public funding.¹

Hon. Steven Blaney (Bellechasse—Les Etchemins—Lévis, CPC):

What we are realizing is that there are two avenues. You would like to see studies. If you wish, you can respond in writing to my comments.

Mr. Madan and Ms. Bertrand, you expressed the wish that we collect statistical data to support artists. However, they produce works, and those works create wealth.

Does the government have to support artists or put in place measures that will create value for the works, which in turn will support the artists? That is the point I wanted to make. I would appreciate your comments on that.

Perhaps the statistical study should take into account these incomes, where they come from and how they can be increased. It's the chicken and the egg.

The principal conclusion of the report which provides the blueprint for VAA's recommendation (*The Visual Arts in Canada: A Synthesis and Critical Analysis of Recent Research*, Guy Bellavance, INRS, April 2011) is that one cannot divorce art works from the artists who produce them, nor from the overall system that contributes to supporting those artists. As laid out by Bellavance's research, this support system is composed of five

¹ For further information, please refer to a recent briefing note on this subject, published by the Canadian Arts Coalition. <http://www.canadianartscoalition.com/artist-taxation-briefing-note/>

CRA's instructions relating to artists' project grants can be found at:

<https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/about-your-tax-return/tax-return/completing-a-tax-return/personal-income/line-130-other-income/artists-project-grant.html>

CRA's instructions relating to scholarships are at: <https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/about-your-tax-return/tax-return/completing-a-tax-return/personal-income/line-130-other-income/line-130-scholarships-fellowships-bursaries-study-grants-artists-project-grants-awards.html> .

Relevant interpretation bulletins:

IT504R2 for visual artists and writers - <https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/it504r2-consolid/archived-visual-artists-writers.html>

IT525R for performing artists - <https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/it525r-consolid/archived-performing-artists.html>.

distinct but interlocking mechanisms: 1) educational institutions, that provide professional training and education in the arts; 2) public arts councils and other funding bodies, that support artists and arts organizations; 3) museums, that collect and exhibit Canadian works of art; 4) the art market, a mechanism for selling artworks; and 5) professional groups and sectoral associations. Each of these mechanisms has a role to play in ensuring the health of the overall system.

The Hon. Steven Blaney is quite correct in stating that it is through the artworks they create that artists introduce value into the economy. In order for that value to be actualized, however, each of the constituent mechanisms must be functioning: for example, museums must be in a position to exhibit works or make acquisitions, a vibrant art market must be in place, professional groups and associations must be renewing discourse around contemporary art through curatorial framing, writing and publication, and artists must be able to access support for training, research, and career development at all stages. An ongoing analysis of all these factors and their interactions will permit the government to better analyze the functioning of the system and make appropriate, evidence-based interventions into supporting and enhancing the socioeconomic conditions of artists.

As mentioned in the recommendation section above, members of the Visual Arts Alliance could play an important role in guiding the proposed ongoing strategic monitoring. Given that our Alliance unites stakeholders from many components of the visual arts support structure (arts educators, museums, art merchants, professional groups and sector-wide associations), the VAA is very well placed to offer expertise and guidance in informing this work.