

John R Walker

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M Peter Keele
Committee Secretary
Artists Resale Royalty Bill Enquiry
Standing Committee on Climate Change, Water, Environment and the Arts
PO Box 6021
House of Representatives
Parliament House
CANBERRA ACT 2600

15 January 2009

Dear Mr Keele

RE: House of Representatives Standing Committee on the Artists' Resale Royalty Bill

Further to my letter of 29 December, I request that you include this further submission which advocates a return to first principles of copyright as a basis on which to determine the effectiveness of this legislation. My submission is based upon findings in two reports: Shane Simpson's *Review of Australian Collecting Societies*, 1995 and Rupert Myer's *Report of the Contemporary Visual Arts and Craft Inquiry*, 2002.

In 1995, Shane Simpson in his report, Section 2.5 on the role of statutory licences and collective administration in a system of exclusive rights, stated:

"The international system of copyright, as reflected in the Berne and Universal Conventions, is based upon the granting of exclusive rights of control to copyright owners. It is generally a system in which the owner of each right has the right to control that right, territory by territory, term by term and use by use. It is ruggedly individualistic: The rights of copyright grant individual owners the right to determine whether these rights are to be exploited and, if so, the terms of exploitation. Collective administration is, and should be, an exception rather than the rule."

He continued:

"The general attitude of WIPO to statutory licences [that is compulsory] is that they should be avoided wherever collective administration is feasible. In brief, it is considered that collective administration recognises that the individual copyright owner has the *essential* right to control usage - even though, for ease of administration, that individual *may choose* to license or assign that right to a representative organisation. When that right to control is taken away, all that one is left with is a "right to remuneration", which is a quite different concept to the full rights of copyright. Rather than knocking down the long established structure of individual rights which comprises copyright (by the implementation of a series of compulsory licences), it is preferable to maintain the existing regime but promote the ease and efficiency of access to copyright material by promoting and facilitating the collective administration of such rights.

[Voluntary] Collective administration should be the preferred mid-way house between the exercise of individual exclusive rights and a compulsory statutory licence where mass usage requires that the community be given access to the rights on reasonable terms.”

Again Simpson in a speech at the launch of this review stated that:

“the Report recommends that there be a multiplicity of societies so that individual societies can represent the disparate interests of the separate groups of rights owners”.

Simpson found that there were no advantages, to the right holders, of monopoly of collection and that the right holder benefited from free market competition for the provision of the service of collection.

In 2002, Rupert Myer in his *Report of the Contemporary Visual Arts and Craft Inquiry* found for a primary royalty right and NOT for a secondary licence. The use of primary rights is never compulsory for the individual right holder. Shane Simpson stated:

“that when the right to control [of usage] is taken away, all that one is left with is a “right to remuneration” which is a quite different concept to the *full rights of copyright*”

I submit that compulsory usage of the resale right is incompatible with Myer’s recommendation. Myer found for an inalienable right of control of usage, not for a right that is compulsory in its actual use. Further, a right to which I cannot say NO is not the individual artist’s right of control that Myer found for.

Maintaining the nexus between the individual right holder’s free choice to use the collecting society’s services and the payment by that individual right holder of collection fees for those services is vital if the scheme is not to be an hypothecated tax upon artists in support of the management of the scheme. Compulsory collection makes the payment by the individual right holder of fees in support of the management of the system, a duty mandated by the crown.

If the scheme cannot pay for itself without my compulsory, mandated participation then it is tax-like in its very essence. Shane Simpson describes copyright as “ruggedly individualistic”. I ask the Committee: is the resale royalty scheme an individual artists’ right of control of usage, that is a matter of free choice, or is it a mandated duty upon artists? A royalty or a duty?

Yours sincerely

John R Walker
Artist