



## **Copyright Visual Arts submission to the Government of Canada's consultation on the Copyright Board of Canada review**

### **About Copyright Visual Arts**

Copyright Visual Arts, also known as CARCC, was founded in 1990 to assist artists in managing their copyright. Copyright Visual Arts is a non-profit subsidiary of CARFAC and RAAV, who represent visual and media artists in Canada and Quebec respectively. As such, our position in this brief is shared by these two associations, with a combined membership of nearly 5,000 visual and media artists. Affiliation with Copyright Visual Arts is separate but often overlapping from the membership of CARFAC and RAAV.

Copyright Visual Arts administers and negotiates copyright on an individual basis on behalf of the affiliates of the collective, representing approximately 1,000 Canadian visual artists. Affiliates legally assign their copyright, for its management by the collective. Copyright Visual Arts operates in both English and French, and maintains offices in Ottawa and Montreal. We are the only Canadian copyright collective exclusively run by visual artists, for visual artists.

We have over 25 years of experience with negotiating terms and licensing copyright use, collecting royalties, and paying visual artists. We administer royalties for the exhibition and reproduction of visual art, and distributing Access Copyright and Copibec reprography payments to affiliated visual artists. We aim to be the primary copyright collective that eventually administers the Artist's Resale Right when it is legislated in Canada. We license the use of copyright for our artist affiliates or their estates, in Canada and abroad, and we offer a copyright registration service for those who require proof of the date of creation of a design or artwork. We also occasionally offer legal counsel and services if an affiliate's copyright has been infringed.

### **Our submission**

The Copyright Act is an essential tool that assists Canadians in balancing the intellectual property and economic rights of creators with the consumer's right to access their work,

and the Copyright Board is an important intermediary that works to ensure there is a fair balance between these two rights in the marketplace.

While Copyright Visual Arts has never applied for a tariff with the Copyright Board, we have a vested interest in ensuring that the Board functions as effectively and efficiently as possible. One of the reasons that we have never filed a tariff is that the process for filing a tariff is long and prohibitively expensive for a small non-profit collective like ours. The time taken from proposal publication to tariff certification takes, on average, about 3.5 years. Several factors, including judicial reviews, make the process longer and certainly more cost-prohibitive, as legal representation over this course of time can be very expensive. Within the review period, it generally takes the Board over a year to render a decision, and ideally this process can be shortened.

It is also similarly difficult and expensive to enforce tariffs once they become certified, if collectives are not provided adequate protection under the Act. The penalties for those not respecting tariffs are not strong enough, so many do not pay them, even if they are taken to court. Therefore, instead of certifying a tariff, we negotiate copyright royalties with content users directly on behalf of our affiliates, using industry standards and guidelines such as the CARFAC/RAAV Minimum Recommended Fee Schedule. If it was possible to certify those royalty payments as tariffs in a more accessible and efficient manner which provided strong penalties if the royalties are not paid, we could be better positioned to enforce them on a broader level by making tariff applications.

It is important to note that Copyright Visual Arts affiliates receive royalty payments from Access Copyright as a direct result of the tariffs they certify through the Copyright Board. These royalties include reprography rights that visual artists are entitled to in addition to writers and publishers. Visual artists receive lower royalties year after year as a result of changes to the Copyright Act that were made in 2012, and many tariffs are not being paid while the courts debate whether or not the tariff should apply in certain instances. The years spent debating the issue in the courts and at the Board means artists are not getting paid what they should in the meantime.

This is important because the income potential of visual artists is significantly lower than the overall Canadian workforce, with average earnings at \$17,176, and half of visual artists in Canada earning just over \$10,000 per year, according to 2011 Census data. Visual artists earn \$10,500 less than the average artist, and 62% less than the average Canadian worker. This may be partly because 74% of visual artists are self-employed, and struggle to earn an income from their copyright-protected work. With respect to tariffs, Access Copyright reports that royalties they pay to creators comprises 20% of an artist's income, which has declined by 80% between 2013 and 2017.

We understand that our concerns are shared by Access Copyright, and as such we support all recommendations that they have put forward for consideration. Like them,

we are asking for the tariff certification process to be refined so that it may follow a shorter and more efficient timeline, and that the remedies provided to those under the mandatory regime of the Copyright Act be extended to all copyright collectives so that we may be able to recover statutory damages if a tariff is not being paid.