Anne Sanders

11 February, 2009

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

Dear Mr Keele

Re: Supplementary attachment to 7 February letter AS.

I wish to draw the Committee's attention to two remarks made at the Committee hearing on Friday 6 February. Both remarks were directed at Mr Walker. Ms Cave observed in response to questioning that Mr Walker's opinion as an artist was "not typical" and Mr Dreyfuss in a direct question to Mr Walker stated "it seems to be the case that you are not joined by a whole lot of other artists in the position that you have taken". Both observations regarding Mr Walker's status reveal a serious definitional preference for artists as members of an organisation rather than individual artists recognised by the market through the sale of their works. Given the very nature of the proposed resale royalty, this is an interesting dilemma. As Mr Walker noted in his submission to the committee and I noted in my comments to the Committee, many artists that we know are individuals recognised as artists by the market through the primary sales of the art works, and they are not members of organisations such as NAVA, nor are they necessarily aware of many of the organisations that constitute CARR.

I also note that NAVA, the organisation that claims to represent Australian artists, did not give evidence. Ms Martin appeared in a private capacity, as did Mr Walker.

It is the recursive isomorphic behaviour of the CARR organisations that is the misrecognised element in this dilemma. This is particularly so with the smaller, dependent membership organisations such as NAVA and Viscopy. They are dependent for their existence on funding and recognition by the much larger institutions such as the Australia Council, federal and state government departments, declared collecting societies and ARC university linkage grants and processes. Thus they mirror each other.

It is this hall of mirrors quality of circularity that excludes individuals. Individuals do not have the symbolic importance of rank and title, hence authority, that is the very essence of institutional behaviour. However as Rupert Myer advocated in his report, this resale royalty should be an individual right of control of usage. The current debate presents a fundamental anomaly; most of the artists that will be affected by a resale royalty are not institutionally linked to NAVA and if they are linked to Viscopy, it is only because they have given their *permission* to Viscopy to negotiate and collect copyright on their behalf. These same artists are not institutionally linked to CAL, CISAC, or the Australian Copyright Council. Many of them are not lecturers at university art schools, nor administrators of arts organisations and galleries; they are not subsidising the making of their art through part-time or full time work in arts institutions. They are individual artists who work in their studios and make and sell art for a living; they would be best described as sui generis.

ArtsLaw and its advocacy for CARR's position on the resale royalty debate means that any individual artists who do not support this position cannot get any advice or help from ArtsLaw, which I might add, was set up to give artists legal support. With regard to ArtsLaw, it is the coalition of arts organisations that are being given subsidised support, not individual artists (although of course, the claim will be made that the organisations represent the interests of the majority of Australian artists: this claim is founded in circularity).

Finally, Mr Torres in response to questioning made plain that within the remote indigenous artist communities there has not been sufficient consultation to explain what resale royalties are and how the legislation will impact upon them. It is well know that NAVA failed in its contribution to the Indigenous Code of Conduct because of its inability to consult. I suggest that Mr Torres's observation might be extended to include many non-indigenous artists who are not part of this organisational nexus.

In a supplementary answer to Dr Washer, regarding the financial viability of a non-compulsory scheme and also to Mr Dreyfuss' questions about explicit problems pertaining to a compulsory, monopoly, both questions directed to Mr Walker, I would like to make the following observation. The CARR scheme has been promoted in a form that would maximise management fees. It may well be that a scheme reoriented towards maximising benefit to artists would be economically viable. Whilst it is true that Viscopy has required repeated injections of public money and has operating costs of approximately 37cents in the dollar (they don't actually publish details of individual collection fees. I have calculated this on the basis of the gross collection and published payment to right holders), the Artists Collecting Society in the UK which has just under 300 artist members, whose management is artist controlled is an efficient, competitive, viable service provider whose costs appear to be a lot less than DACS.[1]

Mr Walker and I believe that with the exception of remote indigenous artists, the case for any sort of collective management, let alone compulsory collectivisation, is poor. The is a need for an element of individual voluntary choice being introduced into the scheme if it is the committee's intention to create a scheme for the benefit of remote indigenous artists.

I thank you and the Committee for the opportunity to submit these comments and I look forward to the committee's deliberations before the House of Representatives on 20 February 2009.

Yours sincerely

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[1] There are some serious questions to be asked about Viscopy's current operations as to whether they are collecting royalties without the authority of individual right holders and whether they understand the concepts of consent and service provision.