

112TH CONGRESS  
1ST SESSION

# H. R. 3688

To amend the copyright law to secure the rights of artists of works of visual art to provide for royalties, and for other purposes.

---

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 15, 2011

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

---

## A BILL

To amend the copyright law to secure the rights of artists of works of visual art to provide for 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 “Equity for Visual Art-  
5 ists Act of 2011”.

6 **SEC. 2. DEFINITIONS.**

7 Section 101 of title 17, United States Code, is  
8 amended by—

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

1 “For purposes of section 106(b), ‘auction’ means a  
2 public sale run by an entity that sells to the highest  
3 bidder works of visual art in which the cumulative  
4 amount of such works sold during the previous year  
5 is more than \$25,000,000 and does not solely con-  
6 duct the sale of visual art by the entity on the Inter-  
7 net.”;

8 (2) inserting after the definition of “proprietor”  
9 and prior to the definition of “pseudonymous work”  
10 the following:

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

15 (3) inserting at the end of the definition of  
16 “Publication” the following: “For purposes of sec-  
17 tion 106(b), in the case of a work of visual art as  
18 defined in this section, a publication does not include  
19 photographic reproductions or other images of the  
20 work, including castings of a sculptural work, made  
21 or distributed prior to January 1, 1978, in connec-  
22 tion with the exhibition of such work by a gallery or  
23 museum, whether for purposes of sale of the original  
24 work, or in connection with any publication author-  
25 ized by a gallery or museum in possession of the

1 work regardless of whether such publication was  
2 with the consent of the author. In no other cir-  
3 cumstances is a work of visual art considered to  
4 have been published prior to January 1, 1978, un-  
5 less such publication has been authorized by the ex-  
6 press written consent of the author of such work.”;

7 (4) inserting after the definition of “registra-  
8 tion” and prior to the definition of “sound record-  
9 ings” the following:

10 “For purposes of sections 106(b) and 701(b)(5),  
11 ‘sale’ means transfer of ownership or physical pos-  
12 session of a work as the result of the auction of that  
13 work.”; and

14 (5) amending paragraph (1) of the definition of  
15 a “work of visual art” to read as follows:

16 “(1) a painting, drawing, print, sculpture, or  
17 photograph, existing either in the original embodi-  
18 ment or in a limited edition of 200 copies or fewer  
19 that bear the signature or other identifying mark of  
20 the author and are consecutively numbered by the  
21 author, or, in the case of a sculpture in multiple  
22 cast, carved, or fabricated sculptures of 200 or fewer  
23 that are consecutively numbered by the author and  
24 bear the signature or other identifying mark of the  
25 author; or”.

1 **SEC. 3. EXCLUSIVE RIGHTS.**

2 Section 106 of title 17, United States Code, is  
3 amended by—

4 (1) inserting “(a)” before “Subject to sections  
5 107 through 122”; and

6 (2) adding at the end the following:

7 “(b)(1) In this subsection, the term ‘net royalty’  
8 means the royalty amount collected less administrative ex-  
9 penses of the visual artists’ collecting society. In no case  
10 shall the administrative expenses of the visual artists’ col-  
11 lecting society subtracted from the royalty amount col-  
12 lected exceed 18 percent.

13 “(2) Whenever a work of visual art is sold as the re-  
14 sult of auction of that work by someone other than the  
15 artist who is the author of the work, the entity that col-  
16 lects the money or other consideration paid for the sale  
17 of the work shall, within 90 days of collecting such money  
18 or other consideration, pay out of the proceeds of the sale  
19 a royalty equal to 7 percent of the price. Such royalty shall  
20 be paid to a visual artists’ collecting society. The collecting  
21 society shall distribute, no fewer than 4 times per year,  
22 50 percent of the net royalty to the artist or his or her  
23 successor as copyright owner. After payment to the artist  
24 or his or her successor as copyright owner, the remaining  
25 50 percent of the net royalty shall be deposited into an  
26 escrow account established by the collecting society for the

1 purposes of funding purchases by nonprofit art museums  
2 in the United States of works of visual art authored by  
3 living artists domiciled in the United States. The right to  
4 receive such royalty and the obligation to deposit the re-  
5 maining share of sale proceeds into the escrow account  
6 provided in this subsection may not be waived by the artist  
7 or his successor as copyright owner. Failure of the entity  
8 collecting the money or other consideration resulting from  
9 the sale of the work to pay the royalty provided under  
10 this section shall constitute an infringement of copyright.  
11 Any such infringement shall be subject to the payment of  
12 statutory damages under section 504.

13 “(3) Paragraph (2) shall not apply to the sale of a  
14 work for a gross sales price of less than \$10,000, or in  
15 exchange for property with a fair market value of less than  
16 \$10,000.”.

17 **SEC. 4. NOTICE OF COPYRIGHT.**

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

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

23 **SEC. 5. COPYRIGHT OFFICE.**

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

1           (1) redesignating paragraph (5) as paragraph  
2           (6); and

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

4           “(5) Issue regulations governing visual artists’  
5           collecting societies pursuant to section 106(b), which  
6           shall, at a minimum—

7                   “(A) establish a process by which entities  
8                   would be determined to be and designated as  
9                   visual artists’ collecting societies;

10                   “(B) require that a visual artists’ col-  
11                   lecting society authorized to administer royalty  
12                   collections and distributions under this title  
13                   shall have had prior experience in licensing the  
14                   copyrights of authors of works of visual art in  
15                   the United States, or have been authorized by  
16                   no fewer than 10,000 authors of works of visual  
17                   art, either directly or by virtue of reciprocal  
18                   agreements with foreign collecting societies, to  
19                   license the rights granted under section 106;

20                   “(C) exclude any entity from being consid-  
21                   ered a visual artists’ collecting society where,  
22                   after having been designated a visual artists’  
23                   collecting society, the royalties collected for at  
24                   least 5 consecutive years have not been distrib-

1           uted directly to authors after deduction of ad-  
2           ministrative expenses;

3           “(D) establish the methodology and proce-  
4           dures pursuant to which visual artists’ col-  
5           lecting societies shall make grants to nonprofit  
6           museums for the purchase of works with the es-  
7           crow funds provided in this section, after notice  
8           and opportunity to comment, including—

9                   “(i) the criteria to be used by the vis-  
10                   ual artists’ collecting societies for applica-  
11                   tion by nonprofit art museums for the pur-  
12                   chase of works out of the funds held in es-  
13                   crow for that purpose by such societies;

14                   “(ii) the amount of the maximum  
15                   grant for the purchase of an individual  
16                   work of visual art;

17                   “(iii) the maximum amount that may  
18                   be granted to a nonprofit museum; and

19                   “(iv) criteria for the award of grants  
20                   when the amounts requested exceed the  
21                   total amount of funds held in escrow;

22           “(E) require that each such society provide  
23           the Register of Copyrights with an annual audit  
24           of royalty funds collected under section  
25           106(b)(1) that includes the total amount re-

1 received from the sales of works of visual art, the  
2 total amount paid in distributions to artists or,  
3 if deceased, to their successors as owners of  
4 copyright, and the total amount paid in grants  
5 to each nonprofit museum for the purchase of  
6 works of visual art; and

7 “(F) make publicly available an annual re-  
8 port to the Congress setting forth the total  
9 amount of royalties received by each visual art-  
10 ist’s collecting society and the amount disbursed  
11 to each nonprofit art museum receiving a grant  
12 or grants from the escrow funds established by  
13 each visual artists’ collecting society.

14 Except as necessary for the report to Congress re-  
15 quired pursuant to subparagraph (F), the Register  
16 of Copyrights shall not disclose any confidential or  
17 proprietary information provided to it in the annual  
18 audits made available pursuant to this section.”.

19 **SEC. 6. COPYRIGHT OFFICE FEES.**

20 Section 708(a) of title 17, United States Code, is  
21 amended—

22 (1) by redesignating paragraphs (10) and (11)  
23 as paragraphs (11) and (12), respectively;

24 (2) by inserting after paragraph (9) the fol-  
25 lowing:



1           “(10) for expenses associated with carrying out  
2           its responsibilities under section 701(b)(5), provided  
3           that such fees shall be paid out of the total royalty  
4           payments received by collecting societies pursuant to  
5           section 106(b), before deduction of such societies’  
6           administrative expenses; and provided further, that  
7           following the initial rulemaking necessary to carry  
8           out its obligations under section 701(b)(5), such fees  
9           shall not exceed 5 percent of the total annual  
10          amount of royalties received by such collecting soci-  
11          eties;” and

12           (3) in the matter following paragraph (12), as  
13          so redesignated, in the second sentence, by striking  
14          “(10) and (11)” and inserting “(11) and (12)”.

15 **SEC. 7. EFFECTIVE DATE.**

16          This Act and the amendments made by this Act shall  
17          take effect on the date that is 1 year after the date of  
18          enactment of this Act.

○