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Arts

Artists should share in resale profits. It's an old idea, but it's not the reality in Canada yet

Auction earnings? More than \$250 million. Artist Peter Doig's take? 'Less than \$65,000'

[Leah Collins](#) · CBC Arts · Posted: Jan 14, 2022 2:53 PM MST | Last Updated: January 14, 2022



In this photo from 2016, a visitor to Christie's auction house in Hong Kong takes a photo in front of Peter Doig's painting *Swamped*. (Anthony Wallace/AFP via Getty Images)

If you were to make a list of living artists whose work earns the biggest of the big bucks, Peter Doig would be on it, and in November of last year, the Edinburgh-born painter set yet another personal record when his 1990 painting *Swamped* sold for [\\$39 million US](#) at Christie's auction house in New York. A previous sale of that piece (for \$26 million US) earned Doig the distinction of being the [most expensive British artist alive](#). But what does that even mean for Doig himself?

On [Thursday's episode of *The Q Interview* podcast](#), host Tom Power tabled the subject in a long-ranging interview with the artist. And in reflecting on the topic, Doig mentioned a bit of trivia that might not have been obvious to the listeners at home: if his paintings sell at auction for millions, he doesn't necessarily see a scrap of it.

"I think what most people don't understand [is] there's the massive, massive gap between the primary market — which is where an artist sells their work to someone, usually through their gallery — to the secondary market, which is, you know, a whole other world," said Doig. "And there's no relationship between the artist and the buyer in the secondary market."



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Episode 23: Peter Doig

Peter Doig is one of the most respected figurative painters of our time — and it's his depictions of Canada that have become the most famous and financially successful. Just last November, Doig sold one of his pieces, titled *Swamped*, for \$39 million US, which placed him among the world's top-selling living artists. He spoke with Tom Power about how growing up in Canada influences his work. Plus, how he was wrongly accused of painting a piece of art that made international headlines.

Or, if you're more of a money person, you could put it this way. As Doig explained on the podcast, he's tallied up his own sales figures, just for a lark. "I added up all the prices that the works had achieved at auction, the highest ones, since the *White Canoe* was sold," he said. That painting, by the way, broke the auction record for a living European artist in 2007. The hammer price? [\\$11.3 million US](#).

But going back to Doig's arithmetic, here's the grand total he came up with: "I think it amounted to over — well, well over \$250 million," he said. "And then I added up the monies that I received for all those paintings, and it was less than \$65,000."



Peter Doig "White Canoe", 1990-1991 Oil on canvas 78 3/4 x 96 1/2 inches 200 x 245 cm DOI 235 Private Collection (Courtesy Michael Werner Gallery, New York and London)

[Hide caption](#)

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It's called the Artist Resale Right

What Doig's arguably talking about is a concept known as the Artist Resale Right (ARR) or *droit de suite*, a term coined in France, where such a royalty scheme has been in play for more than 100 years. The idea itself is as simple as what Doig describes; when artwork is resold, the artist or their estate receives a small portion of what the buyer has paid. And in fact, dozens of countries have legislated the ARR — though the particulars of how it works are a touch different from place to place.

In France, to begin with the O.G. example, *droit de suite* has been in effect since 1920, and beneficiaries are entitled to a royalty if their work sells on the secondary market. The distribution's overseen by a special organization called the Association for the Defence of Graphic and Plastic Arts (ADAGP).

In 2001, the [European Union](#) legislated the ARR, and their member countries, including France, base royalty fees on a sliding scale that can be as much as four per cent of the sale price, though

they've put a cap on how much an artist can earn through the system. (Royalties max out at 12,500 euros.)

- [Peter Doig on Q: A visual companion guide](#)

The details surrounding who stands to collect those royalty cheques — and for how long after an artist's death — can vary from country to country, as do the rules around who oversees all the bureaucracy of those payments and which type of sales qualify for the ARR. Auction sales might be eligible for royalties; private sales might not.

And to further complicate matters, there's this double back salto of mental gymnastics to consider: the premise all rests on the notion that art is fundamentally distinct from any other object on the market. If you sell your couch, for example, you don't expect to keep making money every time a new owner posts it on Kijiji. But as the creator of something, an artist — be they a sculptor, a musician, a writer, whatever — has moral rights to their work. It's "the right for an author to be affiliated with their work," says Cat Lovrics, a Toronto-based partner at Marks & Clerk Canada, an intellectual property firm. So even if an object — a painting, for instance — passes hands, the artist still has a stake in it. "They should have the ability, if they don't waive those [moral] rights, to be able to control the integrity of the work," says Lovrics. And so, artwork isn't treated the same as other forms of property. Still, it's tricky for visual artists to see their contributions recognized in any monetary way, which is one reason the ARR is arguably of such importance.

It's especially tough in North America

Let's go back to what Doig said on *The Q Interview* for a spell. Maybe you're wondering why he didn't get a share of those record-breaking auction prices if the ARR is such a thing — and it *is* a widespread thing. You'll find the ARR legislated in countries all over the world, from Australia to India to Iceland to the U.K., and these places have a reciprocal agreement with each other, so if you're an artist from a country with the ARR, and your work resells in another region that has a similar law, congratulations, you've probably got a royalty cheque coming to you.

But the ARR isn't established everywhere. It's not acknowledged in China, Japan, Switzerland and — notable to this particular explainer article — the United States and Canada. And artists who hail from one of those hold-out countries are doubly out of luck, because even if their work sells internationally in a region where the ARR is recognized, they'll lose out on earning a cut. And that's one issue that may be of particular interest to artists here in Canada.

Yeah, why doesn't it exist in Canada?

The situation here is changing, it turns out, and the federal Liberals have listed the ARR as one of their platform priorities, promising to make changes to the Copyright Act, "[including amending the Act to allow resale rights for artists](#)." But is there something unique about this country, something that's precluded the ARR from being recognized already?

"No, there isn't," says Lovrics. "It's really a policy decision," she explains. "Up until this point in time, there just hasn't been a policy decision to move in that direction." However, Canadian Artists' Representation/Le front des artistes canadiens (CARFAC) is one group that has lobbied for years to see the ARR established.

"It's been a long process. Changing laws always is," says April Britski, CARFAC's executive director, with a laugh. She says the organization presented their first proposal to parliament in 2010. A

document they published in 2015 [outlines their recommendations](#) for what instituting the ARR could look like in this country.



Kenojuak Ashevak's *The Enchanted Owl*, created in 1960, was featured on a Canadian stamp and has permeated Canadian culture. (West Baffin Co-Operative Ltd./National Gallery of Canada)

Per CARFAC, the ARR would apply to works that sell publicly on the secondary market for \$1,000 or more. Items that fit that description would earn a royalty — specifically, a five per cent cut of the sale price. And CARFAC suggests that all the subsequent administrative details be managed by a copyright collecting society, of which, they say, there are already two in Canada.

One argument for implementing the ARR is the notion that visual artists have limited means of earning income, even as their body of work grows in value over time. Those stakes are noted in CARFAC's campaign, which highlights groups who are traditionally disadvantaged by the current system, including seniors and artists from Indigenous communities, particularly those who live far from the primary market.

A few years back, [CBC News ran this story](#) about artist resale royalties, and it outlines how Inuit artwork, in particular, is often brought to the secondary market after a dramatically cheaper sale to wholesalers. (The article cites the example of *The Enchanted Owl* by the late Inuk artist Kenojuak Ashevak. Shortly before the story's publication, an edition of the famed print was auctioned for \$216,000 in Toronto. It first sold in 1960 for roughly 50 bucks. But if the ARR were in place, her beneficiaries could have earned a royalty of \$10,800.)

If Canada's going to introduce the ARR, what happens next?

Britski says she's hopeful that the Copyright Act will be opened up, as promised. One development has been particularly encouraging, she says. In December, the [Minister of Canadian Heritage Mandate Letter](#) highlighted a commitment to allow resale rights for artists.

"It does suggest that it may happen sooner than later," says Lovrics, though to be fair, the actual timeline has yet to be seen. Even if the ARR were instantly legislated tomorrow, there would still be plenty more to do. There would be a whole system of payment distribution to get up and running, notes Britski, plus a network of stakeholders would need to be educated on how it all works. "It will be some time, likely, before we see anything happen in terms of the law being enacted," says Lovrics.

One Canadian art dealer is doing it already

Instead of waiting for the ARR to be formally legislated, some dealers are going the DIY route, figuring out their own ways of honouring it. On its website, [Peter Estey Fine Art & Auctions](#) advertises itself as the "first auction house in Canada to implement the Artist's Resale Right." The business, which opened in 2018, is run by two working artists: Jay Isaac and Caitlin Lapeña.

Isaac has watched his own works come up at auction in the past. He says three will be available on the secondary market this fall. On a personal level, he'd like to see mandatory resale rights come into effect in Canada. "It would mean a financial kickback," he says. "That's really what it comes down to: it's money."

A dollar is a dollar, and to that end, when a piece sells at auction, Peter Estey pays the artist five per cent of the hammer price, no matter how large — or small. "If something sells for \$100, we offer \$5," says Isaac, who also handles the administrative detective work of tracking down the recipient.

What difference would a few royalty dollars make?

Not everyone accepts a royalty cheque when it's the equivalent of a free small latté, says Isaac. And depending on where an artist's at in their career, bigger payouts might not have a meaningful impact on a person's immediate income either. [Steve Driscoll](#), a Toronto-based artist, says he sees his paintings appear at auction seven or eight times a year. In November, a [2015 landscape of his was resold](#) through Waddington's for \$15,600. Would a five per cent royalty off that sale make a difference to his day-to-day?

"Not much at this point in my life, to be honest," says Driscoll, who says he stands to earn more from the work he sells on the primary market — paintings that are expected to increase in value as his older material goes for higher prices at auction. But he says he's all for the ARR. At this moment in time, he's feeling productive, doing two or three exhibitions on average a year. But he can't predict the future, and if something about his situation changes, he might need to bank on the value of work that's already out there. "I could see there being a potential for [the ARR] being meaningful later in life."

- **[Peter Doig is the highest-selling living British artist. And Canadian, sort of](#)**

"Little amounts of money from numerous and various places really add up, so these things are important," says Isaac. The gesture alone has significance, he says. "It goes back to being an artist and understanding the difficulties that artists have making money. It's really as simple as that."

"Maybe it's a little bit of a hassle to give away five per cent of an already pretty small profit margin," says Isaac. "But to us, I think it's more important to have a sort of well-placed mandate."

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- Jay Isaac, co-director of Peter Estey Fine Art & Auctions

"I don't think it's a giant step for businesses to put this into practice at all. For us, you know, we're putting it out there and it's not perfect. It's not seamless. It's the first step in a proposition, basically."

But for now, if a Canadian artist's work were to make headlines for being successfully acquired at auction by some anonymous wacky billionaire, there are no official channels in place to ensure they get a small share of the profits. "Auction houses, they're breaking records, but they never mention who that money is actually going to," says Renuka Bauri, director of communications and advocacy at CARFAC. "You assume it's the artist, but it almost never is."



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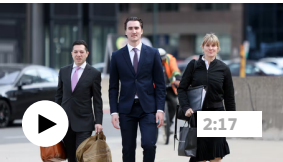
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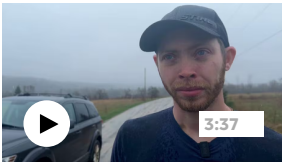
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