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Cardboards

It didn't feel like a "comeback" to Bob. "They came about the time I realized that working down here was what I wanted to do. I came to Captiva a little disillusioned about the problems of art and technology. Over-reacting again, I tried to figure out the most international medium I could find to work in. And it seemed like everywhere I'd ever been there'd been cardboard boxes around."

said, —

that can compete with all his own very best efforts in the past."

— John Perreault in V.V., April 19, 1973

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Evergreen in Washington.
of Bob's photos until recently.

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Conceptual (RR)

Thinks Sol Le Witt's stuff is just silly, but don't say so. "They may think they're getting rid of the object, but they're gaining a building! It's staking out territory. If you draw on a wall, you're taking over the wall because you're not supposed to hang a painting on someone's painting."

RR was somewhat annoyed by Leo's taking on some conceptualists. The gallery space is limited, after all. Bob came on one day and found one whole room taken up with a projector flashing one letter of the alphabet after another on the wall. "Isn't that a little sparse, Leo?" he said. Leo said, oh no, he was using each letter, whereupon Bob said, "In that case it's too crowded."

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..."Art is something you do your whole life, and Rauschenberg has managed to survive his fame and, even better yet, to survive it and make art that can compete with all his own very best efforts in the past."

– John Perreault in V.V., April 15, 1973

long and a wispy untrimmed
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1973

Several critics refer to RR's esthetic "comeback" with cardboard pieces, after five years of Art + Technology BS.

Show was first in new Castelli Gallery downtown. In catalog note, RR said: "For over five years I have deliberately used every opportunity with my work to create & focus on world problems, local atrocities, & in some rare instances celebrate men's accomplishments. I have strained in collecting influences to bring about a more realistic relationship between artist, science, ad business, in a world that is risking annihilation for the sake of a buck. It is impossible to have progress without conscience."

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RR - Cardboards (1972)

In catalog to his 1972 show at Castelli downtown, RR wrote:

"For over five years I have deliberately used every opportunity with my work to create a focus to world problems, local atrocities and in some rare instances celebrated men's accomplishments... It is impossible to have progress without conscience. In doing this, I have had to concentrate almost exclusively on gloom and filter joy, investigate cruelty and suspect all changes. This is my responsibility, but it is exhausting.

"After a while + the resistance a desire built up in me & work in a material of waste and softness. Something yielding with its only message a collection of lines imprinted like a friendly joke. A silent discussion of their history exposed by their new shapes. Laboured commonly with happeners. Boxes..."

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Christopher Rauschenberg - lunch 2/20/78

Rather slight in build, with dark hair worn long and a wispy untrimmed beard, country-style. Wearing a nondescript grey overcoat several sizes too large. Open nature, enthusiastic and friendly like Bob. Seems very together, as his mother said. Lives with a girl in Portland. Portland. Vegetarian.

Sees Bob fairly often, and they get along fine. Goes to Captiva, and when he hears Bob is coming to LA he drops everything and goes down. They didn't get to know one another until Chris was fairly well grown, so it's less a father-son than a friends relationship.

He lives in Portland, and is one of five owners of a coop photo gallery called Blue Sky. Went to Reed College, then Evergreen in Washington. Started taking pictures as a kid. Now aware of Bob's photos until recently.

Loves Bob's work, especially the Red paintings. Key thing for him is Bob's involvement with materials. He went to all the retrospective openings except Chicago.

Thinks Bob has handled fame pretty well. "He sort of invites the spotlight, but then he feels it's sort of hot in there."

Bob very supportive. "He's my greatest fan."

Chris's work: He goes around looking at familiar things as though for the first time, garage doors etc. Not unlike Bob's in that.

Says Jasper is "the only one he lost."

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Change, Inc (Reuben)
Set up in 1971. Reuben pushed Bob into it, because Bob was such a soft touch he kept going into debt for people who took handouts from him. Why not set up a foundation to help destitute artists? Mobil Oil gave $30,000; MOMA about $30,000 (through sale of art works); individual artists gave works to be sold; National Endowment gave $30-40,000; New York State Council on the Arts about $5000. Now they've just launched a new program under which any artist, dancer etc can get free medical care in emergency; this is paid for by collectors giving art works to participating hospitals, which then sell them. Also, setting up "Change West," run by Rosamond Felson. It's a $1 million a year operation now.

Artists Rights Today got started in 1973, out of conversations between Reuben and Douglas Davis. David introduced Reuben to John Brademas, who wrote the original bill. In 1973 there were two bills pending in Congress with reference to artists; today there are 42.

"I never do anything until I check with my guidance counsellors" -- John and Merce, Bob, Jasper etc. "I use the I Ching as often as I use the tax tables."

Royalty Idea: Main thing is to let artists know where work is, when it's sold, to whom. Money not imp.

Then back to Japan for a while, then back here and job with Bob fulltime. This was about the time of the fire in the basement, after which Bob didn't spend much time in NYC. Six months after the fire, he came back and fired Brice and Dorothea, leaving only Sachika. (Also fired secretary of Hummingbird, his son, is 7½. secretary).

Bob says there are four people whose opinion about hew work he really cares about: Ileana, Cy, Brice, and Sachika.

"Bob teaches you to be so flexible."

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Captiva (Reuben)
Started with the Beach House, then added printing plant, studio, printer's house. Now four houses in all, about $1 million worth of property. But real estate tax is relatively low -- about $5000 a year. When Bob moved there Captiva had one policeman and maybe fifty families.

Four employees on salary. In 1972 he set Bob up as a corporation, Robert Rauschenberg Inc. Reuben pays all the bills.

[illegible] with Bob in 1970. An art student in Japan, he won a scholarship that brought him to Italy, where he worked as a studio assistant to Lucio Fontana for about 2½ years. Met Jean de Menil in Milan. He bought a painting, but instead of money he gave him a plane ticket to the US for a three-week vacation. In NY, de Menil gave a dinner for him and invited about a hundred people, including Bob, Jasper, Roy, Andy, Norman Mailer lobster Bob spoke Italian to him at the dinner.

"I ask if anybody need a hand." Bob had Brice, but Brice was having a show at the same time Bob was and couldn't do much, so Sachika helped with silkscreens, on Carnal Clocks.

Then back to Japan for a while, then back here and job with Bob fulltime. This was about the time of the fire in the basement, after which Bob didn't spend much time in NYC. Six months after the fire, he came back and fired Brice and Dorothea, leaving only Sachika. (Also fired secretary of Hummingbird, his son, is 7½. secretary).

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Hisachika - 2/15/78

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THE NEW YORK TIMES, SUNDAY, OCTOBER 2, 1977

Artists' 'Bank' to Aid Health Costs

By EDITH EVANS ASBURY

A new nationwide campagin to establish a $10 million "bank" of donated art to pay for the hospitalization of needy artists has been started by Change, a foundation headed by Robert Rauschenberg, the painter.

"There are lots of organizations to help the artist by providing film, paint, canvas, brushes and ballet shoes, but not with Band-Aids," Mr. Rauschenberg said, at a news conference at the Hospital for Joint Diseases, 1919 Madison Avenue.

Mr. Rauschenberg, as he spoke, gestured with hands that included a bandaged right thumb. The thumb was broken about a month ago, he explained afterward, when he tripped and fell while trying to separate two battling children.

"We propose to help the artists confronted with medical disaster—and we have no taste," he said. "We'll never judge the esthetics of the work of any artist in need. Today's lousy artist from somebody's point of view deserves help as well as anyone else."

Generally artists are self-employed and therefore ineligible for moderately priced group health insurance and most cannot afford the alternative, individual health insurance, Mr. Rauschenberg said.

Two artists are already being treated at the Hospital for Joint Diseases under the program. They are a young sculptor with a complicated medical problem referred from another hospital and a writer with a serious ear infection that was beginning to affect her brain, according to Harvey Machaver, executive director of the hospital.

Alfred Rice, president of the hospital's board of directors, said the hospital was "not altogether altruistic," in participating. He said he viewed the contributed art works as "a substantial asset from which we could receive funds from its sale."

If funds were needed for hospital maintenance or service to the community, "We would not hesitate to dispose of the art for the best price possible," Mr. Rice said.

Meanwhile, preliminary gifts of brightly colored signed lithographs by Alexander Calder, Andy Warhol, Roy Lichtenstein, Mr. Rauschenberg, James Rosenquist and others hand on the walls of the hospital's out-patient department.

There they "alleviate" the pain of patients awaiting treatment by enabling them "to view and enjoy art," according to Mr. Machaver, while also being "our stocks and bonds, just like A.T. & T. or General Motors."

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GALLERIES INC

Rauschenberg Just Won't Be Boxed In

By PETER SCHJELDAHL

EVERY artist's career, like every life, has its own mysterious rhythm of ups and downs. One expects of even the best artists that they will sometimes make indifferent works, and one is used to the special pleasure of seeing a first-rate show by an artist one had thought mediocre. In most cases merely interesting, an instance of this phenomenon will now and then seem to have importance beyond itself. Occasionally we will discern, in the creative fortunes of an individual, the influence of social and cultural forces that we recognize because they have affected us, too.

Few American artists have had careers more visible, and thus more subject to detailed scrutiny, than Robert Rauschenberg, whose current show at the downtown Castelli Gallery, 420 West Broadway, is his best in years and interrupts what looked to be a kind of personal drought. An artist ever ambitious to engage and stir an audience — an artist very much "of" the art world, which is his primary audience, foil and family—Rauschenberg assures his visibility by broadly signaling in his work, the way an actor does on stage, the identity of his ideas and feelings as they occur. And while his new show reveals this less than any other I can recall, its very difference presents an angle on his career that may be instructive.

*

Rauschenberg has been a bellwether of American avant-gardism since the early fifties. A keen and instinctive absorber of dadaist, surrealist and abstract-expressionist ideas early on, he has himself inspired or somehow participated in perhaps all but two of the major art sensations—the two being reductive abstract painting and Minimalism—that have occurred since his first solo appearance 20 years ago at the Betty Parsons Gallery. And fascinatingly enough, his startling debut in 1951, with a show of vast all-white and all-black canvases, might with art-historical justice be said to have "anticipated" both movements, though probably at the time it was conceived more as a prank than a program.

In any case, Rauschenberg in the fifties was a blazingly inventive *enfant terrible* whose every gesture had a sort of instant legendary quality and whose Zen-ish utterances on art took on an oracular ring. When he displayed a stuffed goat with a tire around its middle or persuaded Willem de Kooning to give him a drawing so he could erase it ("Erased de Kooning") or produced two impassioned-looking "action paintings" that were identical down to the last spatter—or when he spoke abstrusely of acting "in that gap between art and life"—he was giving birth to art (and an art career) that came wrapped in its own myth. The work itself was often as ungainly as it was jokey; but anyone who faulted it for that was missing the magic, which was precisely the almost brutal-looking presentation of shrewd and very subtle intuitions.

In the early sixties, the sense of incessant tour de force waned in Rauschenberg's work as he left off making the outlandish assemblages he called "combines" (for instance a painting with a stuffed eagle or live electric clock) and concentrated on painting, incorporating the technique of silk-screening photo images onto canvas (for instance JFK or a Rubens nude) to keep up the supply of "raw" subject matter. The ideas in his works became vaguer and the works themselves became handsomer. And quite suddenly Rauschenberg became respectable. In the euphoric (for American art) year of 1964 he won the top prize for painting at the Venice Biennale. Shortly afterwards he more or less stopped painting.

*

That the mid-sixties art boom also marked a slackening in the output of other successful (especially Pop) artists — and, following the early excitement of Minimal Art, the beginning of an inexorable atomization of the avant-garde into hostile camps—seems significant. It

NY Times, 31 October 1971

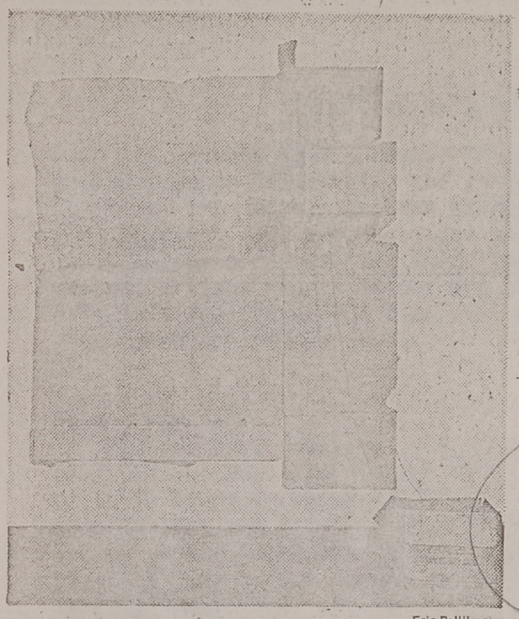
constitutionality of the law on behalf of [illegible] Davis Jr., the San Francisco attorney representing Mayer and Alexander, has also filed an amicus curiae brief in support of the law on behalf of Bay Area Lawyers for the Arts. BALA is seeking contributions to an Artist's Royalties Legal Defense Fund to help defray litigation costs. Interested persons may send contributions to: ARLDF, c/o Bay Area Lawyers for the Arts, 25 Taylor St., San Francisco, Calif. 94102.

Meanwhile, Rep. Henry Waxman (D, Los Angeles) will probably introduce a bill within the next few weeks to provide resale royalties on the federal level, according to Bruce Wolpe, his legislative assistant. The bill would, subject to

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Eric Pollitzer

Cardboard work by Rauschenberg at Castelli downtown
Nothing new, but the effect is fresh as a daisy

was as if the "art-world artists" who had been the heroes of the avant-garde had vastly expanded their audience only to lose touch with it; Rauschenberg (like Andy Warhol and Robert Morris) increasingly involved himself in group activities. Indeed, his projects since 1966 have been as much institutional and political as artistic, notably a mostly disappointing scheme (EAT) to wed advanced art and advanced technology by enlisting the help of big corporations.

The fact seems to be that the kind of art work and the kind of charismatic artist that could electrify general art-world attention have come to belong, like the early Beatles and like "Bohemian" as a synonym for "artist," to an innocent past. For an artist like Rauschenberg—carrying on a romantic dialectic of art and life, of "making art" and "being an artist"—a lack of tacitly shared understandings of these concepts is tantamount to a vacuum. So his new show, which seems to indicate a sort of conservative retrenchment, is doubly intriguing. He seems, in the terms I've cited, to be resigned to "making art" at the sacrifice of confronting an audience in a spirit of esthetic gamesmanship. And the results are zestful and lovely.

Rauschenberg's new medium is old cardboard boxes that have been variously splayed flat or buckled or left whole and then nailed to the wall in big, rhythmically sprawling and emphatically projecting compositions. The artist has nowhere painted the cardboard, which is adorned only with its history — printed brand names and instructions, mailing labels and stamps, punctures and lacerations, dirt and oil stains. There's nothing new about the esthetics here, which go back to Kurt Schwitters, but the effect is somehow fresh as a daisy. And while Rauschenberg in no way improves on the ideas of young artists who have lately been using junk materials in somewhat this way, he doesn't need to—simply, with witty and virtuoso design, he makes his juniors look callow.

However, one series of these works—small multiples called "Cardbirds" — does get rather tricky. Assembled of printed and die-cut parts, these reproductions of cardboard collages are so flawlessly *trompe l'oeil* that to stroke one, seeking its roughnesses and declivities, is to start a mind-jangling argument between one's senses of touch and sight. Finally one's sense of touch wins, though, whereupon these expensive renditions of worthless stuff start seeming a little, so to speak, overwrought. Nevertheless, it feels distinctly good to know that Rauschenberg is again freely exercising his erratic brilliance, subdued though it may be by the passage of time, as what isn't.

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ART LETTER

ARTWORLD INTELLIGENCE FOR PROFESSIONALS

VOL. VII, NO. 2 FEBRUARY 1978

THE ARTISTS RIGHTS FIGHT: NEWS FROM THE FRONT

With the passage (and subsequent court challenge) of artists resale royalty legislation in California, the imminent introduction of such legislation in Congress, the recent issuance of regulations to implement the revision of the copyright law, and the signs that the Carter administration will support legislation to redress tax inequities suffered by artists under the 1969 tax reform, artists rights issues are being taken more seriously by government officials and the public than ever before. The following report details recent developments on these fronts.

Resale Royalties

The constitutionality of the controversial year-old California royalty law (ART LETTER, Nov. '76) -- hailed by some artists as long-overdue recognition of their right to share in profits from resales of their work, and decried by some dealers and collectors as an intolerable economic and administrative burden and an unfair intrusion on their property rights -- is being challenged in U.S. District Court, Los Angeles (ART LETTER, June and Aug. '77), where Judge Robert Takasugi heard oral arguments Dec. 28 on the lawsuit brought by Los Angeles dealer Howard Morseburg.

To help defend the law, two California artists who are not direct targets of Morseburg's suit -- Richard Mayer (president of Artists Equity of Northern California) and Peter Alexander (a Malibu painter and sculptor) -- successfully moved to have the court name them as "parties defendant" in the case, on the grounds that they would lose the right to receive royalties for their own works if the law were declared unconstitutional. As "parties defendant," they have the same legal standing as the defendants actually named by Morseburg: Andre Balyon and the California Arts Council.

Mayer and Alexander entered the case due to concern among proponents of the law that artists' interests might not otherwise be adequately represented in the court proceedings: Balyon, who sells his paintings to Morseburg, has chosen not to put up any defense. (The State Attorney General's Office is defending the constitutionality of the law on behalf of the California Arts Council.) John Davis Jr., the San Francisco attorney representing Mayer and Alexander, has also filed an amicus curiae brief in support of the law on behalf of Bay Area Lawyers for the Arts. BALA is seeking contributions to an Artist's Royalties Legal Defense Fund to help defray litigation costs. Interested persons may send contributions to: ARLDF, c/o Bay Area Lawyers for the Arts, 25 Taylor St., San Francisco, Calif. 94102.

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certain restrictions, entitle artists to receive 5% of the entire resale price of paintings, sculptures, drawings, photographs or prints when the price is at least $1,000 and the work is sold at a price greater than the purchase price plus 5% of the resale price. Unlike the California law, Waxman's bill would provide for royalty payments to artists' heirs. Artists would have to register their works with a proposed National Commission on the Visual Arts in order to be eligible for royalty payments, under the terms of Waxman's bill.

Wolpe told ART LETTER that Waxman's bill will not include a provision for a portion of the resale price to go to a fund for purchasing works of little-known artists -- a controversial proposal which the Congressman had considered as a way to help artists who would be unlikely to receive resale royalties on their own works.

Copyright Regulations

Regulations recently issued by the U.S. Copyright Office in connection with the new copyright law which went into effect last month (ART LETTER, Jan. '77, Jan. '78) define, for the first time, acceptable locations for copyright notices on artworks, and, for the first time, allow printmaking artists to obtain copyright protection without being required to deposit actual copies of their prints with the Library of Congress.

According to the proposed regulations on the position of notice (which are not final, at this writing but are not expected to be changed in relation to fine art), copyright notice for two-dimensional artworks may be "affixed directly or by means of a label cemented, sewn, or otherwise permanently secured to the front or back of the copies, or to any backing, mounting, matting, framing, or other material to which the copies are permanently attached or in which they are permanently housed."

For three-dimensional artworks, such as sculpture, the notice may be "affixed directly or by means of a label cemented, sewn, or otherwise permanently secured to any visible portion of the work, or to any base, mounting, framing, or other material on which the copies are permanently attached or in which they are permanently housed." The proposed regulations also say that "where, because of the size or physical characteristics" of the artwork, "it is impossible or extremely impracticable to affix a notice...directly or by means of a permanent label, a notice is acceptable if it appears on a tag that is of durable material and that is attached to the copy with sufficient permanency that it will remain with the copy during the entire time it is passing through its normal channels of commerce."

The regulations on deposit requirements, which are final, allow creators of two-dimensional artworks to deposit identifying material with the Library of Congress, instead of copies of the works themselves, in cases where "the work is unpublished, or less than five copies of the work have been published, or the work has been published and sold or offered for sale in a limited edition consisting of no more than 300 numbered copies." For sculpture, the deposit must consist of identifying material, rather than the work itself.

Identifying material acceptable to the copyright office includes: photos, transparencies, photostats, drawings, "or similar two-dimensional reproductions or renderings of the work, in a form visually perceivable without the aid

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of a machine or device." For pictorial or graphic works, the identifying material must "reproduce the actual colors employed in the work." The artist must submit "as many pieces of identifying material as are necessary to show clearly the entire copyrightable content of the work," and all pieces of identifying material must be the same size. The title and exact measurement of one or more dimensions of the work must be indicated on at least one piece of identifying material, and one piece of the material must show the copyright notice and its position on the work, if the work was published with such notice.

The complete proposed regulations on position of notice are in the Federal Register, Dec. 23, 1977, pp. 64374-64378. The final regulations on deposit are in the Federal Register, Jan. 4, 1978, pp. 763-771. For more information, contact: Jon Baumgarten, General Counsel, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559.

Artists' Tax Deductions

White House sources told ART LETTER last month that they still expect President Carter to support legislation allowing artists who donate their own works to nonprofit institutions to deduct 50% of the market value of those works from their taxable income (ART LETTER, Nov. '77). However, no mention of this was made in Carter's Jan. 21 tax message to Congress, and some observers feel that without inclusion in the tax package, the measure has little chance of passage this year. (Currently, artists can deduct only the cost of materials, while collectors can deduct full market value.)

* * *

MAJOR BUDGET INCREASES ASKED FOR NEA AND NYSCA: President Carter and New York Gov. Hugh Carey asked for substantial increases in the funding for the National Endowments for the Arts and Humanities and the New York State Council on the Arts, respectively, in their recent fiscal '79 budget requests. Carter asked Congress for an additional $26.16 million for NEA, which would bring its budget to $149.66 million ($139.66 million for grants). For NEH, he requested an increase of $24.6 million, for a budget total of $145.6 million ($134.8 million for grants). The proposed increases would be the largest in the histories of the two agencies.

In other news concerning NEA and NEH, Carter announced that he would support the creation of a separate, cabinet-level Department of Education in the federal government, but, according to a White House source contacted by ART LETTER, he has not yet decided whether to support inclusion of NEA and NEH (now independent agencies) in the proposed new department. Such inclusion is opposed by the chairmen of both endowments (ART LETTER, Dec. '77).

Carey asked the New York State Legislature for an increase of $7.15 million in NYSCA's budget, which would bring it to $36.14 million ($34 million for grants). NYSCA and the state's Department of Education were the only agencies for which the governor requested increased allocations, according to NYSCA's chairman, Kitty Carlisle Hart. Carey suggested that the proposed $6.99-million increase in the council's grant budget be distributed as follows: $4.5 million to organizations designated by the council as primary institutions; $500,000 to CETA (Comprehensive Employment and Training Act) project support; $1.49 million to community arts

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projects; $500,000 to provide 100 additional artists fellowships under the the CAPS (Creative Artists Public Service) program. In a move favored by the council, the governor also asked the legislature to eliminate its requirement that each county in the state receive from the arts council a certain minimum amount, calculated according to the county's population. (This year, the required amount is 55¢ per capita.) The requirement, which the council has found difficult to meet in some instances, has resulted in funding of some programs in areas with little demand for cultural activities, at the expense of programs in areas with a high interest in such activities.

BROOKLYN DEACCESSION SUIT: On behalf of the Brooklyn Museum, the New York State Attorney General's Office has sued Michael Kan, the museum's former chief curator, for alleged "fraudulent manipulation" of the museum's deaccessioning procedures in trading objects from the museum's American Indian art collection. The attorney general alleged that the values which Kan attributed to 38 museum objects, deaccessioned in three trades beginning Jan. 18, 1972, were "a small fraction" of their real value. Kan was guilty of conflict of interest in these trades, according to the attorney general, because he was allegedly engaged in personal transactions totaling $25,000 with the same dealer (identified in the court papers as James Economos) who was involved in the museum transactions. The suit seeks return of all the deaccessioned pieces and $750,000 (the present value of the pieces, according to the attorney general) in punitive damages. Named, with Kan, as defendants in the suit are Economos and two other dealers: Douglas Ewing and Robert Taylor. Kan, who is now deputy director of the Detroit Arts Institute, has denied, through his attorney, that he acted illegally or improperly.

MUSEUM SERVICES INSTITUTE -- PROPOSED REGULATIONS: The first substantive details on how the new Museum Services Institute (ART LETTER, Oct. '77, Jan, '78) is likely to distribute its Congressionally appropriated $3.7-million grant budget for fiscal '78 came to light at the meeting of its board last month in Washington, where proposed regulations for the institute were discussed. The board expects to apply 75% of the grant money toward "general operational support...to assist museums to meet their costs for: preserving and maintaining collections; exhibiting them to the public; providing educational programs to the public." Activities eligible for the remaining 25%, according to the proposed regulations, include: conservation projects; educational programs for special groups; technical assistance; staff development; programs involving cooperation among museums, such as traveling exhibitions or loans of collections.

The majority of grants will be less than $25,000, and "it is anticipated that no grant to a museum will exceed" that amount, according to the proposed regulations. Grants generally will "not exceed 50% of the cost of the project or activity for which the grant is made," but the institute may spend up to 20% of its grant budget on activities which don't meet the 50% matching requirement. Criteria for judging applications include the extent to which the grant will improve the museum's performance, service to the community and conservation of collections. Also to be considered is "the quality and importance of the collection, including the extent, if any, to which the collection constitutes a unique and irreplaceable national resource." The institute's director, Lee Kimche, has the final say in awarding grants, but she "will normally seek the advice of panels of experts or field readers," according to the proposed regulations.

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The institute's tentative schedule calls for applications to be available by Mar. 10, with a May 10 deadline for their return. Institutions desiring more information or wishing to receive application forms should write the institute at: Department of Health, Education and Welfare, 200 Independence Ave., S.W. -- Room 309G, Washington, D.C. 20202.

GUGGENHEIM'S GROWTH PLANS: The Guggenheim Museum, New York, has begun a five-year, $20-million fund drive, to provide additional funds for endowment, operations and acquisitions and to fund remodeling of about 10,000-12,000 square feet of the museum's current space and construction of three or four additional floors (about 15,000 square feet) atop its present 4-story annex. The $20-million drive will also provide an endowment for maintenance of the Peggy Guggenheim collection in Venice -- some 263 paintings, drawings, graphics and sculpture by such artists as Ernst, Tanguy, Miró, Pollock, Arp, Brancusi, Giacometti, Moore. The collection will be inherited by the museum upon the death of Ms. Guggenheim (niece of the museum's founder, the late Solomon Guggenheim), but will remain in its present Venice location, the Palazzo Venier dei Leoni, according to the terms of an agreement between Ms. Guggenheim and the museum, which was unannounced when it was arrived at last fall.

The expansion and remodeling, for which engineering studies are already in progress, are expected to double the museum's exhibition space and improve its office facilities. In an ART LETTER interview, Henry Berg, the museum's deputy director, emphasized that the construction would be accomplished "without undermining the architectural integrity of Frank Lloyd Wright's museum. None of the plans do anything to the building that is not in its character."

Construction is projected to be completed by 1987, the museum's 50th anniversary. The additional space is expected to add about $150,000 a year to the museum's $2.3-million operating budget. The projected construction cost, to be covered by the fund drive, is $3 million, with an additional $1.5 million to be raised in the fund drive as endowment for the operating expenses of the new space.

The remaining $15.5 million sought by the museum is broken down as follows:

-- Program support: $1 million (exhibition expenses, $350,000; catalogues, $150,000; conservation, $100,000; salary increases and other financial support for staff, $400,000).

-- Acquisitions: $1.5 million. The Guggenheim currently has no regular budget for acquisitions, and has to rely on gifts of art or of money to buy art (currently amounting to about $250,000-500,000 a year).

-- Educational programs: $350,000.

-- Library development: $100,000.

-- Reserve fund for the Peggy Guggenheim collection: $750,000.

-- General endowment: $8.4 million ($1.76 million to replace money withdrawn from the endowment to meet deficits in operating and capital budgets during the past seven fiscal years; the remainder to increase the endowment, which now totals $14.75 million).

-- Restricted endowment: $3.4 million, the income from which will be used to fund future acquisitions, publications, curatorial research, conservation, special exhibitions and other programs, library acquisitions.

MUSEUM ACQUISITIONS: Mr. and Mrs. John D. Rockefeller 3rd announced last month that they will bequeath their American art collection to the Fine Arts Museums

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of San Francisco. The collection, valued by the museums at $10 million, consists of 175 paintings and three sculptures by 106 artists from the 17th to early 20th century. Eight paintings from the collection are now on view at the museums. Under the terms of their agreement with the San Francisco museums, the Rockefellers retain the right to remove from their gift some works which they feel are of inferior quality and the may give up to 15% of the collection to other institutions or to members of their family...Metropolitan Museum acquires a rare ninth-century plaque, St. John the Evangelist, belonging to the "Ada" group of Carolingian ivories. Acquired at auction for $470,000 last December at Sotheby's in London, the plaque will go on view this spring in the Cloisters, the museum's medieval art center...Museum of Modern Art receives, by bequest, the Joan and Lester Avnet collection of 180 20th-century drawings by 100 American and European artists. Included: works by Kandinsky, Chagall, Dubuffet, Matisse, Modigliani, Rouault, Braque, Picasso, Klee, Pollock, Rothko, Rivers, Johns, among others. The collection goes on view at MOMA Apr. 28-July 4.

OTHER MUSEUM NEWS: The suit by the Hotel Dorset challenging the constitutionality of state legislation involving the Museum of Modern Art's plans to build an apartment tower (ART LETTER, Sept. '77) has been dismissed by New York State Supreme Court Judge Nathaniel Helman. The Dorset has appealed...Boston Museum of Fine Arts raises its adult admission fee to $1.75 Tuesday-Saturday; $1.25 Sunday (formerly $1.50 Tuesday-Saturday; $1 Sunday). Admission will continue to be free 5-9 p.m. Tuesday.

CAPS GRANT WINNERS: Creative Artists Public Service Program recently awarded fellowships ranging from $3,500-5,000 to 83 visual artists in New York State. Painters: Richard Aakre, Thomas Breitenbach, Arthur Cohen, Pat Colville, Susan Daykin, David Diao, Rackstraw Downes, Victor Faccinto, Peter Heinemann, Carmen Herrera, Gary Hudson, Jerry Jones, Alan Kleiman, Sacha Kolin, Harry Kramer, Lois Lane, G. Peter Lourekas, Knox Martin, Joanna Mayor, Bobbie Oliver, Catherine Porter, Steven Sloman, Roslyn Streifer, Anne Tabachnick, Susan Walp, Philip Wofford, Kes Zapkus. Sculptors: Peter Berg, Luis Camnitzer, Harriet Feigenbaum, Sandy Gellis, Herbert George, Abigail Gerd, John Gillen, Donald James Gummer, Mel Kendrick, Inverna Lockpez, Rudolph Montanez, Richard Lowell Parker, Massimo Pierucci, Sig Rennels, David Smyth, Julius Tobias. Photographers: J.S. Cartier, Russell Drisch, Louis Faurer, Christopher George, Ralph Gibson, Colin Greenly, Jan Groover, Roger Haile, P. David Horton, Leonard Jenshel, Richard Margolis, Laurence Miller, Don Myer, Lilo Raymond, Kenneth Robbins, Douglas Sandhage, Martin Schneider, Barbara Wilson. 15 graphic artists and seven video artists also received CAPS grants.

PEOPLE: College Art Association makes the following awards: Linda Nochlin, Mather Award for distinction in art criticism; Mercedes Matter, distinguished teaching of art; Ellen Johnson, distinguished teaching of art history...George Heard Hamilton, director emeritus, Clark Institute, Williamstown, Mass., receives the $3,000 Art Dealers Association award for outstanding achievement in art history...Livingston Biddle Jr., chairman of the National Endowment for the Arts, selects three deputy chairmen: P. David Searles, NEA's assistant chairman, becomes deputy chairman for policy and planning; L. James Edgy Jr., executive director of the Ohio Arts Council, becomes deputy chairman for intergovernmental activities; Mary Ann Tighe, special arts advisor to Vice President and Mrs. Mondale, becomes deputy chairman for programs ...David Bathurst succeeds L. Guy Hannen as president, Christie's, New York...Museum of Modern Art appoints Lawrence Broadwell finance director, Martin Rapp director of publishing and retail operations.

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CALIFORNIA'S ROYALTY LAW: BOOST FOR ARTISTS OR BOON FOR NEVADA?

To many artists, Gov. Jerry Brown's Sept. 22 signing of the first artists' royalty law in the U.S. was a long-overdue first step towards economic justice. But to much of the state's art establishment, the new law was as unwelcome as it was unexpected: Meetings were called and lawyers consulted to see what could (belatedly) be done to blunt the expected impact. To gauge the reactions to the new law and assess its probable effects, ART LETTER recently interviewed California artists, dealers, collectors and museum people, as well as government officials who were instrumental in the bill's passage. The following report details their views and predictions, and describes the scope of the law:

How The Law Will Work

Effective Jan. 1, the new law gives artists a 5% royalty on the entire resale price of paintings, sculpture and drawings valued over $1,000 and sold at a profit, provided that the seller resides in California or the resale occurs in the state. (Artists need not be California residents to benefit and even sales occurring outside the state will be affected.) The royalty is to be paid by the seller or his agent, and cannot be waived by the artist. (The artist can, however, negotiate to receive more than the 5%.) If the seller cannot find the artist within 90 days of the sale, the royalty money goes to the California Arts Council, which becomes responsible for finding and paying the artist. After seven years, if the artist's whereabouts are still unknown, the money can be applied to CAC's operating expenses and programs. If a resale occurs after the artist's death, no royalty is due the heirs under the new law.

There are no criminal penalties for violating the law; it will be the artist's task to keep track of sales, bringing offenders to justice by suing them for unpaid royalties. CAC will try to ease the seller's task of finding artists by compiling a registry of artists in the state. The council also hopes to issue a booklet of guidelines on the law by Jan. 1.

The California royalty arrangement differs from the Jurrist and Projansky-Siegelaub contracts (the two best-known of the artists' royalty contracts in circulation) by providing artists with a percentage of the entire resale price. (Both contracts give artists 15% of the resale profit.) It also lacks certain protections built into the contracts, such as the artist's right to borrow the work from the collector, the collector's right to a certificate of authenticity from the artist, and a prohibition against the collector's altering the work.

Objections To The Law

All of the California dealers and collectors surveyed by ART LETTER -- even those in basic sympathy with the concept of artists' royalties -- had serious reservations about the California law. The most frequently voiced objections were

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that the law would drive many sales out of California and that many of those sales which did take place would be conducted secretly, to evade the requirements of the law.

"In principle, I go along with it, but it scares the hell out of me," said Los Angeles dealer Margo Leavin about the new law. "It affects about 15 galleries and they're the ones that make the art scene in California work." She said that she might try to pass along the 5% royalty charge to her customers, but she doubted she could get away with it. "There's a proper price for everything," she said, "and I can't charge 5% more."

Billy Al Bengston, the artist, echoed Ms. Leavin's fears: "This law is not good for California's art climate," he said. "The state is not a hotbed for art sales as it is. If this were a national law, it would be a different story."

As to the enforceability of the law, even its sponsor and co-author, Assemblyman Alan Sieroty (D, Santa Monica, W. Los Angeles) conceded that "people can avoid the law if they want." Richard Sherwood, president of the Los Angeles County Museum and a private collector, likened the law to Prohibition, predicting that the royalty law would prove similarly unpopular and be circumvented. Enforcement is complicated by the need to locate sellers and artists around the world. Artist Sam Francis, while "vaguely in support of the law," added that he'd rather devote his attention to creating new work than keep track of where old works have gone. Benjamin Horowitz, director of the Heritage Gallery, Los Angeles, and president of the Southern California Art Dealers Association, bemoaned the bookkeeping problems posed by the new law, and wondered whether artists shouldn't be required to turn over a portion of their royalties to dealers, in payment for the added administrative chores. San Francisco dealers Ruth Braunstein (Quay Gallery, president of San Francisco Art Dealers Association) and Diana Fuller (Hansen Fuller Gallery) suggested, in separate interviews, that the law could not be adequately administered without the establishment of a government-operated registry to keep track of the whereabouts of living artists' works.

Another frequently voiced objection to the law is that it will provide money for artists who don't really need it, and hurt the very artists it is supposed to help. "There are few young artists whose works are selling at over $1,000," noted Peter McCoy, president of Parke Bernet, Los Angeles. "This will benefit people like Dali, Johns and Warhol. Do they really need or want the 5%?" Henry Hopkins, director of the San Francisco Museum of Modern Art, predicted that the law would particularly discourage sales of experimental works by little-known artists, because if a dealer has a "low profit margin" on such works, "the 5% and the paperwork may make him decide that such sales are not worth his while." (If the profit is small, the payment of the royalty may, in fact, create a net loss for the seller.) Hopkins said that while the law's short-term effect on his museum would probably be slight (since the museum rarely sells), the long-term effect could be significant, if collectors stopped purchasing works which they might have ultimately donated to the museum.

Aside from their objections to the substance of the law, many of the opponents criticized the way it was pushed through the legislature. "It was the best-kept secret in the state of California," proclaimed Harry Anderson, a prominent Bay Area collector. "I'm very involved in the artworld here, and it was not until the Monday before the bill was signed by the Governor that I found out about it -- in a letter from the Art Dealers Association in New York. (Other collectors and dealers said they knew the bill had been before the legislature for two years, but they had not been aware that serious action was about to be taken.) Anderson added that he would sooner move out of California than make a single purchase or sale

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under the provisions of the new law. (As a California resident, he would be required to pay royalties on all profitable sales of works by living artists and valued over $1,000.)

The Proponents' Views

To those artists and other arts professionals who have long favored artists' royalties, the California law is, as artist Lynda Benglis says, "a first step." "It's a precedent-setting affair," according to Maurice Tuchman, senior curator of modern art at the Los Angeles County Museum. "Other states will follow, and people will get used to it in the long run. Some parts of the law are shaky and may have to be changed. But after people live with it for 10 years, they will not pay attention to whether they have to pay an extra 5%."

Julia Connor, deputy director of the California Arts Council, which supported the bill, and Ron Blumberg, president of Artists for Economic Action, which lobbied for it, predicted that the law might help California's art market by attracting artists to the state. Ms. Connor quoted a telegram from artist Robert Rauschenberg, urging the Governor to sign the bill: "I would like to add support," he wrote, "by channeling as much of my business through your great state as possible."

David Anderson, a young sculptor who has been with Ruth Braunstein's Quay Gallery for three years, described why he, and others like him, believe the new law was overdue: "When you're young," he said, "you throw things away for almost nothing. It's easy to take little or no money when you're up against the wall. I've screwed myself in the past. In the last two years, prices for my work have doubled."

Future Prospects

Some dealers and collectors are talking about getting the new law amended or declared unconstitutional. Others are talking about setting up shop in Nevada or Arizona. The Art Dealers Associations of San Francisco and Southern California both scheduled meetings late last month to decide what action to take, and collector Harry Anderson has begun consulting lawyers about the grounds for a court challenge. (John Merryman, law professor at Stanford University, who teaches a course on Art and the Law, feels the law is vulnerable to attack on the grounds of its "extraterritorial application" and "retroactivity": its application to sales outside of California and to works by non-California artists, and its imposition of royalties for sales of works acquired before the effective date of the law. Some collectors argue that applying the law to works acquired before the law takes effect amounts to confiscation of property, since the works were bought without any stipulation that royalties would later have to be paid.)

Undaunted by the furor, artists rights advocates such as Rubin Gorewitz, president of A.R.T. (Artists Rights Today), Inc., plan to push the royalties fight to other states (next targets: New York, Ohio), with hopes that state initiatives will lead to federal legislation.

Note: To obtain a copy of the California royalty law, write: Assemblyman Alan Sieroty, State Capitol, Sacramento, Calif. 95814. To obtain copies of the Jurrist and Projansky-Siegelaub contracts, as well as other artists' contracts and agreements, write for the November '76 issue of Art Workers News, 220 Fifth Ave., New York, N.Y. 10001. (Send 75¢ to cover costs.)

OTHER NEW CALIFORNIA LAWS: Three other art laws recently went on the books in

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California: a law to allow artists to retain reproduction rights for sold works, unless there is a written agreement to the contrary; a law which holds dealers responsible for loss or damage of consigned artworks and which forbids them to use such works to satisfy the claims of creditors; a law requiring appropriation of state funds for purchasing, leasing and commissioning artworks for public buildings. (The amount of funding for the latter is indefinite, to be determined annually by the legislature.)

COPYRIGHT REFORM: Most arts professionals are aware of the key provision in the new copyright law, signed last month by the President: Copyright protection, previously available for a maximum of 56 years, will be available for the lifetime of the creator plus 50 years. (The longer term will apply only to works created on or after Jan. 1, 1978; for other works, the maximum term will be 75 years.) The following are some other, less publicized aspects of the complex law, which also could have important artworld significance:

Omission of Copyright Notice: Under the old law, if a work was published (or publicly displayed) without notice of copyright (the word "copyright," the abbreviation "copr.," or the symbol ©, accompanied by the name of the creator), the work was thrown into the public domain and all possibility of copyright protection was lost. The new law gives artists a second chance: Copyright protection is automatically secured when a work is created, and the artist is given five years from the date of its publication (or public display) to register the work with the U.S. Copyright Office.

Previously, the buyer of a work which contained no notice of copyright was generally presumed to have complete property rights in the work, including reproduction rights. As a result of the new law, the artist will retain copyright of such works, provided that he registers them with the Copyright Office during the five-year grace period. Artists for the first time will also be able to sue for copyright infringement before having registered a work with the Copyright Office. (In such cases, however, the amount of damages the artist may collect may be less than what he could have received had he registered the work.)

Right To Display Works: The owner of the copyright in a work is, for the first time, given the exclusive right to display the work publicly. This means, for example, that if a collector owns a work but the artist retains the copyright, the collector will have to get the artist's permission to lend the work for museum exhibitions or other public display. As a result of this, Bernard Dietz, head of the Arts Section in the Copyright Office's Examining Division, predicts that "the topic of copyright will become a regular matter of discussion in the course of making a sale. Gallery invoices will have language transferring or reserving copyright." He added that there are some gray areas under this provision that are yet to be resolved: "Would a doctor have to receive the artist's permission to display a work publicly in his office? We don't know."

Note: To obtain more information on the new copyright law, contact: U.S. Copyright Office, Library of Congress, Washington, D.C. 20559.

MORE ON TAX REFORM: ART LETTER's report last month on the arts implications of the new tax revision law omitted mention of a measure which will ease the burden on heirs of artists' estates: They will be allowed 15 years to pay estate taxes, with no taxes due the first five years, provided that art makes up 65% of the

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total estate. Also, a clarification about the capital gains tax on works in an estate which were acquired by the deceased before Dec. 31, 1976: The value as of Dec. 31, 1976, which will be used to compute the base for the purposes of determining capital gains, will be arrived at through a complex formula, not by an appraisal for that date.

ARTISTS FOR AMNESTY: 15 distinguished artists, including Arman, Max Bill, Fernando Botero, Alexander Calder, Jan Dibbets, David Hockney, Alexander Liberman, Joan Miro, Michelangelo Pistoletto, Jack Youngerman, have created new works to benefit Amnesty International, the 15-year-old organization which seeks the release of "prisoners of conscience" and the abolition of torture around the world. A four-week benefit exhibition and sale of the works will open on Human Rights Day, Dec. 10, at Andre Emmerich Gallery, 420 W. Broadway, with a gala to be co-chaired by author Lillian Hellman and boxer Muhammad Ali. Also beginning Dec. 10, posters reproducing the original works will be shown at leading museums and galleries around the world, with sales to benefit Amnesty International. For more information or to order posters, write: Artists For Amnesty, c/o Poster Originals, Ltd., 386 W. Broadway, New York, N.Y. 10012.

AUCTION HOUSES BRANCH OUT: Two major art auction houses, Parke Bernet and Christie's, have announced major expansion plans. Parke Bernet is entering the real estate business, with the formation of its new subsidiary, International Realty Corp. headed by Charles Seilheimer Jr. The firm will market luxury residential properties, including farms and estates, through traditional brokerage methods (not by auction). Christie's is negotiating for purchase of Plaza Art Galleries, 406 E. 79th St., and for a long-term lease on the grand ballroom of Delmonico's, 502 Park Ave., with the intention of opening auction galleries at those New York locations next year.

GALLERY COMMITTEE SURVEYS NYC ART SALES: To show the importance of the art trade to New York City's economy, a recently formed Committee of Art Galleries and Dealers in Support of the City of New York asked 199 galleries and one auction house (Parke Bernet) for their annual business volume and average monthly attendance. The annual gross of the 54 respondents totaled $112.8 million, which the committee projects would indicate receipts of about $300 million for the 200 who were queried. Average monthly attendance for the respondents totaled 75,800. The committee now hopes to commission two or three well-known artists to design posters celebrating New York, with proceeds from sales going to needy arts institutions.

Members of the committee, which was formed at the request of Martin Segal, chairman of the city's Commission for Cultural Affairs, are: Bella Fishko (chairman), Forum Gallery; William Acquavella, Acquavella Galleries; Ralph Colin, Art Dealers Association; Ivan Karp, O.K. Harris Gallery; Clyde Newhouse, Newhouse Galleries; Victor Schrager, Light Gallery; Virginia Zabriskie, Zabriskie Gallery.

MUSEUM NEWS: Metropolitan Museum has opened the first 13 of 23 new Egyptian galleries. When installations are completed, about two years from now, the museum's entire Egyptian collection of almost 45,000 objects from 300,000 B.C. to 641 A.D. will be on permanent view...Treasures of Tutankhamen, the much-heralded Egyptian loan show, opens Nov. 17 at the National Gallery, where it will remain to Mar. 15 before traveling to five other U.S. museums. As head of the museum

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consortium which arranged the tour, the Metropolitan Museum agreed to try to raise about $3.6 million for renovation and construction of Egyptian museums. (About $2 million is to come from already promised private donations; $1.6 million from the sale of publications and reproductions related to the show.)...Museum of Modern Art gets a $1 million gift from Mr. and Mrs. Roy Titus. About $200,000 will go to renovation of the museum's 37-year-old auditorium, with the rest to be used as an endowment to support the auditorium's maintenance and programs. Titus is son of the late Helena Rubinstein, retired chairman of her cosmetics company, and vice president of the Film Society of Lincoln Center...National Collection of Fine Arts opens a new permanent gallery displaying art objects given to the Smithsonian Institution in 1929 by John Gellatly, wealthy New Yorker...Rembrandt's Juno goes on display Dec. 19 at the Los Angeles County Museum and has been bequeathed to the museum by Armand Hammer. The businessman and collector, who has bequeathed his entire paintings collection to the Los Angeles museum, recently purchased Juno from an anonymous New York collector for $3.25 million, said to be the highest price ever paid for a Rembrandt...National Gallery buys Jackson Pollock's Lavender Mist, 1950, (one of the last major Pollocks owned privately) from sculptor Alfonso Ossorio and his associate Edward Young for an undisclosed sum (rumored to be more than the $2 million paid by the National Gallery of Australia in 1973 for Pollock's Blue Poles). The work will be displayed in the museum's new East Building, scheduled to open in the spring or summer of '78.

OPPORTUNITIES: American Academy in Rome provides accommodations, food and research facilities for artists and scholars desiring to pursue independent work in Rome. Single recipients receive $3,120 stipend, $1,300 travel allowance, $300-800 for supplies; married people get $3,600 stipend, $1,600 for travel, $300-800 for supplies. At least 20 awards are expected to be made this year. Deadline: Dec. 31. Application fee: $10. For more information and application, write: Executive Secretary, American Academy in Rome, 41 E. 65th St., New York, N.Y. 10021...Whitney Museum's Independent Study Program offers semester of full-time study and practical experience for graduate students and advanced undergraduates. 15 students are accepted in painting and sculpture; 10 in art history and museum studies. Tuition: $600. Scholarships are available. Deadline: Nov. 5. For more information, contact: David Hupert, Independent Study Program, Whitney Museum, 945 Madison Ave., New York, N.Y. 10021.

PEOPLE: Brian O'Doherty switches from directing National Endowment for the Arts' Visual Arts Program to directing its Public Media Program; Renato Danese, Visual Arts assistant director, becomes acting director...Eight new members are named to the 26-member National Council on the Arts (presidentially appointed advisory board to the National Endowment for the Arts): Martina Arroyo, opera singer; William Boyd, president, University of Iowa; Hal Davis, president, American Federation of Musicians; J.C. Dickinson Jr., director, Florida State Museum, University of Florida; William Eells, executive and regional manager, Ford Motor Co.; Harold Prince, theater director and producer; Franklin Schaffner, film director; Geraldine Stutz, president, Henri Bendel...I. Michael Danoff is new acting director, Milwaukee Art Center, continuing in his former post as curator of exhibitions and collections...Marcia Tucker, controversial champion of the avant garde, is dismissed from her post as curator of contemporary art, Whitney Museum...Two curatorial appointments at the new Yale Center for British Art and British Studies: Andrew Wilton, curator of prints and drawings (formerly of British Museum); Malcolm Cormack, curator of paintings (formerly of Fitzwilliam Museum, Cambridge University).

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ART LETTER
ARTWORLD INTELLIGENCE FOR PROFESSIONALS

VOL. V, NO. 9 SEPTEMBER 1976

NYSCA'S ADMINISTRATIVE TURMOIL: THE UNTOLD STORY BEHIND THE RESIGNATIONS

Amidst charges of inefficiency and inability to work well with some of her colleagues, Joan Davidson, chairman of the New York State Council on the Arts, resigned last month, saying she had been forced out by Gov. Hugh Carey. Press accounts of the underlying issues have been sketchy at best. To get behind the hints and rumors, ART LETTER's editor recently sought and obtained an extended interview with a high-level council source. According to this source, the reason for Ms. Davidson's forced resignation was her constant battle with the Governor over inadequate council funding and his desire to use the council as a dumping ground for political appointees.

Although Ms. Davidson did not wish to comment directly about her resignation, she did confirm that the account given here of her side of the story accurately reflects her views. As for the Governor's side, his office, repeatedly contacted by ART LETTER, was reluctant to comment in any detail, and even refused to confirm or deny that the Governor did, in fact, order Ms. Davidson's resignation. Since NYSCA, as the oldest and largest state arts agency, has long served as a model for the rest of the country, the current turmoil and possible threats to the agency's future integrity are of considerable interest, not only to New Yorkers, but to the entire U.S. arts community.

The Background

On May 20, 1975, Joan Davidson was sworn in as chairman of the New York State Council on the Arts by Governor Carey, becoming the second person to occupy the post since the council's formation in 1960 (ART LETTER, May '75, June '75, Sept. '75). Under her administration, the council's fiscal and program staffs were combined, names of advisory panel members were published for the first time, plans were made to expand certain program areas, and arts groups were given advance notice of the council's intended allocations to the various program categories. In addition, the initial phases of grantmaking were considerably speeded: One of the main criticisms of the previous administration, appointed by Gov. Nelson Rockefeller and headed by Seymour Knox, chairman, and Eric Larrabee, executive director, was slowness and inefficiency in distributing grants. By the end of Oct. '75, under Ms. Davidson's administration, according to figures supplied by the State Budget Division, NYSCA had paid out 29.5% of its grant money, compared to only 2.5% the previous fiscal year. But by the end of fiscal '76, only 69% of NYSCA's grant money had been paid out, compared to 75.4% the previous year. In addition, work on fiscal '77 grants later fell about six weeks behind schedule, and the council had begun to receive complaints about the delays from financially pressed applicants. According to Ms. Davidson, the delays were caused by cuts in the council's budget, which necessitated staff reductions and a disruptive move to new rent-free headquarters (ART LETTER, Mar. '76). Despite these obstacles, she said that grant processing would have been back on schedule by September. But on Aug. 4, the

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New York Times ran an article describing the council's administrative difficulties and adding that "people inside and close to the council" had heard reports "that Governor Carey was about to name a replacement for Joan K. Davidson." Ms. Davidson at first said that she would not resign voluntarily, but five days later she did resign, with a terse statement charging the Governor with "indifference to the arts" and saying that he had asked her to leave. The next day, Aug. 10, the Governor appointed Kitty Carlisle Hart, the entertainer, television personality and vice chairman of the council, to its chairmanship. (Like Ms. Davidson, Ms. Hart said she would serve without salary.) The Governor also filled 12 vacant seats on the 20-member council.

On Aug. 16, Ms. Hart announced "with regret" the resignation of Kent Barwick, who had been appointed director of the council by Ms. Davidson. Hugh Southern, executive director of the New York-based Theatre Development Fund, was subsequently named "transitional executive director" of NYSCA, and a search committee of council members was formed to find a permanent replacement. Colleen Burke, a former program associate in Governor Carey's office and his liaison with NYSCA, joined the council's staff on a temporary basis at Ms. Hart's request, to aid in the administrative transition.

Issues Behind the Resignations

According to ART LETTER's high-level council source, who did not wish to be identified, Ms. Davidson's problems with the Governor came to a head about a month before her resignation, when she had a "stormy meeting" with him in his office. Their argument, according to the source, centered on two issues: the Governor's refusal to request any money in the state's supplemental budget for additional administrative help at the council (the council's administrative budget had been cut from $1.59 million in fiscal '76 to $1.37 million in fiscal '77), and his desire to appoint certain persons who were not associated with the arts to vacant seats on the council. Ms. Davidson did manage "to keep off some egregious real estate tycoons who had been on the Governor's list originally," according to the source. But only one person from Ms. Davidson's own list of possible council candidates -- drawn from the ranks of sculptors, architects, writers, painters and museum professionals -- was finally accepted by Carey: Kurt Vonnegut Jr., the writer. There are no visual artists, three performing artists (Peter Duchin, pianist; Geraldine Fitzgerald, actress; Frederick O'Neal, actor) and one architect (Lev Zetlin) among Carey's 12 appointments to the 20-member council.

Other points of contention between Ms. Davidson and Gov. Carey, according to the source, were as follows:

--- "The Governor did not fight for his budget request of $30 million for the council. He put other priorities first." (The state legislature passed a $27.35-million grants budget this year, compared to the $33.1 million which the council had available for grants last year.)

--- "He took more than a year to fill some of the vacancies on the council.

--- "He wanted to make his own appointments to the advisory panels, opening them up to political appointees." (The panels consist of arts professionals who review applications and recommend approval or rejection.) Ironically, the appointment of Ms. Davidson, who had run unsuccessfully as a Democratic candidate for State Senate in 1974, had initially been criticized as politically motivated, and she was interrogated, prior to her appointment, by the State Senate's Finance Committee over the issue of whether she would open the council to political influence.

A press spokesman for the Governor's office, which had at first refused any comment on the subject of Ms. Davidson's resignation, gave the following rejoinders

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to the issues raised: "The arts council did very well in a very tight year to come up with the budget it received. The Governor should be judged by the appointments [to the council] which he made. The Governor's office has no intention of taking over the advisory panels." Was the Governor unhappy with Ms. Davidson because (as the press accounts seemed to indicate) he felt she was an inefficient administrator? The spokesman would not say. But Howard Miller, first deputy director of the State Budget Division, which monitors the art council's performance, told ART LETTER that, as far as his agency was concerned, "there was no evidence of inefficiency. We had no serious qualms over the organization under Joan Davidson. We were not really aware of the difficulties others have spoken of. There were some administrative difficulties, but these were based on lack of money for staffing."

The Clash of Personalities

The high-level council source characterized Ms. Davidson's relationship to the Governor as "a constant battle. He didn't like the idea of an opinionated female standing up to him." The source added that the Governor "had no intention of talking to [Ms. Davidson] face-to-face, and would have fired her in the pages of the New York Times," if she hadn't insisted on meeting with him after the appearance of the Aug. 4 article which hinted that her departure was imminent.

In an interview with the Times after her ouster, Ms. Davidson said the Governor had told her during their last meeting that "he had heard some complaints. He said some council members didn't like me...and he said he had a sense that the agency wasn't doing its work." ART LETTER's source said that certain council members had been hostile towards Ms. Davidson "right from the beginning." Unlike her predecessor, Seymour Knox, who had kept a relatively low profile and had left most day-to-day administrative matters to executive director Eric Larrabee, Ms. Davidson was, by all accounts, a hard-working, active chairman who devoted full-time to administering the council, taking literally the statutory mandate that the chairman be the council's chief executive officer. An impulsively outspoken woman, she is said to have antagonized some members of the council and staff, and she herself admits that "maybe I wasn't as tactful as I could have been in some circumstances."

According to ART LETTER's source, Ms. Davidson particularly ran afoul of the "old-guard members of the council, who didn't want change." The two longest-standing council members (aside from honorary chairman Seymour Knox), Victoria Levene and Dorothy Rodgers, indicated to ART LETTER in separate interviews that they felt, in some instances, that Ms. Davidson had not adequately consulted with the council on policy decisions. When questioned on this point by ART LETTER, Ms. Davidson asserted that she had given the council more power than it had ever had before, relying on it, instead on the staff, to draw up the budget and new bylaws, and involving it in the agency's reorganization plans.

"Perhaps it is a matter of style," said Ms. Levene, director of the graduate arts administration program at the State University of New York at Binghamton, who noted approvingly that Ms. Hart had begun her work "by seeking advice at all levels." Ms. Rodgers, wife of the composer Richard Rodgers, also expressed delight with Ms. Hart's appointment, saying that she "gets along very well with people." When asked if this was not true of Ms. Davidson, she replied, "You'll have to draw your own conclusions."

The Outlook

During the first days of her tenure, Ms. Hart is proceeding cautiously and diplomatically, trying to get a sense of her job before making any pronouncements

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on future policy. In keeping with this approach, she said she did not wish to discuss her new post with ART LETTER until she had had more time to settle into her work. One probable change, which was mentioned to ART LETTER by several council sources, is an internal restructuring of the council's staff, to expedite the processing of grants. The details of this have not yet been specified.

For the present, the council is running without a full-time administrative head. Ms. Hart does not intend to get involved in the day-to-day affairs of the council as Ms. Davidson did. Hugh Southern said he can devote only half-time to his work as transitional executive director, and added that he expected a permanent director to be named early this month. One of Southern's main assignments is to help prepare the council's fiscal '78 budget for submission to the Governor this month.

It is too soon to tell how these administrative changes will affect NYSCA. But the arts community (and ART LETTER) will be watching closely during the next few months for the answers to some disturbing questions:

--- Will the disbursement of this year's grants be further slowed by the latest administrative disruptions?

--- Does the appointment of Ms. Hart, a performing artist, and the absence of a single visual arts-related person from the list of the Governor's recent council appointments, signal an increased emphasis on the performing arts at the expense of the visual arts?

--- Will the removal of a chairman who reportedly stood in the way of political appointments to the council and its panels clear the way for such appointments in the future?

ART LETTER'S SELECTIVE GUIDE TO FALL MUSEUM EXHIBITIONS

NEW YORK:

METROPOLITAN MUSEUM: Two Worlds of Andrew Wyeth: Kuerner's and Olson's, paintings and watercolors, Oct. 16-Feb. 6.

MUSEUM OF MODERN ART: The Natural Paradise: Painting in America 1800-1950, Oct. 1-Nov. 30; Harry Callahan retrospective, Dec. 2-Feb. 3.

GUGGENHEIM MUSEUM: Paul Klee, Nov. 19-Feb. 27; James Ensor (from Chicago Art Institute), Jan. 28-Apr. 10.

WASHINGTON, D.C.:

NATIONAL GALLERY: Morris Louis, 16 paintings, Sept. 12-Jan. 9; Titian and the Venetian Woodcut, Oct. 30-Jan. 2.

NATIONAL COLLECTION OF FINE ARTS: Signs of Life: Symbols of the American City, to Oct. 31.

HIRSHHORN MUSEUM: The Golden Door: Artist-Immigrants of America, 1876-1976, to Oct. 20; John Covert, Sept. 16-Nov. 14; Hans Hofmann retrospective, Oct. 14-Jan. 2.

CORCORAN GALLERY: Contemporary Washington Art, six young artists, Sept. 24-Nov. 21; Carl Andre, Barry Le Va, Richard Long, sculptures made specifically for the occasion, Dec. 11-Jan. 30.

CHICAGO:

CHICAGO ART INSTITUTE: Art Nouveau in France and Belgium: 1880-1910 (organized with Rice University), to Oct. 31; James Ensor, Nov. 6-Jan. 3.

MUSEUM OF CONTEMPORARY ART: Will Insley and Joel Shapiro, Sept. 11-Nov. 7; Maniere Dawson and John Storrs, Nov. 13-Jan. 2.

MINNEAPOLIS:

MINNEAPOLIS ARTS INSTITUTE: Charles Biederman retrospective, Oct. 17-Jan. 2.

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WALKER ART CENTER: The River: Images of the Mississippi, works by Bierstadt, Catlin, Bingham, contemporary works, Oct. 3-Jan. 9.

OTHER CITIES:

BALTIMORE MUSEUM: Donald Judd and Sol LeWitt, works made specifically for the museum space, Sept. 7-Oct. 31; Frank Stella: The Black Paintings, Nov. 23-Jan. 23.

EVERSON MUSEUM, Syracuse, N.Y.: Three American Realists: Alice Neel, Sylvia Sleigh, May Stevens, Sept. 18-Oct. 31.

MOORE COLLEGE OF ART, Philadelphia: John Sloan/Robert Henri: Their Philadelphia Years, Oct. 1-Nov. 12.

WADSWORTH ATHENEUM, Hartford, Conn.: Jean Baptiste Greuze, Nov. 30-Jan. 31.

CLEVELAND MUSEUM: The American Situation 1846-1976, photos by O'Sullivan, Curtis, Lange, Stieglitz, Bourke-White, Evans, Arbus, etc., Sept. 8-Oct. 3.

HOUSTON MUSEUM OF FINE ARTS: André Masson (from Museum of Modern Art), Oct. 7-Nov. 28; Gustave Caillebotte retrospective, Oct. 21-Jan. 2.

SEATTLE MUSEUM: Lewis and Clark: A Voyage of Discovery, to Sept. 26.

SAN FRANCISCO MUSEUM OF MODERN ART: Painting and Sculpture in California: The Modern Era, Sept. 3-Nov. 21; In Celebration of Ourselves, contemporary California folk art, Dec. 3-Jan. 30 (dates tentative); California Pictorialism: 1900-f/64, over 100 works by 12 photographers, Dec. 1-Jan. 23.

LOS ANGELES COUNTY MUSEUM: Honoring Daumier, from Armand Hammer collection, to Oct. 31; Two Centuries of Black American Art (organized by Fisk University, Nashville), Sept. 30-Nov. 21; Women Artists: 1550-1950, Dec. 23-Mar. 13.

FALL ROUND-UP OF GRANTS TO INDIVIDUALS

NEA VISUAL ARTS GRANTS: Programs for which individuals may apply (and for which the deadline has not already passed) are listed here. Students are not eligible. For more information and application, write: Visual Arts Program, National Endowment for the Arts, Washington, D.C. 20506.

Artists Fellowships -- Grants of $10,000, $5,000, $2,000. Deadline: Oct. 15.

Craftsmen's Fellowships -- Grants of $5,000. Deadline: Dec. 20.

Craftsmen Apprenticeships -- $3,000 grants for master craftsmen to hire apprentices, generally for nine months. Deadline: Oct. 1.

GUGGENHEIM FELLOWSHIPS: John Simon Guggenheim Memorial Foundation this year awarded average grants of $13,000 to about 300 scholars and artists in the U.S. and Canada. Deadline for next year: Oct. 1. For more information and application form, write the foundation at 90 Park Ave., New York, N.Y. 10016.

NATIONAL MUSEUM ACT: Programs for which individuals may apply (and for which the deadline has not already passed) are listed here. Grantees must be employed or sponsored by museums, academic institutions offering museum-related training, or nonprofit museum-related organizations. Applications should be made through these organizations or institutions, but persons who have difficulty with this requirement can contact the National Museum Act's office independently. For more information and application form, write: Administrator, National Museum Act, Arts and Industries Building -- Room 2467, Smithsonian Institution, Washington, D.C. 20560.

Stipends for Conservation Studies -- Grants for the costs of professional studies in museum conservation at institutions or museums in the U.S. or abroad. Eligible: persons employed as conservators for at least two consecutive years, or persons studying conservation at the time of application. Deadline: Sept. 15.

Advanced Academic Degree Program -- Grants up to $8,000 a year for one or two years to museum professionals working towards an advanced academic degree. Eligible: persons with bachelor's degree who have had at least two years of full-time museum employment. Deadline: Sept. 15.

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Travel for Museum Professionals -- Grants up to $2,000 for costs of transportation and other expenses of travel/study. Eligible: persons employed in museum work for at least two consecutive years. Deadline: Dec. 1.

Special Studies and Research -- Grants for essential costs such as salaries, supplies, travel, etc. Deadline: Dec. 1.

SMITHSONIAN FELLOWSHIPS: Smithsonian Institution offers fellowships to support independent research in American art, in association with the institution's staff and using Smithsonian collections and other facilities. Stipends are $10,000 a year plus research allowance to postdoctoral scholars; $5,000 a year plus research allowance to doctoral candidates preparing dissertations. Also available: several research appointments without financial support. Deadline: Jan. 15. For more information and application form, write: Office of Academic Studies, Smithsonian Institution, Room SI 356, Washington, D.C. 20560.

NEH GRANTS: Programs of the National Endowment for the Humanities for which individuals may apply are listed here:

Research Grants -- Grants in the following categories: General Research Program, support for a wide range of scholarship in the humanities (deadlines: Dec. 1, June 1); Research Tools, support for the production of basic reference works such as dictionairies, bibliographies, guides, catalogues (deadlines: Nov. 8, May 2); Editing, support of efforts to make historical and literary works more available for scholarly purposes (deadlines: Nov. 8, May 2). For more information and application form, write: Division of Research Grants, Mail Stop 350, NEH, Washington, D.C. 20506.

Fellowships -- Grants are available in the following categories: Fellowships for Independent Study and Research, maximum grants of $10,000 for six months, $20,000 for 12 months (deadline: June 1); Fellowships in Residence for College Teachers, maximum grants of $14,500 plus a travel and moving allowance of $500 for advanced university study by persons who teach in undergraduate and two-year colleges (deadline: Nov. 8); Summer Stipends, $2,000 for two months of full-time study by college and university teachers who have been nominated by officers of their institutions (deadline: Oct. 18); Summer Seminars for College Teachers, $2,000 plus $250 for housing and travel, for advanced study at major educational institutions by teachers from undergraduate colleges (deadline: Mar. 1); Fellowships and Stipends for the Professions, to give non-teaching professionals a chance to study the historical, social, cultural and philosophical dimensions of their professional interests (further information and application instructions to be available in December). For more information and application form, write: Division of Fellowships, NEH, 806 15th St., N.W., Washington, D.C. 20506.

BUSH FELLOWSHIPS: Bush Foundation will provide about six awards to artists at least 25 years of age who have lived in Minnesota for at least a year prior to the application deadline, Oct. 22. Awards will be $833 a month for up to 12 months, or $10,000 for a 12- to 18-month period. Students are not eligible. For more information and application form, write: Bush Foundation Fellowships for Artists, W-962 First National Bank Building, Saint Paul, Minn. 55101.

COOKE AWARDS: Hereward Lester Cooke Foundation last year awarded two grants totaling about $5,500 to distinguished artists in need over 40 years of age. Application deadline was not definite at this writing, but was expected to be Jan. 15. For more information and application form, write the foundation at 1800 M St., N.W., Suite 925, Washington, D.C. 20036.

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ROYALTIES FOR ARTISTS (ARTnewsletter, Oct. 26, 1976)-Vol. II, No. 5

Governor Jerry Brown of California has signed into law a controversial bill providing royalty payments to artists when their works are resold. In placing his signature to the document, the governor added a lighthearted footnote when he scrawled across the face of it, "What hath Art wrought!"

California's new law, the first of its kind in the United States, requires that whenever a painting, sculpture or drawing is sold for $1,000 or more and the seller lives in California or the sale takes place in California, the seller or his agent shall pay to the artist five percent of the sale price. The law applies to the work of living artists only. It does not apply to the initial sale of a work or to the resale of a work for less than the price paid.

If the seller or agent is unable to locate and pay the artist within 90 days, the royalty money will be deposited by the California Arts Council in a special fund in the state treasury. The Arts Council will attempt to locate the artist for whom the money was received. If they are unable to locate him, and no claim is filed for the money within seven years of the date, the artist's royalty right terminates and the money is transferred to the Arts Council's operating fund. If the seller fails to pay the artist or the Arts Council, the artist may bring an action for damages within a specified period.

Critics of the new law have called it "well intentioned but bad legislation." The royalty payment, they say, is, in effect, another tax, which must be added to the sales tax, capital gains tax and commission. The result may be that sellers will simply export their art to other states for sale. Although the law says that the tax is payable if the seller lives in California, this provision may be difficult to enforce when the sale is made out-of-state.

Critics also assert that royalty legislation helps only a very small number of artists. "There are less than 100 living artists who have a secondary market," says one observer, "but legislation like this makes people unwilling to buy the work of any living artist. So who's helped? Does Chagall need the money? The law helps those who least need help at the expense of those who do."

Meanwhile, on the federal front, the Tax Reform Act, HR 10612, has passed both Senate and House committees and is now awaiting the signature of President Ford to become law. The legislation, which was originally written to assist farmers, may have a significant effect on artists' estate taxes. Under present law, the estate tax generally must be paid nine months after the decedent's death. Under the new legislation, if 65 percent of the adjusted gross estate consists of art and other business properties, no tax is payable for five years after the artist's death. Thereafter, the tax is payable in equal installments over a ten-year period. Thus, the heirs would not be compelled to dump large amounts of work on the market immediately after the artist's death in order to pay the estate taxes.

Both the California law and the federal bill were written with the assistance of Rubin L. Gorewitz, president of A.R.T. (Artists Rights Today), Inc., the New York-based lobbying group for visual artists.

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Whatever limits are assigned, this is clearly one of the healthiest sections of the art market at present, demonstrated not only by this sale but by successful sales in Europe last year. Among the more interesting SPBNY prices were:

Jean Francois Millet, Un Paysan Greffant un Arbre, 31 by 38½ inches, estimated at $200,000 to $250,000, sold for $360,000 to a German dealer. The price was the highest in the sale, a record for the artist and a record for any Barbizon painting at auction. This Millet, which was once owned by another Barbizon artist, Theodore Rousseau, had been in the United States since at least 1886.

Jean Francois Millet, Le Retour de Laboreur (1863), 17½ by 24½ inches, estimated at $35,000 to $50,000, sold for $65,000, buyer not named. A good example of the vicissitudes of the saleroom -- this painting was sold at a Samuel Freeman sale in Philadelphia in 1924 for $70,000.

Wyandus Johannes Josephus Nuyen, A Canal Quay, Amsterdam

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on this artist and, apparently, high prices have resulted. Sotheby's received $19,000 for a Tissot in 1974 and last year one brought $25,200 at Christie's.

A PICASSO GRAPHICS SUCCESS

The first big sale of Picasso graphics of the season was a success. A "Swiss private collector" consigned 45 lots to Sotheby's, and the result was a return of $256,000. The collector owned two great rarities described as "two lots that are not included in any catalogue raisonné of Picasso's graphic work." Both were versions of the same print, La Femme qui Pieure, made on July 4, 1937. The first, in drypoint, aquatint and etching, sold for $51,500. The second, in drypoint and etching, sold for $49,800. Both were bought by an "anonymous foreign buyer." The prices were, of course, far below the record, which was made as far back as 1973 and is still good: $144,150 for Le Repas Frugal, sold at Kornfeld und Klipstein in Berne.

One prominent prints dealer summed up the Picasso graphics market this way: "Some of his finest prints are down, except for the crème de la crème. The medium prints are strong. The poor are doing poorly."

The sale totaled $412,750 for 159 lots with 16 percent (by number) unsold. Other Picasso prices of note were:

Nature morte au Compotier (1945), lithograph, first state of three, 9 by 13 inches, sold for $12,450 (high estimate) to Colnaghi, a London dealer.

Tête de Jeune Fille (1945), lithograph, first state, 9 by 11 inches, sold for $11,650 (high estimate) to Namtenshi, a Tokyo dealer.

The same unnamed Swiss collector sold an important collection of modern illustrated books; 114 lots brought $171,500. with 18 percent

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24th District, California

Committees:
Interstate and Foreign Commerce
Government Operations
Democratic Steering and Policy

Burt Margolin
Administrative Assistant

Bruce Wolpe
Legislative Assistant

October 11, 1977

Calvin Thompkins
New Yorker Magazine
25 West 43rd
New York, New York 10036

Dear Mr. Thompkins:

I am pleased to enclose for your information and review a discussion draft of the Visual Arts Act of 1977. This legislation would for the first time recognize the right of artists to a continuing financial interest in their work by providing royalties on secondary sales of visual art. The proposed bill would also establish a federally-funded art bank which would purchase art by developing artists for display in buildings and institutions across the country.

I am circulating this draft bill to dozens who have expressed an interest in it in order to receive a broad range of comment and criticism. It is my intention that the final draft incorporate as much feedback as possible, so that the bill may enjoy a strong consensus. I have also asked for a review of whether the final bill to be introduced should:

(1) contain both the resale royalty and the art bank;
(2) contain the resale royalty alone;
(3) contain the art bank alone.

I trust this information will be of value to you and your readers, and that you will feel free to use it as appropriate. If you have any questions, I very much hope you will contact me or my legislative assistant, Bruce Wolpe.

With all best wishes, I am

Sincerely,

Henry A. Waxman

Henry A. Waxman
Member of Congress

HAW:bwl

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(44) Candidacy - Chapin - Visual Arts

[DISCUSSION DRAFT]

OCTOBER 10, 1977

95TH CONGRESS
1ST SESSION

H. R.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER , 1977

Mr. WAXMAN introduced the following bill; which was referred to the Committee on _____

A BILL

To establish a National Commission on the Visual Arts, to require payments to the Commission by certain sellers of works of visual art, to provide for the purchase and distribution of a National Visual Arts Collection, to establish in the Treasury a Visual Arts Fund, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Visual Arts Act of 1977".

DEFINITIONS

SEC. 2. For purposes of this Act—

(1) The term "work of visual art" means an original

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painting, sculpture, or drawing. Such term does not include any item which the National Commission on the Visual Arts shall determine by regulation not to be a work of fine art.

(2) The term "artist" means any individual who applies his artistic skills in the creation of a work of visual art.

(3) The term "seller" means, in connection with any sale of a work of visual art, any person or group of persons who owned such work immediately before such sale. Such term does not include any agent of such person or group of persons who sells such work at such sale for such person or group of persons.

(4) The term "art institution" means any museum or educational institution which the Commission determines, under regulations which it shall prescribe, to be engaged in and to have developed expertise in the display and maintenance of works of visual art.

(5) The term "government agency" means any department, agency, government corporation, establishment, or instrumentality of any branch of government of the United States or of any State or political subdivision thereof.

(6) The term "public building" means any building (or part thereof) which is open to the general public.

(7) The term "interstate or foreign commerce" means commerce between any place in any State and any place outside of such State or between any places in any State through any place outside of such State.

(8) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

NATIONAL COMMISSION ON THE VISUAL ARTS

SEC. 3. (a) ESTABLISHMENT OF COMMISSION.—There is hereby established a commission which shall be known as the "National Commission on the Visual Arts" (hereinafter in this Act referred to as the "Commission").

(b) MEMBERSHIP.—

(1) The Commission shall be composed of 20 members appointed by the President who shall be selected from among citizens of the United States who are recognized by those in the field of the visual arts—

(A) for their interest and expertise in the field of the visual arts, including artists, members of the museum profession, and others who are professionally involved with the visual arts; or

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(B) for their support for and appreciation of the visual arts.

The members of the Commission shall represent the major disciplines of the visual arts. The President shall, in the making of such appointments, give consideration to such recommendations as may, from time to time, be submitted to him by leading national organizations involved with the visual arts. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(2) The members of the Commission shall be selected from individuals who are not officers or employees of any government agency. If any member of the Commission becomes an officer or employee of such an agency, he may continue as a member of the Commission for not longer than the 30-day period beginning on the date he becomes such an officer or employee.

(c) FUNCTIONS OF COMMISSION.—The Commission shall—

(1) administer section 4 of this Act, relating to payments to the Commission by sellers of works of visual art;

(2) administer section 5 of this Act, relating to

payments by the Commission to artists of works of visual art; and

(3) administer section 6 of this Act, relating to the National Visual Arts Collection.

[Further provisions relating to the Commission would include the following: terms of the commissioners; appointment of the Chairman; provisions relating to the meetings of the Commission; pay and travel expenses of the commissioners; director and staff of the commission and their pay; the hiring of experts and consultants; miscellaneous administrative powers of the commission; and annual reports to the President and the Congress.]

(d) CONFIDENTIAL INFORMATION.—

(1) Information furnished to the Commission pursuant to section 4(b) or section 5(c) of this Act shall be treated by the Commission as confidential.

(2) Notwithstanding section 552a of title 5, United States Code, or any other provision of law, it shall be unlawful, except as provided in paragraph (3), for any member, officer, or employee of the Commission to disclose to any person other than a member, officer, or employee of the Commission, or to use for personal benefit, any information contained in any statement, correspondence, or other document filed with or otherwise

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obtained by the Commission under section 4(b) or section 5(c) of this Act. Nothing in this subsection shall authorize the Commission to withhold information from the Congress.

(3) (A) Any information referred to in paragraph (1) or (2) may be disclosed in accordance with the prior written consent of the artist with respect to whom such information is maintained, but only to such extent, under such circumstances, and for such other purposes as may be allowed under regulations which shall be prescribed by the Commission.

(B) Whether or not the artist, with respect to whom any information referred to in paragraph (1) or (2) is maintained, gives his written consent, such information may be disclosed if authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. In assessing good cause the court shall weigh the public interest and the need for disclosure against any prejudice to the artist together with the effective operation of the program established under this Act. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any information is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(4) (A) Whoever violates any provision of this subsection may be assessed a civil penalty of not to exceed $1,000 for each violation. Such penalty shall be assessed by the court in a civil action brought by the Attorney General.

(B) The Commission shall refer to the Attorney General the name of any individual it has reasonable cause to believe has violated any provision of this subsection.

(e) REGULATIONS.—The Commission shall prescribe such regulations, pursuant to and consistent with the provisions of this Act, as it considers necessary to carry out the purposes of this Act.

PAYMENTS BY SELLERS OF WORKS OF VISUAL ART

SEC. 4. (a) PAYMENTS BY SELLERS.—

(1) If a work of visual art is sold in interstate or foreign commerce for $1,000 or more, an amount equal to 5 percent of such sum shall be paid by the seller to the Commission before the end of the 30-day period beginning on the date of such sale.

(2) If a work of visual art is exchanged for property or for any combination of money and property, the fair market value of such property at the time of such sale shall be included in the sum specified in paragraph (1).

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(b) SUBMISSION OF STATEMENTS TO COMMISSION.—

(1) After any sale of a work of visual art referred to in subsection (a), the seller of such work shall file with the Commission, before the end of the 30-day period beginning on the date of such sale, a written statement describing the work sold at such sale and indicating—

(A) the names of the artist or artists of such work; and

(B) the amount of any money and the fair market value of any property taken as payment for such work.

Such statement shall conform to the requirements which shall be prescribed in regulations which shall be issued by the Commission.

(2) (A) Whoever fails to file any statement as required under this subsection may be assessed a civil penalty of not to exceed $1,000 for each violation. Such penalty shall be assessed by the court in a civil action brought by the Attorney General.

(B) The Commission shall refer to the Attorney General the name of any individual it has reasonable cause to believe failed to file any statement as required under this subsection.

(c) ENFORCEMENT BY THE COMMISSION.—

(1) (A) The Commission shall bring an action to recover any payment under this section—

(i) on its own initiative, or

(ii) on the request of any person who it determines would be entitled to a payment under section 5 of this Act if such payment under this section were made,

if the Commission determines that any seller of a work of visual art has failed to make such payment to the Commission as required under this section in connection with any sale of a work of visual art.

(B) Any such action may not be brought after—

(i) the end of the 3-year period beginning on the date of the sale of such work by such seller, or

(ii) the end of the 1-year period beginning on the date on which the Commission first received notice of such sale,

whichever last occurs.

(2) (A) If a court finds that such seller intentionally failed to make the prescribed payment as required by this section, the Commission shall be entitled to—

(i) its reasonable costs, disbursements, and

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expenses, including reasonable attorney fees, actually incurred because of any action described in paragraph (1), and

(ii) punitive damages not to exceed three times the amount of such payment.

(B) (i) Each amount received by the Commission under subparagraph (A) (i) shall be deposited in the operations account of the Visual Arts Fund established under section 7 of this Act and shall be used for the purposes described in subsection (a) (2) of such section.

(ii) Each amount received by the Commission under subparagraph (A) (ii) shall be deposited in the payments account of such fund and a payment equal to such amount shall be made by the Commission to the artist or artists or other person or persons to whom a payment is made under section 5 of this Act in connection with the sale of the work of visual art resulting in the receipt by the Commission of such amount. The amount each such artist or other person shall receive under this clause shall be equal to the payment made by the Commission under this clause divided by the number of such artists or other persons receiving such payment.

(3) The district courts of the United States shall have jurisdiction over civil actions brought under this

subsection, without regard to the amount in controversy or the citizenship of the parties.

(d) EXCEPTIONS.—

(1) The preceding subsections of this section shall not apply with respect to—

(A) the initial sale of any work of visual art;

(B) the resale of any work of visual art after the 50-year period beginning on the date of the death of the last living artist of such work;

(C) the resale of any work of visual art for a sales price less than the purchase price plus an amount equal to 5 percent of such sales price;

(D) the resale of any work of visual art before the end of the 2-year period beginning on the date of the initial sale of such work, if, with respect to such resale and each preceding resale of such work, the seller is considered by the Commission, under regulations which it shall prescribe, to have been at the time of the resale by him of such work actively engaged in the business of selling works of visual art or consigning such works for sale; and

(E) the resale of a work of visual art if such resale is in connection with the sale of a building

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or other structure of which such work is determined by the Commission to be an integral part.

[(2) Notwithstanding subparagraph (C) of paragraph (1), the preceding subsections of this section shall apply with respect to any resale described in such subparagraph if such resale is one of a series of two or more resales undertaken for the purpose of avoiding or lessening any payment required under this section.]

(3) For purposes of subparagraph (D) of paragraph (1), in the case of an artist or artists of a work of visual art whose services were commissioned to create such work, the date of the initial sale of such work shall be considered to be the date on which the initial payment of consideration was made to such artist or artists for such services.

PAYMENTS TO ARTISTS BY THE COMMISSION

SEC. 5. (a) ENTITLEMENT TO PAYMENTS.—The artist of a work of visual art the sale of which results in a payment to the Commission under section 4 of this Act shall be entitled to a payment by the Commission out of the payments account of the Visual Arts Fund of an amount equal to 80 percent of such payment to the Commission.

(b) JOINT ARTISTS.—If two or more artists have combined their artistic skills in the creation of a work of visual art and have jointly registered such work with the Commission as artists of such work in the manner which shall be prescribed by the Commission pursuant to subsection (c), each such artist shall be entitled to, in lieu of the payment referred to in subsection (a), a payment equal to the payment referred to in subsection (a) divided by the number of such artists so registered. If the Commission determines that one or more artists of such work failed to join in the registration of such work before the end of the 1-year period after the initial sale of such work, no artist of such work shall be entitled to such payment.

(c) REGISTRATION OF WORKS OF VISUAL ARTS.—An artist of a work of visual art may be entitled to a payment under this section resulting from a sale of such work only if such artist has registered such work with the Commission before the date of such sale and in the manner which shall be prescribed by the Commission by regulation.

(d) EFFORTS TO LOCATE AND NOTIFY ARTIST; TERMINATION OF ENTITLEMENT TO PAYMENT.—

(1) The Commission shall take such steps as it considers reasonable to locate each artist who is entitled to a payment under this section and to notify such artist so located of such entitlement.

(2) The Commission shall pay to such artist the amount to which he is entitled under this section, except that no such payment may be made until such artist files

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with the Commission a written claim for such payment in such form and such manner as the Commission shall prescribe by regulation. If such artist does not file such written claim for such payment before the end of the 7-year period beginning on the date of the sale resulting in his entitlement to such payment, such entitlement shall terminate and an amount equal to such payment shall be transferred by the Commission from the payments account of the Visual Arts Fund established under section 7 of this Act to the operations account of such fund.

(e) ASSIGNMENT OR ALIENATION.—Except as provided in subsection (f), any entitlement to a payment under this section may not be assigned or alienated.

(f) (1) SURVIVORS OF ARTIST.—In the event of the death of an artist of a work of visual art, any payment thereafter which would have been payable to such artist under the preceding subsections of this section if such artist were alive and had immediately filed a written claim in accordance with subsection (c) (2) shall be payable to the person or persons surviving such artist in the following order of precedence:

First, to the beneficiary or beneficiaries designated by such artist in a signed and witnessed writing received

by the Commission before his death. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

Second, if there is no designated beneficiary, to the widow or widower of such artist.

Third, if none of the above, to the child or children of such artist and descendants of deceased children by representation.

Fourth, if none of the above, to the parents of such artist or the survivor of them.

Fifth, if none of the above, to the estate of such artist until such time as such estate is terminated.

Sixth, if none of the above, to such other next of kin of such artist as the Commission determines to be entitled under the laws of the domicile of such artist at the date of his death.

For purposes of this subsection, the term "child" includes a natural child and an adopted child, but does not include a stepchild.

(2) Except in the case of any beneficiary referred to in paragraph (1) (unless otherwise provided in the writing referred to in such paragraph), the amount which each person may be paid under this subsection shall be equal to the

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amount of the payment payable under paragraph (1) divided by the number of the persons to whom such payment is payable under such paragraph.

(3) The provisions of subsection (d) (2) shall apply with respect to each such person to the same extent and in the same manner as such provisions would apply with respect to such artist.

THE NATIONAL VISUAL ART COLLECTION

SEC. 6. (a) ESTABLISHMENT OF COLLECTION.—

(1) A National Visual Art Collection (hereinafter in this section referred to as the "Collection") shall be compiled and maintained by the Commission. The Collection shall consist of works of visual art which shall be—

(A) purchased by the Commission from funds available in the operations account of the Visual Arts Fund established under section 7; and

(B) loaned by the Commission to regional custodians appointed pursuant to subsection (b) of this section.

(2) At each quarterly meeting of the Commission the Chairman of the Commission shall appoint a committee of 5 members who have not previously been so appointed during that calendar year to select works of visual art for purchase by the Commission.

(3) No work of visual art shall be selected for purchase by the Commission unless—

(A) such work is offered for sale by the artist of such work for less than $1,000; and

(B) such artist is deemed by such members to be a gifted and developing artist who does not have nationwide recognition.

(b) REGIONS AND REGIONAL CUSTODIANS.—

(1) The Commission shall assign each State to one of 6 geographical regions which the Commission shall designate in a manner which the Commission considers necessary to promote the efficient operation and effective distribution of the Collection.

(2) The Commission shall appoint from applicants under paragraph (3) one art institution within each geographical region to serve as the regional custodian for that region. Each regional custodian shall be responsible for the handling, transportation, maintenance, and display within its region of works of visual art purchased by the Commission under subsection (a).

(3) Any art institution located within a geographical region established under paragraph (1) may apply to the Commission for the position of regional custodian for that region. Any such application shall be made in such manner and such form as the Commission shall pre-

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scribe. Any such application may not be approved unless the Commission receives as part of such application assurances in writing to its satisfaction—

(A) that any work of visual art loaned to such art institution by the Commission under this Act shall be adequately protected;

(B) that the correct identity of the artist or artists of such work shall be maintained;

(C) that such work shall not be distorted, mutilated, altered, or subjected to any other action which would be prejudicial to the honor or reputation of the artist or artists of such work;

(D) that after such work has been purchased by the Commission and loaned to an art institution serving as a regional custodian, such institution shall secure such work from the seller of such work and thereafter transport such work in an appropriate manner;

(E) that such work will be displayed at an appropriate place and in an appropriate manner in areas of public buildings generally accessible to and frequented by the public;

(F) that the art institution will submit to the Commission such annual or special financial and

operations reports as the Commission may reasonably request; and

(G) that the works of visual art will be available for inspection by any duly authorized representative of the Commission upon reasonable request.

(4) After approving an application for the position of regional custodian, the Commission, on behalf of the United States, shall transmit to the art institution which made such application an offer of the position of regional custodian and of a grant payable during each fiscal year during its term as regional custodian in an amount which the Commission considers sufficient to compensate the institution during such fiscal year for the administrative and personnel costs which the institution would incur as regional custodian. The offer shall be made upon such terms and conditions as the Commission considers necessary to meet the requirements of this Act and the regulations prescribed thereunder, including the assurances provided under paragraph (3). Each offer shall state a definite amount as the maximum obligation of the United States payable from funds authorized by this Act, and shall stipulate the obligations to be assumed by the art institution as regional cus-

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scribe. Any such application may not be approved unless the Commission receives as part of such application assurances in writing to its satisfaction—

(A) that any work of visual art loaned to such art institution by the Commission under this Act shall be adequately protected;

(B) that the correct identity of the artist or artists of such work shall be maintained;

(C) that such work shall not be distorted, mutilated, altered, or subjected to any other action which would be prejudicial to the honor or reputation of the artist or artists of such work;

(D) that after such work has been purchased by the Commission and loaned to an art institution serving as a regional custodian, such institution shall secure such work from the seller of such work and thereafter transport such work in an appropriate manner;

(E) that such work will be displayed at an appropriate place and in an appropriate manner in areas of public buildings generally accessible to and frequented by the public;

(F) that the art institution will submit to the Commission such annual or special financial and

operations reports as the Commission may reasonably request; and

(G) that the works of visual art will be available for inspection by any duly authorized representative of the Commission upon reasonable request.

(4) After approving an application for the position of regional custodian, the Commission, on behalf of the United States, shall transmit to the art institution which made such application an offer of the position of regional custodian and of a grant payable during each fiscal year during its term as regional custodian in an amount which the Commission considers sufficient to compensate the institution during such fiscal year for the administrative and personnel costs which the institution would incur as regional custodian. The offer shall be made upon such terms and conditions as the Commission considers necessary to meet the requirements of this Act and the regulations prescribed thereunder, including the assurances provided under paragraph (3). Each offer shall state a definite amount as the maximum obligation of the United States payable from funds authorized by this Act, and shall stipulate the obligations to be assumed by the art institution as regional cus-

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todian. When an offer is accepted in writing by the art institution, the offer and acceptance shall comprise an agreement constituting an obligation of the United States and of the institution. Thereafter, the amount stated in the accepted offer as the maximum obligation of the United States may not be increased by more than 10 percent. Unless and until an agreement has been executed, the United States may not pay, nor be obligated to pay, any portion of the costs which have been or may be incurred.

(5) Each regional custodian shall serve for a term of 5 years and may be reappointed to successive terms. The first term shall begin on the first day of the first fiscal year beginning after the end of the 1-year period beginning on the date of the enactment of this Act. Any regional custodian appointed to fill a vacancy occurring prior to the expiration of the term for which its predecessor was appointed shall be appointed only for the remainder of such term. A vacancy in the position of regional custodian shall be filled in the manner in which the original appointment was made. A regional custodian may serve after the expiration of its term until its successor has taken office.

(6) If the Commission determines on the record after opportunity for hearing that an art institution serving as regional custodian has failed to comply with the agreement entered into under paragraph (4), the Commission may remove such institution from the position of regional custodian and deny it access to any unpaid grants or other benefits under such agreement.

(7) Before the purchase by the Commission of any work of visual art under this Act, the Commission shall prescribe by regulation such reasonable measures as the Commission considers necessary to provide for the efficient and safe transfer of works of visual art loaned to an art institution as regional custodian under this Act to its successor as regional custodian.

THE VISUAL ARTS FUND

SEC. 7. (a) ESTABLISHMENT OF FUND.—There is established in the Treasury a Visual Arts Fund (hereinafter in this section referred to as the "fund") which shall be available to the Commission without fiscal year limitation, in such amounts as may be specified from time to time in appropriation Acts, to enable the Commission—

(1) to make payments to artists of works of visual art or their survivors pursuant to section 4(c)(2)(B)(ii) and section 5 of this Act; and

(2) to purchase and to distribute on loan works of visual art and to otherwise operate and maintain the National Visual Art Collection pursuant to section 6

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of this Act, and to pay the administrative and personnel expenses of the Commission.

(b) DEPOSITS INTO FUND.—All payments received by the Commission under section 4(a) of this Act shall be deposited into the fund as follows:

(1) 80 percent shall be deposited into a payments account of the fund to be used only for expenses described in subsection (a) (1) of this section; and

(2) 20 percent shall be deposited into an operations account of the fund to be used only for expenses described in subsection (a) (2) of this section.

(c) TRANSFERRAL OF FUNDS.—If the Commission determines at any time that, because of the failure of artists to register works of visual art and to qualify for entitlements under this Act, the total amount in the payments account of the fund exceeds the amount necessary to fully and effectively carry out the responsibilities of the Commission under section 5 of this Act, the Commission may, in such amounts as may be specified from time to time in appropriation Acts, transfer from the payments account of the fund to the operations account of the fund any amount in excess of such necessary amount.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the operations account of the fund such sums as are necessary to enable the Commission to perform the functions described in subsection (a) (2).

PREEMPTION

SEC. 8. No State or political subdivision thereof may establish, continue in effect, or enforce any provision of law or regulation which provides for any payment for the benefit of any artist of a work of visual art if such payment is in connection with the sale in interstate commerce of such work.

EFFECTIVE DATE

SEC. 9. The provisions of this title shall take effect on October 1, 1978, and shall apply only with respect to works of visual art initially sold on or after such date.

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(44) Cardboards - "Change" - ~~Arbitrary~~ Capture

[DISCUSSION DRAFT]

OCTOBER 10, 1977

95TH CONGRESS
1ST SESSION

H. R.

A BILL

To establish a National Commission on the Visual Arts, to require payments to the Commission by certain sellers of works of visual art, to provide for the purchase and distribution of a National Visual Arts Collection, to establish in the Treasury a Visual Arts Fund, and for other purposes.

By Mr. WAXMAN

OCTOBER , 1977

Referred to the Committee on _____

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(44) Cardinaud - "Chaos" - Judith Kaplan