

The Artist's Resale Right – a conversation

What is the Artist's Resale Right?

Droit de suite or "resale right" is the right of an artist to receive a percentage of the revenue from the resale of their works in the art market. The resale right was introduced into UK law with effect from 14 February 2006. Currently, resale rights are exercisable in the UK only by living artists. However, from 1 January 2012, resale rights will be extended to include the sale of work of artists who have died in the previous 70 years.

Who qualifies?

Qualifying individuals and *qualifying bodies* now have the right to a royalty on the resale of a *work* in which copyright subsists.

Currently, a *qualifying individual* (including the original artist) must be a national of an EU member state, Iceland, Liechtenstein or Norway, or one of the following states: Algeria, Brazil, Burkina Faso, Chile, Congo Costa Rica, Ecuador, Guinea, Iraq, Ivory Coast, Laos, Madagascar, Mali, Monaco, Morocco, Peru, Philippines, Russian Federation, Senegal, Serbia and Montenegro, Tunisia, Turkey and Uruguay. Resale rights can also be held, and exercised in respect of a sale, by a trustee, who does not need to be a *qualifying individual*.

A qualifying body is a charity established under English, Northern Irish or Scottish law, or one which has its central administration in one of the states mentioned above.

Are all works of art covered?

Work means any work of graphic or plastic art such as a picture, a collage, a painting, a drawing, an engraving, a print, a lithograph, a sculpture, a tapestry, a ceramic, an item of glassware or a photograph. A copy of a work is **not** a *work*, unless the copy is one of a limited number which have been made by the artist or under his authority.

Show me the money!

You will receive a royalty provided that the sale price of your work is at least €1000. Royalty rates are calculated on the sale price, net of tax, using a sliding scale of percentages. The maximum resale royalty is €12,500, which applies to works sold for €2,000,000 and above.

Collection of the resale royalty must be by a collecting society such as the Design and Artist Copyright Society (DACS) or

the Artists' Collecting Society (ACS). The collecting societies monitor art sales both in the UK and abroad, including those on the internet.

Note that there is **no** resale if the seller bought the work directly from the artist and resells within three years for less than €10,000.

It all sounds very straightforward! Is it?

Where resale rights or royalties have a connection to another state, it is necessary to consider the application of local law.

The relevant provision in the EU Directive which introduced the resale right provides that the resale royalty is payable to the artist and after his death to those entitled under him/her.

Do the words "after his death to those entitled under him" mean:

- Entitled under the relevant applicable succession law; or
- Entitled under the relevant resale right law where the right is located?

The Directive does not specify which interpretation is correct. This is where we can help.

What do I need to do next?

Contact us if:

- (a) you are an estate, charity or beneficiary who is, or may be, a *qualifying individual*, and
- (b) might be entitled as the owner of copyright of an artist with a relevant nationality who died in the last 70 years

We can also help you to register with a collecting society, such as ACS or DACS. Registration is not mandatory, but it means that a royalty should be paid within 30 days of collection.

You should also review your will to ensure that any resale rights you may have pass to qualifying individuals. If not, they will be lost.



For more information, please contact

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