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Artists' resale royalty right: what it means for visual artists

27 April 2010



More information

Copyright Agency Limited
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This information sheet is for visual artists, including painters, sculptors, printmakers, craftworkers, installation and media artists, and photographers who produce limited edition prints.

This information sheet is for guidance only. It is not legal advice.

The artists' resale royalty right

From 9 June 2010, artists and their beneficiaries will be entitled to a 5% royalty on the sale price for certain resales of their work. This entitlement comes from the *Resale Royalty Right for Visual Artists Act 2009* (the Act).

There is information about the background to the resale royalty, and a link to the Act, on the website of the Department of the Environment, Water, Heritage and the Arts at www.arts.gov.au/resale_royalty.

The government has engaged Copyright Agency Limited (CAL) to collect resale royalties from buyers, sellers and art market professionals (such as commercial galleries and auction houses), and pay the royalties to artists and their beneficiaries.

When will the royalty be payable?

A royalty will be payable on the sale of an artwork if:

- it occurs after 8 June 2010;
- the sale price is \$1,000 or more;
- the artist is:
 - alive, or
 - has been dead for fewer than 70 years;
- the artist, or beneficiary of the artist's estate, is:
 - Australian; or
 - from another country with resale royalty legislation that is listed in the regulations to the Act; and
- it is not the first change of ownership after 8 June.

The first change of ownership after 8 June 2010 (on which a royalty is not payable) could be a sale by the artist, a gift, an inheritance or a resale.

The sale price includes GST, but excludes any buyer's premium or other taxes.

Which artworks?

To be eligible for the resale royalty, an artwork must be:

- created by the artist; or
- produced under the authority of the artist.

The types of artworks covered include artists' books, batiks, carvings, ceramics, collages, digital artworks, drawings, engravings, fine art jewellery, glassware, installations, lithographs, multimedia artworks, paintings, photographs, pictures, prints, sculptures, tapestries, video artworks and weavings.

Manuscripts are excluded.

Limited editions are covered, provided each copy is authorised by the artist. Examples are limited edition prints (such as etchings and linocuts), photographs and sculptures.

Mass-produced items, such as posters, are excluded.



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CAL's role

CAL's role is to collect resale royalties from buyers, sellers and art market professionals, and to pay the royalties collected to artists and artists' beneficiaries.

Sellers, buyers and art market professionals are required to provide CAL with certain information about all commercial resales after 8 June 2010, whether or not a royalty is payable.

CAL's obligations

CAL's obligations under the Act include:

- collecting information from art market professionals, sellers and buyers about commercial resales (including those on which a royalty is not payable);
- publishing information about commercial resales on its website;
- collecting royalties for artists and other right holders;
- ensuring that royalties are paid by those liable to pay;
- identifying and locating artists and other right holders entitled to resale royalties; and
- paying royalties to artists and other right holders.

CAL recognises that, for a range of reasons, it will be easier to establish reporting and payment mechanisms with some art market professionals than with others. But CAL has obligations to *all* artists to ensure they receive the royalties due to them, so will actively seek to recover those royalties from reluctant as well as cooperative art market professionals.

CAL will report to the government on its administration of the resale royalty scheme. It will also report annually to the Code Reviewer on its adherence to the Collecting Societies Code of Conduct.

CAL is establishing an Artists' Resale Royalty Advisory Panel, comprising artists and their representatives, to advise CAL about how to best implement the Act in accordance with current practices.

Some FAQs

What do I need to do to receive resale royalties?

If your works are resold in the future, and CAL collects royalties for them, you will need to be registered with CAL for CAL to pay the royalties to you. Registration costs you nothing, but you must give us certain information (such as your nationality), and warrant that the information is correct. From 9 June 2010, you will be able to register online at www.resaleroyalty.org.au.

Remember that royalties are not payable until the *second* change of ownership after 8 June 2010, even if the first change of ownership after 8 June is a commercial resale. This means that how soon you become entitled to resale royalties will depend on how quickly your work changes hands for the first time, then the second, after 8 June 2010.

What about resales in other countries?

CAL will be seeking to establish reciprocal arrangements with other countries that have resale royalty schemes, such as the UK, France and Germany. That will assist CAL's equivalent bodies in those countries to collect resale royalties for Australian works, which CAL can pay to the artists.

What if there is more than one artist?

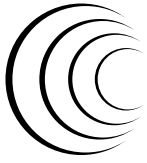
If each artist is Australian, or from another country with a resale royalty scheme, then the royalty is divided equally between the artists unless they have agreed differently.

How much money will CAL deduct from my resale royalties?

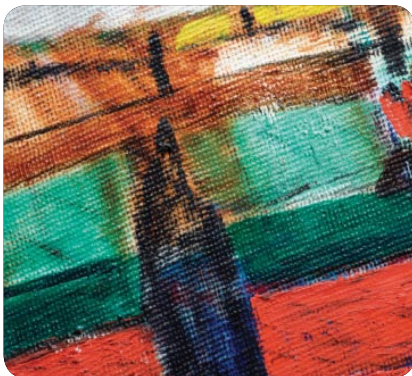
CAL's administrative fee will be 10% of the royalties collected.

Can I get access to the information CAL has about the sales of my works?

Yes, provided you have registered for the scheme and have given CAL an undertaking that you are the artist of those works.



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CAL will be receiving information about *all* commercial resales after 8 June 2010, whether or not a royalty is payable on them. This means that we will be able to give you information about when and for how much your work has resold, even if a royalty is not payable. We won't be able to give you information about the buyer and seller, though, for privacy reasons.

What about online auction sales?

Royalties will be payable on resales through online auctions if all the requirements are met (for example, the sale price is more than \$1,000).

What if I don't want to receive resale royalties?

The Act allows you to notify CAL, on a case by case basis, that you do not want CAL to collect the royalty on a particular sale.

CAL must publish information about a resale, on its resale royalty website (www.resaleroyalty.org.au), as soon as it becomes aware of the resale. That may be through the seller (who is obliged to notify CAL), or through CAL's independent research.

An artist who does not want the royalty must notify CAL within 21 days of the information being published on CAL's website. If there is more than one right holder (for example, two artists, or three beneficiaries of an artist's estate), all of them must notify CAL that they don't want CAL to collect the royalty. If not, CAL remains obliged, under the Act, to collect the royalty.

The Act does not allow you to waive your entitlement to all royalties from all future resales. Any purported waiver has no effect. If you told CAL you did not want to receive any future royalties, CAL would remain obliged to collect the royalties unless you notified CAL, within 21 days of each resale, that you did not want CAL to collect the royalty for that resale.

This provision is intended to protect artists who may be pressured to give up their entitlement (for example, as a condition of purchase). For the same reason, resale royalty schemes in other countries all have a similar provision.

What if I want to collect my resale royalties myself?

You must notify CAL, within 21 days of CAL publishing information about a resale on its website, that you do not want CAL to collect the royalty for you.

You can then seek to recover the royalty yourself from the buyer, seller or art market professional.

You must notify CAL each time you want to do this. The Act does not enable CAL to act on a notification for all future resales.

If a gallery pays me an advance against a future sale, is the sale of the work by the gallery a commercial resale?

If you still own the painting when the gallery sells the painting, no. The sale by the gallery will transfer ownership of the painting from you to the purchaser, and the royalty will not be payable. Whether or not you retain ownership of the work will depend on the terms on which the advance is given.

Can the resale royalty apply to works in which copyright has expired?

In some cases, yes. The resale royalty lasts for the artist's lifetime plus 70 years. This is also the period of copyright protection for most artworks, but not for all.

For example, copyright in all photographs taken before 1955 has expired, but the sale of a limited edition of a photograph taken before 1955 could be subject to payment of the resale royalty if the photographer has been dead for fewer than 70 years. To give another example, copyright in a painting whose artist died in 1954 has expired, but resale royalties will be payable on the painting until 2024.

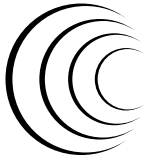
More information

There will be more information soon on CAL's new resale royalty website, www.resaleroyalty.org.au.

You can also ask us for more information by:

- emailing us at resale@copyright.com.au; or
- phoning 1800 066 844.

Contact people at CAL in relation to the resale royalty scheme include Zoë Rodriguez and Libby Baulch.



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Use of this information sheet

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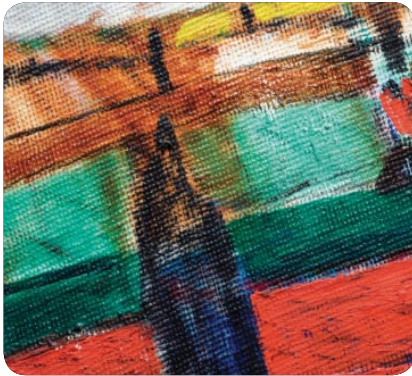
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