

# Artists' resale royalty scheme: information for art market professionals

14 December 2011

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

## About the artists' resale royalty scheme

The artists' resale royalty scheme started on 9 June 2010. Under the scheme:

- commercial resales of artworks over \$1,000 (including GST) must be reported; and
- a 5% royalty is payable on some resales.

The Australian government appointed Copyright Agency Limited to manage the scheme.

Key features of the scheme are:

- it applies to resales of works created both before and after 9 June 2010;
- it applies to a range of original artworks, included limited edition prints authorised by the artist;
- all resales over \$1,000 must be reported, whether or not a royalty is payable;
- a royalty is not payable on the first transfer of title after 9 June 2010;
- a royalty is not payable on resales for under \$1,000 (including GST); and
- the scheme will be extended to artworks from countries that have similar schemes.

## How does the resale royalty scheme affect you?

There are legal obligations for 'art market professionals', who include commercial galleries, auction houses, art dealers, online art auctions and sales, and other people in the business of selling artworks.

You need to:

- make sure that your sellers know that they need to report certain information about resales of artworks to us, or report that information yourself; and
- if a royalty is payable, make sure that it is paid.

## Which artworks?

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, and architectural drawings and plans are excluded.

The artwork must have been:

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

A limited edition reproduction, such as a numbered print, is covered if its making was overseen by the artist.

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

## Which transactions are 'commercial resales'?

A transaction is a commercial resale if:

- a person transfers ownership of an artwork to someone else in exchange for money;
- that person is not the artist (or the artist's estate); and
- it is not a private sale from one individual to another.

## What information must be reported?

Sellers must provide sufficient information about a resale to enable us to work out:

- if a royalty is payable; and
- if it is, who will pay it.

To work out whether the royalty is payable, we need information about some, and in some cases all, of the following:

1. the sale date;
2. whether the seller acquired the work after 8 June 2010;
3. the sale price;
4. a description and/or image of the work;
5. the title of the work;
6. the name of the artist;
7. whether the artist is living or dead and, if dead, the year of death; and
8. the artist's nationality or residency.

In some cases, you or the seller may not have information about some or all of the last four matters. Where we receive insufficient information, there is a presumption that a royalty is payable.

Sellers can report through an agent, such as a gallery or auction house.

If we receive sufficient information from the agent, and any royalty is paid, then we do not need information about the seller or buyer.

If necessary, however, we can seek additional information from sellers, buyers and art market professionals to help us work out if a royalty is payable and, if it is, by whom.

## What is the process for reporting?

1. Go to [www.resaleroyalty.org.au](http://www.resaleroyalty.org.au);
2. Click the "Register" button, complete the form with your contact details and register; and
3. Provide information about commercial resales by:
  - completing the online form; or
  - uploading a document, such as an Excel spreadsheet, with information about multiple sales.

## When is a royalty payable?

A royalty is payable if:

- the seller did not own the artwork on 8 June 2010 (i.e. acquired the artwork after that date);
- the work resells for \$1,000 (including GST) or more;
- the resale was not a private sale from one individual to another;
- the artist is an Australian citizen or resident;
- if the artist has died, it was less than 70 years ago; and
- if the artist has died, there is a beneficiary or estate with a connection to Australia.

## Who has to pay the royalty?

The seller and art market professional are jointly responsible to ensure the royalty is paid. If the royalty is not paid, we can take enforcement action against one or both of these.

## More information

Additional information available from [www.resaleroyalty.org.au](http://www.resaleroyalty.org.au) includes:

- Code of practice for artists' resale royalty
- Guide to the artists' resale royalty scheme (which includes FAQs)

## Use of this information sheet

Check [www.resaleroyalty.org.au](http://www.resaleroyalty.org.au) for the terms of use for this information sheet, and to make sure that this is the most recent version.