

AbaF

Artists' resale royalty scheme

The artists' resale royalty scheme commenced on 9 June 2010 and entitles artists to a 5% royalty on certain resale of their works. The federal government appointed Copyright Agency Limited (CAL) to manage the scheme.

How does the scheme work?

Art market professionals (galleries, dealers and auction houses) have to report all resales of artworks to CAL. CAL then works out if a royalty is payable. If it is, CAL contacts the artist, gets confirmation that the work is the artist's, and pays the royalty on to the artist.

Why did the government introduce the scheme?

The scheme implemented a 2007 election commitment, which followed more than 20 years of lobbying by artists and their representatives.

Visual artists have more limited opportunities than other creators to earn royalties from their work. Composers, for example, can earn royalties from CD sales, live performances, broadcasts and digital downloads of their music. Writers can earn royalties from book sales, film adaptations, photocopying and digital use of their work. The resale royalty scheme is intended to create an additional income stream for artists.

The scheme is also intended to redress the inequity for artists whose works escalate in value. The former Minister for the Environment, Heritage and the Arts, Peter Garrett, described the scheme as 'an important development for the Australian art market and a significant result for visual artists, recognising the value and esteem in which they're held by the wider Australian and international community.'

Which artworks are covered?

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.

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.

The scheme applies to works created both before and after 9 June but does not apply if the artist passed more than 70 years ago.

Which resales are covered?

The legislation requires art market professionals to report all resales from 9 June 2010 so CAL can work out if a royalty is payable. A royalty is payable if:

- the sale price (including GST) is \$1,000 or more;
- the artist is Australian, and is alive or passed fewer than 70 years ago; and
- the sale is not the first change of ownership since 8 June.

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

The scheme will be extended to resales of works by artists from countries that have similar schemes.

What about resales in other countries?

CAL has contacted the organisations that manage these schemes in other countries to establish reciprocal arrangements. When they are in place, Australian artists will be entitled to royalties from resales of their works in other countries. All member countries of the European Union have a resale royalty scheme.

Who is entitled to the royalties?

If the artist is alive, the artist is entitled to the royalty. If there is more than one artist, the royalty is shared between them. If the artist has passed, the artist's beneficiary or beneficiaries are entitled to the royalty. Except under a will, the artist cannot transfer his or her royalties to anyone else.

Why have a will?

Having a will means that you can choose who will receive the things you leave – including your copyrights and other rights, such as the resale royalty right, which continue after death.¹

What if the artist doesn't want royalties?

The legislation does not allow an artist to waive their entitlement to royalties. Artists can, however, instruct CAL to not collect a royalty for them on a case by case basis.

CAL is required to publish certain information on the resale royalty website at www.resaleroyalty.org.au about resales for which royalties are payable. An artist who does not want CAL to collect a royalty on a particular resale must give CAL a written instruction to that effect within 21 days of CAL publishing the information.

Register for the scheme

CAL has established a resale royalty website that, among other things, enables artists to set up a secure online login to provide their contact details and view information about resales of their works. Go to www.resaleroyalty.org.au and click 'Register now' (left hand side of screen) to enter your contact details and set up a secure login. Registering for the scheme will help CAL to find you if they collect royalties for you in the future. If you do not have internet access, you can provide your details by phone, email or post (see below for CAL's contact details).

About CAL

CAL is a non-profit company that has been managing rights for authors, artists, publishers and others for more than 20 years. CAL was appointed by the Australian government to collect and distribute copyright fees for educational use of content in 1990, and for government use in 1999.

Following its appointment to manage the artists' resale royalty scheme in April 2010, CAL established an art market professionals advisory panel and an artists advisory group.

¹ The Arts Law Centre of Australia's publication *Where There's a Will... Estate planning for artists* can provide more information about preparing a will. www.artslaw.com.au/LegalInformation/WhereTheresAWill.asp

Level 15
233 Castlereagh Street
Sydney NSW 2000
T: 1800 066 844;
E: resale@copyright.com.au;
W: www.copyright.com.au and www.resaleroyalty.org.au

Further reading and resources

- Frequently Asked Questions (FAQ) www.resaleroyalty.org.au/FAQ.aspx
- link to legislation: www.arts.gov.au/artists/resale_royalty
- Resale Royalty Right for Visual Artists Bill 2008: Report by House of Representatives Standing Committee on Climate Change, Water, Environment and the Arts: www.aph.gov.au/house/committee/ccwea/resaleroyalty/report.htm
- Report of the Contemporary Visual Arts and Craft Inquiry (Myer report): www.arts.gov.au/public_consultation/earlier-consultations/cvac_inquiry/report
- resale royalty in the United Kingdom: www.dacs.uk
- European Union Directive on resale royalty: http://ec.europa.eu/internal_market/copyright/documents/documents_en.htm

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