



Artists: Resale Royalty

In this information sheet, we give a brief overview of the resale royalty right for visual artists, introduced by the Resale Royalty for Visual Artists Act 2009. This information is mainly for visual artists and art market professionals but is also relevant to people who may wish to purchase or sell an item of visual art.

For information about our other information sheets, publications and our seminar program, see our website www.copyright.org.au

The purpose of this information sheet is to give general introductory information. If you need to know how the law applies in a particular situation, please get advice from a lawyer.

We update our information sheets from time to time. Check our website to make sure this is the most recent version.

Key points

- The resale royalty right applies to the “commercial resale” of “works of visual art”.
- The right only applies to a resale of an artwork occurring on or after the “commencement date” – that is, on or after 9 June 2010.
- The royalty only applies to the second and subsequent sale/s that occur after the “commencement date”.
- The royalty is 5% of the resale price (inc GST) of the artwork.
- The royalty applies for the life of the artist plus 70 years.
- The royalty is only payable where the resale price (inc GST) is \$1,000 or more.
- The royalty right cannot be waived or transferred.

Background

The resale royalty right for visual artists commenced in Australia on 9 June 2010. The scheme provides an additional income stream for visual artists and their heirs. It was introduced in recognition of the fact that, while other creative works such as books and music often generate income streams (royalties) over a period of time, in most cases visual artists only realise value from the principal sale of their artwork, and not from other royalty income streams.

What artworks are covered?

The royalty applies to original “works of visual art” that are either created by an artist or group of artists or produced under the authority of an artist or group of artists. It is not intended to include works produced in unlimited editions or that are mass produced, for example, souvenirs.

The term “works of visual art” includes (but is not limited to):

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.

The royalty specifically does not apply to:

buildings, or a drawing/plan/model for a building, a circuit layout, a manuscript of a literary/dramatic/musical work.

For a resale royalty to be payable, a minimum sale price of \$1,000.00 (including GST, but not including any buyer’s premium or other tax) must be paid by the purchaser. Any sales for less than \$1,000.00 will not attract the royalty.

Commercial resale

The royalty only applies to “commercial resales.”

A “commercial resale” involves a change of ownership in exchange for money (other than the first change of ownership) and the involvement of an “art market professional”. We discuss these concepts in more detail below.

Change of ownership requirement

The royalty only applies to “commercial resales.” It does not apply to a first change of ownership.

For artworks already in existence on 9 June 2010, however, the resale royalty will only apply to the second change of ownership that occurs from 9 June 2010 (the commencement date). So, for example, if an artwork was first sold in January 2008 and is then commercially resold in January 2011, the royalty will not apply as only one change of ownership has occurred after the commencement date.

Also, for any artwork, it doesn’t matter if the first change of ownership was not a “commercial resale” (for example, it was given to someone as a gift, or inherited under the terms of a will) as long as the relevant resale meets the criteria of a “commercial resale”.

Art market professionals

The phrase “art market professionals” is defined in the legislation to include:

- auctioneers;
- art galleries;
- museums;
- art dealers; and
- anyone else “otherwise involved in the business of dealing in artworks”.

The collecting society

Generally speaking, it is envisaged that individual artists, beneficiaries and their agents won’t have to collect monies due to them under the scheme. Rather, it has been assumed that most artists will

let the collecting society appointed by the federal government – Copyright Agency – collect resale royalties on their behalf.

As the collecting society appointed to administer the scheme, Copyright Agency's obligations include:

- publishing a notice on its website (www.resaleroyalty.org.au) when it becomes aware of a "commercial resale";
- collecting the royalty (unless notified to the contrary); and
- enforcing the resale royalty right where necessary.

To cover administrative costs, Copyright Agency will take a 10% fee out of all royalties collected before distributing the remainder.

Art market professionals are required to send information about every "commercial resale" to Copyright Agency.

Artists

When a qualifying commercial resale occurs, a right to receive the resale royalty is generated for the relevant artist/s or their beneficiaries.

If there is more than one artist, the artists will each be entitled to an equal share of the royalty unless they have agreed otherwise.

Residency test

To be eligible, artists must satisfy a residency test. Generally, an artist will satisfy the residency test if they are:

- an Australian citizen;
- an Australian permanent resident; or
- a national of a country that has a reciprocal agreement with Australia for resale royalties.

If the artist is no longer living, the artist must have satisfied the residency test just before he or she died, and the royalty is only payable to beneficiaries who also meet the test.

How much will I receive?

The royalty is 5% of the resale price (including any GST applicable on the sale).

Where Copyright Agency collects the royalty on your behalf, an administrative fee of up to 10% will be charged. This means you will receive 90% or more of the total value of the royalty collected.

How do I receive royalties?

To receive royalties from the collecting society that has been appointed by the federal government, you will need to register your details with Copyright Agency. You can register online from 9 June 2010 at www.resaleroyalty.org.au Registration is free.

If you have not registered with Copyright Agency prior to the royalty being collected, Copyright Agency is obliged by law to use its best endeavours to locate the holder of the resale royalty right.

Can I collect royalties myself?

You can choose to collect a royalty yourself or to appoint an agent to collect the royalty on your behalf. To do this, or to choose not to have the royalty collected, you must notify Copyright Agency that you do not want Copyright Agency to collect the royalty within 21 days of when Copyright Agency publishes a notice about a resale of one of your works on its website. This must be done by the right holder on a case by case basis, that is, you will need to make a separate notification in respect of each resale. You cannot make a blanket request to collect all future resale royalties yourself.

Under law Copyright Agency is able to pursue collection of the resale royalty on behalf of right holders. You should carefully consider under what circumstances you might collect the royalty yourself or appoint an agent to collect it on your behalf.

What about sales overseas?

We understand that Copyright Agency will endeavour to enter into reciprocal arrangements with relevant collecting societies in other countries that have similar schemes, so that if an Australian artwork is sold in one of those countries, Copyright Agency can collect the royalty and distribute it in Australia.

For foreign schemes to be recognised, the Australian government must list in regulations, the countries with which Australia has entered into reciprocal agreements for the resale royalty.

Buyers, sellers and art market professionals

After the “commencement date”, anyone who purchases or sells visual art in the secondary arts market will be required to provide details to Copyright Agency about the sale, when a work is sold for more than \$1000.

Generally, buyers, sellers, agents, and other relevant art market professionals all have obligations to ensure information is given to Copyright Agency about all commercial resales. In ensuring that any applicable royalty is paid, we understand that, Copyright Agency envisages art market professionals will pay royalties on behalf of their clients and that, where Copyright Agency is to collect a payment, Copyright Agency will assist the parties to work out if a royalty is payable.

Legal action can be taken against a buyer, seller or art market professional in the event that a royalty is not correctly paid.

Common questions about the resale royalty

My artwork was first sold in 2008. If it was resold in an auction in July 2010, will I be entitled to the royalty?

No. Only the second sale that occurs from 9 June 2010 will attract the royalty.

If an artwork I created and sold in July 2010 is resold in August 2010 for \$990 plus 10% GST – will I receive the royalty?

The total resale price would be \$1,089. The threshold for the royalty is \$1,000 (including GST), so in this case the royalty will be payable.

My artwork is resold for \$10,000 (including GST). How much will I receive?

Provided you meet the eligibility requirements, you will be entitled to a 5% royalty – in this case, \$500. Unless you notify Copyright Agency that you do not want it to collect the royalty on your behalf, you will receive \$450 (Copyright Agency having deducted a 10% administration charge).

I purchased an artwork from a gallery and my neighbour is now interested in buying it. Will the royalty apply to the resale?

There would be no royalty payable in this situation, provided neither of you is “in the business of dealing in artworks” and this is a private transaction; it is not a “commercial resale”.

What happens if I enter an agreement to purchase an artwork but the sale is never completed?

No royalty will be payable until there is a change of ownership in the artwork.

I am interested in purchasing an artwork and the artist is dead. Does this mean the royalty won't apply?

There will be no royalty payable on the first transfer of ownership from 9 June 2010. However, a royalty will be payable on “commercial resales” thereafter, until 70 years after the year in which the artist died.

I purchased an artwork whilst on vacation in Italy. Will the resale royalty apply in this case?

The Australian resale royalty only applies to sales covered by Australian law. Where you purchase an artwork overseas, it will usually be the law of that country that applies. However, that country might have a similar resale royalty scheme in place, so you may be liable to pay a resale royalty under Italian law.

What happens if I purchase an artwork in Australia but the price is in \$USD?

You must apply the exchange rate applicable at the time of the sale to work out what the \$AUD equivalent would be. If the \$AUD equivalent at that time is more than the threshold \$1,000 then the resale royalty will apply to a qualifying commercial resale that occurs from 9 June 2010. The royalty will be 5% of the \$AUD equivalent.

What if I believe I am entitled to a royalty but I can't see any information about the transaction on the resale royalty website?

If you believe you are entitled to receive the royalty, you can write to Copyright Agency to notify it. You should include your name, address, the proportion of the royalty you believe you are entitled to, and details regarding the basis of your claim.

Does the resale royalty apply to a sale through an Australian online auction house or an Australian gallery that sells artworks online?

Yes, these transactions would be covered by the scheme (provided the sale price is \$1,000 or more and the other general criteria are met).

Further information

For further information about Copyright Agency and the resale royalty, see www.resaleroyalty.org.au

For further information about copyright, and about our other publications and seminar program, see our website – www.copyright.org.au

If you meet our eligibility guidelines, a Copyright Council lawyer may be able to give you free preliminary legal advice about an issue that is not addressed in an information sheet. This service is primarily for professional creators and arts organisations but is also available to staff of educational institutions and libraries. For information about the service, see www.copyright.org.au

Reproducing this information sheet

Our information sheets are regularly updated - please check our website to ensure you are accessing the most current version. Should you wish to use this information sheet for any purpose other than your reference, please contact us for assistance.

Australian Copyright Council

The Australian Copyright Council is a non-profit organisation whose objectives are to:

- assist creators and other copyright owners to exercise their rights effectively;
- raise awareness in the community about the importance of copyright;
- identify and research areas of copyright law which are inadequate or unfair;
- seek changes to law and practice to enhance the effectiveness and fairness of copyright;
- foster co-operation amongst bodies representing creators and owners of copyright.



Australian Government



The Australian Copyright Council has been assisted by the Australian Government through the Australia Council, its arts funding and advisory body.

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