

COPYRIGHTAGENCY | **viscopy**

**Submission to US Copyright Office on
artists' resale royalty right
December 2012**

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About the Australian artists' resale royalty scheme

The Australian artists' resale royalty scheme commenced on 9 June 2010.

Key features of the scheme are:

- a royalty is payable on certain resales of artworks since commencement of the scheme;
- the scheme applies to resales of works created both before and after 9 June 2010;
- the definition of 'artwork' is quite broad, and includes 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 rate is a flat 5% of the sale price: there is no sliding scale and no cap;
- a royalty is not payable if:
 - the sale price (including goods and services tax) is less than AUD\$1,000;
 - the artist died more than 70 years ago;
 - the artist is neither Australian nor from a country with a resale royalty scheme;
 - the resale is from one individual to another without the involvement of an art market professional; or
 - the resale is the first transfer of title since commencement of the scheme;
- the legislation provides for a single collecting society to be appointed by the government;
- all resales of \$1,000 or more must be reported to the collecting society, so that the collecting society can determine whether or not a royalty is payable;
- the Australian Government is in the process of extending the scheme to artworks from other countries with resale royalty schemes (which requires amendment to the regulations to the legislation);
- the establishment of the scheme was assisted by the Australian Government with seed funding of AUD \$1.5M;
- the government appointed Copyright Agency, a not-for-profit rights management organisation, to manage the scheme in May 2010; and
- Copyright Agency deducts a 10% administrative fee from royalties collected.

There is detailed information about the scheme, including guides for artists and art market professionals, frequently asked questions and a link to the Resale Royalty Right for Visual Artists Act 2009, at <http://www.resaleroyalty.org.au/>

About Copyright Agency|Viscopy

Since July 2012, Copyright Agency has been managing Viscopy's services for licensees and members.

Like Copyright Agency, Viscopy is a not-for-profit rights management organisation. Each is affiliated with similar organisations operating in other countries. Viscopy remains a separate legal entity with its own members and board, but is managed by Copyright Agency. We refer to the organisations together as Copyright Agency|Viscopy.

Copyright Agency's nearly 25,000 members include artists, writers and publishers. Viscopy represents more than 8,000 Australian and New Zealand visual artists, of whom more than 50% are Indigenous Australians. Viscopy is affiliated with American artists' rights organisations, Artists Rights Society (ARS) and VAGA, and manages their respective repertories in Australia and New Zealand.

Background to the introduction of the Australian scheme

When the legislation for the resale royalty right was introduced into the Federal Parliament in 2009, the Minister for the Environment, Heritage and the Arts spoke about the importance of right for artists:

The introduction of this bill marks a landmark day for Australia's visual artists, whose right to an ongoing economic interest in the value of their artistic works will be appropriately recognised in Australia for the first time.¹

There are currently more than 20,000 visual artists in Australia whose diversity of work spans painting, sculpture, glassware and photography.

This government values their work; we are committed to enlarging the creative endeavour and recognising artists' contribution to our economy, community and identity.

The decision to introduce a resale royalty right for visual artists has been a long time coming.

Historically, the achievements of our visual artists have not been recognised to the same extent as those of our composers, authors and performers, who are able to earn copyright and performance fees from their work, and thus have an ongoing financial interest in their creative efforts. Visual artists, on the other hand, have little ability to earn income from their work, other than through its initial sale. When a work sells for a large sum on the secondary art market, the artist receives no direct financial benefit from the sale.

Australia's art market has been through a boom period in recent years and we should all be proud of the incredible talent demonstrated by our visual artists.

...

The government's resale royalty scheme, set out in this bill, addresses a situation which is plainly inequitable, by creating a right for visual artists for a royalty payment each time their work sells on the secondary art market.

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[http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=BillId_Phrase%3Ar4010%20Title%3A%22second%20reading%22%20Content%3A%22I%20move%22%7C%22and%20move%22%20Content%3A%22be%20now%20read%20a%20second%20time%22%20\(Dataset%3Ahansard%20%7C%20Dataset%3Ahansards\);rec=1](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=BillId_Phrase%3Ar4010%20Title%3A%22second%20reading%22%20Content%3A%22I%20move%22%7C%22and%20move%22%20Content%3A%22be%20now%20read%20a%20second%20time%22%20(Dataset%3Ahansard%20%7C%20Dataset%3Ahansards);rec=1)

...

This is a right which has now been recognised by over 50 countries around the world and is long overdue in Australia.

Prior to the introduction of the legislation and the commencement of the scheme, there were many arguments advanced by art market professionals and others about why a resale royalty right was undesirable and would not work. These arguments included the following:

- only a very small number of rich and famous artists will benefit;
- it will be impossible to locate and pay artists;
- administration will be a nightmare for the art market;
- administration will be so expensive that artists will not get anything ;
- the art market will collapse; and
- the art market will move offshore.

Operation of the Australian resale royalty scheme to date

The successful operation of the scheme over the last two years has demonstrated that these concerns were unfounded. On the contrary, our experience is that:

- the benefits of the scheme are being spread widely, with over 500 artists (mostly living) receiving royalties to date;
- we are successfully locating and paying artists, including Indigenous artists in remote communities;
- our extensive consultation with art market professionals has assisted to ensure that administration as simple and streamlined;
- administration has been assisted by an online facility we established (www.resaleroyalty.org.au);
- administration has also been simplified for auction houses by a facility provided by the operator of Australian Art Sales Digest, a website that reports auction sales;
- we are returning 90% of the royalties collected to artists
- as in the United Kingdom, there is no evidence that the art market has suffered as a result of the introduction of the right or that sales have moved offshore.

Since its start on 9 June 2010 until 31 October 2012, the scheme has generated royalties:

- totalling more than **AUD\$1,000,000 (US\$1,043,176)**
- from more than **5,000 resales**
- for more than **500 artists** (over 60% are Indigenous Australians)

Some other facts:

- lowest royalty **\$50**
- highest royalty **\$50,000**
- most royalties have been between **\$50** and **\$500**
- most of the artists have received one or two royalty payments, but some have received multiple payments

- some royalties have been paid to the families of deceased artists, but most (nearly 90%) have been paid to living artists.

International reciprocity

Introduction of a resale right into US federal law would enable American artists to receive royalties from the many other countries which have a reciprocal right. The Berne Convention for the Protection of Literary and Artistic Works has included *droit de suite* since the 1970s and while the enactment of the right is optional for signatories, the recognition of a resale right is increasingly gaining acceptance around the world. In addition to countries in the European Union and the European Economic Area, the right has been introduced, or is being considered, in many other territories.

One of the features of the Berne Convention provision on resale is the principle of reciprocity. The right may be claimed in a country of the Berne Union only if legislation in the country to which the author belongs so permits.

Copyright Agency is currently working with the Australian Government to put in place the necessary arrangements for international reciprocity so Australian artists can start to receive royalties from overseas and we can remit royalties to foreign artists.

Our research shows that between 2007 and 2011, works by a total of 47 American artists have generated sales of USD 2,606,343 at Australian auctions. This amount represents 10.4% of total sales of foreign artists in Australia.

Copyright Agency/Viscopy supports a resale right for US artists

Copyright Agency/Viscopy is strongly supportive of the introduction of a federal resale right in the US and we encourage the Copyright Office to recommend in favour of it. We think it is an important issue of equity for visual artists who have limited opportunities to earn ongoing income from their works beyond the initial sale. Objections to the introduction of a resale right have proved to be without foundation in the Australian context, as they have in the United Kingdom and elsewhere.

We support the submissions to this inquiry made by ARS and VAGA.