



Response to the Notice of Inquiry on Resale Royalty Right

Created in 1953, ADAGP is the French collecting society in the field of visual arts. In connection with 46 sister societies, ADAGP manages the rights and defends the interests of its over 10 000 members and more than 110 000 authors of graphic and plastic arts from all around the world (painters, sculptors, architects, designers, photographers, illustrators, authors of comics or manga...) in France, Monaco and Luxembourg.

ADAGP carries out the following tasks:

- Collecting and distributing the copyright royalties accruing to its members for the use or resale of their works;
- Granting authorizations to reproduce or communicate to the public the works of its members, thus providing legal certainty to users (publishers, museums, art galleries, broadcasters, web publishers, manufacturers...);
- Defending its members' rights against any third party, including in the courts;
- Defending and improving authors' rights, at both national and international level.
- Promoting and providing financial support to artistic projects, cultural events, exhibitions, art fairs and conferences related to copyright and creation (more than EUR 550 000 have been allocated in 2012).

ADAGP has been approved by the French Ministry of Culture to enforce the resale right in France, both for French and foreign artists, and has worked for many years to promote, communicate and demystify the resale royalty legislation to the French and European authorities as well as art market operators.

ADAGP wishes to provide an input to the ongoing debate on resale royalty right, in the light of the French century-long experience.

The resale right is a vital author's right for visual artists

Enacted into French Law in 1920, the resale right (or *droit de suite*) is defined, under French Intellectual Property Code, as an inalienable right, for the benefit of the author of an original work of graphic or plastic art, to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author¹. It subsists for the life of the author plus seventy years.

The resale right thus enables the authors and their heirs to participate in the economic success of their works on the art market. All professional operators are concerned: voluntary auction operators (VAOs) – including online VAOs –, galleries, art dealers.

The *droit de suite* is a key-means of ensuring social fairness and equity, a primary source of remuneration and an economic incentive for creation.

1 | The resale right is a key-means of ensuring social fairness and equity

There is no need to underline the considerable disparities that could be observed between the original sale prices agreed by artists at the outset of their careers and, some years later, the considerable resale sums obtained by art dealers.

The artist's growing reputation determines the value of the work: it is just and equitable that he and his family benefit from its appreciation².

The resale right is a valuable instrument for achieving social fairness and equity; and not only between artists and economic operators, but also between visual artists and the other creators.

It should indeed be noted that for most visual artists, unlike writers or composers, the amounts involved in reproduction or representation are generally insignificant: income derives mostly from the sale and, through the *droit de suite*, the resale of the works.

The resale right can thus provide a precious continuity of income for visual artists and their heirs³.

¹ The royalty rates are set based on price brackets:

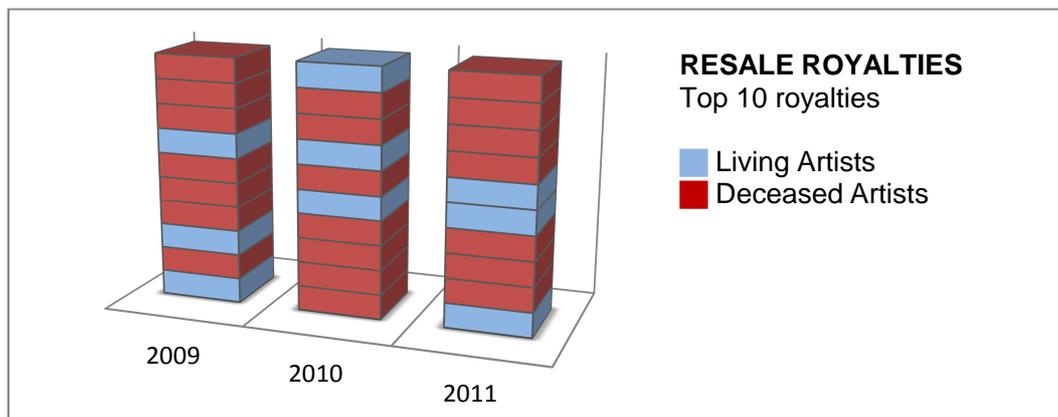
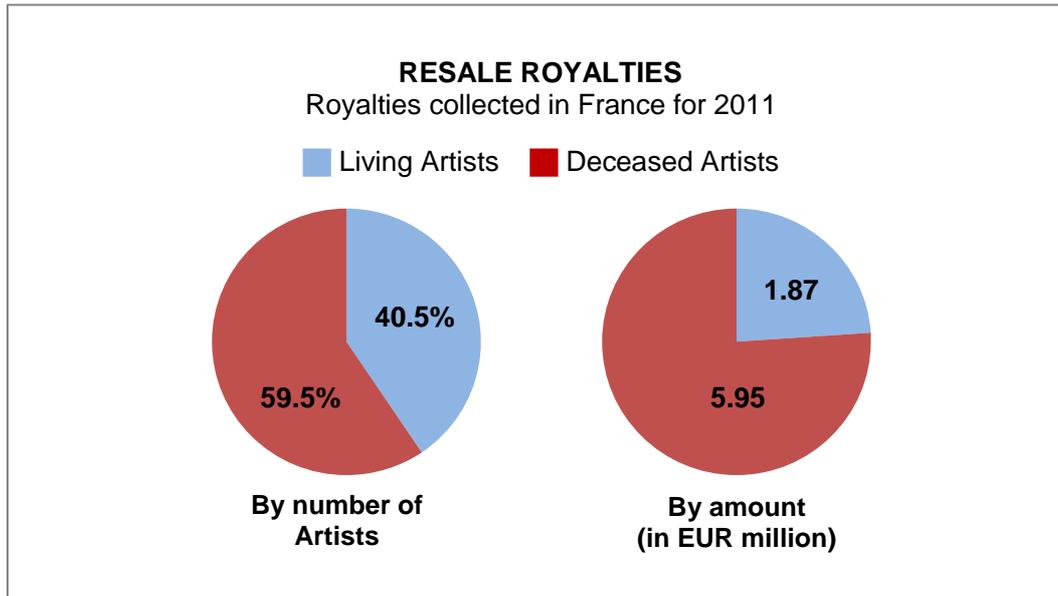
- 4% for a resale price up to EUR 50 000;
- 3% for prices from EUR 50 000.01 to 200 000;
- 1% for prices from EUR 200 000.01 to 350 000;
- 0.5% for prices from EUR 350 000.01 to 500 000;
- 0.25% for prices exceeding EUR 500 000.01.

² In 1920, the French legislator had precisely in mind the case of Millet's *Angelus* dated 1858, sold for a pittance by the artist and resold after the First World War for a record FRF 100 000. The reseller of the painting made a huge profit from this sale, whereas Millet and his family lived and died in poverty. This is still the case today, as outlined, inter alia, by the painter Sam Szafran in a contribution sent to ADAGP: "*Two weeks ago, one of my paintings was sold in Versailles for EUR 166 000. I personally sold it for FRF 800 (EUR 120).*"

2 | The resale right is a primary source of remuneration

ADAGP collected more than EUR 10 million resale royalties in 2011: EUR 8 million were derived from sales carried out in France and EUR 2.2 million from foreign markets.

Resale royalties thus represent the first source of royalties collected by ADAGP for its members, benefitting both living artists and the heirs of deceased artists, as shown below.



³ The letter sent in 2008 to ADAGP by Françoise de Staël, the beneficiary of the famous painter Nicolas de Staël, is meaningful:

“In his lifetime, de Staël hardly had enough to live decently. It was only in 1953, two years before his death, that things got better for me and my children. During all these years, the droit de suite allowed me to defend his work, publish his catalogue raisonné, pay lawyers’ fees in actions concerning fakes, have valuations made. I find it most unfair to even think of taking away from beneficiaries the modest participation represented by the droit de suite and that merchants and collectors could benefit from the important profit of the market.”

3 | The resale right is an economic incentive for the creators

By providing authors with proper economic rewards in line with the market, the resale right has a clear stimulating effect on creation.

Even if the amounts are logically lower for lesser-known artists, since the resale right reflects the market value, the *droit de suite* can help artists to purchase new supplies or launch a new project. And for the heirs, it provides resources for promoting the artist's *oeuvre* and combating art forgery⁴

The resale right is also an invaluable and unique source of information for artists to see how their career is progressing, work by work, sale by sale. None of the other economic rights offers such a monitoring instrument.

The resale right has no detrimental effect on the art market

The extension of the resale right to all European Member States in 2001⁵ raised concerns among art dealers, fearing this would negatively affect the market and cause collectors to sell their goods outside the European Union.

At the beginning of 2011, the European Commission conducted a broad-based public consultation on the effect of the introduction of the resale right on the competitiveness of the market in modern and contemporary art. More than 500 responses were received for publication, primarily from artists and artists' successors in line, but also from art market professionals⁶ and European States. A petition signed by 2 500 French authors, heirs and estates⁷, reaffirming the importance of the resale right for visual artists, was also transmitted to the Commission⁸.

On 14 December 2011, the European Commission released a report on the implementation and effect of the resale right⁹ concluding unequivocally the resale right has no significant impact on the turnover or location of art market:

⁴ See notably the testimony of Anne Le Bon, the heir of the painter Paul-Elie Gernez, transmitted to ADAGP in 2008:

"We are preparing the catalogue raisonné of Paul-Elie Gernez's works and we need funding. Resale royalties have provided a part of this funding. Moreover, the droit de suite mechanism is an accurate source of information on the sales carried out on the French market, permitting us to complete the catalogue through the establishment of links with sellers or buyers."

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⁸ Many artists and heirs also took time to send written contributions to ADAGP, with a view to support the *droit de suite*. A few of these contributions are quoted in this document.

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“No clear patterns can be established to link the loss of the EU's share in the global market for modern and contemporary art with the harmonization of provisions relating to the application of the resale right in the EU on 1 January 2006. Neither can any clear patterns currently be established that would indicate systematic trade diversion within the EU away from those Member States which introduced the right for living artists in 2006.”

This statement, which confirms the results of previous economic studies¹⁰, is evidenced by facts.

1 | The resale right has no effect on the art market turnover

The figures for 2011 highlight that art dealers operating in countries whose laws provide resale royalties are not penalized on the global art market.

The leading European auction markets, notably, have shown a strong economic growth¹¹:

- the United Kingdom's market represents a 19.4% of the global market, with a 24% increase in sales (\$2.24 billion in 2011 vs. \$1.81 billion in 2010);
- France's share was 4.5%, with an increase of 9% in sales (\$521 million vs. \$478 million in 2010)¹²;
- Germany posted a 23% increase in sales, with a market share of 1.8%.

Conversely, the art market turnover decreased in states without resale royalty legislation, such as the United States or Switzerland.

The French experience confirms this statement: Paris used to be the world-leading art market for decades, up until the mid-60's, during which period the resale right was applied.

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2 | The resale right has no impact on the location of the art market

The location of the art market depends on complex economic factors much more significant and decisive than the existence or non-existence of a resale right legislation.

It is obvious that the first rank of China's art market is primarily linked with its global economic growth. As noted by the European Parliament in its resolution of 20 November 2012 on the Report on the Implementation and Effect of the Resale Right Directive (2001/84/EC)¹³, *"the general trend for the centre of gravity of the art market shifting towards emerging countries is linked to globalization, the rise of Asia and the emergence of new collectors in these countries"*.

Moreover, it should be underlined that the resale royalties are extremely low compared to the art market turnover (as highlighted in the following table, as concerns French voluntary auction operators) and cannot seriously be considered as a determining factor of relocation.

	VAOs Turnover (VAOT) in EUR millions ¹⁴	Resale royalties (RS) in EUR millions ¹⁵	Ratio RS/VAOT
2005	1 949	2,9	0,15%
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One also has to mention that the president of Christie's in Hong-Kong, François Curiel, who chaired Christie's France for 9 years, admitted the resale right has no effect on the location of the art market:

"Will occidental collectors transfer their objects in Hong Kong if taxes reach a certain level? Not yet. I've seen it happens many times in my life. When the resale right was introduced in France and several other European countries, as well as in England as regards deceased artists, there were people thinking that the market would be transferred in

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Switzerland, because there was no such right there. But nothing happened. Biggest markets are in London and New York when it comes to impressionists, modern and contemporary paintings. I cannot imagine that contemporary artworks would be sold in Hong Kong in the near future purely because of the resale right.”¹⁶

The resale right is now well integrated by market operators

In France, as fears and misconceptions have been dispelled, the situation is being eased. Resale right is now well integrated and accepted by auction houses and galleries.

ADAGP also notes with satisfaction the increase of spontaneous payment of royalties by art dealers and the great decrease of disputes as to the legitimacy and applicability of the resale royalty.

A clear sign of this acceptance is that the main associations and organizations representing auction houses, galleries and dealers (CGPA, SNA, SYMEV...) are now working with ADAGP to promote and explain resale right to their members¹⁷.

Conclusion

Experience in France shows the resale right is highly beneficial for visual artists and their heirs, without being prejudicial for the art market operators.

There is a growing trend in many countries around the world to move towards a stronger support for visual artists. About 50 countries¹⁸ have now a resale right legislation. And thanks to the reciprocity principle, local authors of these countries can benefit royalties both from the sales carried out in their own country and those made abroad.

¹⁶ Source: Artinfo France, January 2012. The original interview, in French, is available at: <http://fr.blouinartinfo.com/news/story/778305/fran%C3%A7ois-curriel-d%C3%A9finit-l%E2%80%99importance-de-la-vente-liz-taylor-sur-le-futur-de-la-joaillerie>.

¹⁷ On 29th October 2012, ADAGP thus signed with a major organization representing art dealers and with the French Ministry of Culture a *vademecum* on the application of resale right to design objects. See ADAGP's press release, available at: http://www.adagp.fr/FR/Communique_ADAGP-SNA_26-11-2012.pdf.

¹⁸ These include Algeria, Austria, Belgium, Bolivia, Brazil, Bulgaria, Burkina Faso, Chile, Colombia, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Germany, Greece, Guatemala, Guinea, Honduras, Hungary, Iceland, Iraq, Ireland, Italy, Lao People's Democratic Republic, Latvia, Lithuania, Luxembourg, Madagascar, Mali, Malta, Mexico, Monaco, Montenegro, Morocco, Netherlands, Nicaragua, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Serbia, Slovakia, Slovenia, Spain, Sweden, Tunisia, Turkey, United Kingdom, Uruguay, Venezuela.

Even the global leader in the commercial exchange of art – China – is considering enshrining the resale right. In this context, it is essential for the global community of authors of graphic and plastic arts to see the resale right introduced into US law. This would allow American artists, whose works are sold all around the world, to receive royalties from all the countries with a resale royalty legislation.

ADAGP thus strongly supports the proposed *Equity for Visual Artists Act of 2011* and wishes the US government will promote the resale right at an international level, by proposing a modification of the Berne Convention making the resale right mandatory.



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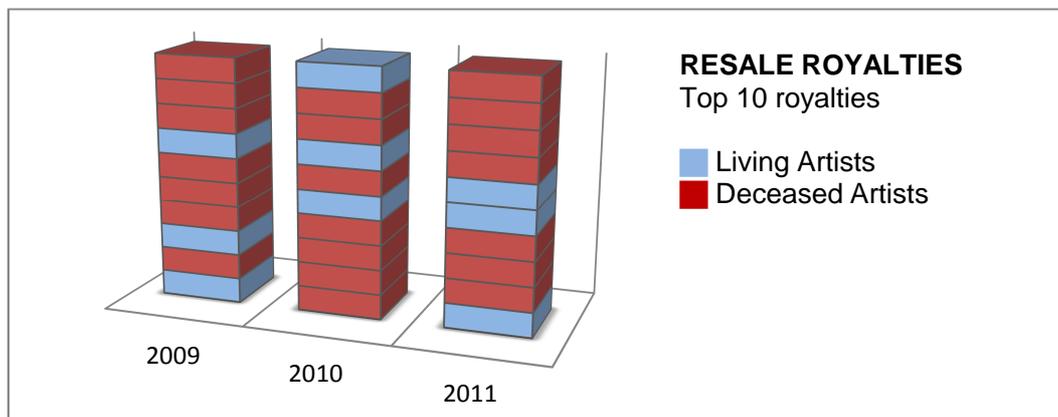
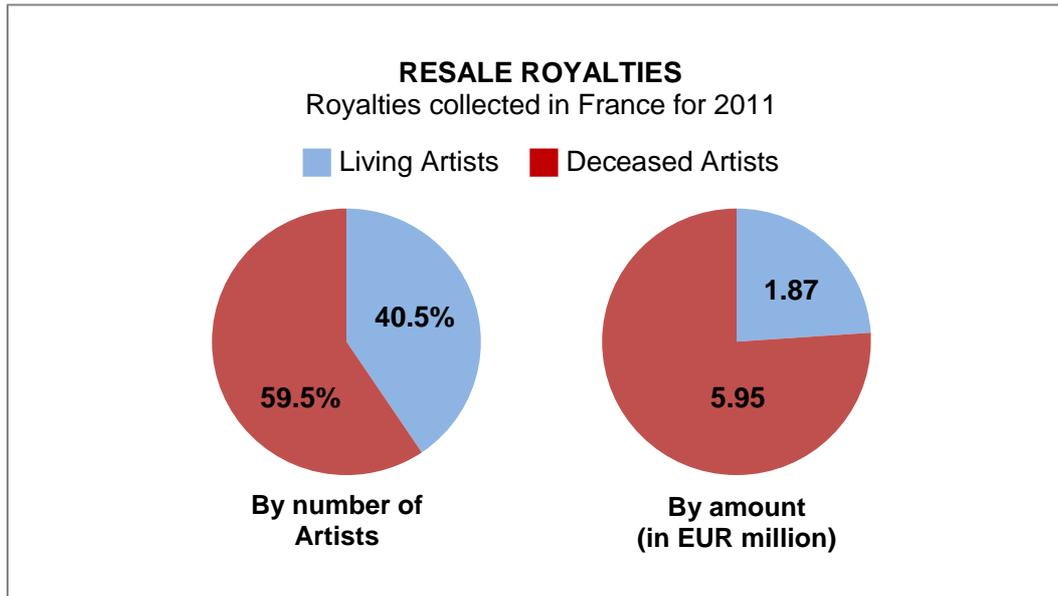
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¹⁶ Source: Artinfo France, January 2012. The original interview, in French, is available at: <http://fr.blouinartinfo.com/news/story/778305/fran%C3%A7ois-curriel-d%C3%A9finit-l%E2%80%99importance-de-la-vente-liz-taylor-sur-le-futur-de-la-joaillerie>.

¹⁷ On 29th October 2012, ADAGP thus signed with a major organization representing art dealers and with the French Ministry of Culture a *vademecum* on the application of resale right to design objects. See ADAGP's press release, available at: http://www.adagp.fr/FR/Communique_ADAGP-SNA_26-11-2012.pdf.

¹⁸ These include Algeria, Austria, Belgium, Bolivia, Brazil, Bulgaria, Burkina Faso, Chile, Colombia, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Germany, Greece, Guatemala, Guinea, Honduras, Hungary, Iceland, Iraq, Ireland, Italy, Lao People's Democratic Republic, Latvia, Lithuania, Luxembourg, Madagascar, Mali, Malta, Mexico, Monaco, Montenegro, Morocco, Netherlands, Nicaragua, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Serbia, Slovakia, Slovenia, Spain, Sweden, Tunisia, Turkey, United Kingdom, Uruguay, Venezuela.

Even the global leader in the commercial exchange of art – China – is considering enshrining the resale right. In this context, it is essential for the global community of authors of graphic and plastic arts to see the resale right introduced into US law. This would allow American artists, whose works are sold all around the world, to receive royalties from all the countries with a resale royalty legislation.

ADAGP thus strongly supports the proposed *Equity for Visual Artists Act of 2011* and wishes the US government will promote the resale right at an international level, by proposing a modification of the Berne Convention making the resale right mandatory.