



13 August 2004

Mark Taylor
General Manager
Arts & Regional Department of Communications Information Technology & the Arts
GPO Box 2154
Canberra ACT 2601
Australia

Dear Mr Taylor,

Re: Australian Government Discussion Paper on Resale Right

The Design and Artists Copyright Society (DACCS) is the copyright and collecting society for artists and visual creators in the UK. Following the European harmonisation of the Artist's Resale Right in 2001, DACCS will be administering collection and distribution of resale royalties on behalf of 52,000 artists.

The deadline for the implementation of the Resale Right in the UK is 1 January 2006. DACCS is currently working closely with the British Government (Department of Trade and Industry) and the art market (represented by the British Art Market Federation) to help the shape the Regulations. We are also presently in the process of designing a database and IT system which will facilitate the management of the Right.

We consider that our many years of experience in campaigning for the introduction of the Right, coupled with our present work on the detail of the implementation, places us in a position to make a meaningful contribution to your consultation process.

We should like to highlight some of the important issues arising from the British implementation debate and draw your attention to the following points:

Minimum threshold

We are given to understand that you are considering setting a minimum threshold resale price to which the royalty will apply of Australian \$3,000. We would like to point out that a threshold at this level would disenfranchise many artists, such as photographers, illustrators and crafts makers, many of whose works sell for less than this amount. The threshold has the potential to unfairly exclude these artists and those others that the legislation might be seeking to encourage, such as newly emerging artists and less well-known names.

Maximum royalty payment

The European Directive makes mandatory provision for a capped royalty payment of 12,500 Euros. It is our strongly held view that this cap undermines the value of the Resale Right and is completely unique within the field of intellectual property legislation.

Parchment House, 13 Northburgh Street, London EC1V 0JP

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DACS is a not-for-profit, membership organisation which exists to protect and promote the copyright of visual creators in the UK and worldwide.

Definition of art market professional

It is essential that resales which are transacted by both art galleries and auction houses attract the royalty. To exclude art galleries would create unfair commercial advantage to one stakeholder within the same market place, as well as creating a potential loop hole for those wishing to avoid paying the royalty. It is also our understanding that the majority of Australia's indigenous artists sell through art galleries rather than via auction.

Definition of original work of art

It has been relatively uncontroversial in the UK to agree that if a work of art is being resold by an art market professional, then it should be regarded as an original work of art capable of attracting the resale royalty. Therefore, the definition in the UK Regulations is likely to echo the provisions within our copyright legislation which includes photography, graphic works, plastic works and works of artistic craftsmanship.

Person liable for payment of the royalty

The European Directive offers the option for Member States to make the seller, the buyer, the art market professional or a combination of any of these liable for payment of the royalty. We expect the British government to opt for the seller and the art market professional to be jointly liable. This offers two advantages; first of all, the art market professional is able to effectively protect the identity of the seller should they so wish and it is our understanding that this is an important requirement of the art market. Secondly, joint liability affords the most realistic opportunity for the artist and/or his representative to be able to claim his royalty. The right of the artist to obtain information about the resale is insufficient unless it is accompanied by appropriate liability provisions.

Options for collection of the royalty

The European Directive provides the option of collective management of the royalty through a collecting society. It is likely that this option will be taken up by most Member States since it offers practical advantages to both the art market professional and the artist. On this basis, the British Government is seriously considering this option which would represent a departure from the voluntary arrangements which characterise most other British copyright legislation.

Creation of a level playing field for creators

One of the most compelling arguments in favour of the Resale Right, which is explicitly recognised within the European Directive, is the creation of the possibility for visual creators to earn royalties that are linked to the success and increasing value of their creative output. The Artist's Resale Right recognises the fact that visual creators rely on sales of their original work rather than mass dissemination and attempts to create something of a parallel with the generation of royalties for songwriters and authors through on-going commercial sales of their work.

The Artist's Resale Right is a very significant new right for visual artists, which recognises the importance of their creative contribution to our society. We are most encouraged that that the Australian government is contemplating the introduction of the Right and hope that the information we have provided will be helpful in that regard.

Please do not hesitate to contact me should you require any further information.

Yours sincerely,

Joanna Cave
Chief Executive

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