

Mr Mark Taylor
General Manager, Arts and Regional
Department of Communications,
Information Technology and Arts
GPO Box 2154,
CANBERRA. ACT 2601

14 September 2004

Dear Mr Taylor,

I am a firm believer on the introduction of a resale royalty arrangement for artists when their work again on the secondary market and I thank you for the opportunity to comment on this.

I have worked in indigenous art galleries for the past 19 years, initially in Sydney with Aboriginal Arts Australia and for the past 17 years in Alice Springs. As you are aware, over the past years since Aboriginal art has been receiving a lot of attention and some works by living artists have selling for large sums of money, particularly at auctions.

When the auction results are announced not only are the artists confused as to why if their paintings are reaching such high prices are they not receiving anything, but the pressure from their families is intolerable. The family believes that either the artist, the gallery representing them, or both, must be receiving something and cause a lot of distress for the artist. This happened only 2 weeks ago for Dorothy Napangardi. A painting that we sold for approximately \$8,000 around 7 years ago sold at auction for \$129,000.

There are also cases where the artists are very elderly or ill and unable to paint any longer and survive only on handouts. One particularly case was Johnny W. Tjupurrurla. It seemed sinister that whilst one of his early works sold at auction for more than \$250,000, he was still penniless and begging for \$5 each day to buy food.

Which transactions would a resale royalty apply?

In my opinion a resale royalty should be applied to public auctions and sales with a public element but should exempt resales between private individuals from the application of resale royalties as it would represent a very small percentage of the resale market, be almost impossible to monitor and be cost prohibitive. The difficulty in trying to find a solution to monitor this will only delay formulating a policy for resale royalties which is long overdue.

Where a work of art is resold the percentage of remuneration to the artist on the resale of their work could be shared between the original owner and the commissioned art dealer, auctioneer or agent.

Form

The payment to the creator of a work should be based upon a percentage of the resale price of the work as it would be very difficult to calculate the royalty as a percentage of the increased value of the work. Rate

Rate

I agree that a flat royalty rate of the resale price (between three per cent and five per cent) applied for all kinds of sales will mean that there is greater certainty and predictability for artists, purchasers and art dealers, and it facilitates collective management;

Because of administration costs, a minimum threshold for claiming a resale royalty of would appear necessary. As your report states, the European Union decided on a minimum threshold of EUR\$3 000 and to me this would seem realistic. I feel so much thought has been put into the European model and certainly the droits de suite law has worked very successfully in France for a very long time – surely recommendations from what the European Union has set in its Direction would be a good model for a resale royalty here in Australia as well.

Collection and distribution

The model of payment to the artists through a collecting societies established by visual artists for the artists themselves I feel would work best which the agency retaining a small percentage to cover their costs.

Waiver and assignment

I feel it is fairer that the resale royalty should be an inalienable right and that the artist should not be under pressure to waive or assign his or her resale royalty rights as this often aids in providing a source of income in the absence of superannuation.

Duration and succession

The resale royalty should be actionable both by the artist and the heirs of the artist.

Reciprocity

As with most countries, if a resale royalty were introduced in Australia, it would only be actionable by foreign artists where the artist is a citizen of a nation where a similar resale royalty provision operates to protect Australian artists.⁸⁷⁰ The condition of reciprocity provides an incentive for states which have not recognised resale royalties to introduce it to obtain the benefits of its application for their artists in countries already applying the resale royalty.⁸⁷¹ The recognition of resale royalties in an increasing number of countries also operates to minimise the risk of a detrimental effect on domestic art markets. As a result, it appears appropriate for reciprocity to be required before resale royalties can be exercised by a foreign national.

Right to information

To keep the paperwork simple, I think it makes sense that the right to information could be exercisable only by a single collecting society working on behalf of the artists such as VISCOPY. They will have an overview of everything including enforcing artists' rights beyond national borders.

Conflict of laws

To avoid resale royalties not being paid by people living in countries not recognizing a resale royalty I believe the sales made in Australia by people overseas should adhere to Australian law.

Yours faithfully,

Roslyn Premont Lali
Director