



What is the  
**ARTISTS**  
**RESALE**  
**RIGHT**

[www.resale-right.org](http://www.resale-right.org)





Painter, Sculptor  
Performer, Critic, 2020  
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Street Art - Multimedia  
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# ARTIST'S RESALE RIGHT

## What is it?

The artist's resale right, also referred to as *droit de suite*, guarantees creators the ability to **earn a fair share** from the resale of their works. It is a royalty paid to visual artists when their works are resold by an auction house or gallery, above a certain price.

The royalty is a **small percentage of the resale price**. The rate varies from country to country and normally depends on the sale price of the work.

The artist's resale right ensures that the artist and his/her family receive **compensation** each time a work is resold. This makes it possible for the artist to retain a share in their work as it increases in value. Without resale right, the artist receives no compensation after the initial sale, while auction houses, art dealers and private collectors cash in on the growing value of the work, which is attributed to the artist's reputation.

The first resale right law was enacted in **France** in 1920. The need for the right became clear when a collector made a significant amount of money from the sale of Jean-François Millet's painting "The Angelus," while the artist's family was living in extreme poverty.

The right is **recognised** under international copyright law. It is included in article 14<sup>ter</sup> of the Berne Convention, which remains the principle blueprint for global authors' rights. It is not compulsory, however, and is instead presented as a reciprocal right. This means that for an artist to receive the resale royalty, the right must be enacted both in his/her home country as well as the country where the work was sold.

A Directive of the European Union passed in 2001 required **all EU countries** to implement the resale right. This was a major step forward towards the global recognition of the right, which now exists in more than 70 countries worldwide. However, due to the reciprocal nature of the right in the Berne Convention, the fact that it is not yet implemented in some countries, including major art markets such as the United States and China is a major hurdle for visual artists worldwide.

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## Why is it so important?

The resale right is the only way for visual artists to maintain **an equitable share** in the value of their works past the initial sale. Artists, especially early on in their career, usually sell their works at a low price to collectors or dealers, who put them aside and place them back on the market again once the author's reputation is well established. With the resale right in place, the artist receives a small percentage of the resale price of each public resale. Without the resale right, the middlemen get to keep all of the money from the sale, and the artist receives nothing. This unfair and unjustified system completely ignores the artist's role in raising the value of his or her own works. Ultimately, it is the artist's growing reputation that determines the value of their work; therefore, it is only just and equitable that the artist and his family benefit from the work's appreciation.

Even with the resale right in place, the lion's share of the resale price still goes to the seller. Nonetheless, the money received by artists, while usually representing an insignificant sum to the sellers, is an incredibly **important source of income for artists**. Many artists earn less than their country's median income. Unlike other creators such as composers or writers, the amounts visual artists receive for reproduction or representation of their works are generally marginal. Thus, the amount received from the resale of their works is a vital part of their income. After an artist's death, the need for resale income remains crucial as families and heirs inherit not only the rights to the work but also the burden of managing an artist's estate, including the costs of storage, conservation, cataloguing, research and restoration.

Furthermore, as the resale right requires accountability on the part of auction houses, dealers and galleries, it helps artists maintain the connection with their works and have an accurate view of their value.

Because the resale right is considered a **reciprocal right** in the Berne Convention (meaning that an artist can only receive the resale royalty if legislation is in place in both his/her home country as well as the country where the sale occurred), it is of the highest importance to ensure that the resale right is implemented in as many territories as possible. For example, because the world's number 1 art market, the United States, does not currently have the resale right in place, artists from the EU or Australia or other countries that do have the resale right cannot obtain royalties from resales in the US. Likewise, US artists cannot collect resale royalties even when their works are resold in countries that do have the resale right in place. ■

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## How does it work?

### The Legal Framework

In each country that has adopted the resale right, the legislation provides a framework to calculate how much money will go to an artist upon the resale of his work. This often involves a threshold price, below which no resale royalties apply; rates based on the resale price of the work and any other conditions or exemptions.

For example, in France, the resale right applies to sales after the initial sale that are greater to or equal to EUR 750. While the numbers change slightly between countries, the resale right follows a similar structure across the EU following the introduction of the 2001 Directive.

### The Role of Collective Management Organizations

Once legislation is in place, systems are created to administer the right and make sure that the royalties are collected from sellers and distributed to the artists. Collective management organizations (CMOs, also known as Authors' Societies) play a key role in this process.

Each month CMOs managing visual artists' rights send "resale report requests" to local auction houses, dealers and galleries across the territory they represent. The various sellers fill out the reports and return them to the CMO, which then calculates the resale royalty share due for each resale and bills the seller. Once payment is received, the money is distributed to the artists. In countries with compulsory collective management, the CMO distributes not only to its members but also its non-members. In such countries, the local CMO searches for the artist or heir in order to carry out the distribution. CMOs provide numerous online tools such as registration for artists, searchable artist databases, royalty calculators and online sale reporting.

In countries where the resale right has become incorporated into the daily working environment of art professionals, many companies have automated the process and send monies and reports directly to the CMO without prompting. A study carried out by DACS (Design and Artists Copyright Society) in the UK following implementation of the Artist's Resale Right showed that 60% of art market professionals said their own administration of the resale right took less than five minutes and cost them less than £10 per quarter<sup>1</sup>. ■

<sup>1</sup>The Artist's Resale Right in the UK: Submission to the post implementation review by the UK Intellectual Property Office by the Design and Artists Copyright Society, February 2008.

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## Why does it not negatively impact the art market ?

Study after study that has looked at the impact of the introduction of the resale right on various national art markets, including a comprehensive report issued by the European Commission in December 2011<sup>2</sup>, has shown no significant impact on the overall value of the market. Even auction houses, who had made dire predictions about how sellers would transfer their business to markets without the resale right to avoid paying the royalty, admit that the resale right has not affected their business.

Prior to partial implementation in the UK in 2006, London art market professionals who were against the right argued that sellers would abandon London for territories that did not have the right (the two key markets identified were Switzerland and the US). And yet, the UK market outgrew both the US and the Swiss markets substantially during 2007-2008, at a rate of 10.8% growth compared to -18.8% and -13% respectively. In fact, taking a long view, during 1998-2008 the UK market recorded substantially stronger growth than these two competing markets<sup>3</sup>.

According to a study by Art Economics spanning 2006-2011, the market share in France (which had implemented the full resale right for artists and heirs) remained stable at 6%. In the UK, where resale right at the time only applied to living artists, the market share dropped from 27% to 22%. In the US, which has no resale right legislation, the market share plummeted from 46% to 29%<sup>4</sup>.

While these figures reflect a difficult economic period in general and are certainly not intended to prove reverse causality, they attest to the fact that the tiny percentage of the market represented by resale royalties (ex. .15% of the UK market after full implementation in 2012) ultimately has no impact on the distribution of value within the world's major art markets. New York, London and Paris remain the indisputable capitals of the Western art market.

### **Illustrative Example : Resale Royalty - A small price to pay**

Alberto Giacometti's *Walking Man I* (1960) sold at auction in February 2010 for a record-breaking £58 million. The buyer's premium payable on this artwork was £7 million. If the UK Government had fully implemented Artist's Resale Right from 1 January 2010, the resale royalty payable would have been €12,500. This represents 0.16% of the buyer's premium and 0.02% of the hammer price. ■

<sup>2</sup> *Report on the Implementation and Effect of the Resale Right Directive (2001/84/EC) from the Commission to the European Parliament, The Council and the European Economic and Social Committee; December 14, 2011.*

<sup>3</sup> *The International Art Market 2007-2009: Trends in the art trade during global recession prepared by Dr Clare Mc Andrew, 2010.*

<sup>4</sup> *The British Art Market: A winning global entrepôt, by Art Economics, 2010.*

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## Where does it exist?

The following countries now have resale right legislation in place:

Algeria	Greece	Netherlands
Austria	Guatemala	New Zealand
Australia	Guinea	Nicaragua
Azerbaijan	Honduras	Norway
Belarus	Hungary	Panama
Belgium	Iceland	Paraguay
Bolivia	India	Peru
Brazil	Iraq	Philippines
Bulgaria	Ireland	Poland
Burkina Faso	Italy	Portugal
Chile	Ivory Coast	Romania
Colombia	Kazakhstan	Russian Federation
Congo	Kyrgyzstan	Senegal
Costa Rica	Laos	Serbia
Croatia	Latvia	Slovakia
Cyprus	Lichtenstein	Slovenia
Czech Republic	Lithuania	Spain
Denmark	Luxembourg	Sweden
Ecuador	Madagascar	Tunisia
Estonia	Mali	Turkey
Finland	Malta	Ukraine
France	Mexico	United Kingdom
Gabon	Monaco	Uruguay
Germany	Montenegro	Venezuela
Georgia	Morocco	

Of course, the fact that the resale right is a reciprocal right and the largest art market in the world—**the United States**, which represents a market share of approximately 30%—does not currently have the resale right in place undermines the efficacy of the right worldwide. A bill was introduced into the House of Parliaments and the Senate in February 2014 and discussions are ongoing. Moreover, the U.S. Copyright Office released last December a positive Report on Resale Royalties. Following the initiative of Frank Stella and the estate of Roy Lichtenstein, a considerable number of artists and estates have signed a common declaration to support the introduction of the right.

In May 2012, a bill was introduced in **China**, the second largest world art market and the most important market for Chinese and many other Asian artists.

In **Switzerland** a postulate in favour of introducing the Resale right in the Swiss Copyright Law was proposed in December, 2013. In March 2014, the Parliament approved to treat the postulate. ■

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## Artist's Testimonials



Roberto Cabot  
Photo : © Martin Ogolter

### ROBERTO CABOT - BRAZIL

*"Usually I try to analyze things focusing on the effects it has on reality, more than on what they are supposed to be, or to mean. From that point of view, what seems extremely relevant to me in the necessity of Droit de Suite beyond the immediate economical question, is the fact that it creates a tracking system of the art works. In a lifetime artists produce hundreds, thousands, of works, our effort and ability to signify the world throughout our lives contributes to the value added to the work, but beyond that, the possibility of tracking the work of every artist may change the way we write history in the future. And will surely re-enforce the market value of many artists, will help historians in their researches."*



Julio Carrasco Bretón © ADAGP, Paris, 2014  
Photo : © Julio Carrasco Bretón

### JULIO CARRASCO BRETÓN - MEXICO

*"In my view, the resale right not only secures artists a fair share in the success of their works but also enables them not to cut the umbilical cord with their creations by not losing track of them on their first resale. The resale right affords artists the possibility, in the same way as other authors, of receiving fair remuneration that is proportional to the price of their works and of following the fortunes of their works, but sadly only in some countries. Artists worldwide should be able to enjoy this right, without discrimination."*



Hervé Di Rosa  
Photo : © Pierre Schwartz

### HERVE DI ROSA - FRANCE

*"Art is universal; artists delight the peoples of the five continents; the rights protecting them and the resale right in particular should be recognized in every country of the world."*



Mandy Martin

### MANDY MARTIN - AUSTRALIA

*"Even small amounts of funding generated from the acknowledgement of artist's rights through copyright and resale royalties are important and help support artists who usually have very low incomes and, for many Indigenous artists, live in parlous health and housing conditions in remote communities. My first resale royalty was a healthy sum of money and it seemed morally appropriate to me, that as it was a work which had graced a large company's boardroom for quite a long time and was passing to another collection, I should know of that transfer of ownership and also receive recompense. I am pleased to know my children will similarly receive those royalties from resale of my work, after I die."*

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## Artist's Testimonials



Rune Mields

Photo : © Jürgen H. Krause, Cologne

### ■ RUNE MIELDS - GERMANY

*“Resale right is an extremely important achievement of copyright as it gives to fine art artists what is obvious for text and music authors: a fair participation in the economic success the works have in the art market. It is very important that resale right is internationally acknowledged because the art market has developed into a global market. Many of my works are sold internationally and without world-wide resale right only the art market profits but not the artist.”*



Yan Pei-Ming © ADAGP, Paris, 2014

Photo : © Marie Clérin

### ■ YAN PEI-MING - CHINA

*“The combat to grant and apply the resale right to all artists worldwide, without distinction, is one that I support because the resale right enables artists to share in the real success of their works. Moreover, art is universal and the resale right for artists and their beneficiaries ought to be as well. The differences subsisting between national laws on the subject have no place any more in an age in which the economy and the art market are globalized.”*



Ousmane Sow

Photo : © Béatrice Soulé/Roger-Viollet

### ■ OUSMANE SOW - SENEGAL

*“Artists do not live on thin air. And because they enrich the world with their art, they should be protected. So it is fair that those who trade in their works pay them a share of what they earn. That is the purpose of the resale right: to share all forms of enrichment.”*



Frank Stella

### ■ FRANK STELLA - USA

*“Visual artists are the only members of the creative community in the United States who do not receive residual payments for their works. Composers, lyricists, actors, playwrights, screenwriters, all deservedly receive royalties for the later productions, performances, or sales of their works. Unfortunately, visual artists in the US do not earn a penny in residual or resale payments. The benefits derived from the appreciation in the later sale of their works accrue entirely to collectors, auction houses, and galleries. The adoption of the droit de suite in my country is therefore long overdue.”*



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