



ARTICLE

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Resale right for Artists

Article for National Association for the Visual Arts

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One of the key recommendations from the Myer inquiry into contemporary visual arts and craft, in its September 2002 report, was that a resale right for visual artists should be introduced in Australia. A resale right entitles an artist (or the artist's heirs) to receive a percentage of the resale price each time the artist's work is resold. The right is recognised in a number of other countries. A European Union Directive requires all member countries of the EU to grant the right.

In July 2004, the Federal Government released a discussion paper seeking views on the introduction of the resale right in Australia. Responses were due by 13 August.

In late 2003, NAVA, together with Australian Copyright Council, the Arts Law Centre of Australia and Viscopy put forward a proposed model for a resale right in Australia. In March 2004, the Shadow Minister for the Arts, Senator Kate Lundy, introduced a private member's bill for the introduction of a resale right. The Bill will not be passed, but was intended to be a statement of the ALP's policy on the resale right. The main features of the scheme set out in the Bill accorded with the model submitted by NAVA and other organisations.

NAVA's position, and that of a number of other organisations, is that a resale right should be introduced in Australia with the following features:

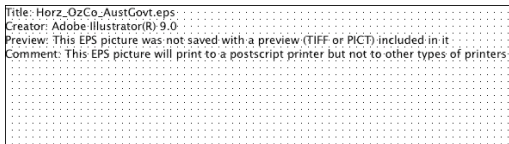
- the rationale for the right is to enable visual artists to better benefit from the copyright system, as their work tends not to generate royalties in the same way that book sales provide royalties to writers or radio airplay and CD sales provide royalties to composers;
- the right would be introduced by way of amendments to the Copyright Act which, among other things, would impose a legal obligation to pay a royalty on resale of an artistic work, and regulate the collection and distribution of the royalties;
- the right would apply to all "artistic works" currently covered by the Copyright Act, including paintings, sculptures, limited edition prints and photographs and works of artistic craftsmanship;
- the right would apply to foreign works sold in Australia, where the artist is a national of a country with an equivalent scheme, under which Australian artists are entitled to benefit;
- the right would be "inalienable", meaning that, unlike other copyright rights but like moral rights, it could not be transferred to anyone else;
- the right should last for the same period as copyright (currently life of the artist plus 50 years, to be extended to 70 years as a result of the Australia/US free trade agreement);
- the right would apply to all sales involving a professional intermediary, including auction houses, private galleries and agents and online auctions, where there sale has a connection with Australia;
- the rate should be a flat rate of 5% of the resale price, as this is the most common rate currently applied in countries which have the right, and a flat rate is easier to administer than a sliding scale rate (such as the one set out in the EU Directive on the resale right);

- the collecting society would have the power to not collect a royalty if the costs of collection and/or distribution would exceed the royalty (these costs are likely to diminish over time, particularly as a result of technological change);
- royalties would be collected and distributed to a not-for-profit copyright collecting society, which would have to meet criteria set out the Copyright Act and be declared by the Attorney-General as the designated collecting society for the resale right;
- the seller would have a legal obligation to pay the royalty to the would be the seller of the work, and the intermediary would have a legal obligation to ensure the royalty was paid;
- the introduction of the resale right should be accompanied by an education campaign for the artists, intermediaries and others would be affected by the right.

Australian Copyright Council

The Australian Copyright Council is a non-profit organisation whose objectives are to:

- assist creators and other copyright owners to exercise their rights effectively;
- raise awareness in the community about the importance of copyright;
- identify and research areas of copyright law which are inadequate or unfair;
- seek changes to law and practice to enhance the effectiveness and fairness of copyright;
- foster co-operation amongst bodies representing creators and owners of copyright.



The Australian Copyright Council has been assisted by the Commonwealth Government through the Australia Council, its arts funding and advisory body, through its Policy, Communication and Planning Division.

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