

Key Principles and Recommendations on the management of the Author Resale Right

Introduction

For the purposes of this document:

“Artist Organisations”	Associations/organisations representing visual artists
“Artist(s)”	Visual artist(s) and their beneficiaries
“CMOs”	Collective management organisations administering the resale right on behalf of visual artists and their beneficiaries
“AMPs”	Auction houses, art dealers and galleries
“the Directive”	Resale Right Directive 2001/84/EC of 27 September 2001
“Trade Associations”	Bodies representing the interests of art dealers and/or auction houses and/or galleries

The following *Key Principles And Recommendations On The Management Of The Author Resale Right* are the result of a Stakeholder Dialogue (hereafter “the Dialogue”) which was launched at the beginning of 2013. Four one-day meetings took place in Brussels on 30 January, 2 May, 1 July and 6 November during 2013.

The Dialogue brought together representatives of CMOs and visual artists (right-holders’ community) as well as representatives of art market professionals (dealers and auctioneers).

The aim of the Dialogue was to discuss practical solutions to problems faced by those involved in the payment and the administration of the resale right.

The intention of these “Key Principles and Recommendations On The Management Of The Author Resale Right” is to highlight possible policies and procedures which would help to improve the administration of the right for all stakeholders. The stakeholders have in common that they are contributing with their respective activities to the creation of art works, the dissemination of art and providing income for Artists.

These “Key Principles and Recommendations” were agreed upon in the spirit of solidarity between representatives of major auction houses, Trade Associations, CMOs and Artists, in order to achieve a smooth application of the resale right for the benefit of all parties concerned.

The following organisations participated in the Dialogue:

Artists' Collecting Society (ACS),
Société des Auteurs dans les Arts Graphiques et Plastiques (ADAGP),
Confédération Internationale des Négociants en Œuvres d'Art (CINOA),
Confédération Internationale des Sociétés d'Auteurs et Compositeurs (CISAC),
Copydan Billedkunst,
Christie's,
Design and Artists Copyright Society (DACS),
European Council of Artists- Scottish Artists Union (ECA-SAU),
European Federation of Auctioneers (EFA),
European Visual Artists (EVA),
Federation of European Art Galleries Association (FEAGA),
Groupement Européen des Sociétés d'Auteurs et Compositeurs (GESAC),
Sotheby's,
The Association of Art and Antique Dealers (LAPADA),
The British Antique Dealers' Association,
The Society of London Art Dealers (SLAD),
VG Bild-Kunst.

The undersigned parties agree to the following “Key Principles And Recommendations On The Management Of The Author Resale Right”:

1. Recommendations on Transparency and Administration

The undersigned parties encourage national stakeholders to regularly consult each other in a spirit of cooperation, being mindful of solutions and best practice models agreed upon by the stakeholders in other countries, with the aim of finding common solutions for improved transparency and administration of the resale right, notably:

- 1. CMOs undertake to make available to the AMPs (online and in print) comprehensive registers of Artists represented.**
- 2. CMOs undertake to declare which mandates they hold and to provide proof of them in case of justified doubt.**
- 3. CMOs operating under a system of compulsory collective management agree to use all reasonable efforts to identify and trace Artists who are not their members.**
- 4. In line with Article 9 of the Directive, AMPs are urged to provide CMOs with all the necessary information on the relevant sales of art works (minimum: name of the artist, price and date of the sale) in an agreed upon time frame.**
- 5. Trade Associations and CMOs are urged to promote a high level of transparency and accountability with the mutual aim of encouraging all parties to adhere to the rights and obligations set out in the Directive.**

CMOs and AMPs should so far as possible:

- 6. Work to develop streamlined reporting systems which take into account each party’s workflow (electronic and/or manual reporting) and which are suited to different volumes of transactions.**
- 7. Agree on how to achieve collection of resale right in a timely manner.**
- 8. Establish a mechanism for agreeing solutions to common and/or frequently occurring issues, e.g. eligibility of works, undistributed resale right remuneration and other issues.**
- 9. Define, collect and evaluate data on the relevant market in order to be able to provide measurable data for future purposes /international discussions.**

2. Recommendations on Increasing Knowledge of the Resale Right

The intent of the following recommendations is to increase awareness and understanding of the resale right amongst stakeholders so that all parties are better informed of their legal rights and obligations.

Artists, Artist Organisations and the wider artistic community need to be clearly informed about the resale right and, where relevant, of their legal right to the resale right.

- 10. CMOs commit to publish clear guidance and FAQs for Artists, to be widely disseminated and published on CMO and Artist Organisation websites, clearly explaining how the resale right works and how an Artist can register with a CMO.**
- 11. CMOs and Artist Organisations commit to working in partnership, to promote and explain the resale right in an engaging and accessible manner (including the use of case studies and artist-led formats).**
- 12. CMOs commit to communicate openly with the artist community and encourage participation and interaction with the CMO.**

CMOs and Trade Associations are encouraged to work together:

- 13. To organise practical seminars or workshops to help AMPs and CMOs understand and fulfill their legal obligations under resale right legislation**
- 14. To provide written guidance and FAQs to be disseminated to AMPs.**
- 15. To ensure that at least one person per Trade Association and/or CMO is acquainted with the legislation and can provide verbal advice.**
- 16. To meet to discuss successful events, common concerns, share training materials, and models of best practice, across sectors, where appropriate.**
- 17. To ensure Trade Association members are urged to meet their legal obligations under the resale right.**
- 18. To ensure art market trade associations are encouraged to support the compliance efforts of CMOs, where appropriate.**
- 19. To resolve compliance issues as much as reasonably possible through dialogue and agreement with the AMPs. When appropriate, CMOs should alert the relevant Trade Association about issues.**

Buyers and collectors need to understand better the resale right.

20. Where relevant, AMPs are encouraged to provide information to buyers explaining what the resale right is

3. Cascade Effect and problems concerning resale right payment

A resale royalty is due on each sale subsequent to the first sale when an AMP is involved.

21. When an art work is sold several times between different AMPs, the resale right is legally due on each of these sales as well as on the sale to a non-professional buyer. The undersigned parties acknowledge that this situation (the so called “cascade effect”) is in accordance with the resale right as provided by the Directive and may arise within one Member State or across borders.

In Member States where the seller shares liability for paying the resale right with the dealer, or where commercial law allows buyers to be charged for it, dealers can potentially end up paying the resale right twice (in two resales of the same art work), both when they buy and when they sell.

This phenomenon could arise:

- In EU Member States in which an AMP charges another AMP by virtue of the contractual freedom and where the latter sells to a private buyer (the final client). In this situation some dealers report that they are not able, for commercial reasons, to charge amounts equal to resale right to their final buyer and therefore they pay the successive resale right twice.
- During cross border sales.¹ Due to the different application of liability of payment between the buyer and the seller in different Member States, a dealer may be required to pay twice, when he buys and then sells the same artwork.²

The group was unable to collect definitive figures in order to indicate the size of this problem of payment by dealers although according to FEAGA, the UK dealer

¹ For example if an AMP buys at a UK auction (where the buyer usually pays) and sells at a French auction (where the seller usually pays) he would end up paying resale right twice because of the different approach to who is liable to pay the resale right in the two countries. This issue was raised in France and the Paris Court d’Appel issued two contradictory judgements: in the first one, it concluded that the seller was the sole party liable for resale right in France, and in the second one, it concluded that the parties could contractually decide who shall bear the artist resale right in France (Judgment SNA vs Christies France of 12.12.2012, and CPGA vs Christies France of 03.07.2013). Both decisions are subject to further appeal by the French Supreme Court.

² Conversely, the reverse situation can also occur, for example, when a dealer buys at a French auction (where the seller pays) and sells at a UK auction (where the buyer pays), the dealer is not charged with the resale right on either transaction.

associations, and the Dutch dealer associations, all represented at the meeting, it affects a significant number of dealers' transactions for which the resale right is due.

The undersigned parties therefore recommend that:

22. In the next report on the implementation and the effect of the Directive to be issued in 2015, , the Commission studies among other issues

- **the extent to which successive sales occur between AMPs and,**
- **the frequency with which AMPs pay the resale right twice in respect of the same art work and the amounts of the resale right paid by the AMPs as a consequence of this. This information should distinguish between transactions where the parties are based in the same Member State or cross-border transactions**

Signatories

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As witnessed by:

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Michel Barnier Commissioner for Internal Market and Services