

AR RA

**ARTISTS
RESALE
ROYALTIES
AOTEAROA**



*— An introduction
to the campaign
for visual artists
5% resale royalties
in Aotearoa New
Zealand, produced
by Depot Artspace.*

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Cover and left: Jean Francois Millet, *L'Angelus*, oil on canvas, 1857 — 59. The resale of this artwork prompted the first documented requests for legislation to employ artists resale royalties.

The artwork itself has an interesting history. It was one of the only paintings the well-known Surrealist personality Salvador Dali admitted to being captivated by, believing there was something 'hidden' in the painting. His paintings *Archeological Reminiscence Millet's Angelus* (1935) and *Millet's Architectonic Angelus* (1933) both directly reference the work. In 1963, an x-ray revealed that Millet had painted between the farmers, the coffin of a boy. This part was painted over by the artist to make the picture more saleable.



Left: Jean-Louis Forian, *Un Tableau de Papa!* (*One of Father's Paintings!*), lithograph. The popularisation of this artwork following the Millet complaint drew sympathy to public campaigning eventually leading to France becoming the first country to introduce Artists Resale Royalties in 1920.

In the image a visibly dishevelled man (hair in face, head hung low, collar upturned against the cold) and a young girl (a street seller as indicated by the basket) gaze into a window from the street and as the title suggest the young girl proclaims 'one of father's paintings!'. The title and the image working together to clearly illustrate the plight of impoverished artists and their families.

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INTRODUCTION

WHAT ARE ARTISTS RESALE ROYALTIES?

An artists resale royalty entitles an artist to receive a royalty payment (normally a percentage of the sale price) from the sales of their artwork on the secondary market (this most commonly occurs through auction sales). Artist resale royalty rights are also often referred to as 'droit de suite' (literally 'follow-up right'), the French name given to the original artist resale royalty rights scheme. France was the first country to introduce an artists resale royalties scheme in 1920 almost 100 years ago!

"The French Government introduced a scheme to protect the right of resale in 1920, after controversy over artists living in poverty, while public auction houses were profiting from the resale of their artistic creations." [1]

— Mathew Rimmer

ORIGINS AND DEVELOPMENT

The concise origins of droit de suite are debatable but it is certain that discussion of artists rights to resale royalties has been taking place since the 1860s. The following points are generally considered and cited as being pivotal to publicising the issue and eventually leading legal action by the French Government.

- In 1889 a complaint was made by the family of Jean Francois Millet (a French Realist) *"14 years after the artists death the French copper magnate Eugène Secrétan sold Millet's painting L'Angélu (see cover and facing page for image) for a record breaking 553,000 francs. Millet's family was completely destitute at the time and were horrified by the sale (ironically, the painting depicts two peasants bowed in prayer)"* [2]
- Droit de suite was introduced to assist the widows of artists killed in the 1914–18 World War [3]
- *"The final (less romantic but more easily verified) theory is that the droit de suite legislation was inspired by an initiative of 13 art enthusiasts, who contributed 250 francs per year over 10 years to purchase the work of emerging artists. A collection of these works, including works of Picasso, van Gogh, Gauguin and Matisse, was sold at auction in 1914 and the group quadrupled their investment. Article 10 of the group's contract required them to distribute 20 percent of the profits to the artists on a proportional basis. The concept was widely discussed in Paris and embraced by the French Parliament."*[3]

[1] www.abc.net.au/news/2007-07-27/a-right-of-resale-indigenous-art-under-the-hammer/2514884

Mathew Rimmer, *A Right of Resale Indigenous Art Under the Hammer*, July 27, 2007. Web.*

[2] www.hyperallergic.com/153681/an-illustrated-guide-to-artist-resale-royalties-aka-droit-de-suite/

Tieran Morgan and Lauren Purje, *An Illustrated Guide to Artist Resale Royalties (aka 'Droit de Suite')*, October 24, 2014. Web.*

[3] www.arts.gov.au/sites/default/files/images/Proposed_Resale_Royalty_Arrangement_Discussion_Paper.pdf

Multiple authors, *Proposed Resale Royalty Arrangement Discussion Paper*. Web. Cited December 3, 2014.

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ARTISTS RESALE ROYALTIES AOTEAROA

It is seven years since the Ministry of Culture and Heritage produced a discussion paper on 'Artists Resale Royalties'. When first surveyed in Aotearoa New Zealand in 2007 65% of respondents supported the plan.

For some reason the MCH discussion paper languished and the issue of resale royalties for artists eventually disappeared. Since 2007 an additional 20 countries have introduced resale royalties.

Over this time too, the growth in the secondary arts market has mushroomed, with an increasing number of outlets turning over millions of dollars' worth of sales. It is a cruel fact that none of this wealth accrues to the artists whose work is being sold.

Given this growing phenomenon, it is becoming increasingly essential to introduce Artists Resale Royalties, for a fair deal for artists, and for the sustainability of both artists and the arts in Aotearoa New Zealand.

WHAT WOULD ARTISTS RESALE ROYALTIES MEAN IN AOTEAROA?

In Aotearoa New Zealand the paper produced by the Ministry of Culture and Heritage in 2007 included some of the following proposals:

- Royalty obligations would extend to all auction houses, galleries, dealers and any other intermediary involved in the business of dealing in works of art.
- There would be joint liability for payment of a resale royalty between the art market intermediary involved in the sale and the seller.
- Work purchased directly from an artist would be exempt from a resale royalty on the first resale of that work, provided that resale occurred within three years of the first sale and provided the work was resold for less than a certain amount.
- There would be a flat **5%** resale royalty rate. This would be charged on the 'hammer' or 'ticket' price (excluding GST, a buyer's premium and an agent's commission).
- A resale royalty right would apply to the creator of an art work in which a copyright existed. This would be regardless of whether the creator had retained ownership of the copyright.
- A resale royalty right would be inalienable and unable to be waived or reassigned. This would prevent a change of resale royalty right ownership becoming a condition of any first sale.
- In line with the World Trade Organisation's Agreement on Trade Related Aspects of Intellectual Property Rights, a resale royalty right could be offered on a reciprocal basis to nationals of countries that have similar schemes and that offer reciprocal rights to nationals of New Zealand. [1]

[1] www.mch.govt.nz/files/ResaleRoyaltyPublicDiscussionPaper.pdf
Ministry of Culture and Heritage Discussion Paper, April 2007. Web.*



"The resale right is a fundamental right for authors of graphic and plastic arts. It consists of a small percentage of the resale price that art market professionals pay to them at each resale of their works be it in auction or in a gallery.

The specificity of visual artists is that their primary source of income is the material selling of their original works. While auction houses and galleries make their business by taking commissions, it would be paradoxical that artists do not benefit from the profit generated by their works on the art market.

This is why the resale right, which is not applicable to first sales and therefore not on those galleries that do the work of promoting artists, was created. It also helps to restore the balance with the authors of other creative sectors (composers, screenwriters and film directors, writers) whose rights of reproduction and communication to the public cannot be compared with those of visual artists."

"I supported this idea of five percent royalty last time and would again... The five percent is not just financial it's about recognition and respect."

— Nigel Brown (pictured left), 2014.

WHY AOTEAROA NEW ZEALAND NEEDS ARTISTS RESALE ROYALTY RIGHTS

ARTISTS RESALE ROYALTY RIGHTS AOTEAROA PROVIDES VISUAL ARTISTS WITH

- Recognition of their ongoing rights in their art.
- Additional income through royalties derived from commercial resales of their art.
- Greater recognition and respect for the visual arts as an industry and profession.
- A provision for families and relatives of deceased artists managing artists' estates.

"Receiving a cheque from a resale lends weight to an artist's wellbeing. It gives them rights — they are being taken seriously. It means they are valued socially and culturally, and even politically."

— Bernard Ah Kee, Australian indigenous artist. [1]

- Equity across the creative sector, as authors, script writers, musicians and composers already receive royalties for their work.

[1] www.resalerightnow.wordpress.com/2014/05/29/artists-set-the-record-straight-we-want-resale-royalties
Artists Set Record Straight We want Royalties, May 29, 2014. Web.*





Left: Australian Papunya Tula (of the Western Desert Art movement pictured left) artist Johnny Warangkula Tjupurrula died penniless in 2001.

"Johnny Warangkula Tjupurrula, one of the founding members of a thriving school of Aboriginal painters whose work is increasingly prized both in Australia and on the international art market, died on February 12 at Papunya in the western Australian desert near Alice Springs. He was about 75. He died a penniless alcoholic. In 1997 one of his paintings, 'Water Dreaming at Kalipinya,' (facing page) which he had sold in 1972 for A\$75, changed hands at a Sotheby's auction in Melbourne for A\$263,145, setting a record for any Aboriginal work of art. Mr. Tjupurrula's request for 4 percent of the sale price was refused by both seller and buyer." [1]

— Paul Lewis

THE RESALE ROYALTY RIGHT ACT IN AUSTRALIA

"When the bill was passing through parliament, Peter Garrett, then the minister for the environment, heritage and the arts, said that 'introducing the [resale] right will significantly increase the transparency of the art market, which... is particularly important for indigenous artists, who have sadly continued to be exploited by some unscrupulous dealers.'" [2]

— Elizabeth Fortescue

The Resale Royalty Right Act was introduced in Australia in 2009 and applied to original artworks by living artists and for a period of 70 years after an artist's death. Eligible artworks include original works of graphic or plastic art, including pictures, collages, paintings, drawings, engravings, prints, lithographs, sculptures, tapestries, ceramics, glassware, photographs, fine art textiles, installations, fine art jewellery, artists' books, carvings and multi-media artworks. This act is currently under review although the benefits to Australian artists is clear.

"SINCE ITS BEGINNING IN JUNE 2010 UNTIL 31 JULY 2014, THE SCHEME HAS GENERATED ROYALTIES

- Totalling more than A\$2.55M
- From more than 9,175 resales
- For more than 910 artists
- Lowest royalty A\$50
- Highest royalty A\$55,000
- Most royalties have been between A\$50 and A\$500

OTHER FACTS

- Over 65% of the artists receiving royalties are Aboriginal or Torres Strait Islander artists and they have received 46% of the total royalties generated
- Most royalties (over 65%) have been paid directly to living artists with some paid to artists' estates and beneficiaries
- Of the 50 artists who have received most money under the scheme, 26 are Aboriginal or Torres Strait Islander
- Most artists have received one or two royalty payments, but some have received multiple payments
- Royalties generated for artists already exceeds the funding provided by Government for implementation of the scheme." [3]

[1] www.nytimes.com/2001/02/26/arts/26TJUP.html

Paul Lewis, *Johnny Warangkula Tjupurrula, Aboriginal Painter, Dies at 75*, New York Times, February 26, 2001. Web.*

[2] www.theartnewspaper.com/articles/Is-the-Australian-resale-royalty-scheme-benefiting-indigenous-artists/30109

Elizabeth Fortescue, *Is the Australian Resale Royalty Scheme Benefiting Indigenous Artists*, The Art Newspaper, July 19, 2013. Web.*

[3] www.resaleroyalty.org.au

Royalties for Artists, Copyright Agency Resale Royalty, July 31, 2014. Web.*



Above: Robert Rauschenberg, *Thaw*, 1958.

Thaw was originally sold by Rauschenberg directly from his New York studio to the infamous art collectors Robert and Ethel Scull for US\$900. The Scull's secured their infamy as art collectors and a new breed of art investors by holding an auction at Sotheby Parke Bernet in 1973. The couple sold 50 contemporary artworks from their collection through the auction for record-breaking prices including this artwork which sold for US\$85,000. Rauschenberg famously said, "I've been working my ass off for you to make that profit." [1]

"In 1958 my father, Robert Rauschenberg, painted Thaw, which he later sold to an art collector for \$900. Fifteen years later, that collector sold the painting at auction for \$85,000. My father was rightfully angry. His hard work was beginning to pay off, but not for him. If not for his continued art-making and the profile he went on to build in the art world, it's unlikely that Thaw would have increased so much in value."

"By the end of his life, my father was a wealthy man. Back in the 1970s, however, when his painting was sold for \$85,000 without a cent going to him, he was still an emerging artist. He had a perspective and growing prominence, but certainly not the financial security that he had later in life." [2]

— Christopher Rauschenberg



Above: The late Clifford Possum Tjapaltjarri with his work *Warlugulong*.

Warlugulong was originally bought for A\$1,200 by the Commonwealth Bank in 1977. In 1996 it was sold to Melbourne art dealer Hank Ebes for A\$36,000 and in 2007 it sold again for A\$2.4m to the National Gallery of Australia at Sotheby's in Melbourne, a record auction price for an indigenous work. *"The artist's only reward was the \$1,200 he received for the picture when he initially sold it thirty years before."*

Sadly the Artists Resale Royalty Right Act was established in Australia too late for Clifford and Johnny Warangkula Tjupurrula (see previous page) to benefit from but the scheme is already proven to benefit artists from the generations that have followed. *"The first to receive a royalty under the scheme was Gabriella Possum Nungurrayi. This is significant for two reasons. Firstly, because she was as far from a 'dead white male' as it is possible to be; and secondly, because she was the daughter of Clifford Possum who...is often cited as a casualty of the pre-royalty position."* [3]

[1] www.artinamericamagazine.com/reviews/the-scul-collection/
Roni Feinstein, *The Scull Collection*, Art in America, June 04, 2010. web. *

[2] www.huffingtonpost.com/christopher-rauschenberg/artists-deserve-royalties_b_5588388.html

Christopher Rauschenberg, *Artists Deserve Royalties Too*, Huffington Post, July 15, 2014. Web. *

[3] www.artslaw.com.au/art-law/entry/the-artists-resale-royalty-scheme-the-first-six-months/

Libby Baulch, *The Artists' Resale Royalty Scheme: The First Six Months*, Arts Law Centre of Australia, December 24, 2010. Web. *

ARTISTS RESALE RIGHTS IN THE UNITED KINGDOM

After lengthy debate the United Kingdom the Artists Resale Right (ARR) was enacted on January 1, 2006. It entitles creators of original works of art (including paintings, engravings, sculpture and ceramics) to a royalty each time one of their works is resold through an auction house or art market professional. The right to this royalty lasts for the same period as copyright, so since January 2012 ARR has applied to qualifying works by artists who have been dead for less than 70 years. [1]

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WHAT YOU CAN DO

- Write to the Minister of Culture and Heritage for Aotearoa New Zealand, Maggie Barry.
- Write to your local MP and ask them to shadow ministers for arts and culture such as Labour's Jacinda Ardern and the Green Party's Jan Logie
- Talk to people about this issue. There's nothing like word of mouth to spread the message and provoke discussion.
- Start your own campaign!

FURTHER INFORMATION

The following articles have been selected from the many available on the Internet as references for further reading as they include information with specific relevance to practicing artists in New Zealand and Australia.

When an Artists Resale Royalties scheme was last considered by parliament in 2006, the Ministry for Culture and Heritage, New Zealand released these two documents:

Resale Royalty Right for Visual Artists Discussion Paper
www.mch.govt.nz/files/ResaleRoyaltyPublicDiscussionPaper.pdf
Resale Royalty Submission Analysis
www.mch.govt.nz/files/resale-royalty-submission-analysis.pdf

The Australian Government released their proposed Resale Royalty Arrangement Discussion Paper (produced by the Department of Communications, Information Technology and the Arts) in 2004: www.arts.gov.au/sites/default/files/images/Proposed_Resale_Royalty_Arrangement_Discussion_Paper.pdf

The Artists Reserved Rights Transfer and Sale Agreement is also an interesting document which an artist may use as a contract between themselves and purchasers of their works (although its legal standing is questionable) you can find/download a copy here: www.tenstakonsthall.se/uploads/58-Seth-Siegelaub-The-Artists-Reserved-Rights-Transfer-And-Sale-Agreement.pdf

[1] www.gov.uk/artists-resale-right

Artists Resale Right, Intellectual Property Office, May 16, 2014.*

*All web articles referenced in this publication were cited December 4, 2014 unless otherwise stated.



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