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Artist's resale right and its influence on the British art-market

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In the early 20th century a new right was created in France known as the *droit de suite* (lit. «right to follow»). It is not a tax because the revenue generated does not go to the Treasury, but to the creator of the original work (or their heirs, since the right lasts for 70 years after death, as with copyright). It first arose internationally at the Bern Convention for the Protection of Literary and Artistic works.

The proposal for a European Directive on the resale right for the benefit of the author of an original work of art has been made by Mario Monti, the Single Market Commissioner. According to the Directive the work must be an original work of art or a copy made in limited numbers by the artist himself or under his authority and under copyright protection. The sale must involve a professional party or intermediary, such as salesrooms, art galleries and, in general, any dealers in works of art. The *droit de suite* does not apply to sales directly between private individuals without the participation of an art market professional, nor to sales by individuals to public museums. The artist must be a national of a Member State or of another country which has *droit de suite* provisions: Member States are free, but not obliged, to treat artists domiciled on their territory as nationals. The Directive was drafted to ensure that the EU's modern and contemporary art market works well, by generalising and harmonising resale rights within the single market [1].

Under the Directive, resale rights will apply to any sale where the price exceeds € 3000. This means that some works of art which rarely attain such prices e. g. sketches, and photographs are in practice unlikely to be covered by the Directive. It is primarily sculpture and paintings which are likely to give rise to the payment of resale rights. The European art markets' main competitor for the sale of modern and contemporary works is New York. The USA does not recognise resale rights, and art market professionals fear that sales will shift to the United States or Switzerland but USA art lawyers indicate that if the right will work the

United Kingdom and will be harmonised across Europe, USA legislators would seriously consider its introduction there.

In the United Kingdom, the law is in place but the shouting hasn't stopped. England, which adopted a resale royalty law in 2006, is expanding that law in 2012, much to the chagrin of art dealers and auctioneers [2].

A 2010 report on artists' resale royalties, commissioned by the European Art Market Coalition, found that in continental Europe, 74 percent of all the royalties collected went to artists' heirs, 20 percent went to the collecting agencies and only six percent went to living artists. Helping older artists may be the intended goal, but critics claim the practice has largely benefited the heirs of already successful artists like Pablo Picasso, Georges Braque and Henri Matisse.

Studies by the British Art Market Federation and the Society of London Art Dealers say many galleries are now less willing to do take a chance on new artists because it involves too much paperwork and brings down any profit on a sale, it notes.

Artists in the U. S. and in the United Kingdom are divided on the issue of resale royalties. Some of the artists expressed their support for the law, while others signed a petition against it. The petition highlights that running a small business is becoming increasingly costly and the cumulative effect of 4% ARR on purchases plus 4 % on sales will make it difficult for small art dealers to meet their overheads. The protesting artists also deplore the debilitating effect this will have on the majority of art businesses in the United Kingdom. Unlike international auction houses, these are often small family-run enterprises of the type recognised by the Government as key to growth at a time of economic uncertainty. And the breach issue is that far from helping struggling new artists, the lion's share of the royalties from the extended Right will be paid to the heirs of deceased artists, such as the Picasso estate, which are already financially well-off [3].

In 2014 there will be an enquiry to see if the extension has damaged the UK Art Industry. Obviously if that enquiry should prove that it has done there is a chance that something might be done at governmental level to cancel or curtail it.

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