

'Artists, agents, dealers, art gallerists, auction houses and art market professionals - are you adhering to The Artist's Resale Right Regulations 2006 correctly?

The Artist's Resale Right Regulations 2006 may apply to any work of graphic or plastic art, such as a picture, a collage, a painting, a drawing, an engraving, a print, a lithograph, a sculpture, a tapestry, a ceramic, an item of glassware or a photograph. A living author of any such work, in which copyright subsists, may have a right to a royalty on any sale of the work which is a resale subsequent to the first transfer of ownership by the author.

The liability to pay a royalty arises on completion of a resale, provided various qualifying conditions are satisfied. The regulations only apply to sales or purchases by art market professionals, where the resale price is more than 1000. The seller and their agents are jointly and severally responsible for paying the resale royalty, which may only be collected by a 'collecting society', meaning a society or other organisation which has as its main object, or one of its objects, the administration of rights on behalf of more than one artist. Crucially, if the seller has no agent, the seller and the buyer's agent will be jointly and severally responsible and, if neither the seller nor the buyer have an agent, the seller and the buyer are jointly and severally responsible.

The royalty is calculated as a percentage of the sale price, on a sliding scale and is collected in return for a fixed fee, or a percentage share of the royalty, payable to the collecting society, which should only be as much money as is necessary to cover basic administrative costs. What's more, almost any person acting in the course of the business of dealing in works of art is under an obligation, albeit limited, to respond to requests for information issued by a collecting society. Not only that, but resale royalties are collected on an artist's behalf, whether or not the artist has actively mandated a collecting society to do so. The collecting society will then hold onto the money until they receive information as to an artist's whereabouts.

An artist's signature triggers a legal presumption under the regulations as to the identity of the author/artist. Where a work is made by joint authors, both signatures will trigger this presumption and each of them will be entitled to the resale right and share the royalties equally, unless they both sign a written agreement to the contrary. Copies of works are also covered by the ambit of the regulations provided they are one of a limited number which have been made by the author or under his authority.

There is a lot more information contained in the regulations as you would expect and includes provisions relating to proving authorship, exempt re-sales, assignments, waivers, trusts, the territorial extent of the resale right and the right to information, let alone what's planned for 2010? Please contact us if you would like more information.

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This article should not be relied upon as a substitute for legal advice as to any particular matter. If you would like specific advice please contact the persons stated above.

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