

WIPO Copyright

Collective Management Training Serbia

17 March 2022

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Secretary General

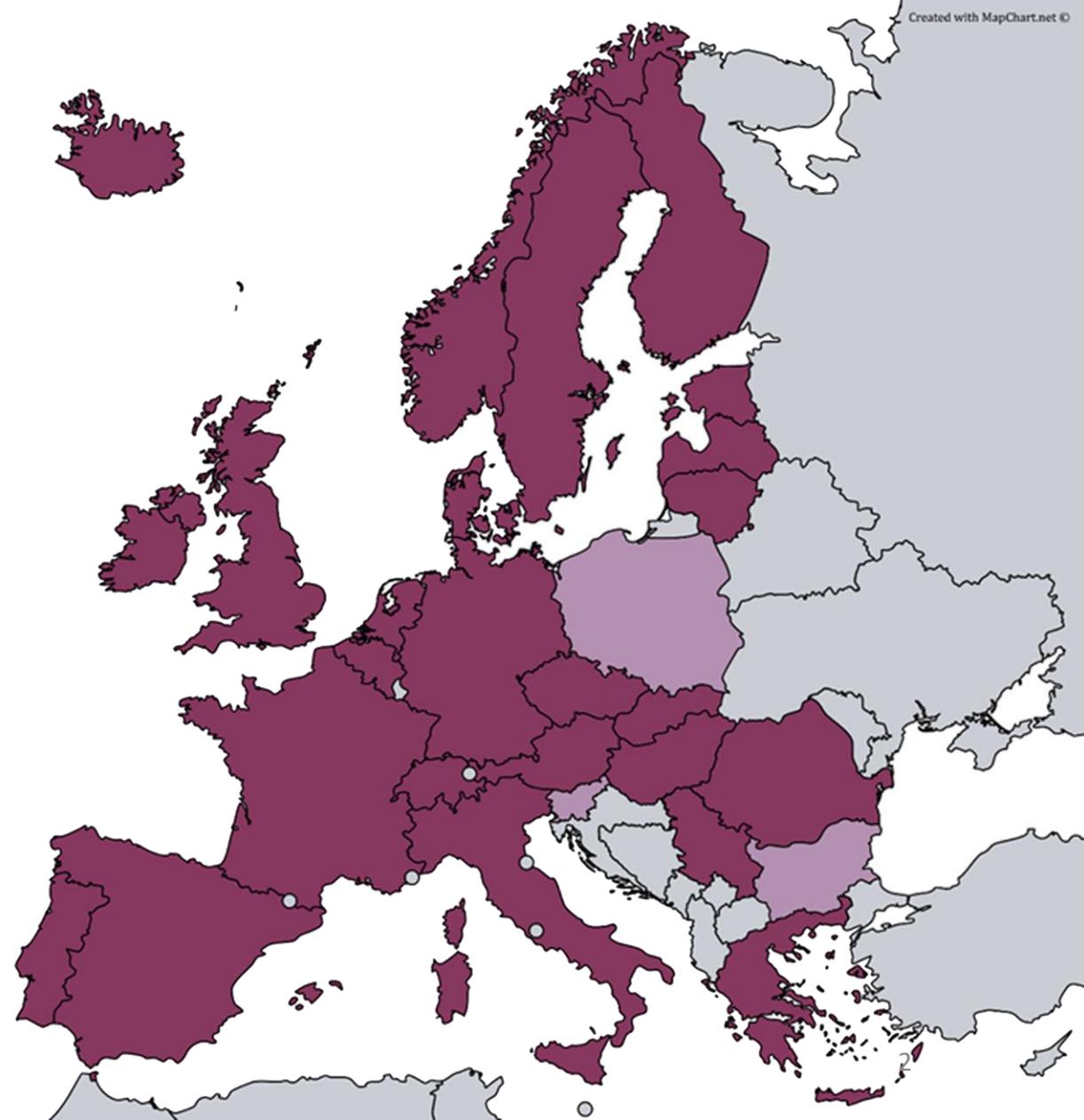


European Visual Artists

European Visual Artists

EVA represents **28 European collective management organisations** for fine arts, photography, illustration, design, street-art and other visual works for close to 130,000 authors. They manage for authors primary uses, the resale right and they collect and distribute collective remuneration rights.

www.eartists.org



- Draft Commission 1996-Proposal for a EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE on the **resale right for the benefit of the author of an original work of art** /* COM/96/0097 FINAL - COD 96/0085 */
- Official Journal C 178, 21/06/1996 P. 0016

1. Equal Treatment

- Following the Berne Convention, **Resale Right is optional** (Article 14ter), and it only applies across borders if there is reciprocity
- **Principle of non-discrimination in the EU:** rights cannot be denied to nationals from member states on the reason that the country of origin does not provide the same right to its own nationals; Phil Collins and others, ruling ECJ; Cases C-92/92 and C-326/92 1993
- Protection for the principle of equal treatment is resulting from the **prohibition of any discrimination on grounds of nationality**

2. Internal Market - Competitiveness

- The majority of countries had Resale Right, but there were differences in:
 - **Works covered**
 - **Those entitled** to receive royalties
 - **The rate** applied
 - **The sales subject to payment** of a royalty, and
 - the **basis of assessment** thereof

Some countries had no Resale Right, for instance the UK, the largest art market in the EU, which could lead to **distortions of competition** as well as **displacements of sales** within the Community.

Those differences have a negative impact on the proper functioning of the internal market
 **harmonization**  Article 100a Treaty (becoming Article 95)

OJ L 272, 13.10.2001, p. 32-36 - Recitals

(1) In the field of copyright, the resale right is an unassignable and inalienable right, enjoyed by the author of an original work of graphic or plastic art, to an economic interest in successive sales of the work concerned.

(...)

(3) The resale right is intended to ensure that authors of graphic and plastic works of art share in the economic success of their original works of art. It helps to redress the balance between the economic situation of authors of graphic and plastic works of art and that of other creators who benefit from successive exploitations of their works.

(4) The resale right forms an integral part of copyright and is an essential prerogative for authors. The imposition of such a right in all Member States meets the need for providing creators with an adequate and standard level of protection.

(7) The process of internationalisation of the Community market in modern and contemporary art, (...) makes it essential for the European Community, in the external sphere, to open negotiations with a view to making Article 14b of the Berne Convention compulsory.

Exceptions to applying the Resale Right:

- Recital 18 (1): **direct sales** between persons acting in private capacity without the participation of an AMP (Art Market Professional)
- Recital 18 (2): between **private sellers** and publicly accessible, not-for-profit **museums**
- Article 1 (3) OPTIONAL exception: if the first resale takes place **within three years from the first sale** and the price is **below 10.000€**, the resale can be excluded

Definition of work categories, recital 21:

- Recital 19: RR does **not apply to manuscripts** of writers and composers
- Article 2, not exhaustive list: "original work of art" means works of graphic or plastic art **such as** pictures, collages, paintings, drawings, engravings, prints, lithographs, sculptures, tapestries, ceramics, glassware and photographs, provided they are made by the artist himself or are copies considered to be original works of art
- It can happen that work character is not accepted for instance for works of **applied art, conceptual art and performances**. It's recommended to agree with representative bodies of AMPs on definitions.

Article 3 - Threshold

Article 3 sets the **maximum applicable threshold at 3.000 €** resale price and permits member states to lower the threshold.

Several countries have implemented the threshold at 3.000 €.

The UK surprisingly introduced a threshold at 1.000 €.

Member states with very low average prices, for instance with 200-300 € average resale price, set the threshold lower to allow national artists to have an opportunity to benefit from RR.

In article 4, a **sliding scale of percentages for price bands** is introduced.

In the case of resale prices that exceed the lowest price band, the calculated amounts per price band are summed up. For resale prices in the lowest price band, a percentage of 5% instead of 4% may be applied.

A ceiling is introduced at 12.500€, which is the maximum amount payable to an artist. The ceiling corresponds to the resale price of 2.000.000€. Resales at a price of 2.000.000€ or above generate the same amount: 12.500€.

- Article 5: the **calculation basis** is the RR price net of tax or the hammer price. Nonetheless, in several countries AMPs make deductions and legal procedures are ongoing.
- Article 6: **the RR is inheritable**. Collective management is only optional, but
 - Recital 28 (3): “Member States must also ensure that amounts intended for authors who are nationals of other Member States are in fact collected and distributed.” It is impossible to effectively manage RR without an international network provided only by CMOs for visual works.
 - Recital 30: authors have a right to be informed and it is an option that “Member States which provide for collective management of the resale right may also provide that the bodies responsible for that collective management should alone be entitled to obtain information”.

Article 7 contains a **reciprocity clause for nationals** of third countries.

It also allows member states to treat nationals from third countries equal to nationals if they have their habitual residence in the member state.

Article 8 contains the **terms of protection** and opens the possibility to **temporarily not apply the RR** to heirs of deceased artists unless the RR has already been applied in the past.

The UK made use of the temporary exclusion of heirs  Article 8 (2) + (3)

The Directive had to be implemented by 31/12/2005 (Article 12 (1)). In the following 6 years, the UK applied the RR only to living artists, while all other EU countries fully applied the Directive also for deceased artists.

A research was prepared by the UK government before the full implementation. It turned out that the RR had no impact on the art market and had not the effect to cause shifts to other art markets

All member states implemented the directive in time by 31/12/2006, Romania and Bulgaria followed in 2007, Croatia in 2013. The UK implemented in two phases:

- For living artists, to the implementation deadline in 2006
- Extension to deceased artists in 2012

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Artist Search

If you are making a sale, find out if we represent the artist and if an ARR royalty is due. Any artist not found in the search may still be entitled to a royalty.

First name	Last name	
<input type="text"/>	<input type="text"/>	<input type="button" value="Search"/>

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Items per page

Submit sales details

If a royalty is due, you need to send us details of the relevant sale(s).

[How to submit sales details](#)

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Can't find an artist?

These search results aren't exhaustive. You need to pay resale royalties if the artwork in question is in copyright and if the artist is a national of the UK or a country in the (EEA).

List of EEA countries

Disclaimer

Whilst we endeavour to ensure that the information on this website is correct, we do not warrant its completeness or accuracy.

Our Artist Search is intended as a guide and is correct to the best of our knowledge and research at the time of disclosure. Use of this web search does not imply partnership or any contractual relationship between DACS and the user.

The Artist Search list indicates whether an artist is currently eligible for Artist's Resale Right royalties through DACS **or other collecting**

ARR threshold calculator

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ARR threshold calculator

- ✓ Due to EU regulations, the ARR threshold is defined in € EUR.
- ✓ Since the exchange rate varies daily, this tool allows you to calculate the ARR threshold in £ GBP for any given date.

• **Sale date:**

15 March 2022 

Calculate

This calculator links to the European Central Bank's website. It can sometimes perform more slowly between 9-11am and 4-6pm when they refresh their currency rates.

*If you experience problems, we advise you try again later. For any other issues, please **get in touch**.*

For Artists For Beneficiaries & Heirs **For Art Market Professionals** Licensing Know

Artist Search Royalty Calculator Threshold Calculator Submit Sales Details

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ARR royalty calculator

1. Select sale status:

have already sold this item
 Sale has not yet occurred

2. Enter sale date:

15 March 2022 

3. Enter the sale price:

EUR: €

This calculator links to the European Central Bank's website. It can sometimes perform more slowly between 9-11am and 4-6pm when they refresh their currency rates.

*If you experience problems, we advise you try again later. For any other issues, please **get in touch**.*

Does RR cause translocation of the art market to places where the right is not applied?

- Study by Joelle Farchy and Kathryn Graddy in 2017, *The Economic Implication of the Resale Right*, SCCR-WIPO
- The implementation of the RR in the UK was a field case that provided unique information. It showed that the **RR has no impact on the art market** at all: the UK, 2nd largest art market in the world (and regularly one of the top three markets with the U.S. always first, and China) had to implement the RR following the EU Directive 2001/84. The move was made in two steps, first, the right was introduced only for living artists in 2006, and second, the introduction was extended to deceased artists in 2012. It gave the unique opportunity to compare these introductions with movements on the U.S. art market, 1st or largest art market in the world with no RR in place and with France, the second largest market in the EU with RR in place, during the same period. The UK government commissioned studies on the art market developments which were revisited by Farchy and Graddy with the clear message that the resale right had no impact on the art market (p.24 + 25).

Resale Right is a huge success for living UK artists.
The UK continues the Resale Right beyond Brexit.

During the Covid 19 pandemic all public venues were immediately closed.

- Auctions
- Art fairs
- Exhibitions

Following the EY study, Rebuilding Europe, January 2021, the creative industries in the visual field dropped income by 38 % (average 31%).

Many AMPs did not suffer any losses by changing to online sales.

- “It’s so useful, because as an artist, unless you spend your life googling things, you wouldn’t know what sells on the secondary market at all.” **Chantal Joffe**, DACS, UK
- “Even small amounts of funding generated from the acknowledgement of artist’s rights through copyright and resale royalties are important and help support artists who usually have very low incomes and, for many Indigenous artists, live in parlous health and housing conditions in remote communities. My first resale royalty was a healthy sum of money and it seemed morally appropriate to me, that as it was a work which had graced a large company’s boardroom for quite a long time and was passing to another collection, I should know of that transfer of ownership and also receive recompense. I am pleased to know my children will similarly receive those royalties from resale of my work, after I die.” **Mandy Martin**, Copyright Agency Australia
- “The protection of an artist’s resale right is based on an acceptance of the author’s status within the society. However, as far as cultural context is concerned, this protection means even a protection of the most important device - the originality of a particular work of art. This topic has gained its importance thanks to the support of a professional organisation as LITA, ensuring the protection of the artist’s rights.” **Ivan Csudai**, LITA, Slovakia
- “Creativity often comes at a price - financial instability. Art should be protected and appreciated and the Artist’s Resale Right goes some way to addressing this.” **Bridget Riley**, DACS, UK
- “The kind of experiments I do in my art requires the freedom to take risks and to engage in work whose outcome is fundamentally uncertain. Guaranteeing a resale right for art is not only fair, it directly contributes to the artist’s ability to continue experimenting in his or her studio.” **Olafur Eliasson**, Copydan, Denmark



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www.eartists.org

Thank you!

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www.resale-right.org