

## Information for beneficiaries

January 2016

This information sheet is for guidance only. It is not legal advice.

### About the resale royalty scheme

The artists' resale royalty scheme started on 9 June 2010. Under the scheme:

- commercial resales of artworks over \$1,000 (including GST) must be reported; and
- a 5% royalty is payable on some resales.

The Australian government appointed Copyright Agency to manage the scheme.

Key features of the scheme are:

- it applies to resales of works created both before and after 9 June 2010;
- it applies to a range of original artworks, including limited edition prints authorised by the artist;
- all resales over \$1,000 (including GST) must be reported, whether or not a royalty is payable;
- a royalty is not payable if the seller acquired the work before 9 June 2010; and
- a royalty is not payable on resales for under \$1,000 (including GST).

### Which artworks?

Artworks covered include artists' books, batiks, carvings, ceramics, collages, digital artworks, drawings, engravings, fine art jewellery, glassware, installations, lithographs, multimedia artworks, paintings, photographs, pictures, prints, sculptures, tapestries, video artworks and weavings.

A limited edition reproduction, such as a numbered print, is covered if its production was overseen by the artist.

Mass-produced items, such as posters, are excluded. Manuscripts, architectural drawings and plans are excluded.

### Which artists are covered?

The scheme applies to living artists, and artists who have died in the last 70 years.

The Australian scheme currently only applies to artists who are Australian citizens and residents, however in time, may be extended to other countries with a resale royalty scheme.

### When is a royalty payable?

A royalty is payable if:

- the seller acquired the artwork after 8 June 2010;
- the work resells for \$1,000 (including GST) or more;
- the resale was not a private sale from one individual to another;
- the artist is an Australian citizen or resident;
- If the artist has died:
  - it was less than 70 years ago; and
  - there is a beneficiary or estate with a connection to Australia.

## Establishing your entitlement

Important questions to consider when establishing your entitlement include:

- *Are you the sole beneficiary or are there multiple beneficiaries?*

Where multiple beneficiaries meet the entitlement criteria each should register their details with the resale royalty scheme by completing a separate registration form. Split payments between multiple beneficiaries can be facilitated.

- *Did the artist leave a will?*

In the case where an artist left a will Copyright Agency will follow the instructions of the artist as per the will. Where there is no will the rules of intestacy apply. Please contact us for further information about the necessary supporting documentation in the case where an artist dies intestate.

- *I own an artist's copyright – does this mean I'm also entitled to their resale royalty?* Not necessarily. Copyright and resale royalty are different types of intellectual property – one is governed by the terms of the Copyright Act (1968) and the other by the Resale Right Act (2009). To determine who inherits the resale royalty entitlement it is necessary to consult the will of the artist. Resale royalty is inherited via succession. It is an inalienable right which means, unlike copyright, it cannot be assigned to a third party.

- *I don't live in Australia – am I eligible?*

An individual satisfies the residency test at a particular time if the individual is either an Australian citizen or a permanent resident of Australia. If you reside permanently overseas you should submit proof of your Australian citizenship at the time of registering as an artist's beneficiary.

- *What entities other than an individual are eligible for resale royalty?*

In addition to an individual with a beneficial interest in the right, other entities that would satisfy the succession test criteria are:

- a charity or charitable institution with a beneficial interest in the right

- a community body with a beneficial interest in the right
- a person who holds an interest in the right in trust for:
  - an individual;
  - a charity or charitable institution;
  - a community body.

## What do I need to do to register as an artist's beneficiary?

Complete the Resale Royalty Scheme Registration Form for Artists' Beneficiaries online at <http://www.resaleroyalty.org.au>; or

Email your completed Resale Royalty Scheme Registration Form for Artists' Beneficiaries and supporting documentation (a copy of the artist's will) to [resale@copyright.com.au](mailto:resale@copyright.com.au); or

Post your completed Resale Royalty Scheme Registration Form for Artists' Beneficiaries and supporting documentation (a copy of the artist's will) to the below address:

Copyright Agency, Resale Royalty Scheme,  
Level 11/66 Goulburn Street Sydney NSW 2000

Alternatively you can phone us and request that we send you the necessary paperwork by calling **1800 066 844**.

## What assistance is available for beneficiaries of Indigenous artists?

If you are a beneficiary of an Indigenous artist and require additional assistance in registering you can contact Copyright Agency's **Indigenous Engagement Manager Patricia Adjei** on our toll free number **1800 066 844** to discuss your family's situation. The Arts Law Centre of Australia also provides some assistance to art centres and the beneficiaries of Indigenous artists in registering for their royalty entitlements.

### **What about resales overseas?**

There are currently no reciprocal arrangements between Australia and other countries. This means that royalties are not collected for Australian artists in other countries, and the Australian scheme only applies to Australian citizens and residents.

We are in the process of establishing reciprocal arrangements with other countries. When the Australian government is satisfied that Australian artists are entitled to resale royalties from another country, it will list that country in the regulations to the Australian legislation. This will also mean that artists from that country are entitled to royalties for artworks sold in Australia.

### **What is Copyright Agency's fee?**

By arrangement with the government, from 1 July 2015, our administrative fee is 15% of the royalty collected. We are required to collect GST on our administrative fee, payable to the Government, which we deduct from the royalty. An artist or beneficiary who is registered for GST can claim that GST on their tax return.

### **What information is available about resales?**

Under the legislation for the scheme, we have to display information about recent resales on the resale royalty website. You can see recent resales by clicking the 'View resales' button. We display the name of the artist, the title of the work, and a description of the work.

### **What if I don't want to receive resale royalties?**

Each time an artist's work is resold, we display information about it on our website. When we upload that information to our website, we wait 21 days before sending an invoice. In that 21 day period, an artist's beneficiary can instruct us not to collect the royalty.

### **What if I want to collect a resale royalty myself?**

If you want to collect a royalty yourself, you must instruct us to not to collect the royalty for you, within 21 days of our displaying information about the resale on our website. Provided you know who is responsible for paying the royalty (that is, the seller and/or the art market professional), you can approach them for payment of the royalty.

We have strict obligations under the legislation in relation to information we receive about resales. We need the permission of the people to whom the information relates to disclose that information to anyone else. You must notify us each time you do not want us to collect a royalty for you. The legislation does not allow us to act on a notification for all future resales.

### **Use of this information sheet**

Check <http://www.resaleroyalty.org.au> for the terms of use for this information sheet, and to make sure that this is the most recent version.