

FAO Business Law Team
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

By email to: CopyrightActReview@mbie.govt.nz

29 March 2019

Dear Sirs,

DACS' statement in support of the review of the Copyright Act 1994

DACS is a UK organisation that represents visual artists worldwide including painters, sculptors, photographers and illustrators. We write in support of the New Zealand government's review of the Copyright Act 1994 and to recommend changes that would support the lives and practices of New Zealand artists, the priority of which is the implementation of the Artist's Resale Right.

Support for the Artist's Resale Right (ARR)

The creation of an ARR law was proposed by the New Zealand government in 2007 to reflect the growth of the secondary art market. Following an open consultation process, a majority of interested parties favoured ARR, but the law has not been adopted. As art sales are on the rise, New Zealand's artists should be able to benefit from ARR.

The expanse of the online art market means that artists' works are increasingly sold in a global market. New Zealand artists may also miss out on royalties when their works sell in countries that have an ARR law.

- **Background of ARR**

The principle of paying royalties to artists on the secondary sale of their works originated in France in the 1920s where it is known as *droit de suite*. The principle stemmed from the notion that visual artists and their families should benefit financially from their work in same way as composers or authors.

In 1948, *droit de suite* became part of the Berne Convention, an international agreement protecting artists' rights. By 2001, now formalised as Artist's Resale Right, it was part of European Law. The UK adopted ARR in 2006 and the law was updated in 2012 to benefit not only living artists but their heirs too.

ARR is firmly established worldwide: 81 countries have made it law, and more nations are adopting it or are considering doing so – including South Korea, USA, South Africa, Japan and China. Reciprocal

agreements between ARR-paying nations ensure that artists are paid on sales abroad, leading to a flow of payments in and out of supporting countries.

- **Benefits to artists**

Artists operate as individual sole traders or small business enterprises. The shocking fact is that most artists in the UK earn less than £5,000 a year after tax¹ - the average annual salary for a UK worker in the same period was £28,677².

Artists rely on royalties and revenue from secondary sales of their work, which is why DACS exists. DACS' overall royalty distributions exceeded public funding for visual arts via the Arts Council England in 2017: DACS distributed £15.2m in royalties, of which £9.4m were ARR royalties, and Arts Council England awarded £11.9m in grants for visual artists.

The artists receiving royalties from DACS are not just the famous, wealthy artists who make headlines when their works sell for millions – our data shows that each year over **50%** of artists or estates receiving ARR royalties exclusively sell works for £5,000 or less.

Artists use ARR royalties to pay for living expenses, materials and studio practice, meanwhile estates of artists spend royalties on preserving and storing works or covering the costs of compiling *catalogue raisonnés*. Even small amounts of money make a big difference.

Supporting an artist's practice allows them to make more works and make them available for public enjoyment. This work feeds the art market and creative economy leading to a positive cycle that generates rewards for everyone.

- **No negative impact on the art market**

The art market in the UK is one of the largest in the world and continues to prosper since the introduction of ARR, now making sales of over \$14bn (USD)³. Art sales have not slowed or been diverted to countries without ARR, instead DACS has distributed more and more royalties each year, which shows that art sales continue to thrive.

In 2017 an independent economic research project, conducted by Kathryn Graddy of Brandeis University, Boston, investigated the economic implications of ARR, including whether art sales were

¹ The Art Newspaper *Artists are getting poorer* 30 November 2017, at <https://www.theartnewspaper.com/news/artists-are-getting-poorer>.

² Office for National Statistics *Annual Survey of Hours and Earnings*, October 2017 at <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/annualsurveyofhoursandearnings/2017provisionaland2016revisedresults#main-points>

³ Art Basel and UBS *Art Market Report 2019*, by Dr Clare McAndrew, p.29 at: <https://www.artbasel.com/about/initiatives/the-art-market>

relocated to non-ARR jurisdictions⁴. The report concluded that no evidence could be found that ARR harmed the art market, or that ARR forced relocation of art sales to other jurisdictions.

Concluding statements

DACS fully supports the implementation of ARR in New Zealand. It has improved the lives of thousands of visual artists and helped them support their practice. DACS recommends that ARR is fully adopted into New Zealand law so artists in New Zealand can also benefit from this vital right.

DACS is a member of the British Copyright Council who are also responding to this open consultation. DACS supports their comments particularly in respect of the term of copyright and support for a 'fair dealing' style of copyright exceptions.

About DACS

Established by artists for artists in 1984, DACS is a not-for-profit organisation that manages artists rights and campaigns on their behalf. Our mission is to provide services that help artists sustain their work. We collect essential income on their behalf, acting as the trusted broker for 100,000 artists worldwide.

In 2006, following lobbying by artists in the UK, the government made the Artist's Resale Right (ARR) part of UK law. For the first time, artists and their estates could earn a modest royalty on resales of works over €1,000 through galleries and auction houses. Prior to this, they could only earn money from one sale. This meant that if a work was resold, an artist could not benefit from its rising value.

Since 2006, DACS has distributed almost £79 million in ARR for artists and their estates, which represents a crucial source of funding to the visual arts and a vital contribution to the creative economy.

Yours faithfully,



Reema Selhi
Legal and Policy Manager
DACS

⁴ *The Economic Implications of the Artist's Resale Right*, Joëlle Farchy, Professor at the University of Paris I, Panthéon-Sorbonne, Paris, France; Kathryn Graddy, Fred and Rita Richman Distinguished Professor in Economics, Brandeis University, Boston. Accessed at: http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=389676