

Standing Committee on Copyright and Related Rights

Thirty-first Session
Geneva, December 7 to 11, 2015

PROPOSAL FROM SENEGAL AND CONGO TO INCLUDE THE RESALE RIGHT (DROIT DE SUITE) IN THE AGENDA OF FUTURE WORK BY THE STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS OF THE WORLD INTELLECTUAL PROPERTY ORGANIZATION

document presented by Senegal and Congo

PROPOSAL FROM SENEGAL AND CONGO TO INCLUDE THE RESALE RIGHT (DROIT DE SUITE) IN THE AGENDA OF FUTURE WORK BY THE STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS OF THE WORLD INTELLECTUAL PROPERTY ORGANIZATION

1. Article 14ter¹ of Paragraph (1) of the Berne Convention states that authors of a work of art shall enjoy “the inalienable right to an interest in any sale of the work subsequent to the first transfer by the author of the work”. This article establishes a right known as the “droit de suite” or “resale right”.
2. Under Article 14ter, paragraph (2) this right is subject to the requirement of reciprocity and “to the extent permitted by the country where this protection is claimed”. As a result, the existence and level of protection with regard to the resale right varies from one country to another and depends upon the nationality of the author or his/her place of residence.
3. Nowadays, more than 80 countries recognize the resale right in their national legislations and other countries are in the process of doing so. Artists have been able to benefit greatly from the advent of this right in Member States and it has helped to encourage creativity in the visual arts.
4. Nonetheless, there is still substantial progress to be made for this right to be acknowledged universally. A number of countries have still not incorporated this right into their own laws, and plastic artists in these states cannot claim or benefit from this protection in countries where it exists, owing to the requirement of reciprocity.
5. At the twenty-seventh session of the WIPO Standing Committee on Copyright and Related Rights (SCCR) which took place in April 2014, Senegal and Congo Brazzaville proposed for the first time ever that the subject of the resale right should be included in the future work of the Committee. This request received positive support from many Member States from the five continents.
6. When the SCCR last met at its thirtieth session on July 3, 2015, Congo Brazzaville renewed its proposal to include the resale right on the agenda of the SCCR and was supported by several Member States. The Chair of the SCCR indicated in his draft report that it would be opportune to analyse in greater detail the issues related to this subject at the next meeting

By including the resale right in the agenda of the work plan of the SCCR it will be possible to become acquainted with and understand legislations and national practices related thereto, in addition to carrying out comparative analyses and impact studies in order to identify the problems and determine the solutions that need to be found, especially with regard to WIPO and the role that it will play in ensuring that these solutions are appropriate.

8. Considering that :

**¹Article 14ter«Droit de suite» in Works of Art and Manuscripts:
1. Right to an interest in resales; 2. Applicable law; 3. Procedure**

(1) The author, or after his death the persons or institutions authorized by national legislation, shall, with respect to original works of art and original manuscripts of writers and composers, enjoy the inalienable right to an interest in any sale of the work subsequent to the first transfer by the author of the work.

(2) The protection provided by the preceding paragraph may be claimed in a country of the Union only if legislation in the country to which the author belongs so permits, and to the extent permitted by the country where this protection is claimed.

(3) The procedure for collection and the amounts shall be matters for determination by national legislation.

- a) The visual arts exist in each of the WIPO Member States and represent the culture and cultural heritage of each country ;
- b) The resale right is an important right that is recognized by the Berne Convention ;
- c) Offering the protection afforded by the resale right in places where it does not exist will stimulate cultural, social and economic development ;
- d) The resale right has not yet been applied in all countries that are Members of the Berne Convention, largely because this right is not mandatory in character;
- e) Which results in major differences with regard to the level of protection offered to visual artists all over the world ;
- f) Visual artists coming from or living in countries which do not protect the resale right suffer from a difference in treatment when compared with artists coming from countries in which this protection is offered ;
- g) The members and observers of the SCCR will benefit from knowledge arising from the exchange of experiences and practices relating to the resale right in places where it exists;

Priority should be given to the resale right among the subjects that will be included in the future work of the SCCR. This right should also be included in the agenda and in the work plan of the Committee.

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