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ROADMAP FOR THE IMPLEMENTATION OF ARTIST'S RESALE RIGHT IN LATIN AMERICA

prepared by the Delegation of Uruguay

Ministerio de Educación y Cultura | Consejo de Derechos de Autor

WIPO WORLD INTELLECTUAL PROPERTY ORGANIZATION

REGIONAL CONFERENCE ON THE AUTHOR'S RESALE RIGHT

organized by
the World Intellectual Property Organization (WIPO)

in cooperation with
the Copyright Council of Uruguay

and in collaboration with
the International Confederation of Societies of Authors and Composers (CISAC) and
the General Association of Authors of Uruguay (AGADU)

Punta del Este, Uruguay, April 29 and 30, 2026

REGIONAL ROADMAP

Prepared by the Copyright Council of Uruguay

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Five Vectors for Implementing the Artist's Resale Right (*Droit de Suite)* effectively in Latin America and the Caribbean

Introduction

The resale right allows visual artists (hereinafter referred to interchangeably as "authors" or "artists") and, where applicable, their successors in title to receive remuneration when their original works are resold on the secondary market. It addresses a particular characteristic of the visual arts. The artist typically parts with the original at the time of the initial sale and may be excluded from subsequent transactions, even as their career gains momentum and that same work attains a considerably higher value.

Latin America and the Caribbean have long experience with this right, but the situation varies greatly from one country to another. Some countries incorporated it into their legislation several decades ago. In others, statutory recognition of the right is more recent or pending. In some countries, the right exists formally but its design, regulatory shortcomings or difficulties in accessing information on resales seriously limit its application. Regional discussions showed that the issue can no longer be framed solely in terms of legislative recognition. Beyond the legal or institutional differences among countries, the discussions highlighted common concerns and objectives: (i) strengthening the position of visual artists, (ii) promoting more transparent and sustainable markets, and (iii) ensuring that the economic benefits derived from the circulation of works also reach their creators.

The figures help put this situation into perspective. In 2022, member societies of the International Confederation of Societies of Authors and Composers (CISAC) collected approximately €500,000 in visual arts royalties in Latin America, compared with €204 million in Europe. The Latin American figure had increased by 34% from the previous year but still represented a very small portion of the €220 million collected worldwide for this repertoire. Nonetheless, the region is not starting from scratch. There are copyright authorities, collective management organizations (CMOs), artists' organizations and professional market operators. In many cases, the priority will not be to create new structures, but rather to ensure that existing ones can manage the right, exchange information and better respond to the actual characteristics of the market. This was one of the clear conclusions of the regional debate.

Based on those discussions, five main vectors were identified to guide future work: clear legislation, collective management, traceability and transparency, effective enforcement, and international cooperation.

They should not be understood as five successive stages. Each country will have to determine where its main challenge lies. Legislation may be adequate, yet there may be no effective reporting mechanism. A CMO may be prepared to collect royalties but lack information on sales. In other cases, the priority will remain enshrining the right in law or adopting implementing regulations.

I. Clear legislation

The first issue is simple: the right provided for by law must actually be exercisable. Regional experience shows that the way the right is set forth in certain laws makes implementation – and collection in particular – very difficult. This occurs, fundamentally, when remuneration depends on demonstrating the increase in value of the work between one sale and the next. The author would have to be aware of previous transactions, obtain prices that are not normally made public and reconstruct a commercial chain over which they have little control.

A calculation basis directly linked to the resale price avoids much of this problem. The specific rate and any thresholds can be adapted to each country's market. What matters is that the royalty can be determined based on the transaction that gives rise to the right, without imposing on the author a burden of proof that, in practice, makes it impossible to exercise that right. The legislation must also resolve issues that directly affect administration: which works are covered, which resales give rise to the right, who must pay, who is required to provide information, and what happens after the author's death. The inalienability and non-waivable nature of the right protect the creator against an early waiver of the right. It is also advisable to review the definitions used to identify transactions subject to the right. The secondary market is no longer limited to public auctions. Galleries, art dealers, art fairs and digital platforms are all part of the resale channels. The legislation should be able to cover the relevant professional transactions regardless of the medium used.

Priority actions

- **Public authorities and legislators:** Review existing laws and regulations to identify provisions that hinder the effective exercise of the right and promote their reform or the adoption of implementing regulations when necessary.
- **Legislators:** In countries where the right does not yet exist, consider enacting it, taking into account the size and characteristics of the national market.
- **Public authorities and legislators:** Use an objective calculation basis linked to the resale price, avoiding the requirement that the author prove an increase in value.
- **Lawmakers and regulators:** Clearly define the works and transactions covered, the beneficiaries, the obligated parties, the reporting and payment obligations, and the duration of the right.
- **Legislators:** Ensure that the right is inalienable and non-waivable, and establish clear rules for its transfer upon death (*mortis causa*).
- **Public authorities, CMOs, and market professionals:** Ensure that the scope of application reflects how the market works, including transactions conducted through digital means.
- **CMOs and artists' organizations:** Provide input to legislative processes regarding obstacles encountered in the practical application of the right.

The WIPO Toolkit on Artist's Resale Right can be referred to when examining the various legislative options. It leaves considerable leeway for national legislators to adapt the system to their legal traditions and the characteristics of each market.

II. Collective management

Once a work leaves the artist's hands, it is difficult to track all subsequent resales individually. It may be a long time before it returns to the market, and the transaction may take place in another city or country. This is one of the reasons why collective management is particularly important for the resale right. A CMO can centralize information on repertoires and rights holders, receive data on transactions, and collect and distribute royalties. For galleries and auction houses, it also means having a point of contact to which they can report sales, rather than having to locate each author or successor individually.

In Latin America and the Caribbean, it seems inadvisable to assume that every country needs a new CMO. Where existing ones are able to expand their activities to include the visual arts, it may be more efficient to develop their capacity. The creation of a dedicated entity remains an option where circumstances warrant it. Management of the right also requires the active participation of authors. Without information about the works and their rights holders, distribution becomes much more difficult. Procedures for declaring works should be simple and, whenever possible, digital.

There must also be transparent rules on administrative deductions, distribution and the handling of amounts that cannot be allocated initially.

Global data show that this right represents a concrete source of revenue within the visual arts. In 2022, the resale right generated approximately €50 million out of the €220 million collected worldwide for this repertoire – that is, nearly a quarter of the total.

Priority actions

- **CMOs:** Assess whether existing structures can incorporate or strengthen the management of the visual arts before considering the creation of new organizations.
- **CMOs:** Establish simple systems for declaring works and keep information on authors and rights holders up to date.
- **CMOs:** Adopt clear rules regarding revenue collection, administrative expenses, distribution and the handling of unallocated amounts.
- **Authors:** Register their works and keep their information and that of their successors in title up to date.
- **Authors and societies of artists:** Actively participate in the structures that manage their rights and help to ensure that the visual arts are adequately represented.
- **Competent authorities:** Create the appropriate conditions for governance, transparency, and oversight of management entities.
- **CMOs:** Progressively expand representation agreements with CMOs abroad and build capacity to administer repertoires from other countries.

When resources are limited, it may be reasonable to start with those operators that account for a significant share of the formal market and expand coverage once the procedures have been tested.

III. Traceability and transparency

A key sticking point identified during the regional discussions was the lack of information. If it is not known that a work has been resold, who its artist is, or what the price was, there is no practical basis for calculating royalties. Part of this difficulty begins long before the resale. Some works circulate with incomplete documentation; some series are not clearly numbered, and some initial sales leave almost no record. Relationships between artists and galleries are also not always formalized. When the work reappears years later, identifying it and reconstructing its provenance can require considerable effort.

Artists can help from the outset by signing their works, correctly numbering series, and keeping basic information on early sales. Certificates of authenticity can be useful when the nature of the work requires it.

However, it would not be efficient to place the entire burden of traceability on the artist or to automatically create new records. Galleries, auction houses and other professionals already generate documentation: catalogs, contracts, invoices, provenance data and transaction records. In some jurisdictions, there are also professional registries designed to verify the origin of goods. Part of that infrastructure can also serve to manage the resale right.

Digitization opens up additional possibilities. For example, in the French auction market, online sales accounted for 34% of the lots sold in 2019, 68% in 2020, and 79% in 2021. That same year, 85% of auction houses reported some form of online auction activity. This experience is not directly transferable to all Latin American markets, but it does show that a growing portion of sales information is already generated digitally. The challenge is to prevent this information from being locked away in systems that do not communicate with one another. In this regard, technological

tools offer considerable potential for collecting and receiving information, especially in an increasingly globalized and digitized art market.

Priority actions

- **Artists:** Sign and document their works properly, number series when applicable, and retain basic information about initial sales.
- **Galleries, auction houses and other market professionals:** Maintain sufficient records to identify the artwork, artist, transaction date and resale price.
- **Market professionals and CMOs:** Define simple reporting formats that can be incorporated into standard sales processes.
- **Public authorities:** Assess whether existing administrative or professional records can be used to facilitate traceability before imposing new obligations.
- **CMOs:** Digitize the receipt and processing of information and work toward systems capable of exchanging data with other entities.
- **Professional associations:** Develop common documentation and reporting practices, especially for operators who do not have their own complex systems.
- **Art education and training institutions and artists' organizations:** Promote and strengthen visual artists' education on copyright and the professional management of their works; incorporate this content into their academic and professional training and enriching it in activities for them that have a practical focus on documenting works, contracts, authentication and copyright.

The goal should not be to accumulate information, but rather to have the necessary information available at the time a resale occurs.

IV. Compliance and effective enforcement

In several countries in the region, the problem arises after the right has been recognized. A resale takes place, but it is not reported; the information exists, but it does not reach the CMO; or the royalty is calculated, but not paid. Enforcement rules must be sufficiently clear so that an operator knows what to do without having to reconstruct the legal system every time a sale is organized. The law or regulations should specify who reports the transaction, who makes or withholds the payment, and the deadline for transferring the royalty. Regional experience offers mechanisms in which professional intermediaries assume direct obligations and are held accountable when they fail to comply. This type of solution prevents the author from having to pursue the seller individually after each transaction.

Access to information is equally important. The entities that manage the resale right need adequate means to request the necessary data and claim outstanding amounts. The authority responsible for overseeing the system must have sufficient powers to intervene when voluntary compliance fails. That does not mean that the only solution is to increase penalties. A portion of the Latin American market continues to operate in a highly informal manner. Costly or difficult-to-understand procedures may cause some transactions to remain outside the formal circuit. The possibility of combining legal obligations with incentives for formalization was thus raised in the course of the regional discussions. Some countries already have tax or cultural promotion incentives that could be examined for this purpose. No single regional incentive is being proposed. The idea is more modest: to identify, within each national system, whether there are instruments that can reward documentation and compliance without replacing the obligation to pay the royalty due under the right.

The way the system is explained is also important. The resale right is not a tax on the sale of works. It is an author's right. Presenting it correctly helps to avoid resistance based on a misunderstanding of its nature.

Priority actions

- **Legislators and regulators:** Define reporting and payment obligations accurately and set clear deadlines for compliance.
- **Legislators:** Provide for proportionate liability mechanisms when intermediaries subject to the law fail to meet their obligations.
- **Supervisory authorities:** Have sufficient powers to request information, verify compliance and enforce the measures provided for in the law.
- **CMOs:** Have mechanisms in place to request information on resales and claim outstanding amounts on behalf of rights holders.
- **CMOs and market professionals:** Simplify and digitize reporting and payment procedures whenever possible.
- **Galleries, auction houses, platforms, and other professional operators:** Incorporate the resale right into their standard sales procedures and retain the necessary documentation.
- **Professional associations:** Work with authorities and CMOs to develop codes of good practice and solutions for problems that arise in day-to-day implementation.
- **Public authorities:** Explore the possibility of using tax incentives or cultural promotion measures to support the formalization of the market when permitted by national law.

V. International cooperation

For many Latin American artists, a large part of the potential market lies outside their home country. A work initially sold in the region may appear years later in a foreign gallery or auction house. At such cases, no exclusively national system is sufficient. Article 14*ter* of the Berne Convention for the Protection of Literary and Artistic Works provides the international framework for the resale right and leaves it to States to decide whether to recognize it in their legislation. It also incorporates the principle of reciprocity. The geographical scope of the right is considerable. As of January 1, 2024, European Visual Artists (EVA) identified 106 countries with resale right provisions in their laws. The revised WIPO Toolkit cites this figure but adds a clarification particularly relevant to Latin America: the fact that the right is provided for in a country's law does not necessarily mean that an operational system for collection and distribution exists.

This is precisely where part of the regional effort can be focused. CMOs need to know in which foreign markets their artists' works circulate in order to decide where to prioritize representation agreements. An extensive network of agreements on paper is less useful than operational relationships with the markets where resales actually occur.

Data compatibility is another practical issue. It is not necessary for all countries to have the same legislation, but it would be helpful if CMOs could identify artists and repertoires, exchange information about a resale, and transfer royalties without having to reconstruct the data at every stage. The discussions in Punta del Este pointed to the need to make better use of the integration capacity that already exists in Latin America and the Caribbean and to make progress on cooperation among CMOs, databases and reciprocity agreements. Uruguay may have a particular to play in this process. Given its legislative experience and the involvement of its authorities and the General Association of Authors of Uruguay (AGADU) in administering the right, Uruguay could serve as a regional hub for sharing and replicating successful practices, adapting them to the circumstances of each country.

This would not mean creating a Uruguayan model for others to follow. The role could be more practical: connecting offices that are contemplating reforms with authorities that have already faced similar challenges; facilitating exchanges among CMOs; organizing technical sessions on reporting, collection, distribution and reciprocity; and pinpointing experiences in other Latin

American countries that could be tested or adapted to new contexts. A hub of this kind would also help to ensure continuity for the work begun in Punta del Este. AGADU could contribute its operational expertise, and Uruguayan authorities could provide their legislative and institutional perspective. WIPO, CISAC and other stakeholders could support specific activities as appropriate.

Priority actions

- **CMOs:** Identify the main foreign markets in which works from their repertoires circulate and use that information to establish cooperation priorities.
- **CMOs:** Expand reciprocal representation agreements with societies in the region and other relevant markets and ensure that they function effectively in practice.
- **CMOs:** Move towards compatible procedures for identifying repertoires, exchanging information and transferring royalties.
- **Public authorities:** Take into account the principle of reciprocity when drafting or amending legislation or regulations governing the right.
- **National authorities and regional and subregional integration mechanisms:** Use existing forums to share implementation experiences and resolve common problems.
- **Uruguay, through its competent authorities and AGADU:** Explore serving as a regional hub for technical exchanges, disseminating best practices that have proven effective, and supporting their adaptation to other national contexts.
- **Uruguay, AGADU, and interested partners:** Consider pilot projects or practical activities with countries at different stages of implementation.
- **WIPO and other international and regional organizations:** Continue to provide support to countries that request it through legislative assistance, capacity-building and forums for exchange, using, among other resources, the Toolkit on this right.

[Annex follows]

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