

PRESENTATION TO THE WIPO INTERNATIONAL CONFERENCE ON RESALE RIGHT

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Session 4: MANAGEMENT OF RESALE RIGHT

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My name is Judy Grady. I am the Manager of Visual Arts for Copyright Agency.

The Visual Art department is responsible for Resale Royalty and Viscopy Licensing

I joined Copyright Agency in 2010, shortly after they took on management of the new Resale Royalty Scheme. My role focused on Resale Royalty and on engagement with the art market professionals: art galleries, dealers and auction houses; ensuring they had the information they needed to meet their obligations under the scheme and to drive compliance. I am also a key contact for the Government, keeping them informed of the Scheme's performance.

In the next five minutes I'll give you an outline of the Australian Scheme, it's structure and a little bit about how we manage the Scheme.

I will also speak about a couple of concerns from the art market, at the time the scheme was introduced – with over six years' experience under our belt now, are they still concerns?

Resale Royalty in Australia

The purpose of the Resale Royalty rights is two-fold:

- Proper recognition of the artists' ongoing rights in their artworks
- Additional income through royalties derived from resales

Artists receive a royalty for eligible resales.

The royalty is 5% of the sales value including GST.

A resale is eligible when:

- the sales price is \$1,000 or more incl. GST
- the artist is alive or deceased no more than seventy years
- the work being sold was acquired by the seller after the scheme started on 9 June 2010
- the artist or their beneficiary meets the residency test; that is they are a citizen or resident of Australia or a reciprocating country

Note regarding international reciprocal arrangements:

The Resale Act allows for establishing reciprocal resale rights with countries which have implemented Article 14 of the Berne Convention for the Protection of Literary and Artistic Works.

Under these arrangements, Australian artists will receive royalties for their eligible artworks sold in reciprocating countries, and artists from reciprocating countries will receive royalties for their eligible artworks sold in Australia.

However, while we have commenced establishing reciprocal arrangements, these arrangements will not be activated until the Australian Government extends the scheme to other countries.

The WIPO and visual arts communities will be kept informed of progress.

Managing the Scheme

To manage the scheme we built systems and processes to streamline its operation.

A key element of this was the website.

Through the website art market professionals can up-load the resale reports.

There is a dashboard for artists and art market professionals to keep track of their resales.

We monitor the market and provide regular reminders for reports.

The legislation also enables us to send formal notice requesting reports.

As when the work was acquired by the seller is a key eligibility criteria, we are also monitoring the acquisition date for accuracy.

So six years in, the systems and processing is working well and the market has adapted and there is good compliance.

And over \$5 Million in Royalties generated.

Concerns at the start of the Scheme:

At the start of the scheme there was a key concern that only a few artists, who didn't need the royalty, would benefit.

Results have proved otherwise:

- Over 1400 artists have had an eligible resale
- These artists are at all stages of careers: emerging, mid-career, established
- 64% of the artists receiving royalties are Aboriginal or Torres Strait Islander
- and there is a spread of royalties around the country, with the scheme having remote, regional and urban impact
- Of the top 50 artists receiving the most money under the scheme, 22 are of Aboriginal or Torres Strait Island artists

Another concern was that it would be difficult to pay artists and their beneficiaries.

There are two elements to this, locating the rights holder; and paying them.

Let's start with paying them:

This has not provided difficult. Payment is working well with everyone having a bank account.

We make payments via electronic funds transfer to their accounts. We were originally also making payments by cheque, but now it's all pretty much EFT

In terms of locating artists and beneficiaries:

Copyright Agency has an extensive database, and is well versed in reaching out to rights holders.

We have developed great networks with public and private galleries as well as art centres and community health centres. The community health centres can be very useful when locating remote Indigenous artists.

In terms of identifying and locating beneficiaries, in addition to Copyright Agency's research expertise, we use a genealogist when necessary.

Overall it is going very well and we have maintained the value of the royalty, where we are looking for the rights holder or resolving payment details, to around 3% of the total royalty invoiced throughout the life of the scheme.

Before I finish a couple of observations:

- All parties see the very real value in the transparency and provenance the scheme encourages.
- And for some artists, they now have a much better understanding of the value of their work in the market. This is enabling them to make better decisions about who they sell

to and for how much. This relates in particular, to some of our Aboriginal and Torres Strait artists.

In closing, if I go back to the purpose of the scheme:

- recognising artists' ongoing rights in artwork
- and additional income for artists

...it is fair to say the Australian Resale Royalty Scheme is achieving this. And to quote Australian artist, Mandy Martin:

“Copyright and Resale Royalty payments appear in my account periodically, often during periods where there have been no primary sales and are very welcome.”

Artists' statement about Resale Royalty: **Nyurpaya Kaika**

For a long time non-Indigenous people have made a lot of money buying and selling the art work from Aboriginal artists. When we first heard about the resale royalty, we were excited. We understood that the resale royalty scheme was about ensuring a small amount of money is shared with the Aboriginal artist when the artwork sells on the second or third occasion.

It is right that this money is shared. Aboriginal people are poor. There are not many jobs in community, and we have lots of challenges with health and other problems. It often isn't an easy life for us. The one area where there are lots of jobs is in the art centres. Being an artist has always been a good job for desert people like me.

The income we make from the sale of our art work feeds our kids and grandkids.

We have seen non-Indigenous people saying in the newspapers, that this money from the second sale won't help Aboriginal artists and their families in communities. Well, this really isn't for outsiders to decide, it is for me and the other senior people to decide what we think will benefit our community.

Us Elders believe this money for Artists will truly help families, and we believe it is truly the right thing for a portion of the money to be shared. It's fair that when the work is sold, that there is a royalty for the Aboriginal artist who is still in community, working hard on their artwork, and trying to make a better future for their kids. This resale royalty might be important for all artists, but it is really important for Aboriginal artists.



Photo: Tjanpi Desert Weavers