Study on the Artist’s Resale Right

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The Artist’s Resale Right

• The Artist’s Resale Right provides an artist with the right to receive a royalty based on the resale price of an original work of art
  • What does “based on” mean exactly?
    European Law: resale price
    California Law: profit

• The right is “inalienable” and cannot be waived
Standard Economic Theory

• Ginsburgh (2005) details the negative effects of the Artist’s Resale Right
  • It negatively effects the price that can be achieved in the original sale by the artist
  • It negatively affects the competitiveness of markets where it is implemented (relative to markets without the Right)
• Tepper (2007) provides a good understanding of the historical rationale of the Artist’s Resale Right, but he is especially critical of the property the right is inalienable and therefore cannot be waived by the artist
The Artist’s Resale Right in the UK

• Result of harmonization of laws across the EU
• Directive 2001/84/EC of the European Parliament and of the Council on the resale right for the benefit of the author of an original work of art was adopted on 27 September 2001
• The Artist’s Resale Right, as it is known in the UK, was implemented on 14 February 2006
• The right at first applied only to works by living artists
• In 2012 the right was extended to the heirs of artists for up to 70 years after death
• Any single payment cannot exceed €12,500
• Payments are to be gathered through a collecting society
• There will be no commissions payable on sales beneath €1,000
Theoretical Predictions on Price

• The Artist’s Resale Right should lower the initial price an artist receives for his work
• All future prices, achieved at art auctions and through dealers, should also be lower because of expected future payments to the artist
• As soon as there is a firm expectation of the implementation of the Artist’s Resale Right, whether or not it has actually been implemented, prices should decline because of future expected payments
Theoretical Predictions on Returns

• If the presence of the Artist’s Resale Right is known at the original sale, the return to holding a work of art as the effect of these rights will be reflected in the original price and all subsequent prices.

• If the Artist’s Resale Right were newly implemented between two auction sales, and this implementation was unexpected, then the effect of the Right will be reflected in the second sale price, but not the first, resulting in lower returns or price growth relative to no implementation.
Theoretical Predictions on Competition

• If some countries implement the Artist’s Resale Right and others do not, owners of art will wish to sell their works in countries without the Right, avoid the payment due on sale, and avoid the lower prices that buyers would be willing to pay because of future expected royalty payments.

• Thus, the UK, by implementing the Artist’s Resale Right, would be expected to lose sales to countries such as the US and Switzerland who have no plans to implement it.
Banterngansha and Graddy (2011)  
Methodology  
• Compare changes in price and number of sales over time in countries in which there was no change in law relative to the UK  
• Compare changes in price and number of sales of art that is eligible for the Artist’s Resale Right relative art that is not  
• Price comparisons are done by constructing an index; index construction is done in two ways: hedonic and repeat sales analysis
Data

• We analyze the auction market by using all paintings over 1000 euros as recorded by Hislop’s Art Sales Index’s

• 5 periods:
  – Period 1: August 1, 1996 -- July 31\textsuperscript{st}, 1997
  – Period 2: August 1\textsuperscript{st}, 2000 -- July 31\textsuperscript{st}, 2001
  – Period 3: March 1\textsuperscript{st}, 2003 – February 29\textsuperscript{th}, 2004
  – Period 4: August 1\textsuperscript{st}, 2004 – July 31\textsuperscript{st}, 2005
  – Period 5: August 1\textsuperscript{st}, 2006-- July 31\textsuperscript{st}, 2007.

• In total: 572,118 works of art
## Average Price Growth per Year

<table>
<thead>
<tr>
<th></th>
<th>UK</th>
<th>US</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject to the ARR</td>
<td>0.077*</td>
<td>Subject to the ARR</td>
</tr>
<tr>
<td>Not subject to the ARR</td>
<td>0.055*</td>
<td>Not subject to the ARR</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>France</th>
<th>Switzerland</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject to the ARR</td>
<td>0.034*</td>
<td>Subject to the ARR</td>
</tr>
<tr>
<td>Not subject to the ARR</td>
<td>0.035*</td>
<td>Not subject to the ARR</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Germany</th>
<th>Other Countries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject to the ARR</td>
<td>0.017*</td>
<td>Subject to the ARR</td>
</tr>
<tr>
<td>Not subject to the ARR</td>
<td>0.016*</td>
<td>Not subject to the ARR</td>
</tr>
</tbody>
</table>
(Difference in Difference in Average Price Growth per Year)

\[ \text{UK}_{\text{subject to the ARR}} - \text{UK}_{\text{not subject to the ARR}} \]

(Country \(_i\) subject to the ARR - Country \(_i\) not subject to the ARR)

<table>
<thead>
<tr>
<th></th>
<th>US</th>
<th>France</th>
<th>Switzerland</th>
<th>Germany</th>
<th>All</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.031*</td>
<td>0.022*</td>
<td>0.024</td>
<td>0.021*</td>
<td>0.001</td>
<td></td>
</tr>
</tbody>
</table>

Calculation: \(0.031 = 0.077 - 0.055 - (0.042 - 0.052)\) (with rounding)

Calculation: \(0.022 = 0.077 - 0.055 - (0.034 - 0.035)\) (with rounding)
Comparison of Number of Artwork Sold

<table>
<thead>
<tr>
<th>Country</th>
<th>Period 1</th>
<th>Period 2</th>
<th>Period 3</th>
<th>Period 4</th>
<th>Period 5</th>
<th>P5-P1</th>
<th>P5-P4</th>
</tr>
</thead>
<tbody>
<tr>
<td>France: Eligible</td>
<td>1156</td>
<td>1462</td>
<td>1075</td>
<td>1555</td>
<td>2323</td>
<td>101%</td>
<td>49%</td>
</tr>
<tr>
<td>France: Other</td>
<td>8854</td>
<td>14424</td>
<td>12235</td>
<td>14806</td>
<td>15908</td>
<td>80%</td>
<td>7%</td>
</tr>
<tr>
<td>Germany: Eligible</td>
<td>628</td>
<td>687</td>
<td>621</td>
<td>865</td>
<td>911</td>
<td>45%</td>
<td>5%</td>
</tr>
<tr>
<td>Germany: Other</td>
<td>7331</td>
<td>7957</td>
<td>7085</td>
<td>9532</td>
<td>7472</td>
<td>2%</td>
<td>-22%</td>
</tr>
<tr>
<td>Switzerland: Eligible</td>
<td>96</td>
<td>101</td>
<td>57</td>
<td>101</td>
<td>49</td>
<td>-49%</td>
<td>-51%</td>
</tr>
<tr>
<td>Switzerland: Other</td>
<td>2796</td>
<td>3251</td>
<td>2653</td>
<td>3662</td>
<td>2732</td>
<td>-2%</td>
<td>-25%</td>
</tr>
<tr>
<td>United Kingdom: Eligible</td>
<td>1487</td>
<td>1733</td>
<td>2001</td>
<td>2773</td>
<td>3653</td>
<td>146%</td>
<td>32%</td>
</tr>
<tr>
<td>United Kingdom: Other</td>
<td>24465</td>
<td>23759</td>
<td>21028</td>
<td>23710</td>
<td>28788</td>
<td>18%</td>
<td>21%</td>
</tr>
<tr>
<td>United States: Eligible</td>
<td>575</td>
<td>641</td>
<td>699</td>
<td>972</td>
<td>1283</td>
<td>123%</td>
<td>32%</td>
</tr>
<tr>
<td>United States: Other</td>
<td>18873</td>
<td>18044</td>
<td>20740</td>
<td>26688</td>
<td>29603</td>
<td>57%</td>
<td>11%</td>
</tr>
<tr>
<td>All Other: Eligible</td>
<td>3080</td>
<td>4322</td>
<td>5511</td>
<td>6428</td>
<td>6531</td>
<td>112%</td>
<td>2%</td>
</tr>
<tr>
<td>All Other: Other</td>
<td>26065</td>
<td>29951</td>
<td>32557</td>
<td>39244</td>
<td>34529</td>
<td>32%</td>
<td>-12%</td>
</tr>
<tr>
<td>All: Eligible</td>
<td>7022</td>
<td>8946</td>
<td>9964</td>
<td>12694</td>
<td>14750</td>
<td>110%</td>
<td>16%</td>
</tr>
<tr>
<td>All: Other</td>
<td>88384</td>
<td>97386</td>
<td>96298</td>
<td>117642</td>
<td>119032</td>
<td>35%</td>
<td>1%</td>
</tr>
</tbody>
</table>

Note: The EU directive on droit de suite came into effect on September of 2001, between periods 2 and 3. The UK implemented droit de suite in February of 2006, between periods 4 and 5.
Conclusion of Empirical Studies

• Using data between 1996 and 2007, we were not able to measure a negative effect on price or quantity sold of art subject to the ARR relative to other countries or other types of art since the introduction of the Artist’s Resale Right.

• In a more recent study, using data between 2002 and 2014, Capelle, Farchy and Moureau (2016), came to the same result.
Case Studies of Artists in the UK

• 2008 interviews of 11 artists
  – All 11 were in favor of, or satisfied with, the implementation of the Artist’s resale right in the UK
  – These artists were chosen by DACS – the UK collecting society and all had recently received a payment
  – Only 2% of the approximately 50,000 artists in the database would have had a resale at that time
Case Studies of Artists in the UK

• 4 Contemporary Case Studies by DACS
  – Fairness as other creative media have copyright laws
  – Auction houses are wealthy and should be giving back to society
  – Like the fact that the works can be tracked in the marketplace
  – Children will inherit work, and it will be expensive to keep up – an implicit argument for rights payed to heirs
  – Collectors buy works for a fraction of the price for which it resold
Resale Rights in Australia: Indigenous Artists

• Slow implementation in Australia
  – Implemented for all art in 2010, but first resale after 2010 was not covered, 5% royalty payment
  – 65% of the artists who received payments were Aboriginal or Torres Strait Islander artists, they received 38% of royalties
  – Indigenous artists received only about 1.4 million dollars in the first four years of implementation
  – Some concern about effect on community-owned Indigenous Art Centers
  – In a 2013 survey, artists were overwhelmingly in favor
Conclusions

• Economic theory predicts negative effects on price and competitiveness in markets
• Empirical studies have shown no effect on price or competitiveness of markets
• Artists are overwhelmingly in favor