

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 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

Banternghansa 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 31st, 1997
 - Period 2: August 1st, 2000 --July 31st, 2001
 - Period 3: March 1st, 2003 – February 29th, 2004
 - Period 4: August 1st, 2004 – July 31st, 2005
 - Period 5: August 1st, 2006-- July 31st, 2007.
- In total: 572,118 works of art

Average Price Growth per Year

UK		US	
Subject to the ARR	0.077*	Subject to the ARR	0.042*
Not subject to the ARR	0.055*	Not subject to the ARR	0.052*
France		Switzerland	
Subject to the ARR	0.034*	Subject to the ARR	0.009
Not subject to the ARR	0.035*	Not subject to the ARR	0.012*
Germany		Other Countries	
Subject to the ARR	0.017*	Subject to the ARR	0.068*
Not subject to the ARR	0.016*	Not subject to the ARR	0.047*

(Difference in Difference in Average Price Growth per Year)

$$[\text{UK}_{\text{subject to the ARR}} - \text{UK}_{\text{not subject to the ARR}} \\ (\text{Country}_{i \text{ subject to the ARR}} - \text{Country}_{i \text{ not subject to the ARR}})]$$

US	France	Switzerland	Germany	All
0.031*	0.022*	0.024	0.021*	0.001

Calculation: $.031 = .077 - .055 - (.042 - .052)$ (with rounding)

Calculation: $.022 = .077 - .055 - (.034 - .035)$ (with rounding)

Comparison of Number of Artwork Sold

Table 1
Observations

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

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 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 is 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