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Artists' resale royalty scheme: What it means for the Indigenous Art Centres

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Detail from *Watanuma* by Kaapa Tjampitjinpa
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More information

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On 9 June 2010, a new scheme to benefit artists starts operation. The scheme will entitle artists to a 5% royalty on certain resales of their works. It also requires people in the business of buying and selling artworks to report certain information about resales of artworks.

The government has engaged Copyright Agency Limited (CAL) to administer the scheme. There is information about the background to the scheme on the website of the Department of the Environment, Water, Heritage and the Arts at www.arts.gov.au/resale_royalty and on CAL's website (www.copyright.com.au).

This information sheet is for guidance only. It is not legal advice.

How does the scheme affect Indigenous art centres?

The scheme affects Indigenous art centres in a number of ways. In some cases, art centres may have legal obligations to report information to CAL, and in some cases to pay royalties. Apart from that, art centres have an important role to play in letting their artists know about the scheme, and helping CAL to identify and find artists for whom royalties have been paid.

CAL would also like to work with Indigenous art centres to collect information about sales from the art centre that may not be covered by scheme. CAL envisages that there would be benefits for art centres in doing this, which CAL would like to discuss with you.

How the scheme will work

An art centre will have legal obligations under the scheme if it holds artworks it has purchased from artists and/or if it will be purchasing artworks from artists in the future.

Artworks purchased before 9 June 2010

If you are holding artworks you have purchased from artists, and you sell them after 8 June, you will need to give CAL certain information about those sales. You will be able to do this online on the resale royalty website (www.resaleroyalty.org.au), using an online form or by uploading a document such as a spreadsheet. We are happy to talk to you about how to make this reporting as easy as possible for you.

Make a list of stock held at 8 June 2010

We suggest that you make a list of stock held as at 8 June 2010. The list should at least include a description of the work, and (if known) its title. Other information, if you know it, would include:

- artist's name;
- date you acquired the work;
- whether you own the work or hold it on consignment; and
- any features to assist with identification (e.g. art centre's identification mark on back of painting).

We suggest that on, or accompanying the list, there is a statement by the art centre's director along the following lines:

I [name of director], Director of [name of art centre] state that this is a list of stock held by [name of art centre] on [date].

This statement should be signed and dated. You may also want to have the signature witnessed (for example, by your accountant or a Justice of the Peace), and you may want to provide the original to someone like your accountant for safekeeping.

You are not obliged to provide the list to CAL, but if you do, it will help CAL determine which transactions require payment of the resale royalty.



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Artworks purchased from 9 June 2010

If you purchase artworks after 8 June, you will need to give CAL information about those sales, and, if the work is sold for \$1,000 or more, ensure that the resale royalty is paid.

You will be able to make online payment of resale royalties (at www.resaleroyalty.org.au). Again, CAL is happy to talk to you about ways to manage payment that will work for you.

Artworks sold on consignment

If you take works on consignment from artists, rather than purchasing them, you are not legally obliged to report your sales of those works to CAL. Nor are they subject to the resale royalty. CAL would, however, like to discuss with you ways in which that sales information could be provided to CAL, as it will assist CAL to manage subsequent sales of those works.

Some FAQs for Indigenous art centres

When an art centre purchases an artwork from an artist do we pay the resale royalty?

There is no resale royalty on the first sale of the work, from artist to owner or art centre.

Does the scheme apply to existing works?

Yes. The obligations to provide information and pay royalties apply to resales, from 9 June 2010, of existing as well as new works.

If a buyer agrees to buy a work, but negotiates to pay in 30 days time, when is the royalty payable?

The royalty is payable as soon as ownership is transferred. This will be determined by the terms of sale, and when the purchaser gets title to the work (before or on payment for the work).

If an art centre pays an artist an advance against a future sale, or on consignment, is the sale of the work by the art centre a commercial resale?

If the artist still owns the painting when the art centre sells the painting, no. The sale by the art centre will transfer ownership of the painting from the artist to the purchaser, and will not be subject to payment of the royalty. Whether or not the artist retains ownership of the work will depend on the terms on which the advance is given.

How much will CAL deduct from the resale royalties?

CAL's administrative fee will be 10% of the royalties collected.

Who has the legal obligation to pay the royalty?

The art centre and the buyer are jointly liable to pay the royalty. This means that CAL can recover the royalty from one or both of them.

Information for artists

There is information for artists on CAL's website at http://www.copyright.com.au/Resale_Royalty/For_Artists/For_Artists.aspx.

CAL is producing a poster about the scheme for artists, which we will be asking you to display in your centre. We will also be asking other organisations visited by artists to display the poster, and we welcome suggestions about places where the poster could be displayed.

About Copyright Agency Limited (CAL)

CAL is a non-profit organisation, established in 1974, that collects and distributes copyright fees for authors, artists, photographers, publishers and others.

There is more information about CAL, and the resale royalty scheme, on its website www.copyright.com.au.

For more Information, contact:

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