Originating in France in 1920 and currently recognised by sixty national legislations, the resale right is specific to graphic and plastic artworks.

Article L. 122-8 [1] of the French intellectual property code defines it as “a non-transferable right to participate in the proceeds of any sale of a work after the first sale by the artist or his/her beneficiaries, when an art market professional is involved as seller, buyer or broker”.

Since the price of works generally increases over time, with successive sales, the resale right allows artists to benefit from the increase in value of their works on the art market. It helps establish a balance between creators of graphic and plastic arts and creators in other creative disciplines (music, literature, audiovisual…), who more easily draw revenues from the reproduction or performance of their works.

For creators of visual arts, the resale right is currently the most important right in economic terms.

>> For practical details about the resale right, see this page [2]

Beneficiaries of resale right

- **During the lifetime of the artist**

The resale right is enjoyed by “creators of original graphic and plastic works who are citizens of a member state of the European Community or a country party to the agreement on the European economic area” (article L. 122-8 [3]).

It can also benefit :

- artists who are not citizens of a member state of the European community or a country party to the agreement on the European economic area “when their national legislation grants this right to artists from the countries mentioned above and their beneficiaries and for the period during which they are allowed to exercise this right in their country” (principle of reciprocity) ;

- artists who are not citizens of a member state of the European community or a country party to the agreement on the European economic area “who, during their artistic career, have participated in French artistic life and have lived in France for at least five years, even if non-consecutive”.

The artist alone can benefit from the resale right, which is non-

transferable. This non-transferability, established on a European (2001/84/EC [4]) and international level (Bern Convention), means that the resale right cannot be assigned. This restriction applies not only to the users but also to the artists themselves: it is intended to protect them from the pressures of speculators, by preventing them from selling for too low a price a right that might generate considerable royalties a few years later. Any contractual clause stipulating an assignment of all or part of the resale right is invalid.

• On the death of the artist

The resale right cannot be bequeathed. On the death of the artist, it "continues in favour of his/her heirs and, for the beneficial title stipulated in article L. 123-6 [5], his/her spouse, with the exclusion of all legatees and assigns, during the current calendar year and for the following 70 years".

Works to which resale right applies

The resale right does not apply to all works of the mind. The intellectual property code precisely defines the works to which the resale right might be applicable.

• The resale right applies to graphic and plastic works of art

The resale right is only applicable to graphic and plastic works of art.

Article R. 122-3 [6] stipulates that this includes works "such as pictures, collages, paintings, drawings, engravings, prints, lithographs, sculptures, tapestries, ceramics, glassware, photographs and plastic creations on audiovisual and digital media".

The list is not limitative ("such as"): all graphic and plastic works of art – in particular design works and applied arts – are included.

• The resale right applies to "original" works

The resale right is only due for "original" works. This is a specific criterion of originality, which is not the same as the one on which copyright protection is dependent.

As per article L. 122-8 [3], original works are "the works created by

the artist him/herself and the copies produced in a limited quantity by the artist him/herself or under his/her control".

Two categories of works must therefore be considered as original :

1° Works created by the artist him/herself: painting done by the painter, furniture made in a single copy, marble sculpted by the artist...

2° Works made in a limited quantity by the artist him/herself or under his/her control: bronze sculptures, copies of photographs, limited edition designer items... Article R. 122-3 [6] requires that such works are "numbered or signed or otherwise duly authorised by the artist".

This second point marks the boundary between copies produced "industrially", which can generate revenues on the basis of the reproduction right, and copies made in a limited number by the artist or under his/her control, which, as originals, have an increased valued on the art market: in such a case, the artist can perfectly legitimately participate in this enhancement in value thanks to this resale right.

The requirement of a "limited" number of copies does not mean that this number must be small: it simply means that the number of copies made must be finite. In this regard, the presence of numbering or a signature confirms this limited nature. But if other elements can demonstrate unequivocally that the artist has only authorised a limited number of copies, the works concerned will be eligible for the resale right.

The intellectual property code stipulates that the following in particular should be considered to be originals (article R. 122-3 [6]) :

"a) Original engravings, prints and lithographs produced in a limited quantity from one or more plates;
b) Copies of sculptures, limited to twelve, including numbered copies and artist's proofs;
c) Handmade tapestries and textile works of art, based on original models provided by the artist, limited to eight copies;
d) Enamelwork pieces made completely by hand and signed by the artist, limited to eight numbered copies and four artist's proofs;

e) Signed photographic works, limited to thirty copies, regardless of the format and medium;

f) Plastic creations on audiovisual or digital medium, limited to twelve copies.”

For other types of works, three general criteria apply: the copy will be considered an original work if it has been either numbered, signed or duly authorised in another way by the artist.

Sales on which resale royalty is payable

The resale right only applies to sales in which “an art market professional is involved as seller, buyer or broker” (article L. 122-8 [3] of the intellectual property code); this includes galleries, auction houses, art dealers, etc

Therefore, sales between two individuals, without any other party involved, are not covered. But the sale of an asset at auction, through an auction house or auctioneer, comes within the scope of application of the resale right (even if the buyer and seller are individuals).

The French intellectual property code also requires that the sale “take place on French territory” or that it is “subject to value added tax” there (article R. 122-2 [7]).

However, certain sales are excluded from the scope of the resale right :

- Sales of works for a price under 750 Euros (article R. 122-5 [8])

- The first transfer of the work (sale, gift) made by the artist or his/her beneficiaries (article L. 122-8 [3]).
- Resale within less than three years after the direct purchase of the work from the artist, provided that the resale price does not exceed 10,000 Euros.

Amount of resale royalty

The amount of the resale royalty is determined by applying a percentage to the sale price of the work excluding tax: price awarded by auction for public auctions, sale price received by seller in other cases (article R. 122-5 [8] of intellectual property code).

It is calculated by applying a reducing schedule based on the amount for which the work is sold (article R. 122-6 [9]):

- 4% for the first tranche of the sale price up to 50,000 Euros
- 3% for the tranche of the sale price between 50,000.01 Euros and 200,000 Euros
- 1% for the tranche of the sale price between 200,000.01 Euros and 350,000 Euros
- 0.5% for the tranche of the sale price between 350,000.01 Euros and 500,000 Euros
- 0.25% for the tranche of the sale price over 500,000.00 Euros.

The resale royalty is limited to 12,500 Euros. Unfortunately for creators of visual arts, it is the only royalty to be limited.

Example :

For a work sold for 230,000 Euros, the resale royalty due will be 6,800 Euros, i.e. :

- 2,000 Euros for the first tranche of the sale price (4% x 50,000 Euros),
- 4,500 Euros for the second tranche (3% x 150,000 Euros),
- 300 Euros for the third tranche (1% x 3,000 Euros).

Payment of resale royalty

According to article L. 122-8 [3] of the intellectual property code, “the resale royalty is payable by the seller”.

However, the art professional involved in the sale is responsible for making the payment (if the sale takes place between two professionals, the seller will be responsible).

Art professionals must inform specially approved collecting societies of any sale on which the resale royalty is due (article R. 122-10 [10]).

Failure to declare sales or pay the resale royalty is punishable by the fine stipulated for third category offences (article R. 122-12 [11]).

>> See obligations of art professionals concerning resale royalties. [2]

Links

[1] http://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000006278925&cidTexte=LEGITEXT000006069414&dateTexte=20130408&oldAction=rechCodeArticle
[2] http://www.adagp.fr/en/author-right/property-rights/en/utilisateur/droit-de-suite
[3] http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=F24611653BB9276DD25E08E73E24D831.tpdjo15v_1?idArticle=LEGIARTI000006278925&cidTexte=LEGITEXT000006069414&dateTexte=20130408
[4] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0084:FR:HTML
[5] http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=F24611653BB9276DD25E08E73E24D831.tpdjo15v_1?idArticle=LEGIARTI000006278947&cidTexte=LEGITEXT000006069414&dateTexte=20130408
[6] http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=3BE522D8AA9A0B042841C7EB33A75583.tpdjo15v_1?idArticle=LEGIARTI000020085905&cidTexte=LEGITEXT000006069414&dateTexte=20130408
[7] http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=3BE522D8AA9A0B042841C7EB33A75583.tpdjo15v_1?idArticle=LEGIARTI000020085910&cidTexte=LEGITEXT000006069414&dateTexte=20130408
[8] http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=3BE522D8AA9A0B042841C7EB33A75583.tpdjo15v_1?idArticle=LEGIARTI000020085896&cidTexte=LEGITEXT000006069414&dateTexte=20130408
[9] http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=3BE522D8AA9A0B042841C7EB33A75583.tpdjo15v_1?idArticle=LEGIARTI000020085891&cidTexte=LEGITEXT000006069414&dateTexte=20130408
[10] http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=3BE522D8AA9A0B042841C7EB33A75583.tpdjo15v_1?idArticle=LEGIARTI000020085870&cidTexte=LEGITEXT000006069414&dateTexte=20130408
[11] http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=3BE522D8AA9A0B042841C7EB33A75583.tpdjo15v_1?idArticle=LEGIARTI000020085857&cidTexte=LEGITEXT000006069414&dateTexte=20130408