

The Law Industry Trends

Copyright And Artists' Resale Rights

Unlike in the case of novelists and musicians, visual artists, which include photographers, sculptors and painters, do not directly benefit or are not enriched from payments when their works are continuously bought and sold in global markets. They do not generate significant income from the rights such as reproduction and communication rights afforded to other creators under copyright law.

by: **Olasubomi Abina,**
Libra Law Office



INTRODUCTION

Unlike novelists and musicians, visual artists such as photographers, sculptors and painters do not directly benefit or are not enriched from downstream payments when their works are continuously bought and sold in global markets. They do not generate significant income from the reproduction and communication rights provided to other creators under copyright law.

Droit de suite or Artist's Resale Right (ARR), a concept that traces its origin to France in the 1860s, exists as an economic justification for all that the artists lose during their creative lifetime.

The point of the artist's resale right was to correct this ever-evident imbalance by ensuring that visual artists can receive a small percentage of the sale price of a piece when it is resold. Droit de suite or Artist's Resale Right (ARR), a concept that traces its origin to France in the 1860s, exists as an economic justification for all that the artists lose during their creative lifetime. ARR is considered a moral right of the artist. The share in the resale indicates that when the work's value increases later, it is assumed that the increased value was already inherent in the piece from the very start.

ARTIST'S RESALE RIGHTS

LIBRA
Barristers, Solicitors, Arbitrators & Notaries

Appearing first in France in 1920, Droit-de-suite, or Artist Resale Rights, is a moral and economic right as well as an extension of the personhood theory of copyright, which claims that the creator of a work holds onto some property interests in the work as it is a part of their personhood. Moral rights allow artists to receive royalties for subsequent sales of their works.

The Minister of Culture and Communication from Senegal, Mr. Mbagnick Ndiaye, noted that while the value of the African art market has increased more than a thousand-fold since 2007, the artists responsible for these works rarely enjoy any of the benefits of their commercial success. 'The artist's resale right is a question of equity,' he said. It ensures that artists are fairly compensated regardless of where their works are sold and establishes a balance between artists and those who trade in their works.

He said the right also "allows artists to maintain a permanent link with their work, which is of the utmost importance in an era of globalization marked by increasing circulation of artworks."

Intrinsically, the rights conferred, which are to be bestowed on to artists under the principle of droit-de-suite, primarily aim to provide artists and their families the opportunity to benefit from the financial gains attached to future sales of their works. As such, there are several arguments supporting it. The foremost benefit is an economic benefit, by providing artists with a source of future income for past works. This allows artists to focus on making new art without having to deal with the constraints of having to sustain themselves financially.

¹ "The Artist's Resale Right: A Fair Deal for Visual Artists." *The Artist's Resale Right: A Fair Deal for Visual Artists*, June 2017, www.wipo.int/wipo_magazine/en/2017/03/article_0001.html.

LIBRA LAW OFFICE

4, Probyn (Onisowo) Road, Ikoyi, Lagos, Nigeria

Postal Address: P.O Box 53015, Falomo, Ikoyi, Lagos, Nigeria

Telephone: 01-6281981 | +234 (0) 9046537758

Email: libra@libralawoffice.com

@Libralawoffice

COPYRIGHT LAW

In Nigeria, copyright is infringed by any person who without the license or authorization of the owner of the copyright uses or causes the copyrighted work to be used. The copyright law in Nigeria Has several categories and the duration of rights. The First Schedule of the Copyright Act provides that:

- In the case of literary, musical, or artistic works (photographs are not included), copyright will be given for a period of 70 years after the end of the year in which the author dies. If the work is created by a corporate body, then the copyright will last for 70 years after the end of the year in which the work was first published.
- In the case of cinematography, films, and photographs, the copyright will last for a period of 50 years after the end of the year in which the work was first published.
- In the case of sound recordings, the copyright is given for a period of 50 years after the end of the year in which the recording was first made.
- Where it is broadcast, the copyright will last 50 years after the end of the year in which the broadcast first took place.

This information shows that although Nigeria has firm copyright laws, however, they do not address or seem to lend support to the cause of Artist Resale right. None of the information obtained during this research leans towards Nigeria's participation in and support of the beliefs of Artist resale rights.²

CONCLUSION

Barristers, Solicitors, Arbitrators & Notaries

Although Nigeria's copyright laws firmly protect the right of artists against their work being stolen or misappropriated, it does not delve into the issues of royalties and perpetual payments as is explained in Droit de suite or Artist's Resale Right (ARR). This begs the question of what the solution is for artists in Nigeria who wish to be fairly compensated for their work over their lifetime, since Nigeria does not subscribe to the principles outlined under Droit-de-suite or Artist's Resale Right (ARR), are there other avenues to achieving the same result?

Artists can enter into private contracts before selling their works, and the effect of this is, it can in a way mimic the desired effects of the Artist Resale right, which is to see that artists get paid not only every time their work is resold but essentially allowing them to benefit from the increase in value of said work that accrues over time. By entering into private contracts with prospective buyers or art dealers, the contract can stipulate grounds in which a percentage of resale fees will belong to the artist every time his work is resold in his lifetime and thereafter.

² Ref Section 1 Copyright Act

LIBRA LAW OFFICE

4, Probyn (Onisowo) Road, Ikoyi, Lagos, Nigeria

Postal Address: P.O Box 53015, Falomo, Ikoyi, Lagos, Nigeria

Telephone: 01-6281981 | +234 (0) 9046537758

Email: libra@libralawoffice.com

www.libralawoffice.com