

DECEASED ARTISTS AND THE RESALE RIGHT

By Mark Dennis

The UK Intellectual Property Office is seeking views on whether to maintain the existing derogation on the Artist's Resale Right. The derogation prevents the resale right applying in the UK to works created by deceased artists.

The Artist's Resale Right was introduced in the UK in 2006 by the implementation of Directive 2001/84/EC. Broadly, the right allows artists and their heirs to receive a relatively small royalty whenever one of the artist's copyright works is resold in a transaction involving art market professionals. It is therefore effectively a form of taxation, rather than an intellectual property right as such.

Currently the UK uses a derogation in the Directive to limit the resale right to works by living artists. This derogation will expire on 1 January 2010, but the UK Government has the option to seek to extend it for a further (and final) two years under the Directive.

The balancing act is essentially between the interests of deceased artists' estates, who stand to lose a further two years of royalties if the derogation is maintained, and the general health and economic viability of the UK art market, which arguably needs time to adapt to this new regime and develop efficient payment systems. The IPO favours maintaining the derogation. This is probably the more cautious approach, but it will no doubt not garner support amongst artists' estates.