

Resale right: why Switzerland has none

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One legal difference between Switzerland and the European Union is of particular importance for the art market: the artist's resale right, or *droit de suite*. Under Directive 2001/84/EC, the member states of the European Union grant artists and their heirs a right to a percentage of the price when their works are resold by an art market professional, with a sliding scale of rates and a cap of 12,500 euros per sale. The United Kingdom introduced the right in 2006 and retained it after leaving the European Union. Switzerland does not have a resale right. Proposals to introduce one have been made several times in the context of copyright reform, most recently during the revision of the Copyright Act that entered into force in 2020, but they did not find a majority in Parliament.¹

The absence of a resale right gives Switzerland a modest competitive advantage as a place for the resale of works by living artists and by artists who died less than seventy years ago. Its practical importance for Art Basel should not be overstated, since many sales at the fair are primary sales by galleries representing artists, to which the resale right would not apply. For secondary market sales of works by such artists, a sale in Basel may nonetheless save a few per cent of the price compared with a sale in Paris or London. Artists' associations have criticised the absence of the right as unfair to artists, who do not share in the increase in value of their works. The debate is likely to continue.²

1 Notes

1. On the resale right under Directive 2001/84/EC of 27 September 2001 (rates and cap of EUR 12,500), its introduction in the United Kingdom in 2006 (Artist's Resale Right Regulations 2006), and the absence of a resale right in Swiss copyright law (URG, SR 231.1), including the unsuccessful proposals during the revision in force since 1 April 2020,

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see the relevant legislation and parliamentary materials. To be verified.
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2. On the debate on the introduction of a resale right in Switzerland and the position of the artists' associations (for example Visarte), see the parliamentary materials on the revision of the Copyright Act and the publications of the associations. Status to be verified. ↩

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