

A.L. 174 ta' l-2006

**ATT DWAR ID-DRITTIJIET TA' L-AWTUR
(KAP. 415)**

**Regolamenti ta' l-2006 dwar id-Dritt ta' Bejgh mill-Ġdid
li għandu Artist**

BIS-SAHHA tas-setgħat mogħtija bl-artikolu 59 ta' l-Att dwar id-Drittijiet ta' l-Awtur, il-Ministru għall-Kompetittività u l-Komunikazzjoni għamel dawn ir-regolamenti li ġejjin:-

1. It-titolu ta' dawn ir-regolamenti hu Regolamenti ta' l-2006 ^{Titolu.} dwar id-Dritt ta' Bejgh mill-Ġdid li għandu Artist.

2. L-iskop ta' dawn ir-regolamenti huwa l-implimentazzjoni ta' ^{Skop.} Direttiva 2001/84/KE tal-Parlament Ewropew u tal-Kunsill tas-27 ta' Settemberu, 2001 fuq id-Dritt ta' Bejgh mill-Ġdid għall-Benefiċċju ta' l-Awtur ta' Xogħol Artistiku.

3. F'dawn ir-regolamenti, kemm-il darba r-rabta tal-kliem ma ^{Tifsiriet.} tkunx teħtieġ xort' ohra –

“awtur”, dwar xi xogħol, tfisser il-persuna li toħloq ix-xogħol;

“bejgh mill-ġdid” tirreferi għall-bejgh ta' xogħol mill-professjonist fis-suq ta' l-arti wara l-ewwel trasferiment ta' proprjetà mill-awtur;

“il-bejgiegh” tfisser il-persuna jew l-impriza li f' isimha jsir il-bejgh;

“*collecting society*” għandha t-tifsira lilha mogħtija fir-regolament 11;

“data tal-kuntratt”, dwar bejgh, tfisser il-waqt meta jkun sar il-kuntratt ta' bejgh tax-xogħol;

“dritt ta' bejgh mill-ġdid” u “*royalty* għal bejgh mill-ġdid” għandhom it-tifsir mogħti fir-regolament 4;

“drittijiet ta’ l-awtur” ghandha t-tifsir moghti fl-artikolu 2 ta’ l-Att dwar id-Drittijiet ta’ l-Awtur;

“prezz tal-bejgh” huwa l-prezz li jinkiseb ghall-bejgh, nett mit-taxxa li tithallas fuq il-bejgh, u konvertita f’euro skond ir-rata ta’ referenza tal-Bank Ċentrali Ewropew li tkun tapplika fid-data tal-kuntratt;

“professjonist fis-suq ta’ l-arti” tfisser, fost l-ohrajn, kmamar tal-bejgh, galleriji ta’ l-arti u negozjanti f’xoghlijiet artistici b’mod generali;

“Stat ŻEE” tfisser Stat Membru, l-Islanda, Liechtenstein jew in-Norveġja;

“trasferiment ta’ proprjetà mill-awtur” partikolarment tinkludi—

(a) il-bejgh ta’ xoghol mill-awtur;

(b) l-ġhoti ta’ xoghol bhala rigal mill-awtur;

(c) it-trasmissjoni ta’ xoghol mill-awtur b’ disposizzjoni testamentarja, jew skond ir-regoli tas-suċċessjoni *ab intestato*; u

(d) meta r-rappreżentanti personali ta’ l-awtur jiddisponu mix-xoghol tiegħu għall-finijiet ta’ l-amministrazzjoni tal-patrimonju;

“xoghol” tfisser kull xoghol ta’ arti grafika jew plastika bhal stampa, collage, pittura, tpingija, inciżjoni, impronta, litografu, skultura, tapezzerija, ċeramika, oġġett tal-ħġieġ u fotografija:

Iżda kopja ta’ xoghol m’ għamdhiex titqies bhala xoghol kemm-il darba l-kopja ma tkunx wahda minn għadd limitat li jkun sar mill-awtur jew taht l-awtorità tiegħu.

Id-dritt ta’ bejgh mill-ġdid.

4. L-awtur ta’ xoghol artistiku fejn jissussistu d-drittijiet ta’ l-awtur għandu, skond dawn ir-regolamenti, ikollu dritt, maghruf bhala d-dritt ta’ bejgh mill-ġdid, għal *royalty* fuq kull bejgh ta’ xoghol li jkun bejgh mill-ġdid sussegwenti għall-ewwel trasferiment ta’ proprjetà mill-awtur. Dak id-dritt ma jistax jiġi mibjugħ jew trasferit u ma jistax jiġi mwarrab, lanqas minn qabel.

5. (1) Id-dritt ta' bejgh mill-ġdid ghandu jkun japplika għall-atti kollha ta' bejgh mill-ġdid magħmulin minn professjonisti fis-suq ta' l-arti. Kif japplika d-dritt.

(2) Ghandha tithallas royalty mill-professjonist fis-suq ta' l-arti li jagħmel bejgh ta' xogħol li jkun bejgh mill-ġdid bla hsara għall-ewwel trasferiment ta' proprjetà mill-awtur.

6. (1) Id-dritt ta' bejgh mill-ġdid m' ghandux ikun japplika fil-każ ta' xogħol li jkun skond dawn iż-żewġ kundizzjonijiet li ġejjin: Limitazzjonijiet.

(a) il-bejjiegh ikun qabel akkwista x-xogħol direttament mill-awtur anqas minn tliet snin qabel il-bejgh; u

(b) ix-xogħol ikollu prezz tal-bejgh ta' mhux iżjed minn 10,000 euro.

(2) Id-dritt ta' bejgh mill-ġdid m' ghandux japplika għar-rigward ta' xogħlijiet li jkollhom prezz tal-bejgh ta' anqas minn 1,500 euro.

(3) Id-dritt ta' bejgh mill-ġdid m' ghandux japplika għal dawk l-atti ta' bejgh mill-ġdid li jsiru direttament bejn persuni li jaġixxu privatament minghajr il-partecipazzjoni ta' professjonist fis-suq ta' l-arti.

(4) Id-dritt ta' bejgh mill-ġdid m' ghandux jestendi għal atti ta' bejgh mill-ġdid lil mużewijiet li ma jagħmlux profitt u li huma miftuħa għall-pubbliku:

Iżda kull min ikun qieghed jagħmel dak il-bejgh ghandu jkun qieghed jagħmlu fil-kapaċità personali tiegħu.

7. *Royalty* skond ma hemm provdut dwarha fir-regolament 4 għandha tiġi kalkolata kif ġej: Kif tiġi kalkolata royalty.

(a) 0% għall-porzjon tal-prezz tal-bejgh sa u inklużi 1,499 euro;

(b) 4% għall-porzjon tal-prezz tal-bejgh minn 1,500 euro sa 50,000 euro;

(c) 3% għall-porzjon tal-prezz tal-bejgh minn 50,000.01 euro sa 200,000 euro;

(d) 1% għall-porzjon tal-prezz tal-bejgħ minn 200,000.01 euro sa 350,000 euro;

(e) 0.5% għall-porzjon tal-prezz tal-bejgħ minn 350,000.01 euro sa 500,000 euro;

(f) 0.25% għall-porzjon tal-prezz tal-bejgħ li jeċċedi 500,000 euro:

Iżda l-ammont shiħ ta' *royalty* ma jistax jeċċedi 12,500 euro u l-prezzijiet tal-bejgħ hawn qabel imsemmija għandhom ikunu netti minn kull taxxa.

Jedd għal *royalties*.

8. (1) *Royalty* li hemm provdut dwarha fir-regolament 4 għandha tithallas lill-awtur ta' xogħol u, wara mewtu, lis-suċċessur tiegħu.

(2) Suċċessur fit-titolu għandu jikseb benefiċċju mid-dritt ta' bejgħ mill-ġdid biss wara l-2010 għar-rigward ta' bejgħ mill-ġdid li jseħh wara dik id-data:

Iżda l-Ministru jista' b'ordni jestendi d-data ta' bidu fis-seħh hawn qabel imsemmija sa l-2012 wara lmenti li jsiru minn Malta mal-Kummissjoni Ewropea.

Persuni li jkollhom jedd minhabba suċċessjoni.

9. (1) Id-dritt ta' bejgħ mill-ġdid għar-rigward ta' xogħol jista' jiġi trasmess b'disposizzjoni testamentarja jew skond ir-regoli tas-suċċessjoni *ab intestato*; u jista' jiġi aktar hekk trasmess minn persuna li dak id-dritt jgħaddi għal għandha.

(2) Id-dritt ta' bejgħ mill-ġdid jista' jiġi biss hekk trasmess lil persuna naturali .

(3) Minkejja s-subregolament (2), dritt ta' bejgħ mill-ġdid jista' jiġi trasmess *bona vacantia*.

(4) Meta dritt ta' bejgħ mill-ġdid jiġi trasmess lil aktar minn persuna waħda, dan għandu jkun jappartjeni lil dawk il-persuni flimkien bhala komproprjetarji.

Terminu għad-dritt ta' bejgħ mill-ġdid.

10. Id-dritt ta' bejgħ mill-ġdid li għandu x' jaqsam ma' xi xogħol għandu jkompli sakemm jiskadu d-drittijiet ta' l-awtur rigward dak ix-xogħol.

11. Id-dritt ta' bejgh mill-ġdid jista' jkun eżerċitat mid-detentur indipendentement jew permezz ta' *collecting society* li topera taht il-kundizzjonijiet li hemm provdut dwarhom fl-Att dwar id-Drittijiet ta' l-Awtur, u regolamenti magħmulin tahtu. Gbir ta' royalties.

12. (1) Id-detentur ta' dritt ta' bejgh mill-ġdid għar-rigward ta' bejgh, jew persuna li taġixxi f'ismu, ikollhom id-dritt li jiksbu informazzjoni mingħand professjonist fis-suq ta' l-arti dwar dak il-bejgh. Jedd għal informazzjoni.

(2) L-informazzjoni li tista' tiġi hekk mitluba hi dik li tista' tkun mehtieġa sabiex jiġi żgurat hlas ta' *royalty* għal bejgh mill-ġdid.

(3) Il-professjonist fis-suq ta' l-arti li ssirlu t-talba għandu jagħmel dak kollu li jista' biex jipprovdi l-informazzjoni mitluba fi żmien 90 ġurnata minn meta jirċievi dik it-talba.

(4) Jekk ma tingħatax informazzjoni skond is-subregolament (3), il-persuna li tagħmel it-talba tista', permezz ta' rikors li jiġi ppreżentat fil-Prim' Awla tal-Qorti Ċivili fi żmien xahar minn meta jkun skada t-terminu ta' 90 ġurnata msemmi f'paragrafu (3) ta' dan ir-regolament, titlob li dik il-qorti tohroġ ordni li ġġieghel lill-persuna mingħand min l-informazzjoni tista' tintalab, biex tagħti dik l-informazzjoni. Ir-rikors għandu jiġi notifikat lill-parti l-oħra li jkollha wkoll dritt li tippreżenta risposta.

(5) Kull informazzjoni li tinkiseb taht dan ir-regolament għandha titqies bhala waħda kunfidenzjali.

13. (1) Id-dritt ta' bejgh mill-ġdid jista' biss jiġi eżerċitat għar-rigward ta' bejgh minn persuna naturali li tkun ċittadin ta' Stat ŻEE. Htiġiet li jirrigwardaw iċ-ċittadinanza.

(2) Awtur li jkun ċittadin ta' pajjiż terz u s-suċċessur tiegħu fit-titolu għandhom igawdu d-dritt ta' bejgh mill-ġdid skond dan ir-regolament biss jekk, il-leġislazzjoni fil-pajjiż fejn hu jew is-suċċessur tiegħu fit-titolu jkunu ċittadini, ikun jagħti harsien għal dritt ta' bejgh mill-ġdid lil awturi mill-Isati Membri ta' l-Unjoni Ewropea u lis-suċċessuri tagħhom fit-titolu.

14. (1) Id-disposizzjonijiet ta' dawn ir-regolamenti – Disposizzjonijiet transitorji.

(a) ma japplikaw għal ebda bejgh fejn id-data tal-kuntratt tkun tippreċedi d-data tal-bidu fis-seħh ta' dawn ir-regolamenti; imma

(b) japplikaw minkejja li x-xogħol mibjugħ ikun ġie “magħmul” qabel dik id-data tal-bidu fis-seħh.

(2) Bla hsara ghad-disposizzjoni tar-regolament 8, meta awtur ta' xogħol li jkun ukoll il-proprjetarju ta' drittijiet ta' l-awtur ta' dak ix-xogħol ikun miet qabel il-bidu fis-sehh ta' dawn ir-regolamenti, huwa ghandu jitqies bhala li jkun ittrasferixxa d-dritt ta' bejgh mill-gdid li kellu lis-successur tieghu fit-titolu.

L.N. 174 of 2006

**COPYRIGHT ACT
(CAP. 415)**

Artists' Resale Right Regulations, 2006

IN exercise of the powers conferred by article 59 of the Copyright Act, the Minister for Competitiveness and Communications has made the following regulations:-

1. The title of these regulations is the Artists' Resale Right Regulations, 2006. Title.

2. The purpose of these regulations is the implementation of Directive 2001/84/EC of the European Parliament and of the Council of the 27th September, 2001 on the Resale Right for the Benefit of the Author of a Work of Art. Purpose.

3. In these regulations, unless the context otherwise requires – Definitions.

“art market professional” inter alia means sales rooms, art galleries and dealers in works of art in general;

“author”, in relation to a work, means the person who creates the work;

“collecting society” has the meaning given in regulation 11;

“contract date”, in relation to a sale, means the time at which the contract of sale of the work was made;

“copyright” has the meaning given in article 2 of the Copyright Act; Cap. 415.

“EEA State” means a Member State, Iceland, Liechtenstein or Norway;

“resale” refers to the sale of the work by the art market professional after the first transfer of ownership by the author;

“resale right” and “resale royalty” have the meaning as given in regulation 4;

“sale price” is the price obtained for the sale, net of the tax payable on the sale, and converted into euro at the European Central Bank reference rate prevailing at the contract date;

“the seller” means the person or undertaking on whose behalf the sale is conducted;

“transfer of ownership by the author” includes in particular –

(a) the sale of the work by the author;

(b) the giving of the work as a gift by the author;

(c) transmission of the work from the author by testamentary disposition, or in accordance with the rules of intestate succession; and

(d) disposal of the work by the author’s personal representatives for the purposes of the administration of his estate;

“work” means any work of graphic or plastic art such as a picture, a collage, a painting, a drawing, an engraving, a print, a lithograph, a sculpture, a tapestry, a ceramic, an item of glassware and a photograph:

Provided that a copy of a work is not to be regarded as a work unless the copy is one of a limited number which have been made by the author or under his authority.

The resale right.

4. The author of a work of art in which copyright subsists shall, in accordance with these regulations, have a right, known as the resale right, to a royalty on any sale of the work which is a resale subsequent to the first transfer of ownership by the author. Such right is inalienable and cannot be waived, even in advance.

Applicability.

5. (1) The resale right shall apply to all acts of resale conducted by art market professionals.

(2) The royalty shall be payable by the art market professional who effects a sale of the work which is a resale subject to the first transfer of ownership by the author.

Limitations.

6. (1) The resale right shall not apply in the case of a work which fulfils the following two conditions:

(a) the seller previously acquired the work directly from the author less than three years before the sale; and

(b) the work has a sale price not exceeding 10,000 euros.

(2) The resale right shall not apply in respect of works the sale price of which is less than 1,500 euros.

(3) The resale right shall not apply to those acts of resale effected directly between persons acting in their private capacity without the participation of an art market professional.

(4) The resale right shall not extend to acts of resale to museums which are not for profit and are open to the public:

Provided that the persons effecting the sale are so doing in their personal capacity.

7. The royalty provided for in regulation 4 shall be calculated as follows: Royalty calculation.

(a) 0% for the portion of the sale price up to and including euros 1,499;

(b) 4% for the portion of the sale price from euros 1,500 to euros 50,000;

(c) 3% for the portion of the sale price from euros 50,000.01 to euros 200,000;

(d) 1% for the portion of the sale price from euros 200,000.01 to euros 350,000;

(e) 0.5% for the portion of the sale price from euros 350,000.01 to euros 500,000;

(f) 0.25% for the portion of the sale price exceeding euros 500,000:

Provided that the total amount of royalty may not exceed euros 12,500 and the sale prices referred to above are net of tax.

8. (1) The royalty provided for in regulation 4 shall be payable to the author of the work and, after his death, to his successor. Entitlement to royalties.

(2) A successor in title shall benefit from the resale right only after 2010 in respect of a resale which takes place after that date:

Provided that the Minister may by order extend the above commencement date until 2012 after representations made by Malta with the European Commission.

Persons entitled on succession.

9. (1) The resale right in respect of a work is transmissible by testamentary disposition or in accordance with the rules of intestate succession; and it may be further so transmitted by any person into whose hands it passes.

(2) The resale right may be so transmitted only to a natural person.

(3) Notwithstanding sub-regulation (2), a resale right may be transmitted as *bona vacantia*.

(4) Where a resale right is transmitted to more than one person, it shall belong to such persons in co-ownership.

Term of resale right.

10. The resale right connected with a work shall continue until the copyright in the work expires.

Collection of royalties.

11. The resale right may be exercised by the holder independently or through a collecting society operating under the conditions provided for in the Copyright Act and regulations made thereunder.

Right to information.

12. (1) A holder of resale right in respect of a sale, or a person acting on his behalf shall have the right to obtain information from any art market professional in relation to the sale.

(2) The information that may be so requested is any that may be necessary in order to secure payment of the resale royalty.

(3) The art market professional to whom the request is made shall do everything within his power to supply the information requested within 90 days of the receipt of the request.

(4) If information is not supplied in accordance with sub-regulation (3), the person making the request may, by application to be filed in the First Hall of the Civil Court within one month from the expiry of the 90 days mentioned in paragraph (3) of this regulation, demand an order from the said court compelling the person from whom the information may be demanded to supply the information. The

application shall be secured on the other party who shall also have a right to reply.

(5) Information obtained under this regulation shall be treated as confidential.

13. (1) The resale right may only be exercised in respect of a sale by a natural person who is a national of an EEA State. Requests as to nationality.

(2) An author who is a national of a third country and his successors in title shall enjoy the resale right in accordance with this regulation only if, the legislation in the country of which he or his successor in title is a national, accords resale right protection to authors from the Member States of the European Union and their successors in title.

14. (1) The provisions of these regulations – Transitional provisions.

(a) do not apply to sales where the contract date precedes the commencement of these regulations; but

(b) apply notwithstanding that the work sold was “made” before such commencement.

(2) Subject to the provision of regulation 8, where an author of a work who is also the owner of copyright in the said work died before the commencement of these regulations, he shall be deemed to have transferred his resale right to his successor in title.