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Droit de suite

The reports last week of the decision of the Paris High Court regarding the *droit de suite* (aka artist's resale right) on the sale of certain paintings by Salvador Dali are a reminder of what is coming our way. In less than five months the scheme will be extended to the UK, for deceased artists, under EU Directive 2001/84/EC and the Artist's Resale Right (Amendment) Regulations.

The scheme provides for part of the sale price of works of art, sold on the art market, to be paid to the artist or his or her heirs for 70 years from the artist's death. The maximum amount to be paid is €12,500 per item, based on a sliding scale from 4% down to 0.25% of the price. The UK has dragged its feet for as long as possible, with the right being introduced for living artists in 2006 and it is now to be extended for deceased artists from 1 January 2012, which will quadruple its scope.

There is a fear that the London art market will be damaged as vendors will choose to sell in countries without such a scheme, especially the US, Switzerland and Hong Kong. That may particularly be the case where there is a collection of items to be sold. On the other hand, selling art is expensive and the amount paid under the right may make little difference in most cases.

The Dali case shows how potentially complicated these schemes can be. The European Court of Justice had confirmed that each state could introduce its own laws as to how its scheme operates. Under Spanish law, the fact that Dali had left the rights to his works to the Spanish state, meant that the state, rather than his family members, was entitled to be paid on resale. However, when items were sold in France, the French collecting agency applied French law and paid the monies to family members. However, the Paris court has now held that Spanish law must prevail in the case and that the Spanish state rather than the family members must benefit.

The inconsistencies in the various schemes potentially make it all very messy, complicated and arguable. That may be good news for lawyers, but not for the market.