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## Artists May Be the Unwitting Losers in Christie's Victory Over Resale Royalties in France

Secondary market dealers say they risk suffering from "unfair competition," and economists warn the change might be unfavorable to artists.

**Naomi Rea**, January 9, 2019



Christie's Paris. Image courtesy Christie's.

Collectors buying art at auction in France are going to have to learn some new math—and artists might lose money in the process.

After years of legal battles, the country's Supreme Court ruled in November that auction houses can now ask buyers to pay artist resale royalties, which since 1920 had been the burden of sellers. The fees offer a percentage of the sale of an artwork to the artist or his or her heirs for 70 years after the artist's death.

The change in policy comes at the request of Christie's, which has been litigating the issue for a decade. In 2009, Christie's was taken to court by the national union of antique dealers (the Syndicat National des Antiquaires) after the auction house requested that buyers of items from the collection of fashion designer Yves Saint Laurent and Pierre Bergé pay resale (or "droit de suite") fees. The antiques traders charged that Christie's executives were seeking an unfair competitive advantage by making buyers (including the union's members) pay the additional tax, rather than shouldering the burden themselves.

French courts ruled in favor of the dealers and upheld that decision in 2012 and 2017. But the Supreme Court has now thrown those rulings out. While auction houses will remain responsible for collecting and passing resale fees on to collecting agencies, they now may ask buyers to pay them as part of predetermined conditions of sale.

A spokesperson for Christie's France told artnet News that the auction house was "pleased with this decision." Contacted by artnet News, a spokeswoman for Sotheby's said that it will also start charging the buyer resale fees as of this month, January 2019.

But the decision is "not neutral for artists," says Nathalie Moureau, a professor in cultural economics and vice president of culture at Paul Valéry University in Montpellier. She says collectors may now decide to lower their bids as they calculate new fees—which means less money for artists, too.

For example, if a collector's budget for a work is €50,000, he or she may now decide only to bid up to €48,077, which would mean a fee of €1,923 to the artist or his or her heirs. Alternatively, if the seller were to pay the fee on the sale of a work for €50,000, the artist would earn €2,000. (The current fee rate is 4 percent on works up to €50,000 and 0.25 percent for works that sell for more than €500,000.)

Further complicating matters, buyers are already on the hook for other fees, including taxes and buyer's premiums. Still, Moureau does not believe the volume of transactions will go down.

While the primary market will remain unaffected, some secondary market dealers are unhappy with the decision. Franck Prazan, the founder of the Paris-based gallery Applicat Prazan, told *The Art Newspaper* that the ruling would disrupt fair

competition. Prazan says dealers would end up footing the bill instead of passing them on to buyers, which could interfere with the negotiating process. “When we buy at auction, this means we will have to pay twice—upon buying and upon resale,” Prazan said.

