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China debates droit de suite

Some say it will stifle the market, others think it could stop fakes at auction

By Katie Hunt. Art Market
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China is considering introducing legislation that means artists will receive royalty payments when their work is resold at auction. The *droit de suite* (artists' resale right) clause is contained in the draft of a new copyright law soon to be submitted to China's State Council, the country's cabinet.

According to the draft, the resale right would apply to original works of fine art and photography, as well as literary and musical manuscripts. It says that creators or their heirs have a right to share in any profit if the owner of the original piece sells it via auction.



Artists such as Yue Minjun could be laughing if the law is passed

China's first copyright law took effect in 1991, and the latest draft brings the country closer into line with prevailing European standards. More than 60 countries have *droit de suite* legislation, although the introduction of a resale fee has often proved controversial, as it is not universally applied.

Limiting the market

The debate in China over the resale clause has also proved heated. Gan Xuejun, the chairman and general manager of Huachen Auction, says the move is "absurd", "unfair" and "unwise". "It will limit the trading interest and enthusiasm of collectors and artists," he says in his post on the popular microblogging site Sina Weibo (China's equivalent of Twitter). China's two biggest auction houses—China Guardian and Beijing Poly—declined to comment.

It is not clear how many artists or their descendants might benefit from the proposal, but given that 20th-century Chinese painting and calligraphy have comprised one of the most active categories at auction in recent years, observers say it could have a negative impact on the market.

"*Droit de suite* may stifle the development of the market," wrote Ji Tao, an auction industry expert, in the *China Culture Daily* newspaper in December. However, he added: "From the point of view of the artists and authors, *droit de suite* is a good thing, because every transaction means gains."

Eugene Low, a Hong Kong-based intellectual property lawyer at Mayer Brown JSM, says that the legislation could address the problem of fake works coming up for auction in China. "The auction companies will have to trace the original creator or their next of kin. In doing so, they will have to check that the work is genuine," he says.

Rogier Creemers, an expert on Chinese copyright law at the University of Oxford's Centre for Socio-Legal Studies, says that increased protection for artists reflects China's desire to move up the value



chain, away from mass-produced goods. “[China] wants to foster an ‘advanced cultural market’,” he says.

Foreign artists

The draft law does not give details on how the resale right will work, saying only that rules will be drawn up separately by the State Council. It does not give the length of time for which an artist's descendant would retain the right to profit from a resale, but China usually extends copyright for 50 years after an artist's death. Guo He, a professor at Renmin University's Law School in Beijing, says that the new law is subject to further changes and is still some way from entering the statute book. If the draft is approved by the State Council, it will be presented to the National People's Congress Standing Committee, China's top ruling body, for consideration, before it is enacted, he says.

Droit de suite legislation elsewhere gives artists or their heirs a percentage of the resale, ranging from around 1% to 5%.