

IPOPHL MEMORANDUM CIRCULAR NO. 2020- 023

SUBJECT: IMPLEMENTING RULES AND REGULATIONS ON RESALE RIGHTS

WHEREAS, Section 13, Article XIV of the 1987 Constitution declares that “[t]he State shall protect and secure the exclusive rights of scientists, inventors, artists, and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people, for such period as may be provided by law”;

WHEREAS, the State enacted Republic Act No. 8293, the Intellectual Property Code of the Philippines (IP Code), as amended, in pursuit of the above policy;

WHEREAS, Sec. 200 of the IP Code provides for a right to proceeds in subsequent transfers, or resale right, for artists;

WHEREAS, there is a need to establish implementing rules and regulations pertaining to the rights to proceeds in subsequent transfers with the view of protecting copyright owners and contribute significantly to the resolution of disputes arising from the interpretation of Sec. 200;

WHEREAS, Sec. 7.1(a) of the IP Code grants the Director General the power to manage and direct all functions and activities of the IPOPHL including the promulgation of rules and guidelines to implement the objectives, policies, plans, programs and projects of the Office;

NOW, THEREFORE, in view of the foregoing, the following Rules are hereby adopted and promulgated.

**RULE I
GENERAL PROVISIONS**

Section 1. *Short Title.* – These Rules and Regulations shall be known and referred to as the “Rules on Resale Rights.”

Section 2. *Definition of Terms.* — For purposes of these Rules, the following terms shall have the meanings provided below:

- a. *“Accredited collective management organization”* – a collective management organization duly recognized by IPOPHL/Bureau after successfully undergoing the accreditation process laid out in the Rules on the Accreditation of Collective Management Organizations;
- b. *“Author” or “Creator”* – the natural person who has created the work;
- c. *“Art Market Professional”* – someone acting in the course of a business of dealing in works of art. The term is used interchangeably with “professional party” or “intermediary” as defined below;
- d. *“Bureau”* – refers to the Bureau of Copyright and Other Related Rights of IPOPHL;

- e. *“Collective management organization”* – a group of artists or copyright/related rights holders whose primary purpose is to collectively manage copyright and/or related rights, including any combination or all of the following activities:
 - i. Negotiation with and grant of licenses to users of protected literary, scholarly, scientific and artistic works, derivative works, performances, sound recordings and broadcasts;
 - ii. Collection of royalties and other forms of remuneration for the use of the abovementioned; or
 - iii. Distribution of the said collection to the rights holders;
- f. *“First disposition”* – the first transfer of ownership of a work with or without consideration. In commissioned works, the transfer of ownership from the author to the person who commissioned the work shall be considered the first disposition;
- g. *“Gross proceeds of the sale or lease”* – the consideration stated in the sales document or the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, excluding value added tax (VAT). It means the same as “gross selling price”;
- h. *“Lease”* – a contract whereby one of the parties binds himself to give to another the enjoyment or use of a thing for a price certain, and for a period which may be definite or indefinite;
- i. *“Professional party”* or *“intermediary”* – refers to auction houses, art galleries, art salesrooms, or any dealer in works of art;
- j. *“Public Museum”* – an institution with a permanent collection, governed by an elected or appointed board, founded by civically minded people, existing for the stewardship of its collection and the education of the public.
- k. *“Resale”* – the sale of a work subsequent to the first disposition thereof by the author;
- l. *“Resale right”* – the right of artists or their heirs to receive royalty from the resale of their work. It also means their right to participate or share in the proceeds of the subsequent sale or lease of their work. It is also called *“droit de suite.”*
- m. *“Resale royalty”* – the remuneration given to the author or his heirs ensuing from the resale right;
- n. *“Seller”* – a person who owns a work by virtue of a first or subsequent disposition;
- o. *“Work”* – an original work of painting or sculpture or of the original manuscript of a writer or composer; and
- p. *“Work of joint authorship”* – a work created by two or more authors.

Section 3. Coverage. – These Rules shall apply to the sale or lease of an author’s original works of painting, sculpture or manuscript subsequent to the first disposition thereof by the author, and notwithstanding that the works sold may have been made before the effectivity of these Rules.

Section 4. Works not Covered. – These Rules shall not apply to the following:

- a. Prints, etchings, engravings, works of applied art, and works of a similar kind wherein the author primarily derives gain from the proceeds of reproductions; and
- b. Subsequent sales that are:
 - i. Made directly between private individuals without the participation of an art market professional; or
 - ii. Made by individuals to public museums.

Section 5. Authors Covered. – These Rules cover authors who are citizens of the Philippines and of other member states of the Berne Convention with resale rights provisions in their national copyright legislation.

RULE II RESALE RIGHT AS A SPECIAL ECONOMIC RIGHT

Section 6. Ownership of Resale Right. –

- 6.1** The author of a work, whether done independently or pursuant to employment or commission, is entitled to resale rights. Upon the author’s death, such right is transmissible to his/her heir(s).
- 6.2** In the case of a work of joint authorship, the right shall belong to the authors as co-owners. They shall hold it in equal shares or as may be agreed upon in writing signed by or on behalf of each party.

Section 7. Term of Protection. – The resale right subsists during the lifetime of the author plus fifty (50) years after his death. In case of works of joint authorship, the resale right shall be reckoned from the moment of creation plus fifty (50) years after the death of the last surviving author.

Section 8. Royalty Rate. – The resale royalty shall be to the extent of five percent (5%) of the gross proceeds of the subsequent sale or lease, computed based on Section 14.1 below.

Section 9. Presumption of Authorship. – Where a name purporting to be that of the author appears on a work at the time of its creation, the person whose name appears thereon shall, unless the contrary is proved, be presumed to be the author of the work.

Section 10. Inalienability of Resale Right. –

- 10.1** Resale right can neither be taken away from nor given away by the author except in the case of succession or other circumstances as may be provided by law.
- 10.2** Resale right can neither be sold nor waived.

- 10.3 Any charge or encumbrance on, or assignment or waiver of, or agreement to share or repay, the resale right is void.

RULE III MECHANICS OF RESALE

Section 11. *Mechanics of Resale.* —

- 11.1 The sale of an original work of art, even if the first transfer of ownership was not made for any consideration, money or otherwise, shall be regarded as a resale provided:
- a. The subsequent sale involves a professional party or intermediary. In case of lease, the same must be for a period longer than one (1) year and covered by a written contract.
 - b. The work is enrolled and registered in the Registry established in Rule IV hereof.
- 11.2 "First transfer of ownership" shall include in particular:
- a. Transmission of the work from the author by testamentary disposition, or in accordance with the rules of intestate succession;
 - b. Disposal of the work by the author's personal representatives for the purposes of administration of his estate;
 - c. Disposal of the work by an official receiver or a trustee in bankruptcy, for the purposes of the realization of the author's estate.

Section 12. *Liability to Pay Resale Royalty.* —

- 12.1 Payment of resale royalty shall be made by the seller to the author or his heirs within sixty (60) days from the date of the sale or lease of a work.
- 12.2 The seller may withhold payment from a person claiming resale rights until sufficient evidence of entitlement thereto is produced.
- 12.3 In case of joint authorship, payment by the seller of the total amount of resale royalty to one of the authors shall discharge the former from paying resale royalty to the other author/s. The co-author who received the payment shall have the obligation to ensure that the other co-authors, their heirs or assigns, shall receive their respective royalty share.

Section 13. *Management of Resale Right.* —

- 13.1 *Collective Management.* — The resale right may be exercised through an accredited collective management organization by virtue of an authorization allowing management of the right. The management of resale right is the collection of resale royalty on behalf of the holder of the right in return for a commission, a fixed fee or a percentage of the royalty.
- 13.2 *Individual management.* — Where the holder of the right has not transferred its management to a collective management organization, the former alone shall be responsible for monitoring and collecting the resale royalty.

Section 14. *Calculation of Resale Royalty.* —

- 14.1 Subject to the limit established in Section 200 of the IP Code, the resale royalty payable

on the subsequent transfer of a work shall be the sum of the following amounts, being percentage amounts of consecutive portions of the sale price:

<u>Gross Selling Price (PhP)</u>	<u>Percentage amount</u>
Up to 150,000.00	5%
150,000.01 – 350,000.00	4%
350,000.01 – 600,000.00	3%
600,000.01 – 1,000,000.00	2%
1,000,000.01 – 2,000,000.00	1.5%
2,000,000.01 – above	1%

14.2 If the sale price is not in Philippine Peso, the price shall be converted into Philippine Peso at the *Bangko Sentral ng Pilipinas* reference rate prevailing on the contract date.

RULE IV CREATION OF A REGISTRY OF QUALIFIED WORKS

Section 15. *Creation of a Registry of Qualified Works.* – There is hereby created a National Registry of Qualified Works to be maintained by the Bureau. This Registry shall provide the means for the enrollment and registration of works that qualify for the application of resale right. It shall also serve as the repository of information on the author of the work for purposes of remittance on the resale royalty.

Section 16. *Collection of Fees.* – The Bureau shall collect appropriate fees for this service.

RULE V DISPUTE RESOLUTION

Section 17. *Filing of Claim* – All claims or disputes arising from the application of this Implementing Rules and Regulations shall be filed within one (1) year from the time cause of the action arose. Such claim shall be considered filed upon payment of the requisite filing fee.

Section 18. *Original Jurisdiction* – All claims or disputes arising from the application of this Implementing Rules and Regulations shall be brought before the Office of the Director of the Bureau of Copyright.

Section 19. *Appellate Jurisdiction* – Parties aggrieved by the decision of the Director of the Bureau of Copyright and Other Related Rights may file an appeal before the Director General of the Intellectual Property Office of the Philippines within 30 days from receipt of the decision of the Director of the Bureau. The decision of the Director General shall be final.

**RULE VI
FINAL PROVISIONS**


Section 20. *Amendment.* – All rules and regulations, office orders, memoranda, circulars and memorandum circulars or parts thereof, and other issuances of the Office inconsistent with these Rules are hereby deemed repealed or amended accordingly.

Section 21. *Separability.* – If any section or provision in these Rules shall be held invalid, the remaining provisions shall remain in full force and effect as completely as if the part held invalid had not been included therein.

Section 22. *Furnishing of Certified Copies.*— The IPOPHL Administrative, Financial and Human Resource Development Service Bureau is hereby directed to immediately file three (3) certified copies of these rules with the Office of the National Administrative Register of the University of the Philippines Law Center.

Section 23. *Effectivity.* – These Rules shall take effect fifteen (15) days after publication in a newspaper of general circulation.

Done this 3rd day of JULY 2020 at Taguig City, Philippines.


ROWEL S. BARBA
Director General

RECEIVED BY UNICA

IPOPHL *20JUL06 09:21