

[DE] Federal Court Judgment of 16 June 1994 on Resale Rights (droits de suite) in respect of a German Artist's Work Auctioned in the UK

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The Federal Court recently decided that the prohibition of discrimination on grounds of nationality, which is one of the fundamental principles of Community law (Judgment of the Court of the European Communities of 20 October 1993) did not apply to the resale rights (droits de suite) covered by Section 26 of the German Copyright Act.

The case was brought by Bild-Kunst, a copyright exploitation company appointed by the widow and heiress of the artist, Joseph Beuys, who died on 23 January 1986, to supervise rights - including resale rights - applying to his work under the Copyright Act.

The plaintiff argued that the defendant, a German national resident in Germany, and the owner of three pictures by Beuys sold at auction in London on 29 June 1989, should pay the estate 5% of the proceeds. In its reasons for dismissing the application, the Court stated that resale rights were not recognised in all the EU countries and that, in the absence of harmonisation, the international legal rules on incorporeal rights applied. This meant that the effects of national law were restricted to the country concerned.

