

European Commission
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BELGIUM

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BONO submission on the Consultation in preparation of a Commission report on the implementation and effect of the Resale Right Directive (2001/84/EC)

BONO, Norwegian Visual Artists Copyright Society, was established in 1992 with the purpose of protecting artists' copyrights and to serve as a link between artists and those who want to use works of art.

Based on agreements with each member, BONO represents at present more than 1 900 Norwegian artists and successors of deceased artists. Through reciprocal agreements with 38 foreign copyright organizations, BONO represents an additional 50 000 foreign artists in Norway. BONO is governed by its members through a general assembly, which appoints BONO's board, consisting of representatives for living artists and successors of deceased artists, as well as legal expertise.

One of the rights BONO administers is the resale right.
BONO has been a member of EVA (European Visual Artists) since 1997.

Introduction

Firstly we would like to express our appreciation for being given the opportunity by the Commission to take part in the consultation process and comment on the implementation of the Resale Right Directive.

However welcome a consultation on the implementation and effect of the Resale Right Directive might be, we believe it is premature to undertake such a process now. A number of the EU-countries have not yet implemented the resale right, either partly or in full. The fact that a major art market such as the UK art market has not yet fully implemented the resale right is likely to make an analysis of the effect of the implementation of the resale right at this moment seriously flawed. It is also regretful that the deadline for the submission is set so early in 2011 that the figures from administration of the resale right for 2010 are not yet available, leaving the Commission with even less data to evaluate the implementation and effect of the directive.

Thus, in our opinion this consultation should have been postponed until the resale right had been implemented in full in the EU-countries for a certain amount of time.

Nevertheless, having to give our comments on the implementation of the Resale Right Directive now and after having administered the resale right since it was introduced in Norway in 2007 our general conclusion is that resale right has been an immediate success. Resale right has in the few years it has been in effect in our country generated remuneration to the artists and their heirs that is of major cultural importance. Resale right provides a financial basis for the artist that allows him/her to continue to create art. Resale right is also an essential contribution to the important work heirs and successors undertake to preserve, present and communicate artworks of deceased artists to the general public.

Some facts on the resale right in Norway

The Resale Right Directive was implemented into the Norwegian Copyright Act on December 22, 2006, effective January 1, 2007. The following main provisions were introduced:

- 5% royalty on works up to € 50 000
- Compulsory collective management
- Simultaneous introduction of the resale right for deceased artists
- Application threshold of € 3 000 ¹

BONO is approved by The Ministry of Cultural Affairs as the sole organization entitled to collect and distribute resale right monies, for members as well as for non-members.

1. Please describe developments in the art market in your country over the period of 2005-2010:

Our description covers the years 2007, 2008 and 2009. Figures from resale right in 2010 are not yet available. See end for table with statistics and figures for the period 2007-2009.

Two characteristics describe the overall development of resale right in Norway during these years:

- A highly successful introduction of the resale right

Prior to its implementation in 2007 BONO distributed information regarding resale right to more than 1200 recipients, mainly auction houses and galleries. In addition the website www.kunstavgiften.no was launched, allowing users to get extensive information, download documents and forms, use a "resale right calculator" to calculate fees payable, etc. Since the implementation, an on-going process, based on close contact with all stakeholders in the art market, has taken place in order to constantly improve the system for collecting and distributing.

Both the necessary documentation as well as the corresponding fees have been sent in due time, essentially from the day resale right was introduced. There have been no signs or examples of the art market relocating as a result of the implementation of the resale right, nor have we registered any complaints that indicate that the introduction of resale right has had any negative effects on the Norwegian art market.

In the Norwegian art market the resale right and the remuneration to artists when their works are sold is generally considered an important and necessary part of the art industry as a whole. Subsequently there have been few, if any, objections to the introduction of resale right among art market professionals.

- A steep decline in the sales of artworks occurring after 2007 as a result of the worldwide financial crisis

2007 was the best year in the history of the art market in Norway. The worldwide financial crisis that followed after 2007 resulted however in a significant decline in sales of works of art, both on the low- and high-price ends of the market. The drop in sales subject to resale right from 2007 to 2008 was 45%, and then from 2008 to 2009 an additional 38%.

Figures from the art market regarding sales of artworks that are not subject to resale right has shown showed the same development from 2007 through 2009 ².

While the art market in the lower price range seems to have improved at the end of 2009 and into 2010, the art market for the high end prices seems slow to react to the improved worldwide financial situation.

1. The option of a maximum threshold of € 3 000 was chosen by the Norwegian government because sale of works of art under this threshold would instead be subject to a tax of 5%, regulated in The Law on Fee on Sale of Visual Art of November 4th, 1948. The tax is distributed as funds, scholarships, etc. to living artists and to heirs/beneficiaries of deceased artists.

2. Figures from the Relief Fund for Visual Artists who collect a tax of 5% on primary sales and further sales that is not subject to resale right.

2. Please describe the factors that have influenced the developments in, and the competitiveness of, the art market in your country over this period

And:

3. What role, if any, has the resale right played in the development of the art market in your country? What effect has it had on trade in the internal market? What effect has it had in terms of the competitiveness of the art market in your country vis-à-vis other relevant markets that do not apply the resale right?

In addition to the impact of the financial crisis mentioned above, the single most important factor that has affected the Norwegian art market with regards to resale right during 2007-2009, is the absence of a resale right for deceased artists in the UK.

There are no indications that the Norwegian art market for works of deceased artists has relocated to the UK in order to avoid resale right. There are other factors far more important for the art market that determines where these works are sold (the size of the marketplace, sales price-projections, competence of the art market professionals etc.).

Whilst the art market itself in general seems not to have been negatively affected by the introduction of resale right, the fact that a number of works by famous deceased Norwegian artists have been sold in the UK market (where resale right for works by deceased artists are still not applied), have deprived heirs to these artists from a substantial income during these 3 years. According to international charters and conventions³, heirs and beneficiaries of deceased artists are as entitled to receiving remuneration from intellectual property rights systems such as the resale right, as are living artists.

6. What is the cost of administering the resale right royalty (a) for living artists; and (b) on behalf of deceased artists? Who bears this cost?

And:

7. How many artists have benefitted from the resale right for each year over the period 2005-2010? What is the value of the royalties that have been distributed (a) to living artists; and (b) on behalf of deceased artists?

And:

8. What is the value of the royalties that have been collected but not distributed? How are these monies being used?

Due to resale right being administered in Norway on a compulsory collective basis, BONO collects and distributes remuneration to members as well as non-members. The administration cost is the same for living artists and deceased artists, as well as for members and non-members; 30% for national artists, and 25% for foreign artists. The Norwegian art market is small compared to that of most other EU-countries and the administrative cost is relatively high to cover the costs related to the implementation of the resale right. The cost was scheduled to be reduced after the introduction, but this has had to be postponed due to the unforeseen recession in the art market that followed because of the financial crisis after 2007.

Resale right has been collected for as many as 339 unique artists since the right was introduced in Norway in 2007. This is a significant number given the fact that the application threshold is € 3 000. 194 of these are living artists (57%), 145 were deceased artists (43%).

Of the collected resale right revenue, the living artists share amounts to € 395 100 (23%) and deceased artists € 1 345 712 (77%).

3. EU Directive 84/2001, 14ter of the Berne Convention and 17 (2) of the European Charter of Fundamental Rights

The amount collected on behalf of non-members that have not been distributed yet, amounts to less than 5% of the total collected resale right revenue. This share is likely to decrease over time because of the accumulation of distribution-information and our efforts to allocate and distribute resale right revenue to non-members. BONO has not yet used any of the non-distributed resale right to cover the administrative costs. However, a provision in the Norwegian Copyright Act allows the organisation to spend non-distributable resale right to cover administrative costs related to the resale right.

9. What is the role of the resale right in fostering artistic creativity?

Resale right encourages production of new art

Resale right provides a financial basis for the artist that encourages creation of art. It is a motivating factor for an artist to know that an artwork might continue to generate income for the artist and his heirs also after it has been created and sold for the first time. Resale right compensates for the fact that artworks as a rule is first sold at relatively low prices before entering the resale market and becoming investment objects and subsequently being resold at substantially higher prices.

Resale right contributes to the preservation and presentation of artworks of deceased artists to the public

Resale right is an essential contribution to the important work heirs and successors undertake to preserve, present and to communicate artworks of deceased artists to the general public.

The estate of one of our most famous members, Edvard Munch, consists partly of the artist's successors and partly of the Municipality of Oslo, represented by the Munch-Museum in Oslo. Before his death, Edvard Munch donated the majority of his works to the Municipality of Oslo, thus the copyright to his works was split into two equal parts. BONO has administered the copyright to Edvard Munch's works on behalf of the estate since 1994. Resale right remuneration is being used for the purpose of spreading the knowledge of Munch's works worldwide. As an example, the rightholders production of a Catalogue Raisonne of the prolific artist's vast number of works was finally made possible in 2009 partly through the funding made possible from resale right remuneration.

Resale right gives credibility to the art market

By paying resale right to the artists the art market professionals and the art market contributes to the production of new art and the preservation and presentation of art by deceased artists. This contribution gives credibility to the actors in the art market. Furthermore, resale right ensures a certain degree of transparency and openness, which are essential conditions for maintaining goodwill among the general public.

Yours sincerely,
BONO - Norwegian Visual Artists Copyright Society

Harald Holter
Chief Executive

Enclosed: Table with resale right statistics and figures in Norway for the period 2007-2009

RESALE RIGHT IN NORWAY; IN FIGURES (1 EURO = 8 NOK)	2007	2008	2009
Sales figures:			
Sales figures for works subject to resale right, living artists	€ 4 383 235	€ 2 668 647	€ 1 516 123
Sales figures for works subject to resale right, deceased artists	€ 22 728 699	€ 12 351 016	€ 7 812 159
Sales figures for works subject to resale right, total	€ 27 111 935	€ 15 019 663	€ 9 328 283
Collected resale right:			
Collected resale right, living artists	€ 194 802	€ 124 737	€ 75 561
Collected resale right, deceased artists	€ 641 231	€ 407 326	€ 297 155
Collected resale right, total	€ 836 033	€ 532 063	€ 372 716
Number of artists who benefitted:			
Number who benefitted from resale right, living artists	123	99	85
Number who benefitted from resale right, living artists	87	77	65
Number who benefitted from resale right, total	210	176	150
Highest collected resale right, single sale:			
Highest collected resale right, single sale, living artist	€ 8 313	€ 7 625	€ 2 864
Highest collected resale right, single sale, deceased artist	€ 12 333	€ 11 313	€ 9 692
Numbers of works subject to resale right:			
Number of works below € 50 000	794	625	456
Number of works between € 50 001 - € 200 000	59	36	23
Number of works between € 200 001 - € 350 000	7	10	3
Number of works between € 350 001 - € 500 000	5	1	1
Number of works above € 500 000	11	4	2
Number of works, total	876	676	485