



BILDKONST UPPHOVSRÄTT I SVERIGE

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

BUS represents 7 400 Swedish creators of visual art and represent more than 50 000 foreign visual creator and their works in Sweden. BUS has been collecting the Resale Right since its introduction in Sweden, 1 January 1996. BUS is a member of European Visual Artists, EVA.

Introduction

The artists Resale Right are a fundamental part of the author's rights legislation and form the basis for the artist's participation on the art market as equal players to sellers, buyers and auctioneers. By the resale right the visual creator can participate in the art market and follow what happens with the work after the first transfer. It gives remuneration and it gives important information on development of the artist's market. The information is helpful also when it comes to first transfers of the artist works. The resale right is essential for authors of fine arts and photography. First transfers of works are often done at rather low prices and to high costs. The remuneration received from the resale right is of economical importance for the professional visual creators. The resale right also put the visual creators on an equal position in relation to other authors, such as composers and writers. The resale right takes it start at the artists normal way of working, selling original works of art and can receive a remuneration when the work is used again (resold).

The implementation of the Directive 84/2001, in Sweden, lowered the resale right remuneration to the artist's. This because the change of the fee from a flat 5 % to the sliding scale in line with the Directive from the sales price of 50 0000 Euro and the introduction of the cap of € 12 500 as a maximum. We cannot see that this change have had any positive effects on the Swedish (or any EU) art market. If the Directive is open again this should be changed and a flat fee of 5 % be introduced.

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

It would be helpful if you could describe these developments:

- a) With respect to trade in the works of: (i) living artists; and (ii) deceased artists***
- b) By sector: (i) auction houses; (ii) art market galleries and dealers***
- c) By price range (up to €50,000; €50,001 - €200,000; €200,001 - €350,000; €350,001 - €500,000; and above €500,000)***

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The art market in the years 2005 to 2010 has increased (in fact since the introduction of the resale right 1996) until the middle of 2008 when the global financial crisis hit the market. We have seen a weak 2009 but a quick recover in 2010. The bottom year of 2009 was stronger than most years since 1996. There is no evidence that the introduction of the resale right play a negative role for the art market. Figures and facts tell the opposite; the resale right strengthens the art market. But this is not the right conclusion, a balanced conclusion is that the resale right is neutral and does not affect the art market in an economical way (except the positive effect for the artist and in the long run for the art market because of the investment, the resale right represent, in the artists that creates the art works that the whole market base its existence on).

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

- *With respect to the works of: (i) living artists; and (ii) deceased artists*
- *By sector: (i) auction houses; (ii) art market dealers and galleries*
- *By price range*
- *With respect to third countries*

The art market is in a better position to answer this question. We cannot see any such factors which can be relevant to the Directive, but probably there is some problems as long as the Directive is not fully introduced in the UK.

The main factor influencing the art market is the general economical situation and the market is following the same pattern as other financial investments. The amount of money for investment seems to be the most important factor. The second important is that there are good pieces of work on the market and that the market does not come to a standstill (no one sells because of risks of low prices and no one buys because of no good art works on the market).

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?

None; for the functioning of the market in economical terms. Positive; for the artists because of their participation. In the long term also positive for art market because of their recognition of the artist and not only the art, this gives the art market a better reputation and a higher status. It is good for the whole market. No negative effects can be seen except the normal administration that comes with the payment of the resale right. But this is not a problem for anyone on the Swedish market.

4. What is the outlook for the art market in your country? What are the major risks and opportunities facing the sector?

We expect a growing market after the financial crisis. We see no major risks at the moment. The market is good to find and explore new opportunities.

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5. It would be helpful if you could further support your answers to Qs1-5 above with as much evidence as possible, including the following market data for each year over the period 2005-2010:

- *art market turnover*
- *value of sales by auction*
- *value of sales by dealers and galleries*
- *volume of auction and dealer sales by price range (up to €50,000; €50,001 - €200,000; €200,001 - €350,000; €350,001 - €500,000; and above €500,000)*
- *imports of works of art*
- *exports of works of art*

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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?

The amounts deducted from the royalties to be paid to all authors are 20 %. Sweden is a small market and the basic services contain costs that are stable, with a growing market these costs can be shared on a larger number of sales.

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?

Approximately 2 000 to 2 500 artist a year depending on the total turnover the actual year. A normal year approximately 20-25 % are distributed to living artists and 75 -80 % to heirs. In Swedish currency the following amounts was collected 2005 to 2010:

2005	2006	2007	2008	2009	2010
12 927 000	21 871 000	18 281 000	15 741 000	11 103 000	14 430 000

If we compare with the collection based on a flat fee of 5 % we have lost the following sums the corresponding years:

472 000	2 149 000	667 000	2 596 000
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It is substantial losses for these individuals concerned especially when we cannot see any positive effect of the fee scale in comparison with the flat fee of 5 %.

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

Sweden have a system of compulsory collective management and we collect for non- members as well as for members. We distribute approximately 95 % of collected remuneration. If we cannot find the artist or the heir we can distribute this money for collective purposes. The legislation requires that moneys are reserved for appearing authors for 10 years and that BUS make substantial efforts to find the artist/heir. We use a computer program in which we documents our efforts to find each artist and

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before any money is distributed collectively there is an active decision procedure that evaluate that we have done measures enough.

The compulsory system gives as a result that we find artists which benefit from the resale right and that is one of the fundamental reasons for the introduction of the resale right – it do good for the artists. Another important effect is that it makes the administration easy for the art market professionals as they don't have to go in to details, this is done by BUS. We can set up simple rules for the administration of the remuneration which saves time and money with all involved parties.

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

Recognition of artists' contribution to the economies and for creating cultural goods

The circulation of works and their changing market value becomes transparent.

See also introduction.

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