

**Submission by Copydan BilledKunst, Denmark, on the Consultation in preparation of a Commission report on the implementation and effect of the Resale Right Directive (2001/84/EC)**

Copydan BilledKunst is a Danish collecting society representing visual artists in Denmark. Copydan BilledKunst is appointed by the Danish Ministry of Culture to administer the resale right in Denmark. The society is in charge of the collection of resale right remuneration for all sales covered by the law and makes distribution to both Danish and foreign beneficiaries.

The resale right was introduced in Denmark in 1990 and is based on a compulsory collective management. Since the introduction both living and deceased artists have been entitled to receive remuneration for the resale of works of art and photography.

We are pleased to be invited to contribute to the Commissions consultation. However, we find it difficult to submit a complete picture of the effect of the implementation and effect of the Resale Right Directive in Denmark because the resale right is not fully implemented in all EU countries. In the UK, Ireland, the Netherlands, Austria and Malta, the resale right only applies to living artists until the end of 2011. This means that heirs of Danish deceased artists have not yet received any resale right remuneration from these countries. And we have received no information from these countries about resale of works by deceased Danish artists. As an example we can mention the UK. According to the report "The International Art Market 2007-2009" by TEFAF (The European Fine Art Foundation), page 13, the UK is a big art market with a majority share of 69 % of the EU art market. In our opinion this proves that there must be a considerable number of works by deceased Danish artists that will not contribute to the effect of the resale right in Denmark before some years after expiry of the prolongation term on 1 January 2012.

**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)**

In Denmark art market has increased during 2005-2010. However, looking at the collected resale right remuneration in 2008 and 2009 it decreased in 2008 and was almost halved in 2009. The figures for 2010 show that the curve is now turning slightly upwards again.

Below please find figures from Copydan BilledKunst. As requested, the development is described with respect to works of living artists and of deceased artists. Furthermore, it is described by price range. We are, however, not able to split the figures between auction houses and art market galleries/art dealers when splitting by living and deceased artists:

<b>2005</b>	<b>Living artists</b> Auction houses and galleries and dealers	<b>Deceased artists</b> Auction houses and galleries and dealers
Up to € 50,000	2,667	8,214
€ 50,001 – 200,000	5	35
€ 200,001 – 350,000	0	4
€ 350,001 – 500,000	0	0
Above € 500,000	0	0

<b>2006</b>	<b>Living artists</b> Auction houses and galleries and dealers	<b>Deceased artists</b> Auction houses and galleries and dealers
Up to € 50,000	2,707	6,230
€ 50,001 – 200,000	7	47
€ 200,001 – 350,000	0	3
€ 350,001 – 500,000	0	2
Above € 500,000	0	3

<b>2007</b>	<b>Living artists</b> Auction houses and galleries and dealers	<b>Deceased artists</b> Auction houses and galleries and dealers
Up to € 50,000	4,237	10,445
€ 50,001 – 200,000	25	41
€ 200,001 – 350,000	2	4
€ 350,001 – 500,000	0	0
Above € 500,000	0	0

<b>2008</b>	<b>Living artists</b> Auction houses and galleries and dealers	<b>Deceased artists</b> Auction houses and galleries and dealers
Up to € 50,000	3,636	8,224
€ 50,001 – 200,000	20	41
€ 200,001 – 350,000	1	4
€ 350,001 – 500,000	0	0
Above € 500,000	0	1

<b>2009</b>	<b>Living artists</b> Auction houses and galleries and dealers	<b>Deceased artists</b> Auction houses and galleries and dealers
Up to € 50,000	3,344	5,726
€ 50,001 – 200,000	6	22
€ 200,001 – 350,000	0	3
€ 350,001 – 500,000	0	0
Above € 500,000	0	0

<b>2010</b>	<b>Living artists</b> Auction houses and galleries and dealers	<b>Deceased artists</b> Auction houses and galleries and dealers
Up to € 50,000	3,908	5,595
€ 50,001 – 200,000	9	22
€ 200,001 – 350,000	0	2
€ 350,001 – 500,000	0	0
Above € 500,000	0	0

**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 follows the state of the market. However, the resale right will not be fully implemented in 5 member countries in the EU which hold a considerable part of the entire EU art market. The UK, Ireland, Netherlands, Malta and Austria will not include works of deceased artists in the resale right before 2012. In 2008 these 5 countries held 72% of the EU art market size. This is an important portion of the resale right which is not being collected and distributed. While resale right is collected in Denmark on behalf of both living and deceased artists and distributed also to beneficiaries in the abovementioned 5 countries, heirs of Danish artists have so far received no resale right from 72 % of the EU art 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?**

The figures published by the art market (TEFAF) to evaluate the global art market developments since the crisis show that no link to the introduction of the resale right can be made. EU countries where the resale right was introduced for the first time even raised their turnover more than countries that had already an existing resale right legislation. During the period of 1998-2008, which includes the period of implementing the Resale Right Directive, the sales of the entire EU art market grew by 45,2 %. The UK art market grew by 52,4 %, Germany grew by 23,4 %, France grew by 17 %, and Italy grew by 60,2%. The UK introduced and Italy exercised resale right for the first time in 2006 and it is interesting to see that these countries had the highest growth during said period. To compare with countries outside the EU, the growth of the art market sales in Switzerland decreased by 3,1 % during the period, and in the US the growth was 14,9 %.

It is also our own experience that resale right has had no negative effect on the Danish art market. The growth of the art market turnover during the abovementioned period 1998-2008 grew by 5,5 %. And since the introduction of the resale right in Denmark in 1990 the amount of collected resale right has increased every year, except from the years 2008 and 2009 which were dramatically influenced by the global financial crisis.

As also explained below under question 6, Copydan BilledKunst is frequently in contact with the Danish auction houses, art dealers and galleries in order to facilitate administration as much as possible for all parties. Copydan BilledKunst has developed an IT-solution which allows auction houses and other art dealers to use digital files when they report sales covered by the resale right. This means that they only

need to send us a digital file with sales figures, which already exist in their own files. Other dealers can also chose to report sales on the website of Copydan BilledKunst.

As a consequence of the implementation of the Resale Right Directive in 2006, Denmark introduced the ceiling whereby the total resale right remuneration from a sale cannot exceed 12,500 euro (excl. VAT). Furthermore, the sliding scale of percentages applicable for fixed price bands was introduced. This has had a negative effect on the resale right and has resulted in a significantly lower resale right remuneration. The figures below show the amounts which the artists have lost in the years 2006-2010 because of introduction of the ceiling and the sliding scale:

	Total amount of lost remuneration	Number of affected sales
<b>2006</b>	€ 178,476	63
<b>2007</b>	€ 61,457	77
<b>2008</b>	€ 105,945	70
<b>2009</b>	€ 199,600	21
<b>2010</b>	€ 30,073	36

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

Resale right supports the growth of visual art and secures a cultural diversity.

**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**
- **Imports of works of art**
- **Exports of works of art**

Below please find the figures for resale right remuneration collected in Denmark by Copydan BilledKunst.

	<b>Auction houses</b>	<b>Galleries and Dealers</b>
<b>2005</b>	€ 862,000 / 6,422,526 DKR	€ 147,000 / 1,093,334 DKR
<b>2006</b>	€ 1,065,000 / 7,933,261 DKR	€ 159,000 / 1,184,739 DKR
<b>2007</b>	€ 1,398,000 / 10,411,588 DKR	€ 211,000 / 1,573,309 DKR
<b>2008</b>	€ 1,286,000 / 9,579,673 DKR	€ 183,000 / 1,359,821 DKR
<b>2009</b>	€ 697,000 / 5,196,037 DKR	€ 145,000 / 1,082,352 DKR
<b>2010</b>	€ 805,000 / 5,997,188 DKR	€ 137,000 / 1,021,571 DKR

**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?**

Before payment of resale right royalty to the beneficiaries we deduct 15 % or 20 % of the fee to cover our administrative costs. For Danish artists we deduct 15 % of the fee. For foreign artists we deduct 20 %, and this percentage is based on agreements with sister societies. The percentage is the same for both living and deceased artists. When we receive resale right remuneration from our sister societies we do not deduct administrative costs before paying out the remuneration to the artists or the heirs.

It is the beneficiaries who bear the costs.

Administration fee:	
<b>2005</b>	€ 126,000
<b>2006</b>	€ 185,000
<b>2007</b>	€ 241,000
<b>2008</b>	€ 222,000
<b>2009</b>	€ 126,000

Copydan BilledKunst is constantly working on facilitating administration of the resale right and is regularly in dialogue with the art market. In cooperation with one of the largest auction houses in Denmark, who also represents the Danish association of auction houses, we have created an IT-solution and made it possible for all interested auction houses, galleries and art dealers to report resale right electronically in the form of xml-files. This means that sales prices and other information, which is already registered by the dealer, can be treated directly by the IT-system of Copydan BilledKunst. This is a practical solution for dealers with a large number of sales. Other dealers may chose to report their sales on the website of Copydan BilledKunst.

When the Resale Right Directive was introduced in 2006 Copydan BilledKunst also met with the representatives of the Danish association of auction houses to agree on a mutual interpretation of the new rules. This resulted in an easy set of rules (one simple schedule) in order to facilitate the day to day administration and, of course, to secure the rights of the artists.

Copydan BilledKunst pays out resale right remuneration 4 times a year.

**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?**

	Living artist		Deceased artists	
	Number of artists	Value	Number of artists	Value
<b>2005</b>	<i>Not available in a comparable form</i>			
<b>2006</b>	656	€ 224,000	948	€ 828,000
<b>2007</b>	876	€ 358,000	1,195	€ 988,000
<b>2008</b>	894	€ 450,000	1,095	€ 953,000
<b>2009</b>	718	€ 227,000	793	€ 515,000
<b>2010</b>	931	€ 297,000	963	€ 560,000

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

In Denmark the resale right is based on compulsory collective management. Copydan BilledKunst is approved by the Danish Ministry of Culture to exercise the resale right in Denmark on this basis. This means that Copydan BilledKunst collects resale right on behalf of both members and non-members, provided that the artist is a national of or has his habitual residence in an EEA country or is a national in a country where reciprocity as to resale right is in place. The royalties collected fall in two categories:

- a) Where the author or beneficiary of a work is not known to or cannot be found by Copydan BilledKunst, the organisation has an obligation to make an effort in order to find the right holders. This is done e.g. by consulting The State Archives, artists' organisations, the Internet and art books. The beneficiary may also contact Copydan BilledKunst and claim his/her right. The beneficiary's claim against Copydan BilledKunst shall last until three years have elapsed from the end of the year in which the resale took place. If the beneficiary has not been found the remuneration passes to Copydan BilledKunst, (cf. Danish Copyright Act, Section 38, 5).

Below, please find the figures for royalties that have been collected on behalf of artists and artists' heirs that we have not been able to find:

2006: Depreciation for 2002: € 51,000  
 2007: Depreciation for 2003: € 53,000  
 2008: Depreciation for 2004: € 78,000  
 2009: Depreciation for 2005: € 46,000  
 2010: Depreciation for 2006: € 48,000  
 2011: Depreciation for 2007 has not yet taken place

b) Where a deceased artist does not leave behind any spouse or issue, the right of remuneration shall pass to the organisation, which is appointed by the Danish Ministry of Culture (cf. Danish Copyright Act, Section 38, 4.) The value of the royalties collected on behalf of artists not leaving any natural heirs amount to the following:

2005: € 110,000

2006: € 83,000

2007: € 128,000

2008: € 100,000

2009: € 60,000

Every year Copydan BilledKunst reports figures on the collection of resale right to the Danish Ministry of Culture.

According to the Law the money may be used to deduct the administration costs and for purposes related to copyright. The money from both a) + b) are used in accordance herewith, e.g.:

- Cover administration cost
- Legal assistance to visual artists
- Conducting or supporting lawsuits of fundamental character as to copyright of visual art
- Information on copyright of visual art
- Negotiations for agreements with interested parties to allow use of art works and secure payment to visual artists
- An image bank created by the artists which function both as an exhibition window and as a sales database

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

The income of visual artists primarily comes from the sale of the original work. In this respect the works of visual artists differ from the works of e.g. composers, librettists and play writers who are entitled to receive a royalty every time their works are being performed. Authors of books are entitled to receive remuneration for copies of the book and for publishing of the book in new editions and in new media. And contrary to a work of art all copies of a book are per se the original literary work. An artwork is unique and there is only one original copy. Or there are typically a limited number of identical original copies. The resale right brings the protection of fine arts in balance with these other protected work categories where the authors and authors' heirs are remunerated during life time and 70 years after the author's death. Resale right is the only means to enable artists to benefit to a modest level on subsequent sales made when art market professionals take part in the transfer.

Most artists who work fulltime on their artistic activity seldom earn enough money to invest in a pension fund or to make long lasting investments to the benefit of themselves or their heirs. Resale right

improves their financial situation so that they can concentrate on making new production. And for many artists the copyright, including the resale right is one of the few assets artists have to pass on to their heirs.

To some extent heirs and estates undertake efforts to preserve and archive the works of their ancestors, and they publish list of works and biographies, thus, creating access to unique sources for researchers and the larger public. This is not only costly. It is also an important contribution to the cultural heritage.

Many artists emphasise the importance to know about the economic success of previous works. The resale right is a means to gather such information which gives important feed-back to the authors. This information is highly valuable for artists for their future creations. It is also an important means to receive information on the place where their work is located.

Resale Right contributes to maintain and develop a better creative environment for visual art and visual artists. Young artists typically receive small amounts in the first years of their professional career, but the resale right makes them feel acknowledged as artists and it encourages them to new production to the benefit of a cultural society.

A large number of Danish living artists and heirs of deceased artists support the resale right and agree to **the following statements:**

**“Resale right has been important for me during my career as a visual artist. It has supported my new production.”**

(In Danish: *“Følgeret har været vigtig for mig undervejs i min karriere som billedkunstner. Den har bidraget til, at jeg har kunnet skabe nye værker.”*)

Michael Kvium

Kathrine Ærtebjerg

Jens Thegler

Kristian von Hornsleth

Søren Vilhelm (Artpusher)

Ole Kofoed Ahlberg

Jens-Flemming Sørensen

Maria Marstrand

Poul Pava Lausen

Peter Nyborg

Ingar Dragset

Cathrine Raben Davidsen

Anette Harboe Flensburg

Annette Falk Lund

Knud Odde Sørensen

Thor Lindeneg

Keld Moseholm

Per Weiss

Husk Mit Navn

Jens Galschiøt

Claus Carstensen

Øssur Mohr

Hans Tyrrestrup

Annelise Kalbak

Sergei Sviatchenko

Jesper Christiansen

René Holm

Finleif Mortensen

Troels Trier

Søren Hagen

Amariel Nordoy

Frodo Mikkelsen

Per Arnoldi

Bjørn Bjørnholt

Christian Tangø

Karin Olesen

Mette Hannemann

Jacob Gadd

Peter Skovgaard

Lars H.U.G.

Tine Hind

Dennis Møgelgaard

Frans Kannik

Rolf Gjedsted

Lars Ahlstrand

Kristian Devantier

Ivan Andersen

Kjeld Ulrich Jørgensen

Susanne Butcher

Jytte Kløve

Jørgen Waring

Anders Kirkegaard

Stig Brøgger

Peter Rössel

Kári Svensson

Peter Martensen: “I am pleased with the resale right, because it guarantees that I get paid, when my works are resold ...”

(in Danish: *Jeg er glad for følgeretsordningen, fordi den garanterer jeg bliver honoreret, når mine værker videresælges ...*)

Per Weiss: “Resale has been important for my production. It has saved my ass many times.”

(In Danish: *“Følgeretten har været vigtig for min produktion. Den har reddet min røv mange gange.”*)

**“Without resale right there had been no royalty for lifelong, artistic production, in contrast to writers, composers and film makers. Typically, the artist earns not much during his or her lifetime. Therefore, it seems fair and just that the family receives a compensation for the poor years after the artist’s death”**

(In Danish: *“Uden følgeret havde der ikke været et afkast/en royalty for livslang, kunstnerisk produktion i modsætning til forfattere, musikere og filmfolk. Og der er typisk heller ikke den store indtjening, imens kunstneren lever, så derfor virker det rimeligt og retfærdigt, at familien efter kunstnerens død får kompensation for de dårlige år.”*)

Jørgen Mønsted (Peder Mønsted)  
Maria Jacobsen (Robert Jacobsen)  
Annette Jacobsen (Egill Jacobsen)  
Grete Balle (Mogens Balle)  
Troels Jorn (Asger Jorn)  
Nanna Hertoft (Henry Heerup)  
Kári Joensen Mikines (Samuel Joensen-Mikines)  
Ane Talbot (Johannes Larsen)  
Michael Freddie (Wilhelm Freddie)  
Kirsten Funder-Schmidt (H. A. Brendekilde)  
Janni Mitzi Madsen (Gudmund Olsen)  
Else Schwalbe (Ole Schwalbe)  
Ira Gadegaard (Paul Gadegaard)  
Leif Vilhelm Arnesen (Vilhelm Arnesen)  
Anders Roland (Knud Nielsen)  
Henrik Hellberg Lindemann (Kai Lindemann)  
Marianne Panton (Verner Panton)  
Lone Mertz (Albert Mertz)  
Martin Tobias Jacobsen (Arne Jacobsen)  
Henrik Jais-Nielsen (Jais Nielsen)  
Else Jensen (Axel P. Jensen)  
Klavs Øllgaard (Hans Øllgaard)  
Kaspar Tobias Winther (Richard Winther)  
Christian Andersen (Mogens Andersen)  
Louise Høm Kristiansen (Bo Kristiansen)  
Helene Høm (Bo Kristiansen)  
Søren Edsberg (Knud Edsberg)  
Naja Salto (Axel Salto)

Kasper Salto (Axel Salto)  
Lotte Müller Christensen (Max Müller)  
Ulrich Freddie (Wilhelm Freddie og Jørn Freddie)  
Estrid Brandrup (Sven Havsteen-Mikkelsen)  
Marianne Saabye (Svend Saabye)  
Peik Hoppe (Erik Hoppe)  
Ulla Roos (Leif Rydeng)  
Søren Ortvad (Erik Ortvad)  
Henrik Ortvad (Erik Ortvad)  
Palle Funder-Schmidt (H. A. Brendekilde)  
Jytte Kirchgasser (H. A. Brendekilde)  
Arne Bjulf (Søren C. Bjulf)  
Peter Tang Engelund (Svend Engelund)  
Anders Engelund (Svend Engelund)  
Nils Engelund (Svend Engelund)  
Charlot Jonna Willumsen (J. F. Willumsen)  
Klaus Thommesen (Erik og Anna Thommesen)  
Jette Baignol (H.A. Brendekilde)  
Erik Wiedemann Thorsen Høst (Oluf Høst)  
Aase Swane (Sigurd Swane, Christine Swane og Lars Swane)  
Fanny Nielsen (Poul S. Nielsen)  
Birgitte Hertz (Mogens Hertz)  
Vivi Kjærholm (H.A. Brendekilde)  
Erik Rosenstand (J.F. Willumsen)  
Inger Egedam (Emanuel A. Petersen)  
Trygve Oluf Wiedemann Høst (Oluf Høst)

K. Tobias Winther:

*"My father passed away a few years ago and, among other things, I inherited his archives consisting of notes, studies and photographic documentation of his artistic production. While this material has little commercial value it turned out to be of great interest to museums and art historians. I have hosted many visits and I have mailed more than a hundred DVDs with scans and photos. Only one time, I have been paid for my efforts, and it was very little. But I do it to honor my father. Fortunately, he received resale right by Copydan, and I have inherited that. I am grateful for the income I get this way because it offsets some of the expenses I incur in conjunction with maintaining and digitizing my father's archives and making them available. From the perspective of the collectors who buy and sell artworks created by my father the interest in the archives is a definite benefit, because the increased awareness and better documentation in the long run makes the actual art more valuable.*

*Sincerely,*

*K. Tobias Winther (the son of Richard Winther)"*