

BILD-KUNST

Verwertungsgesellschaft BILD-KUNST

53113 Bonn

Weberstraße 61

Rechtsfähiger Verein kraft staatlicher Verleihung

Sitz Frankfurt am Main

Library of Congress
Copyright Office
101 Independence Avenue, S.E.
Washington, D.C. 20559-6000

Bonn, Dec. 5th 2012

Dear Sirs,

As managing director of VG Bild-Kunst, the fine art artists' rights management society in Germany and on behalf of German artists I am very pleased to have the opportunity to support the Equity for Visual Artists Act of 2011, introduced by Mr. Nadler to the House of Representatives.

VG Bild-Kunst, being the sole artists' rights management society in Germany, represents more than 12,000 fine art artists by virtue of a direct mandate, and more than 40,000 artists by virtue of mandates given by partner organisations world-wide. A large number of VG Bild-Kunst's direct members are extremely successful in the international art market during their lifetime, to name only Gerhard Richter, Neo Rauch, Andreas Gursky, Thomas Demand, while others like Sigmar Polke and Joseph Beuys enjoyed the appreciation of the art market during their life time as well as after they deceased. These artists are only a few of the most internationally reknown German artists, whose works are regularly being sold in US auctions.

We are closely monitoring the US initiative for the introduction of a resale right in the US and are glad to see that an extensive gap in the protection of visual artists is about being closed by the proposed bill. Whereas all other creatives like writers and composers participate in the ongoing economic success of their works through their share in the sales revenues, fine art artists have no such revenues without resale right. Therefore we think no better title for the bill could have possibly been found: resale right is equity for visual artists, being the only chance for visual artists to participate in the economic success of their works after the initial sale. US artists will not only participate in the revenues their works generate in the USA, but will also be entitled to resale royalties for all sales in Europe and in all other countries granting this right.

Resale right has been discussed in the USA for many years and we are very glad to see the project being taken up again after its successful harmonisation in Europe and its implementation in Australia. We would like to point out that the two other internationally

Vorsitzende des Verwaltungsrats

Lutz Hackenberg, C. Cay Wesnigk, Frank Michael Zeidler

SEB Bank AG, Blz. 380 101 11, Kto. 1024791 600

Commerzbank Köln, Blz. 370 800 40, Kto. 207 269 500

Steuer-Nr. 205/5775/0361, USt-IdNr. DE122126060

Vorstand

Frauke Ancker, Werner Schaub, Rolf Silber

Dr. Urban Pappi (geschäftsführendes Vorstandsmitglied)

Bonn, Ruf (0228) 9 15 34-0, Fax 9 15 34-39, email info@bildkunst.de

10963 Berlin, Köthener Str. 44, Ruf (030) 2 61 38 79, Fax (030) 23 00 36 29

important art markets without resale right so far, China and Switzerland, are currently considering granting artists the same rights as elsewhere in the world. Still, we regret that the proposed bill provides resale royalties only for works having been auctioned, whereas all other sales in the secondary market – galleries and art dealers – are left without remuneration.

The key arguments against resale right and have been proven wrong by practical experience:

1. Art trade did not move to other countries without resale right.
The Report on the Implementation and Effect of the Resale Right Directive given by the European Commission in December 2011¹ clearly shows that this not the case. The market remains where potential buyers are – not where there is no resale right. The successful harmonisation of resale right in Europe, having implemented the right in countries that did not recognize it before, clearly shows the positive effects for artists without any negative side effects to the art market: even in times of economic crisis like after 2007 the art market in GB further boomed after the implementation and artists from around the world received their share of the sales prices. Despite the doom prophecies of the British art market, resale right has not had any negative impact.
2. Not only rich estates profit from resale royalties.
Resale royalties are to be paid to all artists whose works are being sold in the secondary market – living artists and heirs. Experience in the UK shows how strong the market for works of living artists is – from 2006 up to 2011 resale right was collected only for living artists' works. However, heirs are equally entitled to due remuneration during the term of protection of the artists' work. They are maintaining archives of works which are valuable sources for researchers and are investing in legal procedures against forgeries of original works. These activities are costly and not funded by any public financial sources

VG Bild-Kunst collected 3.4 Mio. Euro resale royalties for 1022 artists in 2010 and 4.75 Mio Euro for 1208 artists in 2011 – these figures clearly shows that not only an exquisite circle of artists profit from resale royalties, but a considerable percentage of artists actually receives this remuneration. If US artists were entitled to resale royalties, VG Bild-Kunst could distribute to even more artists.

The key to successful implementation, however, is a smooth operating scheme. We refer to the very positive experience made in the UK where the visual artists society DACS quickly developed a very successful scheme which operated smoothly when the right was implemented. However, it is most helpful to back resale right with mandatory collective management. Mandatory collective management allows the society appointed to manage the right to indemnify the debtor and guarantee the distribution of monies collected to the right holder. Implementation without such legal backing for mandatory collective management on the other hand is likely to entangle both auction houses and visual artists' societies in lengthy disputes about chain of title and hinders smooth administration.

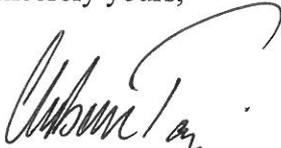
Another crucial element of the successful implementation is a clear definition of the price on which the resale royalties are calculated. The definition given by the bill might still leave room for discussions and we assume that taking the hammer price is a point of attachment

¹ http://ec.europa.eu/internal_market/copyright/docs/resale/report_en.pdf

easier to administer for all sides concerned. The hammer price is published by the auction houses in the result lists and leaves aside all possible additional agreements between auction house and purchaser.

Having expressed all this we hope that the bill passes quickly – equity for visual artists is too important to be further delayed.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Urban Papp', with a large, sweeping flourish extending from the top right of the signature.

Dr. Urban Papp
Managing Director
VG Bild-Kunst