



**Submission to the European Commission Consultation on the implementation  
and effect of the Resale Right Directive (2001/84/EC)**

**Irish Visual Artists Rights Organisation**

**March 2011**

## **Irish Visual Artists Rights Organisation (IVARO)**

IVARO is a non-profit organisation representing visual artists in relation to matters of copyright. It has approximately 1700 Irish artist members. It has reciprocal rights agreements with 17 sister societies in other countries, including the UK, France, Germany and many other EU member states. IVARO is mandated to collect the artist's resale royalty on behalf of its Irish members. It is also mandated by its reciprocal rights agreements to collect the royalty of behalf of the members of foreign societies entitled to enjoy the royalty in Ireland. Since the artist's resale royalty was introduced, on 13<sup>th</sup> June 2006, IVARO has collected and distributed to artists close to €500,000. Approximately €75,000 of this amount consists of royalties remitted to IVARO for Irish artists under the terms of reciprocal rights agreements.

IVARO welcomes this opportunity to participate in the EU Commission's consultation.

## **About the Resale Right in Ireland**

- The resale right was introduced by Statutory Instrument on June 13<sup>th</sup> 2006.
- The right only applies to works by living artists.
- The threshold is €3,000 (the maximum permitted under the EU Directive)
- Mandatory collective management of the right is not in place therefore artists must collect the royalties themselves or mandate an organisation to do so on their behalf.
- The person selling the work is liable to pay the resale royalty.

## **About the Irish Art Market**

The Irish art market is small by international standard, accounting for around 1.4% of the EU total<sup>1</sup>. There has been no major study of the Irish art market that covers the entire period from 2005 – 2010. While auctioneers publish sales figures, Irish commercial galleries and other art dealers do not and there is no association of art dealers to collate data on this sector of the art market. Therefore it has not been possible to provide answers to some of the questions posed by the Commission.

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<sup>1</sup> Droit de Suite: Artists Resale Right, Dr. Clare McAndrew, 2005

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: auction houses (ii) art market galleries and dealers*
  - c. *By price range (up to € 50.000, etc...)*
  
2. *Please describe the factors that have influenced the developments in, and the competitiveness of, the art market in your country over this period:*
  - a. *With respect to the works: (i) living artists; and (ii) deceased artist*
  - b. *By sector (i) auction houses; (ii) art market dealers and galleries*
  - c. *Price range*
  - d. *With respect to third countries*
  
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 in terms of competitiveness of art market in your country vis-à-vis other relevant markets that do not apply the resale right?*

Prior to the introduction of the resale right, Irish art market professionals speculated that the right would have a negative affect on the art market. There were claims that the right would deter art collectors and that sales would migrate to countries without the resale right. These claims have proved to be unfounded. In 2006, the year in which the resale right was introduced, the art auction market broke all previous records. From 2005 to 2007 auction sales rose by 44%, illustrating that the resale right had no negative effect on the art market and did not divert sales abroad.

The table below shows auction sales at the three largest Irish auction houses, Adams, DeVeres and Whytes (which account for over 90% of art sold at auction in Ireland<sup>2</sup>.)

| Year | Sales at Adams, DeVeres and Whytes |
|------|------------------------------------|
| 2005 | €22 million                        |
| 2006 | €28.9 million                      |
| 2007 | €31.7 million                      |

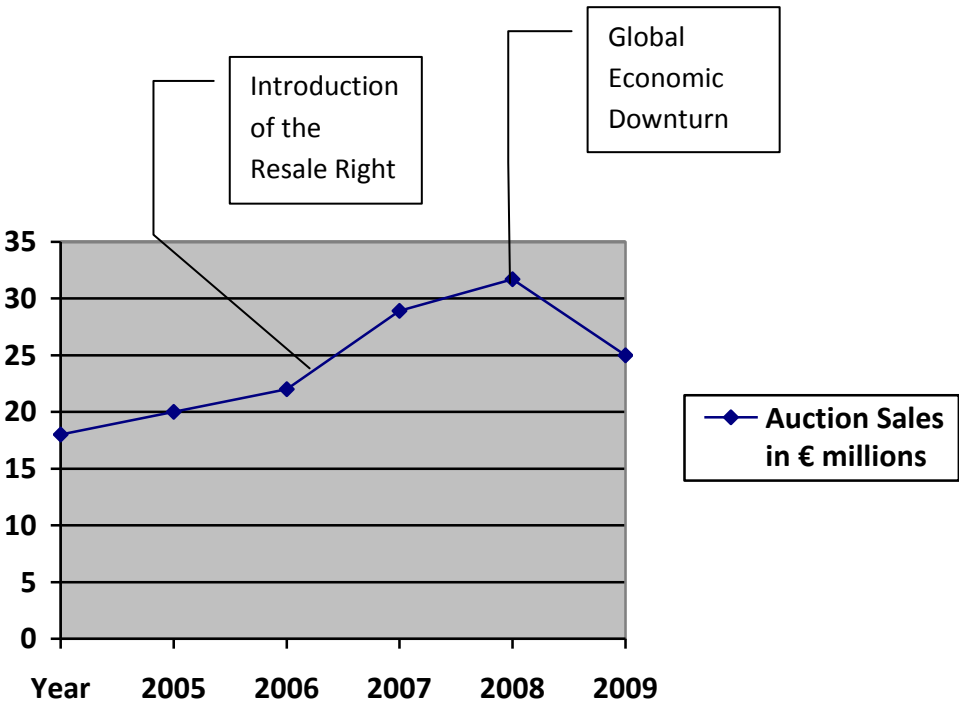
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<sup>2</sup> An Investor's Guide to the Art Market by Dr. Clare McAndrew. Published by Liffey Press.

The following table outlines the changes in the volume of eligible works sold at auction in Ireland in the years before and after the introduction of the right. The table shows that 111.4% more works came onto the market the year after the introduction of the resale right.

|           |  |
|-----------|--|
|           | Number of resale right eligible works sold |
| 2003/2004 | 245  |
| 2006/2007 | 518  |
| Change    | 273  |
| % change  | 111.43 %                                   |

In 2008 and 2009 the art market was affected by the global economic downturn. There was a 40% decline in the value of Irish art sales in 2008 and a further 50% fall in 2009.



Figures based on auction sales for DeVeres, Adams and Whytes.<sup>3</sup>

In volume terms, the 2010 sales of Irish art at the principal auction houses showed a substantial recovery from the depths of 2009. Adam’s put their 2010 increase at 52% and Whytes at 32%.<sup>4</sup>

<sup>3</sup> Annual Price Guide to Irish Art 2007 – 2008, Irish Arts Review.

<sup>4</sup> Annual Price Guide to Irish Art 2010 – 2011, published by the Irish Arts Review.

4. *What is the outlook for the art market in your country?*

*What are the major risks and opportunities facing the sector?*

Initial signs are that the market is recovering.

From IVARO's viewpoint, one of the major risks is that resale royalties that have been collected by galleries and art dealers are not being distributed to artists. Galleries and art dealers in general have avoided the resale right. It has not been possible to reach any accord as to payment of the royalty with the vast majority of the commercial art galleries which process re-sales. Nor has it been possible to obtain any information from them as to qualifying sales. The larger of the galleries have all refused to negotiate or to co-operate with IVARO in any way. IVARO has provided its list of members to each of the galleries and has formally sought information as to sales, sales price and sellers names and address. Such galleries as have responded at all have indicated verbally that they will only provide information if a royalty is claimed relating to a specific sale. This is of course impossible for IVARO as the galleries do not, as the auction houses do, make public their sales.

IVARO suspects that some at least of the uncooperative galleries may have put aside the artist's resale royalty pending the point at which they or the seller is obliged by a court order to pay it to the artist, or the three year time limit for information expires. IVARO is fearful that many of these galleries may not survive the current economic conditions, and this money will be lost entirely to the artists to whom it is due. Unless mandatory collective management is introduced soon, the sums of money lost are going to grow each year.

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 year 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
- Import of works of art
- Export of works of art

6. *What is the cost of administering the resale royalty*

- a. for living artists; and**
- b. on behalf of deceased artists?**

**a) for living artists**

Since the introduction of the right IVARO has collected over €520,000 in royalties for our members. We pay our members within three months of collecting the royalty. Our administration charge is, and always has been, 15%. We do not levy an administration charge on royalties collected through our network of foreign collecting societies.

**b) on behalf of deceased artists**

Not applicable.

**7. How many artists have benefitted from the resale right for each year over the period 2005-2010?**

Figures are for IVARO members who have benefitted from the resale right:

| <b>Year</b> | <b>Number of artists</b> |
|-------------|--------------------------|
| 2005        | 0                        |
| 2006        | 1                        |
| 2007        | 38                       |
| 2008        | 68                       |
| 2009        | 54                       |
| 2010        | Figure not available     |

The number of artists benefiting from the right is relatively small. This can be attributed to the high threshold of €3,000, which is the maximum that was permitted under the EU Directive. In Ireland nearly 98% of art sells at auction for less than €50,000 and 50% sells for less than €1,000<sup>5</sup>. IVARO distributes a large number of royalties under €300 (just over 50% of royalties are under €300 in any given year).

The high threshold has limited the resale right to a small group within the artistic community whose works command high prices at auction. There is no doubt that the threshold has failed to benefit the majority of artists whose works sell for less than this sum.

***What is the value of the royalties that have been distributed (a) to living artists; and (b) on behalf of deceased artists?***

a) IVARO has distributed €490,394 to artists in the period June 2006 to December 2010

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<sup>5</sup> An Investor's Guide to the Art Market by Dr. Clare McAndrew. Published by Liffey Press.

b) Not applicable. Resale right applies to living artists only.

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

All resale royalties collected by IVARO are distributed to artists within 3 months. Ireland does not have mandatory collective management therefore IVARO can only collect on behalf of its members. Artists who are not members of IVARO must apply directly to the art market professional for payment of the royalty.

There is evidence that some of the art market dealers are holding on to the resale royalties collected from the purchasers long past the time that they should have paid the artists or their representatives<sup>6</sup>. IVARO also suspects that some galleries may have put aside the artist's resale royalty pending the point at which they or the seller is obliged by a court order to pay it to the artist, or the three year time limit for information expires. IVARO is fearful that many of these galleries may not survive the current economic conditions, and this money will be lost entirely to the artists to whom it is due.

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

In Ireland, recent research by Visual Artists Ireland (VAI) shows that artists are amongst the lowest paid members of society and that few Irish artists can make a living from their work. 67% of visual artists in Ireland earn less than €10,000 per annum from their creative work.<sup>7</sup>

Faced with the daunting prospect of establishing a career as an artist, the resale right provides a strong motivation to emerging artists to continue creating work during the lean times in the hope that they will receive royalties in the future.

Being able to bequeath the resale right to loved ones or to favourite causes is another strong incentive for artists to keep producing work. Resale royalty income can help support their family or a charity after their death.

After an artists' death, the heirs are generally responsible for maintaining the artists' legacy. This can be a very time-consuming and expensive task. Some of the jobs include - maintaining records, authenticating works, responding to requests to reproduce the artist's works, providing information for exhibitions and catalogues and looking after websites. Resale royalties can assist artists' estates with their work and help them to preserve the artists' legacy for future generations to enjoy.

The resale right also provides valuable information for artists, enabling them to keep a track of where, when and at what prices their works are being sold at.

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<sup>6</sup> Review of the Fine Art Market, article in The Property Valuer, James O'Halloran.

<sup>7</sup> 'The Social, Economic & Fiscal Status of Visual Artists in Ireland', Visual Artists Ireland, July 2009.