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TASK FORCE ON THE ARTIST'S RESALE ROYALTY RIGHT

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Task Force on the Artist's Resale Royalty Right

Working Group 1: Galleries and the resale right

This draft report was prepared by Marie-Anne Ferry-Fall, General Manager of the Société des auteurs dans les arts graphiques et plastiques (ADAGP), a French agency that manages artists' rights, and Chair of the **Working Group on galleries and the resale right**, and was submitted by email to the members of the Working Group.

It contains an **overview of the different situations** in the responding countries, and aims to avoid the theoretical debates in order to focus on concrete questions and issues relating to the application of the resale right to galleries and offering a summary of them. It will serve as a basis for the development of guidelines to be approved by the Working Group on future work in this area.

I. AIM OF THE WORKING GROUP

Although clear enough in the case of auction houses, the application of the resale right in the case of art galleries raises more questions. The occasionally vulnerable situation of galleries and their importance for making known artists' work could lead to a reluctance to apply what would be perceived by them to be a financial and administrative burden.

In order to **move beyond** the stage of purely intellectual thoughts or from **mere feelings**, usually raised but not illustrated in particular in previous discussions held at the European level in 2013 and 2014, without any tangible outcome to date by galleries representatives, the Working Group aims to **take an objective view of the subject** by bringing together all the strands of **verified information** from the field concerning the application of the resale right in the art gallery sector so that discussions might take place on **the soundest possible basis**.

The questionnaire was made up of **three parts**:

- The first part was designed to establish the **proportion of galleries** in the national art market and of those in the **secondary market** - it is **key to recall** that **not all galleries are affected by the resale right**.
- The aim of the second part was to identify the **administrative burden** and the role of CMOs to best support **galleries** subject to the resale right in declarations of sales and payment of fees.
- The third part of the questionnaire concerned the **difficulties of applying the resale right** to the galleries concerned, in particular owing to professional secrecy.

Of **14 responses** received: 13 were submitted by CMOs and one by the International Confederation of Art Dealers (CINOA). CINOA preferred to submit a general document rather than responding directly to the questionnaire.

The 13 CMOs operate in the following countries: Austria, Belgium, Finland, France, Germany, Greece, Italy, Lithuania, the Netherlands, Spain, Slovenia, Sweden and the United Kingdom.

II. RESPONSES TO THE QUESTIONNAIRE

The questionnaire included a request for an estimate of **the proportion of galleries affected by the resale right** and it was found that only **5 per cent** of galleries in **Germany**, **10 to 12 per cent** of galleries in **Belgium and the Netherlands**, and up to **25 per cent** of galleries in **Austria and in France** are concerned.

Respondents indicated that **the share of the resale right paid by galleries to CMOs** ranges from **5 per cent to 41 per cent of the the resale right received**: 5 per cent in Spain, 10 to 15 per cent in the United Kingdom, 20 per cent in Germany and the Netherlands, 28 per cent in France and 41 per cent in Germany.

In total, the **administrative burden** is therefore between **one hour and one day per year and per gallery**, depending on the country.

All CMO respondents confirmed that **legislation providing for mandatory collective management made it easier to manage the resale right**, both for themselves and for galleries. The advantages of mandatory collective management included the existence of a single portal that art market professionals could use without the chance of error, the absence of the risk of late claims from artists or rights holders being made long after a sale but when the right was still legally enforceable, the optimization of trade and the improvement of traceability.

Lastly, regarding **improvements to be made** to management of the right in relation to galleries, the CMOs indicated multiple times that it would be useful to **consolidate information**, or even **organize training sessions** for professionals in the art market, in particular in coordination with their professional organizations, to facilitate improved relations by creating **more direct and local contact** between CMOs and galleries.

In terms of the difficulties of applying the resale right to galleries, the **maintenance of professional secrecy** was a key point for all respondents. That this is an issue for galleries is in contrast to the case of auction houses as, by definition, sales made at auction are public and the outcomes are known. Professional secrecy being a **major and legitimate point of the activity of galleries**, it is desirable that they should express themselves over its extent.

The questionnaire ended with an open question regarding the means that best enabled the application of the resale right to galleries. Although the national realities of markets are not uniform (proportion of auction houses and galleries, proportion of primary market/secondary market galleries, etc.), numerous respondents said that **a more transparent market with rules that are respected by all constituted a strong and healthy market**, and would especially help to stem the rising tide of forgeries on the art market, an issue mentioned by all respondents.

Galleries, meanwhile, must **improve transparency**, in particular in view of the training provided by their trade unions in coordination with CMOs. However, it should be noted that private sales, **by their very nature, more difficult to identify** than sales at public auctions.

III. GUIDELINES FOR FUTURE WORK

Following the responses and the study conducted in this difficult context that we know, **3 guidelines** for future work on the subject emerge.

The first objective is to **expand the questionnaire to non-European entities** in countries beyond Europe, whether CMOs or other bodies, that are in a position to provide concrete information on the application of the resale right to galleries and to **complete some points**. CINOA raised the issue of the disparity in the burden of the resale right under legislation that could be a cause of either the **double payment** or the **non-payment** of the resale right. Nevertheless, this disparity deserve to be deepened.

The setting up of **workshops** on the effective application of the resale right, in particular on aspects of **transparency, traceability** and **dynamism** of the art market, between **professionals in rights management** (CMOs, art market professionals, gallery associations and Member States) by involving the **artists**, is another goal.

Finally, creating an **information document on the application of the resale right to galleries** including regular updating of surveys would be a necessary tool for interested Member States.

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