

Art Law Gallery

Posted at 5:58 AM on October 28, 2009 by Sheppard Mullin

The European Droit de Suite - An EU Effort to Strengthen the US Contemporary Arts Market?

In 2001, the European Parliament passed Directive 2001/84/EG, which requires all EU Member States to incorporate a so called “Droit de Suite” into their respective national copyright law codes by December 31, 2009. A key goal of the Directive is to eliminate competitive barriers that existed in the contemporary and modern art market between Member States whose respective copyright laws had codified Droit de Suite decades ago (*e.g.*, France and Germany), and Member States whose respective copyright laws were silent on the principle (*e.g.* Great Britain, Austria, and the Netherlands).

Once implemented, the EU-wide Droit de Suite will cover original artwork, including paintings, sculptures, drawings and photographs that sell for more than €3,000 in a Member State for the full duration of the artwork’s copyright (*i.e.* the life of the artist plus seventy years). Upon the sale of any piece of art that falls under the scope of Droit de Suite, the artist of such artwork will be entitled to receive the following compensation (with a ceiling of €12,500 for each piece of art per sale): (i) 4% of the sales price of the artwork up to €50,000; (ii) 3% of the sales price of the artwork up to €200,000, (iii) 1% of the sales price of the artwork up to €350,000; (iv) 0.5% of the sales price of the artwork up to €500,000 and; and (v) 0.25% of the sales price of the artwork in excess of €500,000.

The implementation of a Droit de Suite in the EU is likely to lead to a new paradigm in the European market for modern and contemporary art. The absence of a Droit de Suite in Great Britain had been one of several key factors that not only made London a hub of the European market for modern and contemporary art, but also made British auction houses among the most profitable in the world. It therefore follows that an EU wide Droit de Suite is likely to displace the European market for modern and contemporary art to jurisdictions such as Switzerland and the United States whose copyright laws do not recognize Droit de Suite. Indeed, the wake of the European Parliament passing Directive 2001/84/EG, the sales figures for auction houses in Great Britain, the Netherlands, and Austria dropped significantly, whereas the Zurich branch of the Christies now accounts for more than 40% of the group’s European turnover. This sudden shift of business can only be explained by the implementation of the Droit de Suite, which first and foremost means higher prices for modern and contemporary art and higher administration costs for auction houses.

In implementing an EU-wide Droit de Suite, the European Parliament also sought for contemporary artists to participate, along with collectors, auction houses, and galleries, in the financial gains associated with the resale of their works of art. The magnitude of the secondary market for contemporary and modern art is well illustrated by following the sales of Picasso's artwork from 1989 – 1999. During this period, the worldwide value of Picasso works sold at auction amounts to approximately \$500 million. If all such sales had taken place in jurisdictions recognizing a Droit de Suite similar to that of Directive 2001/84/EG, the heirs of Picasso would have realized a profit of approximately \$25 million. According to the European Parliament, a Droit de Suite would not only benefit the Picassos, Miros and Klees of the world, but also lesser known artists. Indeed, it is commonplace for young, relatively unknown and inexperienced artists to sell their artworks quite cheaply at the beginning of their career. By implementing an EU-wide Droit de Suite, such artists (or their heirs) would benefit years later if the original (or subsequent) owners of their works profited from selling them in the open market.

However, renowned European artists such as Gerhard Richter and Georg Baselitz have voiced concerns that only the most famous artists (*e.g.* Picasso, Miro, Klee, etc.) and their heirs will ultimately benefit from the implementation of the Droit de Suite and that implementation of Directive 2001/84/EG will present additional obstacles for already-struggling young artists. Indeed, the works of young artists are generally sold in small art galleries and not in big auction houses. Since the Droit de Suite is likely to lead to higher prices for modern and contemporary art, it follows that it will become increasingly more challenging for young artists to sell their works at all. Accordingly, art galleries in Member States are likely to experience a decline in profitability and may even be tempted to relocate to jurisdictions that do not recognize a Droit de Suite. Perhaps then, in this time of economic uncertainty and financial crises, the EU Droit de Suite will prove to be nothing more than an unintended stimulus plan for the US and Swiss contemporary and modern art markets.

Trackbacks (0)

Comments (0)

Art Law Lawyer & Attorney of Sheppard Mullin Law Firm, offering services related to intellectual property, patents, copyrights, trademarks, trade secrets, advertising, licensing and antitrust for artists and the art industry. **Attorney Advertising**