

The State of Fine Art: New Perspectives on Artistic Copyright

4 November 2014

Report on the Workshop organized with the purpose of drawing attention to copyright issues and the presentation of the position of the visual arts sector in Europe to the representatives of the European Parliament and the European Commission.

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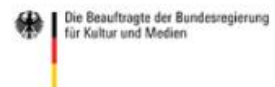
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Context

The digital economy is failing to uphold copyright for artists, allowing their works to be copied easily and only providing meagre royalties, according to top level representatives at a major meeting in Brussels on November 4.

The international symposium, '**The State of Fine Art – New Perspectives on Artistic Copyright**', heard a range of artists, officials, experts and representatives explain how the internet and other new information technologies had eroded copyright protections for most artists.

The symposium was organized under the patronage of **Helga Trüpel (MEP)** by the **VG Bild-Kunst** (Collecting Society for the Visual Arts), the **Internationale Gesellschaft der Bildenden Künste** (IGBK, International Association of Art in Germany), **European Visual Artists** (EVA) in cooperation with **EuroMEI** and the **International Association of Art (IAA) Europe**.

Guest speeches

In his welcoming speech **Werner Schaub**, speaker of the IGBK Board and member of the Executive Board VG Bild-Kunst, emphasized that for the first time, European collecting societies and artists' organizations in the field of the visual arts took joint action at the European level.

Czech **MEP Pavel Svoboda**, who is the chairman of the **European Parliament Committee on Legal Affairs**, underlined the importance of the EU's 2001 Resale Right Directive aimed at ensuring artists receive royalties on their works when these are resold. "*I am personally attached to principles behind this, for remuneration and cultural recognition,*" he said, adding that the Parliament was looking for a closer relationship with stakeholders in the art world. Svoboda quoted Jean Monnet, who said, "If I had to do it again, I would first start through culture", and the U2 singer Bono, who said recently, "Europe is a thought that needs to become an emotion."

As for his own role, Svoboda said the Parliament's Legal Affairs Committee was well aware of the contribution of fine arts and artistic creation to culture. "*Be sure that private copying is something we are attached to very much. I promise that we will do our utmost in this legislature to support artists for fair remuneration,*" Svoboda said.

Panel debates

Resale Right

During the panel debate on resale rights, there was concern about whether the other countries would agree measures to ensure artists receive royalties akin to those in place in the EU. **Marie-Anne Ferry-Fall**, the director of the French visual arts Collecting Society **ADAGP**, noted that the principle of the resale right did not have same global support as other copyright principles. *“The problem with the resale right is that it is a reciprocal right – the country of origin has to recognize it. Unless that is the case, it cannot be given,”* said Ferry-Fall, who is also President of **European Visual Artists (EVA)**. Although neither the US and China – two massive art markets – have agreed the right, she felt they were both moving in that direction. *“It would be wonderful if this could happen. The world would be a much better place for visual artists,”* she said.

Martin Leskovjan, a lawyer for the Czech Collecting Society for resale right **GESTOR** and founder of **Fair Art**, which provides legal services for artists, said one of the challenges is to ensure legislation keeps pace with innovation. *“New or unusual forms of art, like street art or video art, are sometimes difficult to define as visual art,”* he said. But Leskovjan said artists were now using new tools to ensure fair payment, and mentioned a technology called **BlockChain**, which he described as the art world’s Bitcoin. *“This helps with transfer of ownership of art, and the payment of royalties – and not just for art professionals like art galleries and auction houses. It is also efficient, and helps the fight against forgery,”* he said.

Copyright Contracts

The panel on copyright contracts revealed how precarious business can be for artists struggling to make a living with their work, and how they are pressured to waive licensing rights. **Ariane Joachimowicz**, a media and copyright lawyer in Brussels, pointed out that most artists are in a weak negotiating position, and just accept what is imposed on them. *“The royalties are usually outrageously low for entire world and duration of copyright,”* she said. *“Also, artists don’t fight for their rights – they just accept them.”*

British photographer Martin Beckett described the problems freelancers are confronted with when negotiating copyright contracts. *“We are actually being crushed by corporations, crushing the very lifeblood from the creative community. It is not working for us,”* he said. Beckett, a former president of the International Council of Creators of Graphic, Plastic and Photographic Arts (CIAGP), noted that most work for publishing companies is done for a low fee, and artists usually made money from reselling when publication has finished with it – but this right has now been denied. The situation is made worse by competition rules denying photographers the right to collectively bargain. *“It is a very difficult situation to be in. I’m not sure how to go forward. I feel like a dodo bird going down to the beach to welcome the incoming sailors,”* he said.

Anouk Siegelaar, a copyright lawyer and legal advisor with the **Association of Dutch Designers**, said that although Dutch copyright laws give artists the right to decide where and when their work is used, the reality is different, especially for visual artists. *“Since most artists work on commission, they are dependent on clients,”* she said. *“Supply is abundant, anyone can call themselves a photographer and throw up a website, content is offered for free or taken easily. So publishers are more and more demanding, and call for waiving of rights. Nowadays you have to sign the waiver or the commission goes elsewhere.”*

Private Copy Remuneration

Private copy remuneration, another income source for artists, was debated in the third panel, with **Anke Schierholz** of the German visual arts Collecting Society, **VG Bild-Kunst**, explaining how this is under threat from industry, which collects the levy from sales of equipment that can be used to copy. *“The Hewlett-Packards of the world are actively lobbying to have this levy removed,”* she said. *“Manufacturers and importers of devices that pay the levy are attacking this. This is outrageous and an arrogant attitude towards artists. This issue is complicated by new platforms like Netflix, Spotify and cloud computing, where there is no additional copying, but licensing is needed.”*

In the field innovative technologies, **Marie-Anne Ferry-Fall** made a comprehensive presentation aimed at clarifying the hurdles authors have to face with respect to **3D Printing** technologies, and proving that this process, despite it being in a very early stage, also needs to take the author's rights into consideration. *“We are only at the beginning, but it is a phenomenon that we will follow closely in order to avoid having our sector set aside.”*

Carlos Sanz, representing **EGEDA**, Spain's collecting society for audiovisual producers, related how a Spanish government decree in 2012 slashed the remuneration by removing the levy and only providing compensation through a fixed state fund. The result meant that remuneration fell from €115m in 2011 to €5m last year. *“We estimate €350m losses were incurred between 2012 and 2014,”* he said. *“Users pay twice, as the prices of devices have not fallen. Rightholders get much less compensation. The only winners are distributors and manufacturers, who are American, Chinese and Korean.”*

User generated content and ISP Responsibility

The final panel looked at possible income streams from user generated content, for example when a song is used to accompany an individual's home video uploaded onto YouTube. **Gerhard Pfennig**, former head of **VG Bild-Kunst**, and **spokesman of Initiative Urheberrecht**, the German artists' copyright forum, said most of these issues are small and easily solvable. *“Since most of such uses happen on social networks, the best way to solve it is to charge the Internet service provider a fee for the use of protected content by the consumers,”* he said, noting that newly confirmed EU Digital Economy Commissioner Günther Oettinger had already suggested such a fee, or 'Google tax'.

Austrian artist **Alexander von Arotin** said that digital technologies now made art easier to copy than ever. He said the Internet should ensure profits generated by the spread of intellectual property are reinvested by operators and governments in more research, education and art. *“Otherwise the Internet will become a trash library,”* he said. *“The Internet, that started as a free exchange platform, is becoming a huge data stealing system.”*

Von Arotin, famed for his collaboration with **Serghei**, called on ISPs to pay proportional compensation fees to the copyright offices, the authors, artists and inventors, supporting art, research and creation, maintaining the creativity cycle. *“It is necessary to establish urgently a clear, simple and fair solution of compensation for the authors and creators,”* he said.

For any additional information please consult www.state-of-fine-art.org.

For any additional communications please contact us at info@evartists.org.