

# **Order on Calculation of Droit de Suite Remuneration in Connection with Commercial Resale of Works of Art**

## **- Order No. 274 of April 18, 1996**

Pursuant to section 38(3) of Act No. 395 of June 14, 1995 on Copyright the following rules are laid down:

- 1.** Under section 38(1) of the Copyright Act, the author shall in the event of commercial resale of copies of works of art be entitled to a remuneration of five per cent of the sales price, excluding VAT (droit de suite).
- 2.** The right of remuneration shall apply to authors who at the time of sale are
  - (i) nationals of or persons who have their habitual residence in countries within the European Economic Area, cf. section 85(4) of the Act; or
  - (ii) nationals of or persons who have their habitual residence in a country that has acceded to the Berne Convention and which has implemented a droit de suite system as mentioned in article 14 ter of the Convention, cf. section 4(ii) of Ordinance on the Application of the Act on Copyright with Respect to Other Countries, etc. (Ordinance No. 964 of December 12, 1995).
- 3.** The right shall apply in the event of sale of
  - (i) works of fine art, including paintings, sculptures, drawings, graphical works and picture textiles;
  - (ii) works of applied art, including goldsmith's and silversmith's works, jewellery and ceramic works, unless several identical copies have been produced; and
  - (iii) photographic works.
- 4.** The right shall subsist until the expiration of the term of copyright, cf. section 63 of the Act.
- 5.**—(1) The right is connected to resale made or arranged for commercial purposes, including barter, be the sale by shop or auction sale, or in any other manner. The right shall apply to sale to private persons as well as traders.
  - (2) The duty of paying remuneration rests with anyone who for commercial purposes sells or arranges sales of works of art.
- 6.**—(1) Where the author sells copies that the author has not previously transferred to others, no remuneration is payable. This shall apply also if on the basis of a transfer of ownership from the author by inheritance, creditor proceedings or division of an estate, anyone sells copies which have not previously been transferred to others by the author.
  - (2) In the event of private transactions with no participation of anyone who for commercial purposes sells or arranges sales of works of art, no remuneration is

payable.

**7.**—(1) The remuneration shall be calculated as five per cent of the sales price of the copy, including auction fee, if applicable, but excluding VAT.

(2) The basis of calculation shall comprise the value of frames, suspensions, bases, technical equipment, etc. included in the transaction, irrespective of whether such accessories are fixed to the copy or not. In the event of sale of copies of goldsmith's or silversmith's works, the seller shall, however, be entitled to deduct the value of precious metals and precious stones.

**8.** Remuneration is payable only if the sales price exceeds DKK 2,000 (excluding VAT).

**9.** Anyone who for commercial purposes sells works of art shall each year forward to the Copy-Dan Society Pictorial Art a statement of the sale of works for which remuneration is payable. The statement shall be certified by a state-authorized public accountant or registered accountant, cf. section 38(6) of the Act. The statement shall be available not later than on June 1 in the year following the calendar year in which the sale took place.

**10.** Violation of the provision of section 9 may involve a penalty by way of a fine, cf. section 76(1)(iv) of the Act.

**11.**—(1) This Order shall come into force on May 1, 1996 and shall take effect as from July 1, 1995.

(2) Order No. 440 of June 8, 1990 on Calculation of Droit de Suite Remuneration in Pursuance of the Copyright Act shall be repealed.

*The Ministry of Culture, April 18, 1996*

JYTTE HILDEN  
/J. Nørup-Nielsen