A study into the effect on the UK art market of the introduction of the artist's resale right

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1. Executive Summary

The purpose of this study, commissioned by the UK Intellectual Property Office, is to provide:

- An assessment of the impact on the UK art market of the introduction of artist's resale right (ARR).
- An assessment of the costs, both to business and collecting societies of administering the right.
- An assessment of the benefit to artists in the introduction of the right.

We have approached this task by analysing a database of global art sales by auction houses (section 3) and a questionnaire survey of dealers and artists (section 4, see also annexes 2 and 3). We have also attempted a rough cost benefit analysis of ARR and detailed some administrative issues in section 5. We conducted a number of interviews with artists, dealers, major auction houses and the collecting societies which have informed our views throughout (see annex 4). Annex 1 provides a literature survey.

Our major findings are as follows:

- Based on auction house data, we estimate about £2.5 million of ARR is being collected annually, of which around £1.5 million accrues to British artists.
- Most of these payments are quite small, and the median payment to artists based on auction house data is £256. Auction house data indicate that during the period since its introduction, 80% of all ARR payments should have gone to the top 100 artists.
- Based on our survey and interviews, the cost of administering ARR entailed a set-up cost in the region of £1 million and recurrent administration costs of £50,000 per year.
- There is no evidence that ARR has diverted business away from the UK, where the size of the art market has grown as fast, if not faster, than the art market in jurisdictions where ARR is not currently payable.
- There is no evidence that ARR has reduced prices, as prices have appreciated substantially for art eligible for ARR, and faster than in markets where ARR is not currently payable.
- The extension of ARR in 2012 would on current figures increase the size of ARR payments about fourfold. Art market professionals expressed the view in the strongest terms that the extension will significantly damage the UK market by diverting trade elsewhere.
- While the administrative burden of ARR does not seem to have been excessive for most businesses, there have been a number of problems associated with difficulties in establishing the nationality of artists and the requirement to calculate ARR liabilities in euros. A significant minority of art market professionals, including the major auction houses, deem the administration of ARR to be intrusive and burdensome.

2. Introduction

Directive 2001/84/EC of the European Parliament and of the Council on the resale right for the benefit of the author of an original work of art was adopted on 27 September 2001.[1] The Artist's Resale Right (ARR, commonly referred to as "droit de suite" by auction houses and dealers) was implemented in the UK from 14 February 2006 by Statutory Instrument 2006 No. 346.[2] The Directive provides an artist with a right to receive a royalty based on the price obtained for any resale of an original work of art, subsequent to the first transfer by the artist. The Directive defines an original work of art as "works of graphic or plastic art such as pictures, collages, paintings, drawings, engravings, prints, lithographs, sculptures, tapestries, ceramics, glassware and photographs". It therefore excludes what is sometimes termed the "decorative arts", such as furniture and jewelry. The right does not apply to resales between individuals acting in their private capacity, without the participation of an art market professional; or to resales by persons acting in their private capacity to museums which are not for profit and are open to the public.

The purpose of this study, which was commissioned by the UK Intellectual Property Office (UKIPO, formerly the Patent Office), is to provide an overview of the impact of the legislation since its introduction, on eligible artists, dealers and auction houses operating in the UK. Prior to implementation of the legislation, we wrote a baseline study which discussed many of the issues and likely effects associated with introducing ARR ("The IPI Scoping Study: Artist's Resale Right" by Professors Kathryn Graddy and Stefan Szymanski, available at http://www.patent.gov.uk/about/consultations/responses/resale/ipinstitute.pdf).

The UK's implementation of Artists' Resale Rights specifically included the following points:

- The right currently applies only to works by living artists.
- Payments are to be gathered and distributed through a collecting society.
- Single payments cannot exceed €12,500.
- No commissions are payable on sales beneath €1,000.
- Royalties are set at the following rates:

a) 4% for the portion of the sale price up to €50,000;

[1] Published in *The Official Journal of the European Communities* on 13 October 2001: L272, Volume 44 (page 32). The journal can be accessed on the Europa website at http://europa.eu.int/eur-lex/pri/en/oj/dat/2001/l_272/l_27220011013en00320036.pdf.

[2] This document can be accessed at http://www.opsi.gov.uk/si/si2006/20060346.htm.

b) 3% for the portion of the sale price from €50,000,01 to €200,000;
c) 1% for the portion of the sale price from €200,000,01 to €350,000;
d) 0.5% for the portion of the sale price from exceeding €350,000 to €500,000;
e) 0.25% for the portion of the sale price exceeding € 500,000.

- All sale prices are net of tax.

We were asked by UKIPO to carry out the following tasks:

- To calculate both the number of sales on which ARR has been paid, and the total amount of royalty payments.

- To breakdown the number of separate artists who have received royalty payments; to calculate the number of ARR recipients whose sales fell within the €1,000-€3,000 price bracket (and of these, how many also had sales in higher price brackets); to identify the average royalty payment per work and per artist; and to determine the number of UK artists that benefited from ARR payments.

- To assess the costs of administering the right, particularly for smaller businesses.

- To assess the number and value of ARR liable artworks that enter the UK for sale; to assess how many such works are sent out of the UK for sale; and to assess how these numbers compare with previous years.

- To assess how the above will be affected when the right is applied to works by deceased artists.

- To survey dealers and auction houses, particularly smaller businesses both in London and regionally, to ascertain what impact they feel the right has had on their operations.

- To survey artists to ascertain whether they believe the right to be beneficial, for example in encouraging them to create more works.

- To study the changes in size of the art markets in important EEA and non-EEA countries, particularly Switzerland, the USA and Ireland.

- To assess of the efficiency of collection under the current regulations.

To carry out these tasks we used three methods:

- An analysis of art sales data using the Art Sales Index, which provides data on art sold at auction in the UK and in the other major art markets around the world. In our baseline study, we estimated the amount of ARR that would have been payable in the UK 2003/2004 had the law been in force at that date.

We have obtained data on sales in the UK from February until end of July 2006 (this was reported in a preliminary assessment delivered to UKIPO in February 2007) and from August 2006 until end July 2007. We report the principal results of this analysis in the next section.

- We implemented two major surveys, one aimed at artists and one aimed at dealers, the results of which are reported in section 4. The full set of responses is reported in Appendixes 2 and 3, including individual anonymous comments.
- We carried out an extensive series of interviews with interested parties:
    - The collecting societies
    - The leading auction houses
    - Dealers
    - Artists
    - Art market lobby groups

  In section 5, we have incorporated many of these comments into our concluding analysis; we also include a brief summary of interviews in Appendix 4.

3. Statistical Analysis

The art market in the UK can be divided into two segments, art sold by public auction and art sold by dealers. Public art auctions are controlled by a small number of auction houses and the public nature of the transactions make it easy to analyse this segment in some detail. Sales by dealers are much less clearly recorded, and there is therefore some element of guesswork involved in extrapolating from the auction market to the market as a whole. We shall comment on this inference below, but first we discuss the size of the art auction market in the UK.

The Hislop Art Sales Index is a widely used and respected source of data on fine art sales. Specifically, it covers sales of paintings, prints, works on paper, sculptures, miniatures, and photographs worth more than £250. It covers all of the major auction houses worldwide and was used in our October 2005 baseline report on the projected impact of ARR. Part of the purpose of this section is to give an independent report concerning how many works of art were actually applicable for ARR during the period 15 February 2006 through 31 July 2007.

We address the likely impact of ARR on auction sales in six parts, as listed below:

- A calculation of both the number of sales on which ARR has been paid, and the total amount of royalty payments.

- A breakdown of the number of separate artists who have received royalty payments; the number of ARR recipients whose sales fell within the €1,000-€3,000 price bracket (and of these, how many also had sales in higher price brackets); the average royalty payment per work and per artist; and the number of UK artists that benefited from ARR payments.

- An assessment of the number and value of ARR liable artworks that enter the UK for sale; an assessment of how many such works are sent out of the UK for sale; and an assessment of how these numbers compare with previous years.

- A study of changes in the size of the art markets in important EEA and non-EEA countries, particularly Switzerland, the USA and Ireland.

- A systematic comparison of market-segment changes in countries where ARR has been newly implemented (the UK and Ireland) with countries where there have been no changes in ARR.

- An assessment of how the market will be affected when the right is applied to works by deceased artists.

For our report, we analyse Hislop's Art Sales Index for the period 15 February 2006 through 31 July 2007. We then compare this period to 1 March 2003 through 29 February 2004, the period that was studied in the 2005 report. In most sections, we present results for 15 February 2006 through 31 July 2006 separately from our results for 1 August 2006 through 31 July 2007. Results are presented separately in order to be able to compare the 2006/2007 full-year period with the 2003/2004 full-year period that was analyzed in our 2005 report.

Although commission rates are the same, we have at times analyzed the category of art from €1,000 to €3,000 euros separately from the €3,000 to €50,000 category as there was originally a question as to whether ARR would be payable from €1,000 or from €3,000 euros.[3]

3.1 A Systematic Analysis of the Art Sales Index

The following information is based on our analysis of art sales at auction in the UK as published in the 2007 Hislop Art Sales Index (details of the data collection are contained in the footnotes).

[3] The threshold is different in different countries. For example, in France the threshold is €750, and in Ireland, where ARR was implemented in June of 2006, the threshold is €3,000.

Table 1: Total sales by British auction houses recorded in the Hislop Art Sales Index[4]

15 February 2006- 31 July 2006

[redacted]

1 August 2006-31 July 2007

		No Sales	No Artist	Total Value (£)	Total Value (€)
Sale Price in GBP	Sale Price in Euro				
690 - 2068.99	1000 - 2999.99	8,402	4,262	£10,564,305	€ 15,318,242
2069 - 34483	3000 - 50000	16,727	6,210	£154,160,375	€ 223,532,544
34483.01 - 137931	50000.01 - 200000	2,902	1,291	£188,645,800	€ 273,536,410
137931.01 - 241379	200000.01 - 350000	626	364	£113,369,667	€ 164,386,017
241379.01 - 344828	350000.01 - 500000	256	160	£73,612,000	€ 106,737,400
344828.01 - 1379310	500000.01 - 2000000	485	246	£302,974,833	€ 439,313,508
1379310.01+	2000000+	140	75	£466,950,000	€ 677,077,500
Total		29,538	12,608	£1,310,276,980	€ 1,899,901,621

15 February 2006- 31 July 2007

[redacted]

Table 1 summarises the size of the UK auction market for the period 15 February 2006 through 31 July 2007. In this period, total sales of 43,968 works were valued in aggregate at €2,594 million (£1,789 million), giving an average value of about €59,000 (about £41,000) per work sold (items valued at less than €1,000 (£690) are not included). However, the average is skewed by the presence of a small number of works of art that sold at very high prices: only 841 items (1.9 % of all items) accounted for 58% of sales by value. Once these are excluded, the average value of works sold is €25,000 (£18,000).

[4] Data gives sale value in £. Exchange rate of £1 = €1.45 was used throughout for the period 15 February 2006 until 31 July 2006 based on the average Inter-bank rate for that period of 1.452. Note that an exchange rate of £1 = €1.45 was also used for the previous study as the average Inter-bank rate for 1 March 2003 to 29 February 2004 was 1.448. For the period 31 July 2006 through 1 August 2007 the average exchange rate was £1 = €1.48. However, for consistency and given that only a slight difference exists, we have used an exchange rate of £1 = €1.45 throughout.

It is interesting to compare total sales for British auction houses during the yearly period previously analyzed, 1 March 2003 through 29 February 2004 with sales for the latest yearly period available, 1 August 2006 through 31 July 2007. Sales for 1 March 2003 through 29 February 2004 are presented in the table below.

1 March 2003- 29 February 2004

		No Sales	No Artist	Total Value (£)	Total Value (€)
Sale Price in GBP	Sale Price in Euro				
690 - 2068.99	1000 - 2999.99	8,644	4,238	£10,674,490	€ 15,478,011
2069 – 34483	3000 – 50000	12,089	3,996	£99,109,921	€ 143,709,386
34483.01 - 137931	50000.01 - 200000	1,361	736	£87,363,400	€ 126,676,930
137931.01 - 241379	200000.01 - 350000	235	162	£42,296,000	€ 61,329,200
241379.01 - 344828	350000.01 - 500000	89	68	£25,365,000	€ 36,779,250
344828.01 - 1379310	500000.01 - 2000000	154	108	£93,515,000	€ 135,596,750
1379310.01+	2000000+	41	30	£113,000,000	€ 163,850,000
Total		22,613		£471,323,811	€ 683,419,526

In terms of the numbers of works sold, the market has clearly expanded over this time period (22,613 works were sold for the 2003/2004 period in contrast to 29,538 works for the latest yearly period). It is also clear that prices have significantly risen. Since the implementation of ARR, the average price per artwork (not counting items that sold for less than €1,000) was £41,000 whereas just over four years earlier, the average price per artwork using the same calculation was £21,000. It therefore appears that the market has both expanded and appreciated significantly in this time period.[5] This is consistent with a worldwide expansion in sales of art and a booming contemporary art market.

The current UK implementation of the European Directive on droit de suite applies to works by living artists who are EEA nationals or permanently resident in the EEA. Table 2 shows the quantity and value of artworks by living EEA nationals sold in the UK during mid-February 2006 through July 2007 that would have been eligible for ARR payments. This table only includes payments to living artists, as deceased artists' heirs will not qualify for such royalty payments until 2012 (at which point, sales will be ARR liable for up to 70 years after the artist's death). Once again, we break up the table by time period.

[5] One has to take some care in comparing the results of the 2005 study with the current study. Art Sales index, at the margin, alters the auction houses that are included in each production of its CD. Hence, using a later CD Rom for the period March 2003 – February 2004 results in very slightly different numbers than using the 2004 CD Rom for the period March 2003-February 2004. For clarity, for this report, we have recalculated numbers for the 2003/2004 period using the 2007 CD Rom. Hence, they differ very slightly from the numbers in the 2005 report. This difference is not economically significant and in no way affects our analysis.

Table 2: Number of ARR eligible sales by British auction houses [6]

15 February 2006 - 31 July 2006

		No Sales	No Artist	Total Value (£)	Total Value (€)
Sale Price in GBP	Sale Price in Euro				
690 - 2068.99	1000 - 2999.99	524	281	£637,035	€ 923,701
2069 – 34483	3000 - 50000	782	297	£6,363,790	€ 9,227,496
34483.01 – 137931	50000.01 - 200000	102	61	£6,291,000	€ 9,121,950
137931.01 – 241379	200000.01 - 350000	28	22	£5,045,000	€ 7,315,250
241379.01 – 344828	350000.01 - 500000	9	7	£2,660,000	€ 3,857,000
344828.01 - 1379310	500000.01 - 2000000	10	9	£6,520,000	€ 9,454,000
1379310.01+	2000000+	3	3	£6,000,000	€ 8,700,000
Total		1,458	680	£33,516,825	€ 48,599,396

1 August 2006-31 July 2007

		No Sales	No Artist	Total Value (£)	Total Value (€)
Sale Price in GBP	Sale Price in Euro				
690 - 2068.99	1000 - 2999.99	984	444	£1,224,700	€ 1,775,815
2069 - 34483	3000 - 50000	1,805	587	£17,319,750	€ 25,113,638
34483.01 - 137931	50000.01 - 200000	343	133	£22,321,000	€ 32,365,450
137931.01 - 241379	200000.01 - 350000	73	41	£13,245,000	€ 19,205,250
241379.01 - 344828	350000.01 - 500000	36	25	£10,250,000	€ 14,862,500
344828.01 - 1379310	500000.01 - 2000000	48	22	£28,055,000	€ 40,679,750
1379310.01+	2000000+	11	8	£36,200,000	€ 52,490,000
Total		3,300	1,260	£128,615,450	€ 186,492,403

15 February 2006-31 July 2007

		No Sales	No Artist	Total Value (£)	Total Value (€)
Sale Price in GBP	Sale Price in Euro				
690 - 2068.99	1000 - 2999.99	1,508	583	£1,861,735	€ 2,699,516
2069 - 34483	3000 - 50000	2,587	676	£23,683,540	€ 34,341,133
34483.01 - 137931	50000.01 - 200000	445	145	£28,612,000	€ 41,487,400
137931.01 - 241379	200000.01 - 350000	101	46	£18,290,000	€ 26,520,500
241379.01 - 344828	350000.01 - 500000	45	26	£12,910,000	€ 18,719,500
344828.01 - 1379310	500000.01 - 2000000	58	25	£34,575,000	€ 50,133,750
1379310.01+	2000000+	14	9	£42,200,000	€ 61,190,000
Total		4,758	1,510	£162,132,275	€ 235,091,799

A comparison of Table 1 and Table 2 shows that ARR eligible works accounted for about 11% of the total art sales by UK auction houses by volume and about 9% by value, as documented by Hislop's Art Sales Index. This difference is probably caused

[6] The data classified a number of artists as being of mixed origin e.g. Sir Jacob Epstein – British/German. Where possible, nationality was established, otherwise artists were assigned to the first country under which they were listed. We considered an artist to be eligible if the first country under which they were listed was a member of the EEA.

by the fact that more expensive art is sold by dead (not ARR eligible at this time) artists.

Note that while close to one third of all ARR eligible art occurred in the €1,000-€3,000 category, this represented only about 1% of all eligible art by value. In addition, 47% of ARR eligible sales by value were accounted for by only 72 works of art, or 2% of the volume of ARR sales.

It is interesting to compare the number and value of ARR sales with the results from 2003/2004 as shown below.

1 March 2003-29 February 2004

		No Sales	No Artist	Total Value (£)	Total Value (€)
Sale Price in GBP	Sale Price in Euro				
690 - 2068.99	1000 - 2999.99	789	309	£961,860	€ 1,394,697
2069 - 34483	3000 – 50000	807	272	£6,433,100	€ 9,327,995
34483.01 - 137931	50000.01 – 200000	90	48	£5,909,000	€ 8,568,050
137931.01 - 241379	200000.01 – 350000	26	12	£4,740,000	€ 6,873,000
241379.01 - 344828	350000.01 – 500000	4	4	£1,140,000	€ 1,653,000
344828.01 - 1379310	500000.01 – 2000000	7	5	£3,110,000	€ 4,509,500
1379310.01+	2000000+	1	1	£1,850,000	€ 2,682,500
Total		1,724	651	£24,143,960	€ 35,008,742

So for the latter year period of 1 August 2006 through 31 July 2007, the number of ARR sales for living eligible artists was nearly twice that for the entire year, 1 March 2003 through 29 February 2004. The numbers are more easily interpretable, however, when looked at as a percentage of the total market.

Table 4: ARR eligible sales as a percentage of total sales in each price range for the period 1 March 2003 – 29 February 2004 and the period 1 August 2006 – 31 July 2007

Table 4: ARR Eligible Sales as a percentage of total sales in each price range					
		No Sales	No Sales	Value	Value
Sale Price in GBP	Sale Price in Euro	2003-2004	2006-2007	2003-2004	2006-2007
690 - 2068.99	1000 - 2999.99	9.15%	11.61%	9.03%	11.46%
2069 - 34483	3000 - 50000	6.68%	10.39%	6.54%	10.39%
34483.01 - 137931	50000.01 - 200000	6.61%	11.00%	6.76%	10.96%
137931.01 - 241379	200000.01 - 350000	11.06%	11.77%	11.21%	11.81%
241379.01 - 344828	350000.01 - 500000	4.49%	13.31%	4.49%	13.28%
344828.01 - 1379310	500000.01 - 2000000	4.55%	8.87%	3.33%	8.40%
1379310.01+	2000000+	2.44%	7.49%	1.64%	6.81%
Total		7.64%	10.82%	5.13%	9.06%

As a percentage of total sales, the number of ARR eligible items increased from 7.6% in 2003/2004 to 10.8% in the most recent period. As a percentage by value, we also see a rise from 5.1% to 9.1%.

The estimated ARR payment on this amount of auction sales is given in Table 5 below. We will discuss the breakdown of this payment in section 2 below.

Table 5: Estimated ARR that would have been payable to artists

15 February 2006- 31 July 2006

		No Sales	No Artists	ARR (£)	ARR (€)
Sale Price in GBP	Sale Price in Euro				
690 - 2068.99	1000 - 2999.99	524	281	£25,481	€ 36,947
2069 - 34483	3000 – 50000	782	297	£254,552	€ 369,100
34483.01 - 137931	50000.01 - 200000	102	61	£223,903	€ 324,659
137931.01 - 241379	200000.01 - 350000	28	22	£137,347	€ 199,153
241379.01 - 344828	350000.01 - 500000	9	7	£52,093	€ 75,535
344828.01 - 1379310	500000.01 - 2000000	10	9	£68,024	€ 98,635
1379310.01+	2000000+	3	3	£25,862	€ 37,500
Total		1,458	680	£787,262	€ 1,141,530

1 August 2006 – 31 July 2007

		No Sales	No Artists	ARR (£)	ARR (€)
Sale Price in GBP	Sale Price in Euro				
690 - 2068.99	1000 - 2999.99	984	444	£48,988	€ 71,033
2069 – 34483	3000 - 50000	1,805	587	£692,790	€ 1,004,546
34483.01 – 137931	50000.01 - 200000	343	133	£787,907	€ 1,142,465
137931.01 – 241379	200000.01 - 350000	73	41	£359,002	€ 520,553
241379.01 – 344828	350000.01 - 500000	36	25	£206,422	€ 299,312
344828.01 – 1379310	500000.01 - 2000000	48	22	£318,413	€ 461,699
1379310.01+	2000000+	11	8	£94,828	€ 137,501
Total		3,300	1,260	£2,508,350	€ 3,637,108

15 February 2006- 31 July 2007

		No Sales	No Artists	ARR (£)	ARR (€)
Sale Price in GBP	Sale Price in Euro				
690 - 2068.99	1000 - 2999.99	1,508	583	£74,469	€ 107,980
2069 – 34483	3000 – 50000	2,587	676	£947,342	€ 1,373,646
34483.01 – 137931	50000.01 - 200000	445	145	£1,011,809	€ 1,467,123
137931.01 – 241379	200000.01 - 350000	101	46	£496,348	€ 719,705
241379.01 – 344828	350000.01 – 500000	45	26	£258,516	€ 374,848
344828.01 – 1379310	500000.01 – 2000000	58	25	£386,437	€ 560,334
1379310.01+	2000000+	14	9	£120,690	€ 175,001
Total		4,758	1,510	£3,295,611	€ 4,778,636

Table 6: Estimated Average Royalty Payment per Work and per Artist from 15 February 15 2006 through 31 July 2007

Sale Price in GBP	Sale Price in Euro	No Sales	No Artists	By Work (£)	By Artist (£)	By Work (€)	By Artist(€)
690 - 2068.99	1000 - 2999.99	1508	583	£49	£128	€ 71	€ 186
2069 - 34483	3000 - 50000	2587	676	£366	£1,401	€ 531	€ 2,031
34483.01 - 137931	50000.01 - 200000	445	145	£2,274	£6,978	€ 3,297	€ 10,118
137931.01 - 241379	200000.01 - 350000	101	46	£4,914	£10,790	€ 7,125	€ 15,646
241379.01 - 344828	350000.01 - 500000	45	26	£5,745	£9,943	€ 8,330	€ 14,417
344828.01 - 1379310	500000.01 - 2000000	58	25	£6,663	£15,457	€ 9,661	€ 22,413
1379310.01+	2000000+	14	9	£8,621	£13,410	€ 12,500	€ 19,445
Total		4,758	1,510	£693	£2,183	€ 1,004	€ 3,165

Table 6 above provides a breakdown of the average royalty payment by work and by artist. While the average payment by work is £693, the average payment by work is only £249 per item for 85% of the items (this refers to the first two rows of Table 6 – items less than €50,000), versus £3,430 per item for the remaining 15%. Similarly, artists in the €1,000 to €3,000 category only receive an average of £128, compared to an average of £13,410 for artists who sold paintings worth more than €200,000. While some of the artists sell items in high price categories, and therefore receive greater royalties, the bulk of the artists do not. To be specific, of 436 living British artists in the €1,000 to €3,000 category (as shown in Table 7 below), only 167 have also sold items in other categories.

3.2 The Distribution of ARR Eligible Works Between UK and Other EU Artists

Table 7: Number of ARR eligible sales by British auction houses in the period 15 February 2006 – 31 July 2007

[redacted]

Table 7 above provides a breakdown of sales into UK and EEA artists. It is interesting to note that at the lowest category of prices, British artists far outnumber European artists (436 to 147). In the next highest category (€3,000-€50,000), the ratio of living British artists to living EEA artists is approximately the same, as was the case in the 2003-2004 data. However, in the higher price categories (with the exception of sales over €2,000,000), European artists outnumber British artists.

Table 8: Total Value (€) of Sales of all ARR Eligible Art in UK Auction Houses, 15 February 2006 through 31 July 2007

		Living British		Living EEA	
Sale Price in GBP	Sale Price in Euro	Value(£)	Value(€)	Value(£)	Value(€)
690 - 2068.99	1000 - 2999.99	£1,556,505	€ 2,256,932	£305,230	€ 442,584
2069 - 34483	3000 - 50000	£13,335,140	€ 19,335,953	£10,348,400	€ 15,005,180
34483.01 - 137931	50000.01 - 200000	£9,311,000	€ 13,500,950	£19,301,000	€ 27,986,450
137931.01 - 241379	200000.01 - 350000	£5,465,000	€ 7,924,250	£12,825,000	€ 18,596,250
241379.01 - 344828	350000.01 - 500000	£5,680,000	€ 8,236,000	£7,230,000	€ 10,483,500
344828.01 - 1379310	500000.01 - 2000000	£17,750,000	€ 25,737,500	£16,825,000	€ 24,396,250
1379310.01+	2000000+	£28,100,000	€ 40,745,000	£14,100,000	€ 20,445,000
Total		£81,197,645	£117,736,585	£80,934,630	£117,355,214

Table 8 shows the distribution of ARR eligible works by value and by nationality. The value results very much mirror the number results of Table 7: in the lower price categories, British artists dominate, however, in the higher price categories, there are a significant number of European artists.

In conclusion, our analysis of the Art Sales Index reveals that during the period 15 February 2006 through 31 July 2007, the total value of auction sales eligible for ARR is £162,132,275 (€235,091,799), corresponding to a total of £3,295,611 (€4,778,636) ARR payments. The fact that this payment is higher than would have been predicted for living artists in the 2005 study is due to the expansion and appreciation of the art market.

3.3 An Assessment of the Number and Value of Works Subject to ARR That Entered the UK and Were Sent Out of the UK For Sale

While it is very difficult to answer the question of the number and value of works subject to ARR that entered the UK for sale, an understanding of this question can be gained by comparing the paintings by living EU artists that were for sale in the 2003/2004 period with the paintings by living EU artists that were for sale in 2006/2007. In order to compare an equivalent length of time, below we present the results for 1 March 2003-29 February 2004, and for the latest yearly period available, 1 August 2006-31 July 2007. In effect, these paintings can be considered a proxy for ARR eligible paintings entering the UK on the grounds that in all probability, works by living artists were originally sold in the country of residence of that artist.

Table 9: A comparison of ARR eligible paintings by living EEA artists (excluding UK artists) in the period 1 August 2007 - 31 July 2007 with paintings by living non-UK EEA artists in the period 1 March 2003 - 29 February 2004

Sale Price in GBP	Sale Price in Euro	No Sales	No Artists	Value(£)	Value(€)	% By Sales	% By Value
2003-2004							
690 - 2068.99	1000 - 2999.99	94	68	£118,290.00	€ 171,521	1.09%	1.11%
2069 - 34483	3000 - 50000	278	126	£3,009,600.00	€ 4,363,920	2.30%	3.06%
34483.01 - 137931	50000.01 - 200000	62	33	£3,809,000.00	€ 5,523,050	4.56%	4.36%
137931.01 - 241379	200000.01 - 350000	17	8	£2,960,000.00	€ 4,292,000	7.23%	7.00%
241379.01 - 344828	350000.01 - 500000	2	2	£560,000.00	€ 812,000	2.25%	2.21%
344828.01 - 1379310	500000.01 - 2000000	6	4	£2,760,000.00	€ 4,002,000	3.90%	2.95%
1379310.01+	2000000+	0	0	£0.00	€ 0	0.00%	0.00%
Total		459	241	£13,216,890.00	€19,164,491	2.03%	2.81%
2006 - 2007							
690 - 2068.99	1000 - 2999.99	223	147	£305,230.00	€ 442,584	1.72%	1.88%
2069 - 34483	3000 - 50000	938	328	£10,348,400.00	€ 15,005,180	3.77%	4.54%
34483.01 - 137931	50000.01 - 200000	292	89	£19,301,000.00	€ 27,986,450	7.22%	7.39%
137931.01 - 241379	200000.01 - 350000	71	32	£12,825,000.00	€ 18,596,250	8.28%	8.28%
241379.01 - 344828	350000.01 - 500000	25	15	£7,230,000.00	€ 10,483,500	7.40%	7.44%
344828.01 - 1379310	500000.01 - 2000000	28	16	£16,825,000.00	€ 24,396,250	4.28%	4.09%
1379310.01+	2000000+	7	4	£14,100,000.00	€ 20,445,000	3.74%	2.28%
Total		1584	631	£80,934,630.00	€117,355,214	3.60%	4.52%

The best way to make this comparison is to look at these paintings as a percentage of total sales and total volume. Looking at this data, there appears to be a greater number of works by non-UK EEA artists sold in the UK since the introduction of ARR. Note that for the short time period between 15 February 2006 and 31 July 2006, the total percentage of non-UK EEA sales by value was 3.57%, indicating a possible upward trend of sales in the UK. There is no evidence to suggest that sales of foreign born artists subject to ARR in the UK have fallen because of the introduction of ARR, although this cannot be considered a very powerful test of the proposition.

When addressing the question of the number and value of ARR works that were sent out of the UK for sale, it is likewise useful to look at the number of works by UK artists that were for sale in selected countries. Again, this can be used as a proxy for the total number that were sent out of the UK for sale.

Table 10: A comparison of ARR eligible sales by living UK artists in selected countries in the period 1 March 2003-29 February 2004 and 1 August 2006 – 31 July 2007

Country	Sales	Value(£)	Value(€)	% By Sales	% By Value
2003-2004					
France	9	£24,068	€ 34,899	0.07%	0.02%
Germany	9	£39,245	€ 56,905	0.12%	0.08%
Ireland	150	£550,714	€ 798,535	9.08%	7.01%
Switzerland	3	£6,146	€ 8,912	0.11%	0.03%
UK	1,265	£10,927,070	€ 15,844,252	5.60%	2.32%
USA	213	£5,510,514	€ 7,990,245	0.98%	0.87%
Total	1,649	£17,057,757	£24,733,748	2.35%	1.31%
2006 - 2007					
France	48	£198,151	€ 287,319	0.27%	0.09%
Germany	26	£1,097,281	€ 1,591,057	0.31%	1.18%
Ireland	223	£1,266,744	€ 1,836,779	9.41%	5.98%
Switzerland	1	£3,390	€ 4,916	0.04%	0.01%
UK	2,128	£64,771,070	€ 93,918,052	7.20%	4.94%
USA	376	£21,335,592	€ 30,936,608	1.24%	1.17%
Total	2,802	£88,672,228	£128,574,731	3.08%	2.53%

From this analysis, it appears that living UK artists have gained in market share in most countries, both by value and by volume. As this gain appears to be across the board, both in countries where ARR is applicable and in countries where it is not applicable, it is unlikely that this change is correlated with the introduction of ARR.

It does not appear as if ARR has negatively affected sales in the UK by owners of artworks by living ARR eligible artists; owners of art by living UK artists have not noticeably moved to other locations. One does not, of course, know the counterfactual: what would have happened in the absence of the introduction of ARR?

3.4 Change in Market Size

Table 11 below looks at the changes in market size for a selected number of countries for the period 1 March 2003 – 29 February 2004 (before ARR was implemented in the UK), compared with the period 15 February 2006- 31 July 2007 (after ARR was implemented in the UK).

Table 11: A comparison of market size for selected countries for the period 1 March 2003 – 29 Feb 2004 with the period 15 February 2006 – 31 July 2006 and 1 August 2006 – 31 July 2007

Country	Sales	Value(£)	Value(€)	% By Sales	% By Value
1 March 2003-29 February 2004					
France	13,560	£122,307,518	€ 177,345,901	19.36%	9.36%
Germany	7,776	£47,827,826	€ 69,350,348	11.10%	3.66%
Ireland	1,652	£7,859,524	€ 11,396,310	2.36%	0.60%
Switzerland	2,794	£22,390,414	€ 32,466,100	3.99%	1.71%
UK	22,578	£470,497,370	€ 682,221,187	32.23%	36.01%
USA	21,694	£635,555,500	€ 921,555,475	30.97%	48.65%
Total	70,054	£1,306,438,152	£1,894,335,320	100.00%	100.00%
15 February 2006-31 July 2006					
France	10,666	£93,397,865	€ 135,426,904	21.69%	6.89%
Germany	5,431	£41,458,473	€ 60,114,786	11.05%	3.06%
Ireland	1,196	£6,941,556	€ 10,065,256	2.43%	0.51%
Switzerland	2,289	£50,309,480	€ 72,948,746	4.66%	3.71%
UK	14,430	£478,416,115	€ 693,703,367	29.35%	35.28%
USA	15,158	£685,667,748	€ 994,218,235	30.83%	50.56%
Total	49,170	£1,356,191,237	£1,966,477,294	100.00%	100.00%
1 August 2006-31 July 2007					
France	17,761	£209,402,916	€ 303,634,228	19.52%	5.97%
Germany	8,311	£93,187,500	€ 135,121,875	9.13%	2.66%
Ireland	2,370	£21,196,489	€ 30,734,909	2.60%	0.60%
Switzerland	2,797	£46,941,692	€ 68,065,453	3.07%	1.34%
UK	29,538	£1,310,276,980	€ 1,899,901,621	32.46%	37.34%
USA	30,209	£1,827,900,290	€ 2,650,455,421	33.20%	52.09%
Total	90,986	£3,508,905,867	£5,087,913,507	100.00%	100.00%

It is quite interesting to look at each country's sales as a proportion of total group sales (by volume and by value). After an initial dip both by value and by volume during the first five and a half months after the introduction of ARR, the UK has increased percentage sales on both measures. Importantly, between the period 15 February 2006- 31 July 2006 and the period 1 August 2006 and 31 July 2007, percent of sales by volume increased from 29.35% to 32.46% in the UK (an increase of 10.5% points); by value, sales in the UK increased from 35.28% to 37.34% (an increase of 5.8%). For the same time periods, the volume of US sales increased from 30.83% to 33.20% (an increase of 7.8% – less than in the UK) while the value of sales rose from 50.56% to 52.09% (an increase of about 3% – again less than in the UK). For the same period, sales by both value and volume decreased in France and Germany.

In conclusion, the art market in the UK, either despite or because of the introduction of ARR, appears to be doing well.

3.5 A Systematic Analysis of Changes of Sales of ARR Eligible Artists with Non ARR Eligible Artists Across Countries and Time Periods

Below, we look more closely at market changes since the introduction of ARR. Specifically, Table 12 presents changes across time periods for different countries. The 2003/2004 time period is defined as the year period 1 March 2003 – 29 February 2004 and the 2006/2007 time period is defined as 31 July 2006 – 1 August 2007. Note that Ireland introduced ARR in June 2006 for paintings above €3,000 for living artists. For Ireland, we therefore only consider paintings by living artists above €3,000 to be ARR eligible. For all other countries, we consider paintings to be ARR eligible if they would have been ARR eligible in the UK (i.e. paintings above €1,000 by living artists).

Table 12: Changes in total sales before and after the introduction of ARR in various countries

Changes in Total Sales by Volume

	UK		Ireland	
	Eligible	Not	Eligible	Not
2003/2004	1,724	20,854	245	1,407
2006/2007	3,300	26,238	518	1,852
Change	1,576	5,384	273	445
% Change	91.42%	25.82%	111.43%	31.63%

	France		Germany	
	Eligible	Not	Eligible	Not
Before	979	12,581	568	7,208
After	2,277	15,484	910	7,401
Change	1,298	2,903	342	193
% Change	132.58%	23.07%	60.21%	2.68%

	USA		Switzerland	
	Eligible	Not	Eligible	Not
Before	630	21,064	48	2,746
After	1,267	28,942	50	2,747
Change	637	7,878	2	1
% Change	101.11%	37.40%	4.17%	0.04%

Table 12 (continued)

Changes in Total Sales by Value

	UK		Ireland	
	Eligible	Not	Eligible	Not
Before	£24,143,960	£446,353,410	£1,224,188	£6,635,336
After	£128,615,450	£1,181,661,530	£6,289,842	£14,906,647
Change	£104,471,490	£735,308,120	£5,065,654	£8,271,311
% Change	432.70%	164.74%	413.80%	124.66%

	France		Germany	
	Eligible	Not	Eligible	Not
Before	£4,578,233	£117,729,285	£2,399,990	£45,427,836
After	£17,974,772	£191,428,144	£9,067,262	£84,120,238
Change	£13,396,539	£73,698,859	£6,667,272	£38,692,402
% Change	292.61%	62.60%	277.80%	85.17%

	USA		Switzerland	
	Eligible	Not	Eligible	Not
Before	£24,354,931	£611,200,569	£126,155	£22,264,259
After	£65,096,577	£1,762,803,713	£338,322	£46,603,370
Change	£40,741,646	£1,151,603,144	£212,167	£24,339,111
% Change	167.28%	188.42%	168.18%	109.32%

When looking more closely at changes by sub-group and across countries, it still appears that the UK art market is doing well compared to other countries, especially by sales of ARR eligible artists. The most expensive ARR eligible artworks appear to be sold in the UK, as is evident by the whopping 434% price increase for this category of items in the UK, compared to a 167% increase in prices by ARR eligible artists in the US and the 168% increase in prices by ARR eligible artists in Switzerland.

3.6 An Assessment of How the Market Will be Effected When the Right is Applied to Works by Deceased Artists

So far, we have found no obvious effect on sales since the introduction of ARR for living artists. ARR currently affects about 10% of auction sales. Below, we look at the number of auction sales by volume and by value that would have been affected if ARR were applicable to artists' heirs for 70 years after their deaths, as will be the case in 2012, and the percentage of the market that these sales will comprise.

Table 13: Number of ARR eligible sales by British auction houses if eligibility is defined as living EEA artists and their heirs within 70 years of their death

15 February 2006 – 31 July 2007

		No Sales	No Artists	Total Value (£)	Total Value (€)
Sale Price in GBP	Sale Price in Euro				
690 - 2068.99	1000 - 2999.99	5,871	1,974	£7,281,655	€ 10,558,400
2069 - 34483	3000 – 50000	10,916	2,052	£98,810,815	€ 143,275,682
34483.01 - 137931	50000.01 – 200000	1,764	458	£113,031,000	€ 163,894,950
137931.01 - 241379	200000.01 – 350000	377	150	£67,833,667	€ 98,358,817
241379.01 - 344828	350000.01 – 500000	160	85	£45,985,000	€ 66,678,250
344828.01 - 1379310	500000.01 – 2000000	263	97	£162,550,000	€ 235,697,500
1379310.01+	2000000+	77	33	£247,000,000	€ 358,150,000
Total		19,428	4,849	£742,492,137	€ 1,076,613,599

The stakes will clearly be raised in 2012, as the percentage of ARR eligible sales both by volume and by value would have been about 40% of the entire market for the time period since the introduction of ARR. As Table 14 shows below, the estimated ARR payment for these sales would be about £13.5 million (€19.5 million) as compared to the current estimate of £3.3 million (€4.8 million) that should have been collected by auction houses.

Table 14: Estimated ARR payments if eligibility is defined as living EEA artists and their heirs within 70 years of their death

15 February 2006 – 31 July 2007

		No Sales	No Artists	ARR (£)	ARR (€)
Sale Price in GBP	Sale Price in Euro				
690 - 2068.99	1000 - 2999.99	5,871	1,974	£291,266	€ 422,336
2069 – 34483	3000 - 50000	10,916	2,052	£3,952,433	€ 5,731,028
34483.01 - 137931	50000.01 - 200000	1,764	458	£3,999,210	€ 5,798,855
137931.01 - 241379	200000.01 - 350000	377	150	£1,848,337	€ 2,680,089
241379.01 - 344828	350000.01 - 500000	160	85	£919,580	€ 1,333,391
344828.01 - 1379310	500000.01 - 2000000	263	97	£1,766,719	€ 2,561,743
1379310.01+	2000000+	77	33	£663,794	€ 962,501
Total		19,428	4,849	£13,441,339	€ 19,489,942

Table 15 below presents average payments by work and by artist. When compared to living artists, the average estimated royalty payments are similar. For example, the average payment estimated by painting for living artists was £693 as compared to £692 pounds below, and the average estimated payment by artist was £2,183 as compared to £2,772 below.

Table 15: Average royalty payment by work and by artist if eligibility is defined as living EEA artists and artists' heirs within 70 years of artists' death

15 February 2006 – 31 July 2007

Sale Price in GBP	Sale Price in Euro	No Sales	No Artists	By Work (£)	By Artist (£)	By Work (€)	By Artist(€)
690 - 2068.99	1000 - 2999.99	5871	1974	£50	£148	€ 73	€ 215
2069 - 34483	3000 - 50000	10916	2052	£362	£1,926	€ 525	€ 2,793
34483.01 - 137931	50000.01 - 200000	1764	458	£2,267	£8,732	€ 3,287	€ 12,661
137931.01 - 241379	200000.01 - 350000	377	150	£4,903	£12,322	€ 7,109	€ 17,867
241379.01 - 344828	350000.01 - 500000	160	85	£5,747	£10,819	€ 8,333	€ 15,688
344828.01 - 1379310	500000.01 - 2000000	263	97	£6,718	£18,214	€ 9,741	€ 26,410
1379310.01+	2000000+	77	33	£8,621	£20,115	€ 12,500	€ 29,167
Total				£692	£2,772	£1,003	£4,019

Finally, as shown below, the distribution of sales between UK and EEA artists stays relatively similar if ARR were also applied to artists' heirs within 70 years.

Table 16: Number of sales of all ARR eligible art in UK auction houses if eligibility is defined by living artists and artists' heirs within 70 years of artists' death

15 February 2006 – 31 July 2007

		Eligible British Artist	Eligible EEA Artist	Eligible British Sales	Eligible EEA Sales
Sale Price in GBP	Sale Price in Euro				
690 - 2068.99	1000 - 2999.99	1325	649	4693	1178
2069 – 34483	3000 – 50000	960	1092	5838	5078
34483.01 – 137931	50000.01 – 200000	155	303	587	1177
137931.01 – 241379	200000.01 – 350000	39	111	111	266
241379.01 – 344828	350000.01 – 500000	24	61	48	112
344828.01 – 1379310	500000.01 – 2000000	24	73	63	200
1379310.01+	2000000+	8	25	15	62
Total		2,535	2,314	11,355	8,073

Table 17: Total value of sales of all ARR eligible art in UK auction houses if eligibility is defined as living EEA artists and artists' heirs within 70 years of artists' death

15 February 2006 – 31 July 2007

		Eligible British		Eligible EEA	
Sale Price in GBP	Sale Price in Euro	Value(£)	Value(€)	Value(£)	Value(€)
690 - 2068.99	1000 - 2999.99	£5,675,335	€ 8,229,236	£1,606,320	€ 2,329,164
2069 – 34483	3000 – 50000	£48,325,265	€ 70,071,634	£50,485,550	€ 73,204,048
34483.01 – 137931	50000.01 – 200000	£36,374,000	€ 52,742,300	£76,657,000	€ 111,152,650
137931.01 – 241379	200000.01 – 350000	£19,641,667	€ 28,480,417	£48,192,000	€ 69,878,400
241379.01 – 344828	350000.01 – 500000	£13,775,000	€ 19,973,750	£32,210,000	€ 46,704,500
344828.01 - 1379310	500000.01 – 2000000	£37,565,000	€ 54,469,250	£124,985,000	€ 181,228,250
1379310.01+	2000000+	£79,500,000	€ 115,275,000	£167,500,000	€ 242,875,000
Total		£240,856,267	£349,241,587	£501,635,870	£727,372,012

In summary, the average price of paintings and the distribution of EEA artists in relation to UK artists is quite similar under the present ARR regime and one which also extends the right up to 70 years after death. The primary difference between applying ARR only to living artists and applying it to living artists and their heirs within 70 years of death is the size of the market effected and the amount of ARR collected: both approximately quadruple from current levels. While the application of ARR legislation appears to have had very little effect on sales of living artists, it would be imprudent to predict the same result when the size of the market affected is about four times the current size affected.

3.7 Conclusion from Statistical Analysis of Auction Data

The percentage of the market that is ARR eligible by volume is about 10.8% and by value about 9.1%. The share of ARR eligible works is greater than would have been predicted by the 2005 study using the period 2003/2004, before the implementation of Artist's Resale Rights (in this study, ARR eligible paintings for living artists comprise 7.6% of the entire market by volume and 5.1% by value). Since the application of ARR, the number of eligible works in the UK has increased as has the price of eligible works. This finding supports the conclusion that ARR as currently implemented has not had a negative impact on the UK market. Furthermore, there does not seem to be a major impact on the art market in the UK from its introduction. The UK art market, relative to other countries, is in very good shape.

4. Analysis of Questionnaire Survey

We sent out three sets of questionnaires, one aimed at dealers, one at artists, and one at auction houses. In each case, the names and addresses were supplied to us by DACS, who maintain a database in order to collect and pay out ARR. The auction house survey, however, was relatively unsuccessful: we obtained only 14 usable responses out of a total of 200 mailed questionnaires. This 7% response rate raises serious questions about the representativeness of the opinions expressed and in this section we therefore only report on the results for the dealer and artist questionnaires.[7] We nevertheless still visited the three major international art auction houses (Christie's, Sotheby's and Bonhams) based in the UK which were kind enough to supply us with detailed information and opinions about the impact of ARR; these views will be discussed in the next section.

(a) Dealer Questionnaire

Our sample was based on the database maintained by DACS, which contains 2,702 entries. We generated a random sample of 1,000 entries, and ultimately 991 questionnaires were sent out. We received 124 usable responses, a response rate of 12.5%. In addition, we received a number of responses indicating that ARR was not an issue for them, usually because they did not sell contemporary art or had ceased trading.[8] The detailed responses are included as Appendix 2.

We asked our respondents to identify where they do business. Table 1 of Appendix 2 ranks the main locations where sales of our respondents are registered. 106 out of 118 (90%) sold principally in the UK, just over a quarter in London and the rest outside of London. Sales locations outside of the UK were mentioned by several respondents, notably the EU outside the UK and the US. Over half of the respondents that identified a second location also mentioned either London or the rest of the UK. Moreover, 99 out of 118 (84%) indicated that they did more than 50% of their business in their principal location, and 55% indicated that they did more than three quarters of their business in their principal location. Hence the sales of the dealers in our sample are predominantly UK registered.

Since the database was provided to us by DACS, we would expect that our respondents would be principally engaged in the sale of art produced by living artists who are eligible for ARR, or artists deceased within the last 70 years, whose estates may become eligible for ARR in the future. 70% of respondents stated that their largest sales volume was in some form of contemporary art, mostly paintings and drawings, and only 30% stated that their biggest sales volume was in non-contemporary art (see Table 2). After contemporary paintings and drawings, contemporary prints was the second most important selling category among dealers.

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[7] In fact, several responses suggested that the DACS mailing list for auctioneers is less refined than their dealer list. Hence one respondent informed us that they were a livestock auctioneer, another auctioned plant and machinery, a third sold motorcycles and a fourth simply said they did not auction art.

[8] One such respondent returned a blank questionnaire with the following comment "Hello- we've now ceased trading – a decision enhanced by one more burden on the business (ARR)."

We asked dealers to state what share of their sales came from the following categories: primary (first-sale) market for living artists; resale of artists represented by that dealer in the primary market; and other secondary sales or sales on consignment. The distribution is shown in Table 3. Thus 73 dealers indicated that they sold in the primary market, and of these 29 stated that this constituted 100% of their business. Where dealers made sales in the secondary market of artists that they represented, this amounted to a relatively small share of their business (less than 10% in most cases). Secondary market transactions and selling on consignment also tended to make up a relatively small share of business for most dealers, although eight specialists indicated that this constituted the entirety of their business. It should be noted that relatively few dealers indicated that any single activity comprised roughly half of their business-either the activity took up nearly all their business (75%-100%) or only a small share (less than 10%).

We asked dealers to indicate the percentage share of business for a number of different possible sources and destinations of sales (Table 4). For example, 82 dealers in our sample indicated that they acquired art directly from artists, and of these 32 stated that they acquired all art in this way, and a further 21 indicated that they acquired between 75% and 100% of their art in this way. Indeed, this was clearly the most common way in which the dealers in our sample acquired art. Equally clear is that most art was sold to the "other" category, i.e. to collectors of art in general. In other words, the UK dealers in our survey generally act as intermediaries between artists and collectors, with only a small number of transactions taking place between dealers, auctions houses and museums.

Our remaining questions dealt mainly with opinions concerning the state of the art market, the impact of ARR on business, the cost of administering ARR, the likely impact if ARR is extended to the work of artists deceased in the last 70 years and the perceived impact of ARR on artists. We can summarise these views as follows:

State of the art market

- 64% perceived the market to be stable or growing.

Impact of ARR on business

- 73% viewed the impact of ARR on the London art market as either negative or very negative, 26% seeing the impact as neutral.
- 42% perceived a negative or very negative impact of ARR on their own business, 55% seeing no impact at all.
- 36% stated that ARR had significantly increased the likelihood of taking works on consignment (i.e. selling as an agent for the artist rather than buying from the artist), although 50% said it would have no effect.
- 37% stated they were significantly more inclined to deal in primary (first sale) rather than secondary markets as a result of ARR, although 48% said it had made no difference.

Cost of administering ARR

- 50% identified the cost as less than £10 per transaction, while 25% said they did not know.[9] Of the remainder, 10% indicated the range of £10-£20, and about 5% identified one of the three remaining brackets, £20-£30, £30-£40 and Over £40.
- 52% stated that administering ARR was either no trouble or not much trouble, while 48% indicated that they considered it quite or very burdensome. In fact, opinion was more or less equally divided among these categories.
- Opinion was divided on how best to collect ARR: 30% advocated a collecting society monopoly (11% advocating competitive tendering), 29% said artists should be allowed to collect it for themselves, 21% preferred open competition between collecting societies (the status quo) and 15% advocated collection by a government department.

Impact of extending ARR

- 57% stated that the extension of ARR in 2012 would impact London's position in the art market very negatively, while 16% stated the effect would be slightly negative.
- 31% stated it would affect their own business very negatively and 24% slightly negatively.
- 34% stated it would affect the business they conducted in London very negatively and 15% slightly negatively.
- Almost no one among the dealer respondents identified a positive impact of extending ARR for any aspect of business.
- 49% perceived the USA as the principal location which would benefit from the extension of ARR in the UK, while 23% identified Switzerland.

Impact of ARR on artists

- 39% of dealers thought the response of artists to ARR was neutral, and 20% slightly positive. More dealers estimated the response of artists to be very negative (16%) than very positive (13%).

We also received a considerable number of further comments, either in relation to the whole questionnaire or to individual questions. Not all respondents were convinced that we were asking the right questions or that the questionnaire was suited to the needs of dealers, especially those located outside London who perceived a bias towards the capital. A great many comments expressed anger and frustration with ARR – anger that the law is unjust and frustration that it will genuinely harm the art market or their own business. Several indicated that it would cause them to change the way they do business in ways that would be detrimental to artists (e.g. buying on consignment or pulling out of contemporary art altogether).

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[9] The questionnaire asked dealers to "estimate the total cost to your business of administering ARR payments (per transaction)". DACS suggested to us that this wording was ambiguous and could be interpreted to mean the cost of completing the quarterly return rather than cost per individual work of art. We doubt this confusion could arise.

(b) Artist Questionnaire

Our questionnaire was sent to a sample of 1,013 artists for whom names and addresses are held by DACS in June 2007. The sample included 401 artists whose addresses were held by DACS and who had been paid ARR, the remainder were drawn randomly from a list of 3,085 artists eligible for ARR but who had not yet received any payment from DACS. Note that at this date DACS held a mandate to collect ARR on behalf of 2,198 living artists, but in addition they try to maintain a database of all artists.

We received usable responses from 306 artists, a response rate of 30%, and the full tables together with written comments is attached as Appendix 3. Where relevant, we compare the responses of those who had and those who had not already received ARR payments.

In terms of characteristics, we tried to identify the type of works sold by artists and the amount they sold. The artists in our sample are predominantly producers of paintings and drawings, two thirds of respondents stating that more than 50% of their work fell in this category. The next largest category was prints, but only 5% identified this category as accounting for more than 50%, with sculpture and photography slightly less well represented.

51% identified sales through galleries as their most important sales channel, 18% identified direct sales from studios as the most important, while other routes such as the internet, auctions or art fairs were identified as the most important route by few artists. The most popular second choice was sales from studios, followed by sales through galleries.

In terms of the number of galleries representing an artist's work, over one third cited four or more, while one third also cited none or one. However, those who had received ARR were far more likely to be represented by more galleries (50% of these citing four or more, compared to only 22% of those who had not yet received any ARR).

We asked how many works were sold per year by artists in each of the ARR price bands. Nearly half had sold some of their work in the lowest band (€1,000-3,000), one third had sold in the second highest (€3,000-50,000) and one sixth in the third band (€50,000-€200,000). There were only 14 instances of artists claiming to have sold in a higher bracket. In total, artists who had received ARR claimed to have sold more works in each category and to have sold in higher brackets than those who had not yet received any ARR.[10]

[10] We are reluctant to place too much weight on these figures, since some respondents did not find our questionnaire easy to understand. Based on some estimates of average selling prices, 23% of respondents were selling art worth more than £250,000 annually, a number we do not find entirely credible, especially given that 83% respondents stated that their annual income was less than £75,000.

51% of respondents stated that their annual income is less than £25,000 (this being an average over the last five years), while a further 32% identified a figure of between £25,000 and £75,000. Six respondents claimed an annual income of over £500,000 per year. Those who had received ARR claimed systematically higher average incomes. Half of our sample stated that over three quarters of their income is derived from art sales, while 28% stated that it was less than one quarter. For those receiving ARR, the figures were 74% and 9%, respectively, while for non-recipients they were 33% and 41%.

From this analysis, a clear distinction emerges between those who have received ARR and those who have not (yet, at any rate). Those who have tend to be better represented by dealers, sell more art, generate a higher income from art sales, and rely more exclusively on art sales for income. The group who had not received ARR seem to fall more readily into the stereotypical "struggling artist" category.

The remaining questions concentrated on the impact of ARR on artists, dealers and the UK art market, the effect of extending ARR in 2012, and on the ways in which ARR is collected.

Impact on artists

- Perhaps not surprisingly, 87% of artists viewed ARR payments as either slightly or extremely beneficial to artists in general, whether or not that had received ARR. However, this contrasts quite sharply with the common perception of dealers that artists view ARR as neutral. This can perhaps be understood by the fact that 64% of artists that had not yet received ARR viewed the introduction of ARR as neutral for themselves personally, whereas 62% of those who had received it considered it personally slightly beneficial. It appears that artists support ARR in principle, even if they do not perceive a personal benefit.
- Nearly half of artists saw the extension of ARR in 2012 to deceased artists as beneficial even to living artists, while the remainder considered the effect as neutral.
- In contrast to the dealers, artists were overwhelmingly of the view (95%) that ARR had no impact on the likelihood that a dealer would take works on consignment (i.e. sale or return).

Impact on dealers and the UK art market

- Most artists were of the view that dealers would be affected slightly negatively (41%) or not at all (40%) by ARR. This was reflected in the fact about two thirds thought the effect on their own dealer was neutral, although rather more artists who had received ARR perceived a negative effect on their dealer than those who had not (32% against 16%).
- Likewise, artists did not generally perceive any negative effects for the UK art market, about half viewing the impact as neutral, while, 31% perceived it as a positive. Thus less than one in five artists perceive ARR as having a negative impact on the UK art market.

Collection of ARR

- Most artists (81%) believe that dealers seek to avoid paying ARR sometimes (53%) or even frequently (28%).
- A majority (54%) of artists support the present status of the ARR as inalienable, with only 26% thinking that it would be desirable to have the ability to sell their resale right.
- 61% of artists expressed support for a collecting society monopoly, including 17% who wished to see it subject to competitive tendering at regular intervals. Only 10% thought artists should have the right to collect ARR themselves while 29% advocated open competition (the status quo).

Written comments varied considerably, and some expressed difficulties associated with completing the questionnaire. By and large, opinion reflected generally supportive views of ARR, but a significant minority expressed concern that it was becoming more difficult to sell art because of dealer resistance now that ARR is payable.

5. Discussions and Analysis

In addition to our analysis of the Arts Sales Index data and our questionnaires, we met with a number of artists, dealers, auction houses and industry representatives, as well as the two main collecting societies DACS and ACS.

List of interviewees:

(a) *Collecting Societies:*

Design and Artists Copyright Society ("DACS"), Artists Collecting Society ("ACS")

(b) *Auction Houses:*

Christie's, Sotheby's, Bonhams, MacDougall Auctions

(c) *Dealers*

Alan Cristea, Sir Thomas Lighton, Christopher Cosstick, Caroline Wiseman, Renate Nahum, Anthony Hepworth, David Juda

(d) *Artists*

Anonymous, Ken Howard, Christopher Le Brun, Tim Layzell, Darren Baker, Ken Currie, John Scarland, Nicola Bealing, Bernard McMullen, Brian Pollard, Liam Spencer

(e) *Industry Associations*

British Antique Dealers Association ("BADA"), British Art Market Federation ("BAMF"), The Society of Fine Art Auctioneers ("SOFAA"), The Society of London Art Dealers ("SLAD")

(f) *Other*

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We summarise these responses in Appendix 4, but will refer to opinions and information we received in this section.

Some commentators argue that ARR is a moral right: artists should be entitled to a share of proceeds when their works are resold, and hence an analysis of the costs and benefits to artists and the UK art trade more generally is beside the point. Moreover, one might argue that the decision to make ARR inalienable indicates that legislators shared this view: what practical purpose is served by prohibiting the owner of a right to sell that right other than to uphold a moral principle?

Whether one accepts this view or not, it remains possible to analyse in economic terms the costs and benefits associated with the implementation of ARR. Impact Assessment (formerly Regulatory Impact Assessment) is a process developed by government to monitor and assess the impact of legislation such as that required to support the enforcement of ARR and indeed, UKIPO published a Regulatory Impact Assessment prior to the introduction of the legislation. The most recent guidance on the conduct of Impact Assessments sets out a template requiring estimation in financial terms of the costs and benefits associated with a particular policy, yielding an overall estimate of the net present value. In this section we will explore the principle sources of benefits and costs and seek to place a financial value upon them. These benefits and costs can be identified in three main areas:

(a) The amount of ARR being paid and distributed to artists.
(b) The impact of ARR on business and on artists.
(c) The extent of any diversion of the art market from the UK resulting from ARR or likely to result from its extension in 2012.

We deal with each of these questions in turn.

(a) The amount of ARR being paid and distributed to artists

The main benefit to artists is the amount of money paid to them in ARR, and we start by considering this amount. We then ask whether a weighting be used to account for differences in income among recipients of ARR. Next we consider how ARR payments might grow in the future, and whether there are offsetting losses, either in terms of lower payments when works are first sold or reduced art sales. Finally we consider the choice of discount factor for valuing future income streams.

Before developing these themes, it is useful the discuss the efficiency of the collection system. Given that ARR is invoiced by the auction house or dealer, then paid to the relevant collecting society and ultimately distributed to the artist, a number of issues arise in this chain. The main issue for dealers and auction houses concerns the monitoring of ARR sales; we have some estimates of the administrative costs they incur which we discuss below. Most ARR is paid out via DACS, which charges 15% commission to cover their administrative costs. Their objective is to pay out monies collected as soon as possible. For example, they told us when we met with them in October that at that date they had paid out 83% of all ARR due to artists. When an artist is registered with them, this is generally paid through the DACS system, although some are paid by cheque and foreign artists by international transfer. Non-registered artists are paid by cheque, and DACS follows up when cheques have been unpaid for some length of time. ACS is a much smaller organisation, and they told us that this gave them an advantage in terms of being able to settle accounts more quickly. However, they said that they had received complaints from artists about the slowness of the process, largely due to the fact that dealers and auction houses had a 90 day period to respond to formal enquiries and a further 30 days to settle after that. The issue of ARR evasion was also raised as a potential problem. However, we are not in a position to estimate the size of this problem, if it exists.

(i) The value of payments to artists

DACS is by far the largest collecting society and states that it has collected about £4 million of ARR and distributed payments to about 1,000 artists between February 2006 and November 2007. ACS was created in June 2006 as an alternative to DACS (at the behest of SLAD and BAMF) and told us that it had collected just under £427,000 of ARR by the end of September 2007 to a total of around 50 artists. This suggests that somewhere in the region of £2.5 million of ARR is being collected annually.

Our figures indicated that around £3.3 million of ARR should have been collected on auction sales between Feb 2006 and July 2007 (i.e. £2.2 million on an annualised basis), implying that the bulk of ARR payments (88% on these figures) are via auction houses. This leaves something to be explained, since previous guesstimates of the relative size of the dealer market suggested it might be as large as the auction market. There are several possible explanations:

- the guesstimates may have been wildly inaccurate
- the dealer market may have shrunk relative to the auction market (i.e. even if the dealer market were growing, it might be growing at a much slower rate than the auction market)
- dealers and buyers are (legally) avoiding ARR by transacting in jurisdictions where ARR is not payable or (illegally) evading ARR by not declaring sales

Government policies are typically evaluated on the basis of the benefits they bring to UK citizens. British artists receive about 58% of ARR eligible payments in the UK, based on payments by auction houses. This implies an annual value of ARR payments to British artists in the region of £1.5 million.

(ii) Income distribution

In principle, the value of additional income differs according to one's income level. An extra £1 of income is worth much more to a poor individual than a rich one. Government guidance on assessment of benefits suggests that these distributional issues should be considered when weighing costs and benefits.

The average payment per artist by DACS over the first 22 months has been £4,000 or around £2,200 per artist per year, while the average payment by ACS has been £8,450, or £6,405 per year. However, these figures do not represent the income that the majority of artists can expect to receive. Based on the data discussed in section 3, the median payment for works sold through auction is only £160, and the median payment to artists was £256. Table 1 illustrates the distribution of payments to artists as estimated from the auction sales data, and shows that most payments to artists are quite small, while there are some very large payments to individual artists at the top end of the distribution (note the maximum ARR payment for a work of art is capped).

Table 18: Distribution of estimated ARR that would have been payable to artists for works sold at auction, 15 February 2006- 31 July 2006

	By artwork	By artist
Minimum	£28	£28
10th Percentile	£36	£38
20th Percentile	£56	£64
30th Percentile	£80	£100
40th Percentile	£120	£160
Median	£160	£256
60th Percentile	£252	£408
70th Percentile	£420	£720
80th Percentile	£800	£1,674
90th Percentile	£1,845	£5,694
Maximum	£8,621	£16,5645

Moreover, the vast majority of artists have not seen one of their works re-sold over the period. Thus only approximately 2% of the 50,000 artists in the DACS database, irrespective of the fact that not all of these would receive ARR payments through them, have been eligible for ARR payments since implementation of the right in the UK in February 2006. According to one firm that we interviewed that is involved in collecting substantial amounts of ARR, almost 50% of all payments go to a mere 20 artists.

One way to express this is to adjust the value of the benefit received by artists according to their income. From our survey, around 30% of artists receiving ARR stated that their annual income was below £25,000, 40% stated their income was between £25,000 and £75,000, while 30% stated their income was higher than this level. In the UK as a whole, the average final income of the top quintile of households is £49,320, of the third quintile is £22,870 and of the lowest quintile £13,490.[11] In other words, around 70% of artists receiving ARR would classify themselves in the top two quintiles while a relatively small fraction would be likely to appear in the lowest quintile (no doubt a large fraction of artists who do *not* receive ARR would appear in the lowest income quintiles).

The UK Treasury guidance provided by the Green Book states that "in principle, each monetary cost and benefit should be weighted according to the relative prosperity of those receiving the benefit or bearing the cost".[12] It then suggests a set of illustrative weights by income quintile, ranging from 2.3 for gross income in the lowest income quintile to 0.4 for gross income in the highest quintile.

We do not know the income levels of artists receiving ARR, but it would seem reasonable to suppose that a majority of artists whose work can be resold for sums in

[11] http://www.statistics.gov.uk/downloads/theme_social/Taxes_Benefits_2005-2006/Taxes_Benefits_2005_06.pdf, Table 4.
[12] *The Green Book: Appraisal and Evaluation in Central Government*, HM Treasury, 2003, p.92.

excess €50,000 can generate an annual income greater than this amount, putting them in the second highest household income quintile, to which we then attach a weight of 0.5. Of the remaining payments, if we suppose that half were made to artists whose on a median income (and so are given weight 1) and half to artists in the lowest quintile and given a weight of 2. On this basis the value of estimated ARR paid out reported in Table 5 is only £2.7 million as opposed to £3.3 million, about 20% less. If we apply this to our estimate of ARR payable annually to British artists, the distribution adjusted value is around £1.2 million instead of £1.5 million.

(iii) The economic value of ARR to artists

How much would British artists have to be compensated if they were required to give up ARR but be left no worse off financially? The answer depends on (a) who actually pays for ARR – the artists, the dealers, or the collectors; (b) the expected growth in sales volume (given that ARR is essentially a turnover tax); and (c) the appropriate discount rate.

In order to analyze this question, we do a bounds analysis. The lower bound is that there is no benefit at all to artists, as the standard economic argument is that the price the artists will receive at first sale is reduced by the net present value of future ARR payments. In fact, as collection costs are significant and these will be borne at least in part by artists through a further reduction in price, ARR could be detrimental to artists. Although prices have risen sharply in the UK for ARR eligible art, we do not know for certainty whether or not prices may have risen even more in the absence of ARR.

The upper bound can be calculated by assuming that artists do not bear any of the costs of ARR, but only buyers. This upper bound can be justified by the fact that the cost on a per transaction basis is a very small percentage of the final price, and probably may not be noticed on a transaction by transaction basis by buyers. For the upper bound, we need to estimate a rate of growth.

This rate of growth could be expected to exceed the general rate of economic growth, since art is a luxury good. Currently the growth rate of sales is very high, and although there have also been long periods in the past when art values have not appreciated quickly, it seems reasonable to assume a generous growth rate for some time to come. “Generous”, in this sense, means something faster than the long run expected growth rate, excluding price inflation. Long term estimates of real economic growth in the UK are in the region of 2-2.5% per year. For illustrative purposes, let us assume that art market sales (excluding inflation) grow at 5% per year for the next 50 years, at 3.5% per year for the following 50 years, and settles at 2% per year thereafter. On this basis the value of the UK art market will increase eleven-fold over the next fifty years and about sixty-fold over the next century. Let us also assume that ARR payments increase at the same rate.

This gives us a path for expected ARR income into the indefinite future, but we need also to discount future income which is usually deemed to have lower value than present income. In evaluation policy the Treasury recommends a social time preference rate of 3.5%.[13] Using this figure, and assuming a value to UK artists of £1.2 million per year in 2007, we arrive at present value of ARR payments equal £371 million, of which about 56% is associated with payments over the next century.

This calculation necessarily involves some heroic assumptions, and there must be considerable uncertainty over the true value. However, it is also clear that the estimate is sensitive to relatively few parameters. Probably most important is the assumed growth rate of the value of art sales in the UK. For example, if sales growth over the next half century were only 4% per year the present value of future ARR payments would be only £245 million, while at 3% it would fall to only £164 million. Lower growth of art sales in the UK might be associated either with a general slowdown in global economic growth or a relative decline of the UK art market. This latter effect might be a consequence of ARR payments themselves, and a large number of UK art market professionals have told us that they believe this to be the case.

Extending ARR in 2012 to cover artists deceased within the last 70 years would push up the upper bound substantially. From Table 14 we saw that ARR payments by auction houses between February 2006 and July 2007 would have been £13.4 million, instead of £3.3 million, more than four times greater. As with existing payments, a valuation of this benefit should take account of the income distribution. Given the original intention of droit de suite to benefit the impoverished families of deceased artists, one might argue for a much higher weighting than for living artists. However, one suspects that any higher fraction of ARR for deceased artists will be concentrated on a small number of very famous artists, and so the reverse might also be argued. In any case, if we simply applied a crude multiple of four to our estimate for living artists, this would produce a present value of benefits equal to £1,484 million.

The actual net benefit to artists is somewhere in between these two bounds. Given the broad support for the tax among artists as shown by the survey, it is difficult to claim that it actually hurts them. Furthermore, ARR may encourage them to work and innovate. However, a likely consequence is an increased reluctance of dealers to purchase the work of artists, either through fear that the art may depreciate in value before being resold, or for fear of having to pay ARR both on purchase and sale (notwithstanding the "bought as stock" exemption of purchases which are resold within three years for less than €10,000). This means that artists may find fewer opportunities to sell their works, or may be required to bear more risk (e.g. because dealers take works on consignment rather than purchasing outright). In other words, the presence of ARR does not necessarily reduce the price an artist can be expected to receive at first sale, it may nullify such sales altogether or defer income to later periods.

[13] *Green Book*, 2003, p.98.

(b) The impact of ARR on business

The impact of ARR on the business of auction houses and dealers is probably the most controversial aspect of the legislation. Even at a time when the art market in the UK is booming, many dealers claim that ARR has affected their business negatively (32% of our respondents said the effect had been either very or slightly negative) and has damaged the London art market (73% said the effect had been either very or slightly negative). Furthermore, the effects of extending ARR in 2012 to the estates of artists deceased in the last 70 years is deemed to be even more damaging, 81% saying that the impact on London would be very or slightly negative, and 55% saying that their own business' position would be affected very or slightly negatively. By contrast, artists do not in general perceive the introduction of ARR to have been disadvantageous for dealers (only 26% thought it either very or slightly disadvantageous) and only 19% perceived a similar impact on the London art market.

One aspect of the alleged negative effects is the potential diversion of art sales to markets outside the UK; this is explored in the next section. Another possible effect is an increase in the costs of doing business due to administration costs associated with ARR. To estimate these costs, we first need to consider how costs are incurred in administering ARR. According to DACS, most of the administrative burden associated with ARR is borne by themselves. They maintain a database of artists which can be accessed by auction houses and dealers to establish eligibility, and when notified of a sale, they will calculate the liability and send a quarterly form (the Resale Submission Form) to these businesses enabling them to report potentially relevant sales, on the basis of which DACS will create invoices for ARR payable. Once monies have been collected, DACS then reimburses artists, less a 15% commission charged on each transaction to cover these costs.

However, the auction houses and several larger dealers also identified significant set-up and ongoing costs associated with administering ARR. Set-up costs concerned adaptation their computer systems to account for these royalty payments. For example, one large auction house provided us with an estimate that they allocated nearly 1,400 working hours to establishing their ARR systems, about half of which was taken up by IT charges. The cost of implementation was estimated at around £50,000. A similar figure was quoted to us by a somewhat smaller auction house. The larger dealers also suggested to us that they incurred non-negligible set-up costs, often involving several tens of hours of IT professional work. Suppose that the population of dealers and auction houses affected by ARR is in the region of 500 businesses (the DACS dealer database contains 2,702 entries alone, but this seems to overestimate the actual number of those regularly involved in art sales). For simplicity, if we then assume that the ten largest businesses incurred set-up costs of £50,000 each, and the remaining businesses required 30 hours of IT work and 20 hours of management input, we arrive at a total cost of just over £1 million if these are valued using the Standard Cost Measures recommended by the Better Regulation Executive.[14]

[14] In practice the distribution of set-up costs is probably much smoother. Valuation methodology in: *Measuring Administrative Costs: UK Standard Cost Model Manual, Version 1.01, Better Regulation Executive*, 2005. Corporate managers time is valued at £21.24 per hour (including 30% overhead) and ICT professional time is valued at £21.70 per hour. On this basis our set-up cost estimate is £1,027,142.

We can attempt to estimate recurring administrative costs in a similar manner. It is important to stress that many auction houses and dealers emphasised to us that the administrative burdens of ARR are very high. Often the burden was associated with cases where the nationality of an artist was hard to ascertain. In one instance, an auction house believed that the artist whose work was being sold held Chinese nationality, and DACS confirmed that this was their belief as well. However, after the sale it turned out that the artist held a French passport and thus ARR was payable. In this case, the auction house decided to absorb the ARR rather than attempt to recover it ex post, at a cost of some £20,000 (several works had been sold) to the business. They emphasised that this was not necessarily the fault of DACS, but that such situations were likely to arise on a regular basis given the difficulty of establishing nationality in many cases, especially for lesser-known artists. Moreover, the auction house argued that these cases absorbed substantial amounts of management time and legal advice on a recurrent basis, and that they feared they would increase "exponentially" were ARR to be applied to deceased artists. Another area which was said to impose a substantial extra burden was the denomination of ARR payments in euros, which frequently led to difficulties since ARR liabilities would depend on the exact exchange rate employed.

In our survey just under half of respondents stated that dealing with ARR payments was either "very" or "quite" burdensome. When asked to estimate a cost, exactly half declared the cost to be less than £10 per transaction, while one quarter said they did not know. The larger auction houses suggested to us that the costs per transaction were much larger than this. We obtained three cost estimates: one was close to £13, a second was about £21, and a third was around £27. From Table 5, we can see that there were 3,300 ARR eligible sales in the year from August 2006 to July 2007. If we assume this accounts for 88% of total transactions by value, it is likely to be a smaller share of the total volume, since dealer sales are likely to have a much lower average price. If we suppose that total ARR eligible sales are around 5,000, and use a figure of £10 per transaction as an average, then the total annual cost of administration equals £50,000.

Even if we accept that this figure could be substantially higher (or lower), it is in fact small relative to the estimated benefit to artists. Note that these costs are unlikely to grow significantly over time, unlike the value of traded art, and the discounted present value of these costs is only £1.4 million, assuming zero cost growth. Combined with the set-up cost, these amount to less than 1% of the estimated value of the benefits, and even if we doubled the cost and halved the benefit, these costs are still negligible relative to benefits. So long as the art market in the UK is not prejudiced by ARR, the cost of administration does not appear burdensome relative to the benefit to the artists.

Extending ARR in 2012 will raise the number of transactions affected significantly – comparing table 14 and table 5 the number of transactions affected is around four times higher. Once systems are in place to administer ARR, there is no reason to suppose that costs will increase anything other than linearly, hence we might expect annual administrative costs to be around four times higher.[15] In the long run, this administrative cost is much smaller than the benefit received.

[15] Having said this, we are aware that the added due diligence costs of locating up-to-date addresses for deceased artists' heirs (for royalty payments) could be disproportionately burdensome, especially for

We have not valued here the administrative cost of completing a nil return on the quarterly Resale Submission Form sent out by DACS. Several dealers indicated that they found this extremely annoying and a waste of time, given that they had little expectation of ever needing to declare an ARR eligible sale. Since this is sent out to several thousand businesses, it might be considered a considerable nuisance, but in the absence of any significant time cost associated with completing a nil return, we have not attached an economic value to this nuisance.

A number of our interviewees suggested to us that a progressive step to help reduce these costs would be to require artists to register in order to receive ARR payments. A constantly updated database could be managed by the collecting societies both within the UK and, ideally, across all countries affected by the EC legislation and be made available to the marketplace. This would be likely to improve the efficiency of collecting and distributing resale royalties, notably by diminishing due diligence costs and the aforementioned confusion arising between collecting societies and both dealers and auction houses. On the face of it, this entails revoking the inalienable dimension of current ARR legislation and could therefore be detrimental to the interests of some artists (who might be persuaded by their dealers not to register); we therefore suspect that it might also be opposed by parties (principally collecting societies) who stand to lose revenues as a result of reduced ARR payments. However, it might be possible to design a scheme for compensating non-registered artists while affirming the principle of registration.

(c) The extent of any diversion of the art market from the UK resulting from ARR or likely to result from its extension in 2012.

Thus far we have identified an upper bound on the benefit to artists in net present value terms of £371 million to artists and a cost of about £2.5 million in terms of administration for auction houses and dealers. Logically, however, we cannot argue that a benefit can be created out of nothing, and the cost of paying ARR must be borne somewhere, if it is not simply re-allocating a payment that would have gone to the artist. One possibility is that the market intermediaries absorb the cost of ARR into their margins, but our interviews did not suggest to us that this is case, for the time being at least.[16]

The remaining possibility is that sellers pay a higher price through ARR, and that to the extent that British buyers pay ARR, we should offset this against the benefit of ARR to artists. However, the UK is one of the principal centres of the international art market, and when foreign buyers pay ARR, this represents a subsidy to British artists (and other recipients of ARR) and from the point of view of UK government policy there is no direct cost to be considered. According to a survey by SLAD of its members, 47% of sales in 2007 were to UK buyers, while for auction houses the figure is probably somewhat lower still.

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small businesses and until such a time (if ever) that a database of ARR liable artists and heirs is made widely available to the market.

[16] The major UK auction houses, for example, apply the ARR to buyers. A number of our dealer interviewees did, however, indicate that these costs are absorbed: they argued that they could not incrementally raise prices on a case-by-case basis for ARR liable items, thereby concluding that the presence of ARR directly cut into their profit margins.

Suppose that 40% of ARR is paid by UK citizens who purchase works of art. If we apply a distributional weighting in the same way that we did to artists as recipients, it is plausible to suppose that most art buyers are drawn from the highest income quartile and a distributional weight of 0.5 should be applied. On these assumptions, if the present value of benefits is £371 million, then present value of the cost to UK buyers would be £74m, and hence the net benefit to UK citizens would be valued at £297 million.

While payments by foreign buyers is not considered to be a cost in UK terms, these buyers would presumably prefer not to pay a higher price, and thus there is a possibility that art sales that would have taken place in the UK would be diverted elsewhere. The data referred to in section 3 suggested that as yet there is no evidence of diversion of sales, despite the fact that many dealers claimed that there had been adverse effects on the London market. One reason that diversion does not seem very likely at the moment is that London's position as a business centre has improved in recent years, especially relative to New York, given the shift in international business to the East. However, it is arguably just as easy for the centre of gravity of art market to shift elsewhere, and one auction house provided us with some examples of shipping costs to show how easy it is to move art around the world. They provided four examples of artworks valued at £200,000, which could be shipped to Europe or the US for £2,310, £1,820, £1590 or £1,075, and four items valued at £50,000 which could be shipped for £972, £765, £605, or £335. These figures suggest that the ARR payment would be roughly equal to the shipping cost, and therefore shipping items to avoid ARR would be unlikely to be attractive even at the top end of the market.

The impact of extending ARR is viewed in apocalyptic terms by most UK art market professionals. They sincerely believe that London's attractiveness will be badly damaged, and we have already seen that the number of transactions affected would increase around fourfold if ARR is extended to deceased artists up to 70 years after death. However, payment of £13 million of ARR (Table 14) on auction house turnover of £1,789 million, represents less than one per cent of turnover. Of course, profit margins are much slimmer and if buyers were to resist absorbing this cost, the extension of ARR could eat into the margins of UK art market professionals. Unfortunately we are not able to state with any clarity whether this would in fact be the case, and for the time being all we can say is that there is no evidence of trade diversion from the implementation of ARR thus far.

Appendix 1: ARR Literature Review
Appendix 2: Dealer Questionnaire Responses
Appendix 3: Artist Questionnaire Responses
Appendix 4: Summary of Main Interviews

Appendix 1: ARR Literature Review

Overview

The first government mandated artist's resale right ("droit de suite") was put into effect in France in 1920. Under the original legislation (Law of 20 May 1920), the right was inalienable with respect to public (auction) sales and encompassed painting, sculpture, drawing and prints; the same rights belonged to artists' heirs and successors in title for the duration of artistic property law in effect and payments were to be scaled from 1% of the sales price for items between 1,000 and 10,000 francs, up to 3% for items in excess of 50,000 francs. In 1921, Belgium inaugurated a similar royalty scheme and in 1922 the French legislation was extended to Algeria and other French colonies; Czechoslovakia, Poland, Uruguay and Italy passed their own versions of the royalty into law in 1926, 1935, 1937 and 1941, respectively.

The next major development came in 1948 when Article 14bis *ter* was added to the Bern Convention for the Protection of Literary and Artistic, encouraging, though not enforcing, signatories to adopt the droit de suite. The hoped for effect, however, failed to materialise and it was not until 1957, and ultimately 1965, that the droit de suite significantly matured. In the former, France revised its earlier legislation and introduced a flat charge of 3% for all resales above 100 francs and extended the right to dealer transactions (however this latter article was never applied, and in practice the droit de suite has only ever been charged at auction in France); the latter marks Germany's adoption of the royalty.[17] In her authoritative book on the subject of 1991, Liliane de Pierredon-Fawcett observed that 29 countries had come to adopt different versions of the droit de suite (varying notably in royalty rates, how monies were to be collected and distributed, and the types of artworks to which royalties applied).[18] This figure accounts for the aforementioned countries, in addition to the United States where California passed its own version of the royalty into law in 1977 (though no other States ever adopted the law and it is seldom applied in California). By 2000, the droit de suite existed in 11 of 15 European Union nations and was ultimately extended to all Member States the following year with the passage of Directive 2001/84/EC by the European Parliament. Beginning in 2006, the droite de suite (henceforth artists' resale right – "ARR") came into law in the United Kingdom and presently exists in 28 countries within the European Economic Area and 26 others, worldwide.[19]

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[17] Germany differs from France in that the *droit de suite* royalty rate is applied at a lower threshold (€400 versus €750) and that the levy collected by VG Bild-Kunst, the government-appointed German collecting society, is actually bifurcated into two parts: the royalty due, which is directed to individual artists; and payments towards 'Kunstler-Sozialkasse' (KSK), a redistributive welfare fund that helps to cover health insurance and pension schemes for German living artists, at large. The right is inalienable in both countries, though German artists may also decide who rights may be transferred to after death (at which point royalties are applied for an additional 70 years); in France, only direct heirs can receive payments after the artist's death (also for 70 years). On the latter, see: McAndrew and Dallas-Conte, 2001, pp.28-34.

[18] Liliane de Pierredon-Fawcett, *The Droit de Suite in Literary and Artistic Property: A Comparative Law Study*, trans. Louise-Martin-Valiquette, New York: Center for Law and the Arts, Columbia University School of Law, 1991, p.6.

[19] Lord Sainsbury of Turville, 'Intellectual Property: The Artist's Resale Right Regulations 2006,' Department of Trade and Industry, no.346, 13 March 2006. Countries include: (European Economic Area) – Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany,

There are a number of reasons why this royalty emerged in the early twentieth century and why it continues to be promoted today. In this literature review, we begin by examining the context out of which the droit de suite emerged and the rationales in favour of its existence. Next, we examine the leading critiques that have been aired against it and some of the difficulties it has incurred. We conclude by looking at alternative present-day applications of the resale right and the relevance of these examples in the context of the UK art market.

Rationale

According to de Pierredon-Fawcett, the term "droit de suite" was first mentioned in an article by Albert Vaunois in the *Chronique de Paris* on 25 Feb 1893.[20] It derived from the legal discourse of mortgages and real-estate which entitled the holder of such a right to seize property from a third party. Within the art sector, the droit de suite would not concern the dispossession of property, rather it enabled the author of an artwork to claim a percentage of this item's resale value.

The droit de suite's augmenting visibility within the public consciousness of France at this point in time was rooted in growing awareness of the disparity between the "poverty" of artists and the "wealth" of collectors ("*real gold for the speculator, fool's gold for the artist"*). This myth of the 'starving genius' artist was then gaining traction in relation to impoverished members of the avant-garde who toiled for nothing during their lifetime only to find posthumous fame and fortune (Van Gogh, who died broke in 1890, is arguably the most famous case-in-point). By enabling artists to share in the price appreciation of their output, the droit de suite was thus believed to be capable of progressively rebalancing the wealth distribution between the makers and buyers of art. An important aspect of this is that from a legalistic perspective, it was not only articulated as an economic right, but also a moral right governing an artist's intellectual or non-property relationship to his/her product – such that the work's "integrity" could be maintained into perpetuity. This came to a head in Paris in 1909 when press campaigns inspired a public demonstration over the right attended by over a thousand artists. A flat royalty of 2% was formally submitted to the Chambre des Députés in 1914 which, though disrupted by World War One, ultimately set the stage for the droit de suite's passage into law in 1920.[21]

An important aspect of this early history was that the first well documented redistribution of sales proceeds to living artists was undertaken by the Peau de l'Ours ("The Bearskin") art club in 1914. Established by financier André Level in Paris in 1904, the club consisted of 13 partners, including Level, who each contributed 250 francs per year to a pooled trust which was used to invest in modern artworks. In total, Peau de l'Ours purchased approximately 100 items over a ten-year period which were eventually auctioned in a highly publicised sale at the Hôtel Drouot, Paris, on 2

Greece, Hungary, Iceland Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden and the UK; (Non-EEA) – Algeria, Brazil, Bulgaria, Burkina Faso, Chile, Congo, Costa Rica, Croatia, Ecuador, Guinea, Iraq, Ivory Coast, Laos, Madagascar, Mali, Monaco, Morocco, Peru, Philippines, Romania, Russian Federation, Senegal, Serbia and Montenegro, Tunisia, Turkey, Uruguay.

[20] de Pierredon-Fawcett, 1991, p.2.

[21] References in this paragraph from: Ibid, pp.2-4.

March 1914. Level then took the groundbreaking measure of redistributing 20% the auction proceeds to the artists whose works the club had sold. In the aftermath of this high profile auction attended by many Parisian art world notables, such a decision clearly coincided with the prevailing sentiment that artists' deserved a stake in escalating prices.[22]

An illustrative and more recent extension of these issues is enlisted by art law scholar John Henry Merryman in his discussion of the 1973 Scull Sale at Sotheby Parke Bernett, New York.[23] This sale, which represented the first major stand-alone auction of contemporary art from a private collection in the United States and has come to be regarded as a watershed in the upward trajectory of the contemporary art market, is notorious because it led to Robert Rauschenberg's public ridiculing of the Sculls after his *Thaw* (1958) and *Double Feature* (1959) were hammered down for $85,000 and $90,000, against purchase prices of $900 and $2,500 in 1958 and 1959.[24] Key here is that unlike Level, the Sculls refused to repatriate any earnings to Rauschenberg (or other associated artists) and the sale therefore crystallised tensions pertaining to economic earnings disparities that had catalysed the earlier droit de suite debate in Paris. According to well-rehearsed polemics, Rauschenberg argued that the successful advancement of his career drove this price appreciation and he therefore deserved a share of the Scull's earnings.

Beginning from this premise, Merryman then explores a number of counter-arguments which serve as the basis for his critical economic and legal analysis of the resale right. These and others are examined in the next section. Here, it is also significant to observe that such tensions did not arise from a void: only two years earlier, New York conceptual art dealer Seth Siegelaub partnered with lawyer Robert Projansky to draft The Artists Reserved Rights Transfer and Sale Agreement.[25] The Projansky Contract, as it has come to be called, stipulated that artists receive 15% of the resale value of their work, 50% of rental fees earned by the collector in the event of the work being loaned, and a say as to where and under what conditions the work could be exhibited or reproduced. As art historian Alexander Alberro argues, "the Agreement was a political project that provided the groundwork for substantive artist empowerment," and was correlated to both the avant-gardist agenda of conceptualism and to the politics of the Art Workers Coalition, established in 1969, which sought to unionise artists and acted as a critical mouthpiece against institutional conservatism; it

[22] For a good account of this, see: John Richardson, *A Life of Picasso, Volume II: 1907-1917*, London: Jonathan Cape, 1996, pp.48, 297-299. Holdings were sold at 100,000 francs against an aggregate purchase price of approximately 25,000 francs, with Picasso's *Saltimbanques* (1905) commanding the highest price (it was sold for 12,500 francs against an original purchase price of 1,000 francs in 1908).

[23] John Henry Merryman, 'The Wrath of Robert Rauschenberg,' *The American Journal of Comparative Law*, vol.41, no.1, Winter 1993, pp.103-127; and John Henry Merryman, *The Proposed Generalisation of the Droit de Suite in the European Communities*, London: The Intellectual Property Institute, 1996, pp.9-13.

[24] Anthony Haden-Guest, *True Colors: The Real Life of the Art World*, New York: The Atlantic Monthly Press, 1996, pp.1-20.

[25] Merryman actually situates the origin of discussion around artist's resale rights in America in the 1940s; the Scull Sale and the politically charged nature of the Projansky Contract simply heightened interest in and established the grounds for more sophisticated discussion of these issues. See: John Henry Merryman and Albert E. Elsen, *Law, Ethics and the Visual Arts, Fourth Edition*, London, the Hague and New York: Kluwer Law International, 2002, pp.486-487. See also: James J. Fishman, 'Art Law,' *Cleveland State Law Review*, vol.26, 1977, p.488.

certainly also anticipated the tensions raised by Rauschenberg in the Scull Sale and the interests that helped spawn California's version of the right six years later.[26] Not surprisingly, however, the extensive economic and administrative constraints placed upon collectors by the Projansky Contract meant that very few purchasers ever signed it. New York lawyer Charles Jurrist favourably revised its conditions several years later (notably limiting the artist's royalty to the *first* resale), though this agreement, too, failed to gain headway and neither contract is in circulation any longer.

This brief chronology enables us to identify the principal arguments in favour of the ARR.[27] Certainly the most rudimentary is that the artist, having created the artwork, should be intrinsically entitled to a stake in its price appreciation – which is correlated, as Rauschenberg contends, to the broader success of his/her career. This logic is occasionally proposed as self-evident and according to de Pierredon-Fawcett, it takes its legal basis in the "theory of unjust enrichment."[28] Caslon Analytics, Australian research and strategy consultancy, thus propose the "genius in the garret" theory in which such a logic may be rationalised if one accepts that the price paid for "great works" is seldom sufficient at first sale: "each generation - resellers and buyers - should accordingly 'make some reparation for the insensitivity of its ancestors.'"[29] Claire McAndrew and Lorna Dallas-Conte, in their recent survey of the ARR for Arts Council England, strike a similar accord when they argue that such a royalty accounts for the uneven bargaining position of young artists vis-à-vis their galleries.[30] A different iteration of this perspective accounts for why, historically and currently, the ARR has been mandated as an inalienable right. Were it to be otherwise, the logic goes, the weak relative bargaining position of artists would lead them, under pressure from their dealers and patrons, to sign away their resale right.[31]

A second common argument is that resale rights establish a vital degree of economic parity between visual artists and those employed in other creative industries. By linking artists to a flow of future dividends from the circulation of a single work, they therefore benefit from royalty payments enjoyed by, say, musicians and novelists; economic interests of the author and the intermediaries that distribute and/or licence this work are better aligned.

Still further rationales are established on moral-philosophical grounds. These correspond to the 'moral rights' aspects of ARR legislation and its pervasive constitution as an inalienable right – that artists deserve to share in the economic

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26 Alexander Alberro, *Conceptual Art and the Politics of Publicity*, Cambridge: The MIT Press, 2003, p.164. See also: 'A Conversation between Seth Siegelaub and Hans Ulrich Obrist', *TRANS*>, no.6, 1999, pp.51-63.

27 An instructive overview of these arguments, including detailed coverage of the ARR's UK extension, is available at: http://www.artquest.org.uk/artlaw/resaleoroyaltyright/28185.htm. The Artlaw Archive is maintained by lawyer Henry Lydiate and contains all of the articles written by him for *Art Monthly* magazine (in which he has a monthly column) since its launch in 1976.

28 de Pierrdon-Fawcett, 1991, p.13.

29 http://www.caslon.com.au/droitprofile.htm.

30 Claire McAndrew and Lorna Dallas-Conte, *Implementing Droit de Suite (Artists' Resale Right) in England*, The Arts Council of England, 2001, p.18, available at: http://www.artscouncil.org.uk/documents/publications/325.pdf.

31 See: Victor Ginsburgh, 'The Economic Consequences of Droit de Suite in European Union,' Working Paper, March 2005, available at: http://bib17.ulb.ac.be:8080/dspace/bitstream/2013/3295/1/vg-0171.pdf.

appreciation of their output, above all, because they created it and are deserving of such a stake. "Whatever the merits or otherwise of [the ARR] arrangement," argues dealer René Gimpel, "there is no reason why these artists should not maximise their own share in the continuing profits being made by other players in this game."[32] The moralistic basis of this pro-ARR viewpoint can be summarised as follows: if prices rise, artists are *morally entitled* to share dividends; if prices drop, it is *morally improper* to hold artists liable.

A final argument in support of the ARR, and the primary justification for Directive 2001/84/EC and the right's 2006 extension into the UK art market, is on the grounds of trade harmonisation. This perspective departs from those just noted in that it does not concern the economic or moral welfare of artists, per se, but the balance of trade between Member States of the European Union (and thus the welfare of art market actors at large in these jurisdictions). In short, the ARR's existence in countries with the right such as France and Germany afforded an unfair competitive advantage to countries such as the UK and the Netherlands where the right had, until this juncture, ceased to exist: distortions existed internally within the European art market that needed to be rectified.

In the period between the European Commission's 1996 proposal to harmonise the ARR amongst Member States and the passage of the 2001 Directive, neither proponents nor opponents of the right seriously challenged the tenets of this distortion argument – that selling artworks in "low-tax countries where the ARR is not applied" compare attractively to those which do not and that this "may have a harmful effect on the functioning of the internal [European] market."[33] The substantial market share advantages of the UK and Switzerland for business conducted by leading international auction houses within Europe and accounts of collectors choosing to export works to these regions from those where the ARR was applied combined to justify this perspective; the presence of diversion was perceived to be especially strong at the top end of the market where shipping and insurance costs compared favourably to royalties that would otherwise have been due.[34] Indeed, this was a decisive issue for the ARR's penultimate extension into the UK because supporters could use it as evidence of the necessity of the ARR's harmonisation throughout the EU (which, in theory, would remedy an extant competitive trade imbalance) whilst opponents found it paradoxical to challenge because this would then undercut one of their most persuasive arguments against the right (that its standardisation throughout the EU

[32] René Gimpel, 'A Contemporary Art Dealer in Support of *Droit de Suite*,' *The Art Newspaper*, no.61, July 1996, p.2. Gimpel's article was actually written in response to: Victor Ginsburgh, 'What's Wrong with *Droit de Suite*: The Economic Arguments,' *The Art Newspaper*, no.59, May 1996, p.5.

[33] That this went unchallenged is mentioned in: David Booton, *A Critical Analysis of the European Commission's Proposal for a Directive Harmonising the Droit de Suite: A Seminar Report*, London: The Intellectual Property Institute, 1998, p.8; quotation in: Commission of the European Communities, *Proposal for a European Parliament and Council Directive on the Resale Right for the Benefit of an Author of an Original Work of Art, Brussels (96/085 COD)*, 13 March 1996, p.14 [henceforth CEC Proposal].

[34] The 1996 CEC Proposal cited the international geographical breakdowns of sales value by Sotheby's and Christie's in 1994 and 1993, respectively, to justify this. For Sotheby's, 50% of sales occurred in North America, followed by 32% in the UK, 14% in Continental Europe and 4% in Asia; for Christie's, 43% of sales occurred in the US, followed by 38% in the UK, 8% in Switzerland and 11% elsewhere. The case of a German-based collector choosing to auction a work by Joseph Beuys in London (which ultimately sold for £462,000, or DM 1,418,340) was also presented; this led to royalty savings of DM 71,000. See: Ibid, pp.5-6, 14.

would, at the margin, divert business to jurisdictions where the ARR did not exist, such as the US, Switzerland and Asia).

Artists, who stand to financially benefit from the ARR, would seem to be the royalty's most obvious proponents. Curiously, literature published to date has failed to extensively survey their opinions on this subject. Where their thoughts are addressed at all, they typically evoke a melding of extremes, marked, on the one hand, by a majority opinion confirming that the ARR is beneficial to their interests (DACS simply state that they have "never encountered" *any* artist against the royalty) and, on the other hand, by a smaller group who, for reasons explored below, vociferously oppose it.[35] Though the results of our questionnaire confirm that artists, in the main, support the ARR, we found that most were hardly very opinionated: they generally viewed the royalty favourably, but admitted to lacking considerable knowledge about it and did not expect that it would provide significant income streams.[36] Collecting societies, as has been noted in the literature, are thus the most stringent advocates of the ARR: their *raison d'être* depends on its existence and they stand to directly benefit by taking administrative fees on royalty payments.[37] Artists' rights lobbyists tend to be the other major pro-ARR advocates.

Critiques

Counterbalancing this century-long period of ARR advocacy and the law's most recent expansions is an equally dense history of resistance. The 1977 Whitford Committee on Copyright Law's recommendation against the UK's introduction of the right and the 1993 US Copyright Office's conclusion that it is not "legitimately" beneficial to the economic interests of artists provide two prominent examples in leading art markets.[38] A common starting point for resale right critiques is that the nostalgia upon which its basis is founded is erroneous. "The Romantic image of the genius unappreciated by his contemporaries and worshipped by his successors was a warhorse for defenders of the droit de suite at the start of the 20th century. […] It was really just a provocative imaged aimed at attracting the sympathy of the general public."[39] William Landes and Daniel Levine even attempt to overturn van Gogh's relevance to this debate by arguing that the artist was well positioned to begin reaping financial dividends from the large body of important work he had produced at the

[35] Design and Artists Copyright Society, *Submission to the Public Consultation on the Implementation of Directive 2001/84/EC on the Resale Right for the Benefit of the Author of an Original Work of Art*, London, May 2005, p.4. On artists' opposition to the right, see: 'Artists Oppose Resale Rights,' *The Art Newspaper*, no.99, January 2000, p.1; Georgina Adam, 'Artists Enter the Fray,' *The Art Newspaper*, no.109, December 2000, p.75.
[36] McAndrew and Dallas-Conte (2001, p.24) appear to confirm this reading when they note the low level of artists' responses to their own research enquiries; they reckon that this supports criticism of artists' 'lethargy.' They also remark that seven of 25 arts institutions they polled were unaware of the right and that a further ten did not know whether it would apply to their membership.
[37] Merryman, 1996, p.21.
[38] See: Gerald Dworkin, 'The Whitford Committee Report on Copyright and Designs Law,' *The Modern Law Review*, vol.40, no.6, November 1977, pp.685-700; and *Droit de Suite: The Artist's Resale Royalty: A Report of the Register of Copyrights of the Library of Congress*, 1993.
[39] de Pierredon-Fawcette, 1991, p.144.

time of his suicide.[40] Likewise, an alternative reading of the 20% royalty payout by Peau de l'Ours suggests that it was not so much altruistic as a cynical measure for the investors to secure preferred access, at beneficial prices, to other works by this stable of artists. Indeed, the "impoverished" economic welfare of artists has also been challenged: Randall Filer contends that artists earn the same as other workers with similar training and personal characteristics.[41] The staggering commercial success of living British artists like Damien Hirst, compounded by the buoyancy of the contemporary art market at large, are seen to further dispel this "myth."

One of the main economic criticisms of the ARR is that its presence lessens the amount of money that artists can be expected to receive at first sale: in theory, rational collectors will bargain down the price of an ARR liable artwork by the expected future value of the royalty. As long as such a work is resold, the economic welfare of artists remains unchanged and significant financial dividends may accrue if the work is resold more than once, or if the level of the discount is less than the actual value of the royalty (i.e. the collector underestimates the artwork's future value).[42] There are, however, two major problems with this rationale. One, as highlighted by economist Richard Caves, and by Merryman in response to Rauschenberg, is that even if artists benefit from this structure, it obscures a simpler and arguably even more beneficial way to prosper from rising market success: retaining ownership of "high quality" artworks.[43] Not only does this augment the exclusivity value of other works in circulation (through the restriction of supply), it also resolves the aforementioned conundrum of maintaining equity in one's career: an artist may now 'cash in' and receive the *full* value of his/her appreciated artwork. The second problem is that the overwhelming majority of artworks never sell more than once – if at all.[44] Thus one finds that at the margin most artists are actually economically worse off because of the resale right. This is further disadvantageous insofar as artists are likely to value marginal increases in their income more during the early stages of their career rather than later on.

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[40] William M. Landes and Daniel B. Levine, 'The Economic Analysis of Art Law,' in Victor A. Ginsburgh and David Throsby, eds., *Handbook of the Economics of Art and Culture*, Amsterdam: Elsevier, 2006, p.232, n.23.

[41] Randall Filer, 'The "Starving Artist" – Myth or Reality? Earnings of Artists in the United States,' *Journal of Political Economy*, vol.94, no.1, February 1986, pp.56-75. A similar theoretical argument could also be derived from Pierre Bourdieu's discussion of art market actors as socioeconomic utility maximisers who accumulate both cultural and economic capital (not just the latter as assumed in most neoclassical perspectives on the marketplace). See: Pierre Bourdieu, *The Field of Cultural Production: Essays on Art and Literature*, ed. Randal Johnson, Cambridge: Polity Press, 1993.

[42] Ginsburgh (2005, p.2) sums this up well: 'The decrease will obviously depend on the amount of the resale right, on the expectations the artists and his client have about future resale values, on the way they both value risk, and on their time preference, but the resulting effect is clear: there will be a decrease and the artists will earn less.' Of course it could also be questioned whether buyers will actually be able to make such calculations and achieve price discounts. If not, the effect on current prices may be negligible.

[43] In Rauschenberg's case, Merryman is also adamant that the steep prices realised by *Thaw* and *Double Feature* had an immediate positive impact on the figures he was able to charge in the primary market. Although he may not have received royalty payments from the sale of these two paintings, their high profile acquisition had an unmistakably beneficial impact on the strength of his primary and secondary market prices and thus the income that he could expect to derive from future sales. See: Merryman, 1993, p.111; and Richard E. Caves, *Creative Industries: Contracts Between Art and Commerce*, Cambridge and London: Harvard University Press, 2000, p.282,

[44] See, for example: Leslie Singer, 'The Utility of Art Versus Fair Bets in the Investment Market,' *Journal of Cultural Economics*, vol.14, no.2, 1990, pp.1-13.

This perspective coincides with the argument that the distribution of payments under an ARR regime is greatly skewed: a minority of artists reap the lion's share of financial rewards. Researchers are virtually unanimous in support of this finding and our own analysis of the UK context of this discussion also bears it out. In the period 15 February 2006 – 31 July 2007 surveyed in our research, 86% of ARR liable sales commanded just 31% of ARR payments by value; the remaining 14% of sales accounted for 69% of payments by value.[45] Indeed, this distribution is even more extreme if one considers that while close to one third of all ARR eligible art occurred in the lowest price band (€1,000 – €3,000), this represented only approximately 1% of all eligible art by value; in stark contrast to this, 47% of ARR eligible sales by value were accounted for in only 72 artworks, or 2% of eligible art by volume.[46] Critics therefore maintain that the ARR, contrary to its ostensible utility, functions as a tax on struggling artists (or at least those with weak resale markets) which in effect subsidises those who are already successful.[47] "It is Robin Hood in the reverse," issues Merryman, "taking from the poor and giving to the rich."[48] Furthermore, ARR liable art encourages collectors on the brink to spend their money elsewhere (thereby lessening the amount of money otherwise available for such purchases) as it equally divides the "smaller pot" differently (more money is spent paying royalties to artists with resale markets and less is available to acquire works by those who do not, thereby skewing this uneven distribution even further).[49]

There are other problems with this rationale as well. One significant issue that corresponds with Merryman's above account, but is unmentioned in his analysis, is that ARR's presence (especially the fact that it is levied on gross sales price, not profit) encourages dealers to shift from buying works outright to holding inventory on consignment and thus further deferring income payments to artists.[50] A number of market professionals that we interviewed also said that the increased risk introduced by this dimension of the right discourages small margin intra-dealer trading.

ARR proponents defend these inequities by arguing that *any* monies received by artists are beneficial and that even small nominal payments have the positive effect of benefiting large numbers of artists who might not have otherwise qualified. In the UK context, such factors were crucial for lobbyists who sought to lower the price threshold for eligible sales from €3,000 to €1,000: the Design and Artists Copyright Society ("DACS"), the UK's default collecting agency, point out that 92% more

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[45] This 86% figure reflects ARR liable sales (4,095) of less than or equal to €50,000; the remaining 14% represents sales (663) greater than €50,000. The average royalty paid per work, and the average royalty received per artist is equally striking in these two categories: for artworks that sold for less than €50,000, this equates to an average ARR payment of £250 per item and £812 per artist, versus £3,430 per item and £9,059 per artist above €50,000. Data from Hislop Art Sales Index. For further discussion, see: Section 3.1, Table 2.
[46] Section 3.1, Table 2. For a good alternative account of these skewed distributions, especially between living and deceased artists, see: Kusin & Company, *The Modern and Contemporary Art Market: A Study of the Global Resale Market*, Helvoirt: The European Fine Art Foundation, 2005, pp.14-15.
[47] Landes and Levine, 2006, p.232.
[48] Merryman, 1993, p.118.
[49] Ibid.
[50] However this is observed in: de Pierredon-Fawcett, 1991, p.145. Indeed, they are adamant about this irrespective of the fact that under current legislation, no royalty is charged if dealers buy works from artists and resell (for under €10,000) in less than three years.

works would be ARR liable if these measures were undertaken.[51] Yet Anthony Browne, Chairman of the British Art Market Federation ("BAMF"), has countered that DACS grossly misinterpreted the data upon which this figure is based; that the 189 living British artists identified by DACS to have sold work in excess of €1,000 is hardly a robust number in the first instance; and that of these 189 artists, *eight* would have accounted for 30.8% of royalties.[52] Similarly, economist Victor Ginsburgh argues that "advocates of [droit de suite] frequently overestimate the number of artists that it is likely to benefit." To prove his point, he counters a 1999 European Commission memorandum claiming that 250,000 artists stand to benefit from the royalty with statistics from Kusin & Company that indicate that between 2000-2004 only 3,876 living artists' work was sold worldwide, of which only a fraction would have even been droit de suite eligible: "the figure of 250,000 clearly represents a wild exaggeration."[53]

It is further clear that resale royalties introduce potentially significant implementation and administration costs to the market, and that these costs escalate and are incurred by ever larger numbers of businesses the lower the sales thresholds become. Such costs include the purchase of IT and accounting systems for processing payments, legal counsel to establish if and under what conditions a transaction may be ARR liable, and ongoing due diligence and administration. Indeed, these costs were integral to the Whitford Committee's aforementioned aversion to droit de suite when this topic was first on the table in Britain three decades ago.[54] It is imprudent, of course, to generalise about costs as ARR legislation varies so greatly from one country to the next and effects individual businesses differently depending on their size, economies of scale and the extent to which they trade in ARR liable art. Evidence nevertheless suggests that they may be substantial: prior to UK implementation of the ARR, Gerard Leeuwenburgh's survey of dealers estimated per transaction costs in the range of £28 to £38; in the first year following implementation, The Society of London Art Dealers found that 28% of its members (the largest percentage) estimated per transaction costs at between £10-£20, with a further 9% between £20-£30, 18% between £30-£40 and 15% over £40.[55] If correct, these latter figures suggest that the costs to fully one third (33%) of British dealers at the entry-level sales threshold of £690 (or €1,000) for ARR liable art exceed the royalties received by artists (which, after collecting society fees of 15%, come to

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[51] DACS, 2005, p.13 (original citation in: Gerard Leeuwenburgh, 'Study of the Potential Impact of *Droit de Suite* on the United Kingdom Art Market 2006/2012').

[52] Anthony Browne, *Response by the British Art Market Federation to Consultation on the Implementation of Directive 2001/84/EC on the Resale Right for the Benefit of the Author of an Original Work of Art*, 2005, pp.3, 9. Art lawyer and DACS board member Henry Lydiate has more prudently estimated this increase at 35%: www.artquest.org/uk/artlaw/resaleroyaltyright/28859.htm.

[53] Victor Ginsburgh, '*Droit de Suite*: An Economic Viewpoint,' in Kusin & Company, 2005, p.48 [henceforth 'Ginsburgh (Kusin), 2005'].

[54] The two other major factors it cited in its report were that the concept of inalienability proposed by the ARR was contrary to British practice in the copyright field and that it would not be feasible to monitor private sales (and, conversely, that it was unjust to discriminate against public sales). Commission of the European Communities, *Proposal for a European Parliament and Council Directive on the Resale Right for the Benefit of an Author of an Original Work of Art, Brussels (96/085 COD)*, 13 March 1996, p.12.

[55] Leeuwenburgh's figures cited in: Browne, 2005, p.9; The Society of London Art Dealers, *Biannual Members Survey 2007*, June 2007, p.13.

£23.46).[56] In other words, artists may receive small nominal payments, but the overall cost to the art market may exceed these benefits, especially on low value items. It is ultimately feared that such costs may leave artists worse off in the long-term as dealers have less money to promote their careers in the primary (first sale) market, or if they shift their business focus away from low value ARR liable art in the secondary (resale) market.

The other major cost feared by opponents is the flight of capital from ARR jurisdictions to markets where the right does not exist. The simple intuit is that vendors would have incentives to relocate sales items to non-ARR jurisdictions so long as shipping and insurance costs are less than the royalty they would otherwise be liable to pay. Logic suggests that this would only be the case for expensive items at or near the upward cap of €12,500 whose owners could save noticeably by exporting outside of a royalty zone and, crucially, which also stand to benefit from robust international demand; it is unlikely that sellers would incur the same administrative hassle for nominal savings on low- to-medium price artworks, nor is it prudent to assume that such items even have buying audiences outside of their regional context. This is no small matter and resale right opponents claim that this diversion of valuable, blue chip art from ARR jurisdictions could have a crippling effect.[57]

This subject is raised in almost all evaluations of ARR and it has resulted in some polarising debate. For example, ARR critics underline how the royalty's 1977 introduction in California saw Sotheby Parke Bernet promptly terminate its operations in Los Angeles and realign its interests out of State (New York being the obvious beneficiary).[58] Another well known case-in-point occurred in 2001 when Frenchman René Gaffe's £50 million collection of Impressionist and contemporary artworks was auctioned in New York at the request of the sale's beneficiary, UNICEF, to avoid droit de suite charges in Paris.[59] Indeed, we have also seen how ARR advocates leaned on evidence attesting to the imbalance of trade within the European art market to justify resale right harmonisation in 2001. The problem with each of these examples, however, is that causality can seldom be explained by ARR, alone: the presence of such royalties is but one of multiple criteria vendors take account of when making sales decisions (VAT and other taxes, currency exchange rates, time constraints and strength of the particular salesroom all factor prominently).

As our research indicates (see Section 3.7), the effect of diversion is ambiguous within the UK art market since implementation of the ARR in February 2006. In fact,

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[56] One expects running costs of ARR administration to fall as businesses become increasingly familiar with how to account for and process such payments. Though this may be true, the overwhelming majority of those who we interviewed indicated that there is an upward limit to these cost savings, especially for on transactions involving lesser known artists and on private sales where disclosure protocols must be evaluated on a case-by-case basis; the 2012 derogation, which would extend the right up to 70 years after an artist's death, could significantly amplify these costs.

[57] Representative arguments are presented in: Browne, 2005, pp.5-7; and Ginsburgh (Kusin), 2005, pp.46-48;

[58] Indeed, another auctioneer reportedly exports all royalty-liable artworks to avoid complications by its major consignors. On Sotheby's, see: Merryman, 1993, pp.116-117; and Merryman and Elsen, 2002, p.477. Auctioneer anecdote in: McAndrew and Dallas-Conte, 2001, p.44 (original reference in: Kusin and Company, *Europe and California: A Case History in Inefficiency and Marketplace Distortion*, Vol.1, Issue 2, 1999).

[59] Ginsburgh, 2005, p.8.

on the basis of sales volume, the market has only strengthened. ARR advocates embrace these findings as uncompromising proof that diversion fears are unfounded. This vindication, however, is paradoxical since it contradicts the tenets of the earlier move to harmonise ARR throughout Europe: if there is no ARR-led diversion now, then it seems unlikely that prior internal trade distortions were caused by ARR either.[60] The truth of the matter is that biases against the British art trade are likely being hidden by the unprecedented growth of the contemporary art market and the strength of the British pound during this period: should prices plateau or drop, a flight of capital, especially at the top end of the marketplace, could still occur.

The law's inalienability is also problematic. Though this was intended to reconcile artists' weak bargaining power, it negates artists' ability to waive this right and therefore achieve a higher price at first sale.[61] Lawyer Elliott Alderman has additionally argued that such a stipulation is antithetical to the common law Anglo-American tradition of free alienability of property.[62] Ironically, these factors serve to differentiate the royalty structures for visual artists from those in other creative industries such as novelists and composers who are capable of waiving or optioning off the value of these rights: this then weakens claims that the ARR is genuinely indebted to establishing economic parity amongst these actors.[63] This was one of the key issues fueling the 2000 campaign by a coalition of more than 50 prominent European artists – David Hockney, Sir Anthony Caro, Georg Baselitz, amongst others – against the then pending EC Directive.[64] They argued that the ARR would weaken the art market and, more significantly, that its non-waivability "violates artists' human rights." This constitutes an important refutation of both the economic and moral basis for harmonising the right.[65]

A final matter of grave concern to ARR opponents is the weak history of applying resale rights in jurisdictions where the law exists. De Pierredon-Fawcett, for example, finds that only *five* (Belgium, France, Germany, Hungary and Spain) of the 29 countries in which the right existed at the time of her study in 1991 actually applied it in practice.[66] According to the author, this can be explained by the extreme

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[60] According to Anthony Browne, speaking on the UK context, this has led advocates of ARR to 'shift their ground' and deny that the royalty's introduction will divert trade away from Britain by making 'unqualified assertions' as to the de facto costs of exporting artworks overseas. See: Browne, 2005, p.5; and also Anthony Browne, 'Bad for All Art Markets – and the Artists it is Meant to Help,' *The Art Newspaper*, no.157, April 2006, p.30.

[61] See especially: Merryman and Elsen, 2002, pp.499-500.

[62] Elliott Alderman, 'Resale Royalties In The United States For Fine Visual Artists,' 1993, available at: http://www.aldermanlawoffice.com/indexpage_6/Articles_11.shtml.

[63] In practice, these differences are also apparent in that visual artists typically generate income from one-time transactions on durable goods whereas novelists and songwriters are more closely aligned to an intellectual property regime (i.e. a publisher might pay a lump sum for rights to an author's text plus offer royalties on the number of books sold). A second issue is that visual artists already have a copyright in their output and can bargain for royalties on licensed reproductions if they so choose. Thus a further problem with the parity argument is that fails to take account of existing similarities between these economies and also reasons why they diverge.

[64] 'Artists Oppose Resale Rights,' 2000, p.1; Adam, 2000, p.75; and Browne, 2006, p.30.

[65] DACS do not respond to this facet of the debate but reiterate that inalienability is essential lest artists be 'pressured' into giving up their rights (i.e. 'if they are led to believe that their dealer might go out of business as a consequence of the resale right'). DACS, 2005, p.4.

[66] If one includes California, which applies the right sporadically at best, this number rises to six. See: de Pierredon-Fawcette, 1991, p.142.

"complexity" of the law in many such regions and market resistance in these and others. One contributing factor to this complexity relates to whether or not the ARR is applied to sales prices alone (as in 20 of the jurisdictions, including France), or to profits (as in the remaining nine, including California). For example, de Pierredon-Fawcett observes how the profit clause meant that Czechoslovakia's 1926 adoption of the droit de suite effectively left it "doomed to failure:" lacking a centralised art sales registry, commercial actors would have had no adequate basis for capital gains judgment. "The DDS thus turned out to be a prisoner of its own logic," she concludes. "When based on a participation in the sales price, it was criticized for departing from its own rationale. When based on a participation in appreciation, it was impracticable."[67]

Merryman argues that this has crippled the effectiveness of California's version of the right but he is adamant that administrative complexity, alone, does not sufficiently explain the widespread failure of its application. Instead, this is due to the overarching resistance to the right on behalf of diverse art market actors – dealers, collectors, museum officials and even artists – for many of the reasons elaborated above ("even if it works, it's a bad idea").[68] At the extreme, this may be a case of evasion (using illegal means to evade liability), though in most instances it is simply an issue of avoidance (using legal means to avoid paying the right) or tacit inaction (such as in France where the Law of March 1957 extended droit de suite to dealer sales but relevant authorities neglected to publish implementation procedures).[69] In the end, concludes Merryman, the only "plausible explanation" as to why well-meaning people who care about art and artists and are in support of the ARR is because they are *misguided*:

> Their critical/analytical vision is clouded by unfamiliarity with the art world and by a folklore that sentimentally misportrays the artist's life, individuously caricatures collectors and dealers, does not even mention museums, ignores art market realities, disregards art world interdependencies, and is blind to the rejection of the right in the great majority of nations and the failure of droit de suite legislation in most of the jurisdictions that have enacted it.[70]

Which is to say, meaningful analysis of the ARR's impact on the UK art market cannot be achieved by assessing the costs and benefits to artists, alone, but to that of the domestic and international art economy as a whole.

In the UK context, these issues are only to become more pressing moving forward as, under the present derogation, in 2012 resale rights will extend to deceased artists up to 70 years after death. This significantly magnifies the scope of ARR liable sales (it is typically estimated that there is a 20/80 split between the resales of living and deceased artists under such legislation) and it puts increasing pressure on administrative costs and the risks of market diversion. This is precisely why it is often said that the ARR is ultimately an international concern – that European

[67] Ibid, p.5.
[68] Merryman, 1993, p.115.
[69] McAndrew and Dallas-Conte, 2001, p.33.
[70] Merryman, 1996, p.20 (the quotation here is a slightly modified version of that which appeared in Merryman, 1993, p.120).

harmonisation is only a first step to global acceptance.[71] Only if the latter is achieved will fears of diversion and cost shifting subside. Ironically, the scale of an international campaign with the scope to achieve this could also catalyse the critical mass of opposition necessary to repeal this legislation in the jurisdictions where it is presently applied.

Resale Rights in Context

Although this literature review has focused upon the pros and cons of the ARR as an article of government-appointed legislation, it is crucial to expand our analysis beyond this purview. Indeed, the subject of resale royalties for visual artists is becoming an increasingly topical subject of debate outside of jurisdictions where it is presently applied. One reason for this certainly stems from increasing popular intrigue around soaring contemporary art prices and the celebrity status accorded this sector's leading figures. As previously, this sharpens critical attention on income disparities – the "haves" versus the "have-nots" – and it catalyses discussion about the extent to which living artists benefit from record resale prices being hammered down at international auctions. More subtly, this trend is also a bi-product of the increasingly sophisticated art financial services industry, as evident in the uptick of art consultancies, art loaning businesses and even art investment funds. It is this latter development that we would like to highlight here.

One interesting example is taken up by Boyd Level, a New York art consultancy founded by Franklin Boyd, an attorney, in 2005 (the name refers to André Level of Peau de l'Ours).[72] Alongside collection and curatorial services, an affiliate of Boyd Level also manages "Negotiated Resale Rights" ("NRR"). Like the Jurrist Contract of the 1970s, the NRR is only binding at the first resale and is only charged on profits. The idea is that dealers (or artists) enter into such contracts with collectors in exchange for a discount on the initial sales price: the size of the royalty charged upon resale and the extent of the discount is then negotiated between the two parties. Crucially, the royalty payment is to be evenly divided between the dealer and artist in order to align their interests (i.e. unlike under the European ARR regime, dealers are incentivised to offer up-front discounts). Boyd Level's affiliate manages these contracts, for which they charge a one-time administrative fee (of roughly $150) and also a percentage of the royalty payment (if the royalty is set at 16.5% of profits, dealers and artists may take 6.75% each, and Boyd Level 3%).

Clearly, the NRR is not advisable for all artists or collectors. Young, untested artists would likely be penalised: as per the aforementioned ARR critiques, they would receive less money at first sale and, statistically, stand little chance of netting anything back in the secondary market.[73] Furthermore, for this to actually benefit the artist and dealer, terms would also have to be such that the size of the collector's discount is less than the expected future market value of the royalty. Its success therefore depends on the price sensitivity of buyers for whom receiving the initial price discount outweighs

[71] See, for example, the concluding remarks in: de Pierredon-Fawcett, pp.146-147.
[72] http://www.boydlevel.com.
[73] However, to the extent that a potential collector is more likely to buy the work of an untested artist in exchange for a discount and an NRR, the artist may be better served by selling work and generating income and exposure.

the potential loss on resale proceeds. From this perspective, the NRR is ideally suited for relatively new low- to-mid level collectors of contemporary art gallery fare who are neither purchasing the work of novice artists (as per above) nor the pre-eminent output of their blue chip counterparts (which has enough demand that galleries need not offer such discounts and whose buying audience is presumably less cost sensitive). In Boyd's estimation, more established collectors "already feel that they are owed discounts" and may therefore shy from the NRR's calculated reductions; financially savvy first-time collectors may, on the other hand, be attracted to the absolute savings which can then be reinvested in other artworks or investments:

> I am deeply sceptical of government-mandated droit de suite systems which are costly to administer, that don't benefit the parties they're intended to help and have the overriding sense of being imposed like a tax. However, if interests can be aligned there is no reason why, in principle, resale rights can't work. The steep price escalations for contemporary art in recent years have both brought new collectors to the table and have increased the price of participation in this economy. The NRR is a practical resolution to lowering these prices that also works to the collective benefit of dealers and artists.[74]

A second and more well known example is the Artist Pension Trust ("APT"), founded in 2004 in New York.[75] APT does not issue reserved resale rights to artists; rather, it is a pension scheme.[76] The business model works as follows: 250 artists are selected in consultation with a management board and curatorial committees to participate in the Trust; each of these artists give 20 works to the Trust over a 20 year period (two per year for the first five years; one per year for the next five; and one every other year for the remaining ten); as items are sold, individual artists retain 40% of net proceeds from their own artwork sales, whilst 32% of these proceeds accrue to the collective benefit of all participants, with the remaining 28% being directed to management and operational costs.[77] APT currently operates in eight international cities (Beijing, Berlin, Dubai, London, Los Angeles, Mexico City, Mumbai and New York) with the idea being that each Trust is populated by a region-specific agglomeration of artists and, ultimately, that each of these regions can operate multiple Trusts.

Though APT is a clear departure from the ARR regime under Directive 2001/84/EC (revenues derive from first-time sales only), its basis is similar to the foundational resale right doctrine that artists should be able to participate, over the long-term, in the

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[74] Author's interview with Franklin Boyd, 17 January 2008.

[75] http://www.aptglobal.org/default.asp. See also: Jason Edward Kaufman, 'Pension Plan for Artists,' The Art Newspaper, 1 June 2004; and Julie Salomon, '*A New Pension Fund for Struggling Artists*,' *The New York Times*, 20 July 2004.

[76] Indeed, dealer René Gimpel draws a link between the ARR and pension plans in defense of the royalty's reduction of initial sales prices: 'Even if the cost of *droit de suite* is a slight reduction in the work's initial price, few artists will forsake the potential benefits. Perhaps an analogy might be the loss of income voluntarily incurred by many individuals in exchange for paying into a pension fund, a prudent provision for the future.' Similarities aside, one crucial difference is that APT does not provide the tax-free advantages of conventional pension funds. Quotation in: Gimpel, 1996, p.2.

[77] Works remain legal property of the individual artists but they are deposited with APT which pays for storage and insurance, and also makes them available for exhibition loans, until the Trust exercises its option to sell.

upward escalation of market prices. This is achieved by skewing the distribution of works to those in the early stages of an artist's career (fully 50% are to be allocated to the Trust within the first five years) and by elongating the time-horizon for investment and sale. Individual risk is then mitigated by enabling participants to profit from a pooled revenue stream; in principle, even if the majority of these artists' careers flounder, the presence of a few "stars" in each Trust means that they may still be capable of generating potentially significant earnings over the 20-year period.

The concept, of course, is not infallible. Recall that one of Merryman and Caves' key critiques of the ARR was that artists should set aside inventory anyhow and so create their own "pension trusts" in a similar manner. Indeed, one expects that savvy and successful artists already do this and it is therefore reasonable to question why these artists would choose to participate in such a scheme and dilute their own earnings potential. APT attempts to combat this through the added advantage of participation in a pooled scheme and through the curatorial, managing and market *savoir-faire* of its experts. Even so, it is a critique to be taken seriously. An additional concern are the steep 28% fees that APT charges to manage and administer the Trusts: not only are these nearly double those commanded by the English ARR collecting societies (at 15%) but they have increased by 40% since APT was first launched (initially, revenues were divided in a 40/40/20 split). Therefore, despite APT's impressive global growth and ambition, costs are also rising at expense of its main beneficiaries.

Neither the NRR nor APT offer tangible resolutions to the state of the ARR debate in the UK. In both instances, participation is optional and they are therefore clearly skewed to those deemed apt to succeed in the market. Unlike Directive 2001/84/EC which was established to harmonise the balance of trade within the European Economic Community, these latter ventures are also highly individualistic in their efforts to maximise the economic welfare of comparatively small groups of actors. Yet there are lessons to be learned, including how to better align interests amongst transactional parties and how to more efficiently redistribute sales proceeds (which, in both cases, are limited just to first or second sales). As the UK's ARR regime matures, it will be interesting to observe what, if any, of these tactics it ends up deploying and, more importantly, how the ongoing row between its proponents and opponents is to be resolved. The ARR's scope is set to expand precipitously over the next four years and it is imperative that the multifarious angles of this debate are weighed judiciously so that this legislation can be implemented to the greatest benefit of the art world in earnest, not only in theory.

Appendix 2: Dealers' Questionnaire
Part I: General information

Table 1: Principal business locations ranked in terms of where sales are registered

Location by rank	London	UK outside London	EU excluding UK	Switzerland	US	Other	Total
1	31	75	5	0	4	3	118
2	30	18	8	2	7	5	70
3	6	4	24	3	17	2	56
4	2	3	18	5	15	7	50
5	2	3	3	13	11	15	47
6	1	9	3	26	6	17	62
Total	72	112	61	49	60	49	

Table 2: Types of art sold ranked by sales volume

	Contemporary paintings and drawings	Contemporary prints	Contemporary sculpture	Contemporary photography	Other contemporary (e.g. installation, video art, posters, etc.)	Non-contemporary art
1	63	16	3	2	4	38
2	23	28	12	12	4	5
3	6	16	21	5	4	11
4	4	6	20	7	3	4
5	0	4	1	5	7	4
6	2	2	2	3	5	8
Total	98	72	59	34	27	70

Table 3: Significance of market type in the total sales for each dealers

	Primary Market	Secondary market (own artists)	Secondary Market (other artists)
Sales as percentage of total sales:			
100%	29	0	8
75-100%	19	2	15
10-75%	13	6	11
less than 10%	12	22	8
Total	73	30	42

Table 4: Origin of acquisitions and sales

	Artists	Museums	Auction Houses	Dealers	Others
Acquired from:					
100%	32	0	3	2	6
75-100%	21	0	3	5	9
10-75%	13	1	18	22	13
less than 10%	16	4	14	22	19
Total	82	5	38	51	47
Sold to:					
100%	3	0	0	0	38
75-100%	2	1	0	4	24
10-75%	1	0	5	21	20
less than 10%	5	17	11	22	11
Total	11	18	16	47	93

Part II: Dealers' opinions.
NB question numbers relate to original questionnaire

9. The UK in general and London in particular are major centres for the global art market. How would you assess the prospects for the UK and London art markets in general?

Rapidly declining	Slightly declining	Stable	Growing steadily	Rapidly expanding	Total
7	34	31	34	8	114
6%	30%	27%	30%	7%	

10. In your view has the introduction of ARR affected London's position (in terms of its share of the global art market):

Very negatively	Slightly negatively	Not at all	Slightly positively	Very positively	Total
30	33	22	1	0	86
35%	38%	26%	1%	0%	

11. In your view has the introduction of ARR affected your business' position:

Very negatively	Slightly negatively	Not at all	Slightly positively	Very positively	Total
17	30	60	2	1	110
15%	27%	55%	2%	1%	

12. How much do you estimate the total cost to your business of administering ARR payments (per transaction)?

Less than £10	£10-£20	£20-£30	£30-£40	Over £40	Don't know	Total
51	10	4	5	6	26	102
50%	10%	4%	5%	6%	25%	

13. How burdensome do you find the task of dealing with ARR payments?

No trouble (all the work is done by the collecting society)	Not much trouble (most of the work is done by the collecting society)	Quite burdensome	Very burdensome	Total
18	26	23	18	85
21%	31%	27%	21%	

14. It is planned to extend ARR to deceased artists in 2012. In your view would this affect London's position:

Very negatively	Slightly negatively	Not at all	Slightly positively	Very positively	Total
57	14	12	0	5	88
65%	16%	14%	0%	6%	

15. In your view would this affect your business' position:

Very negatively	Slightly negatively	Not at all	Slightly positively	Very positively	Total
32	25	44	0	3	104
31%	24%	42%	0%	3%	

16. In your view would this affect the business you conduct in London:

Very negatively	Slightly negatively	Not at all	Slightly positively	Very positively	Total
29	13	41	1	1	85
34%	15%	48%	1%	1%	

17. To the extent that you perceive the UK art market to be adversely affected by ARR, which rival markets do you think might stand to benefit most:

None	France	USA	Switzerland	Other	Total
15	7	59	28	11	120
13%	6%	49%	23%	9%	

18. ARR payments are currently collected through one of three collecting societies, but most payments are collected by DACS (Design and Artists Copyright Society). Individual artists do not have the right to collect on their own behalf. Which of the following options would you prefer:

Maintain open competition between collecting societies	Create a collecting society monopoly (e.g. under DACS)	Create a monopoly subject to competitive tendering at regular intervals	Collection through a government department	Allow artists to collect ARR payments however they please	Other	Total
23	20	12	16	31	6	108
21%	19%	11%	15%	29%	6%	

19. Has ARR affected the likelihood that you will take an artist's work on consignment rather than direct purchase?

Increased significantly	Increased a little	No effect	Decreased a little	Decreased significantly	Total
36	8	50	1	5	100
36%	8%	50%	1%	5%	

20. Has ARR affected the likelihood that you will pursue sales in the primary versus secondary market?

Increased significantly	Increased a little	No effect	Decreased a little	Decreased significantly	Total
35	9	45	1	4	94
37%	10%	48%	1%	4%	

21. In your experience what has been the response of artists to the introduction of ARR?

Very negative	Slightly negative	Neutral	Slightly positive	Very positive	Total
14	10	35	18	12	89
16%	11%	39%	20%	13%	

Dealer Comments

Thank you for completing this questionnaire. Do you have any other comments?

1. Voted for in EU by Italy, Spain, France, against Germany, Austria, on the fence UK 2 votes 1 for 1 against, compliance in Italy Spain France!! Should only apply to works over 500k. Stops gallery buying from other than artist.
2. Introducing droit de suite at the 1,000 euro threshold rather than the 3,000 euro as is the case elsewhere in Europe has disproportionately affected the trade in artists' work in the bottom income bracket. The existence of wholesale dealers who purchase directly from artists (and pay them when they have completed work not when that work finally sells) and sell the work onto retail galleries around the country was never acknowledged in advance of droit de suite and the failure of this sector has been put in doubt by its introduction.
3. Q.19: I would not dream of dealing with a living artist. Comment: Waste of time.
4. Competing collection agencies cause confusion among artists- if there was 1 galleries register which listed artists represented galleries artists would be better informed and it would support the galleries network as well as being a valuable data resource- we are not satisfied (as galleries and dealers and artists) that monies owed are reaching the due artists- we have an example of Bridgeman art library using ARR to act as an agent without permission! The system is not transparent and our accountant is not satisfied with the tax implications- are costs to be passed on or included in the price. We are registered with DCS and ACS but both have failed to pursue claims (in our case) of use of images in films (keeping mum) of reproduction (prints) bought through another gallery and used without written consent or acknowledgement of artist. Communication is very poor in both ARR institutions. If you wish to contact feel free PZAG INT. Fine Art, 4 New Street, Penzance TR18 2LZ. p3-artgallery@btconnect.com
5. ARR is an infringement of the free market, it is totally unnecessary and never should have been adopted.
6. The studio and gallery that I currently run is primarily an outlet for my own work. I rarely sell other artists work at the moment, hence a neutral response to many of the questions. I haven't received any monies via ARR as an artist to date. I hope this is a help.
7. Was this questionnaire tested out on some galleries prior to its general distribution? You need to give your definition of terms such as "primary market" and "secondary market (other artists)" etc. We record the value of sales which is of interest to us. We have no running total of the number of sales which run into the hundreds each year. This questionnaire appears to be focussed on large London galleries with low volume sales of high value items.
8. Quite apart from the iniquity of the ARR as a scheme (i.e. no collector gets money back if the has dropped in value), to extend it to deceased artists would be immensely complicated and burdensome. I fear that vendors would be

disinclined to sell. I am a provincial auctioneer and this could be an administrative nightmare.

9. It is perceived as France trying to destroy the English market as they destroyed their own 1945+/6. ACSS allows Chancellor to locate assets not already taxed to the hilt. I have STOPPED trading where price is in the £500-£2500 range- paperwork not worth it.
10. Q11: we have stopped selling works by living artist we do not handle under consignment over £600 Q14: We shall move our business out of the UK before that happens. The market is international buyers will find good works anywhere in the world and keeping costs down- market will move Q19: we will not "direct purchase" because of ARR Q20: Yes it has helped to determine our strategy. Comments: As dealers we have to restore the works, reframe them and pay VAT on our sales. The artist (if you can trace them) gets a percentage of the resale price and we cannot recover our costs or offset them. These costs are significant and should be charged against the resale price before calculating the artists percentage. This was a badly thought out levy and should never have been introduced. It will drive significant sales to the USA and Switzerland, where it does not apply. A significant contributor to the UK economy has been disadvantaged against USA competition and will suffer because of it. If the UK government wanted to help UK artists they should have given them a tax break as the Irish government has. As to the 2012 payment to artists who have passed on, DACS finds it difficult to trace the living as do museums and other bodies- the estates of artists don't stand a chance- the surplus will go to DACS who have no incentive to find them. Art galleries are closing all over this country. To saddle them with extra admin and loss of earnings it will give gallery closure an extra nudge.
11. More establishment support for good figurative artists would be welcome. Arts Council hoodwinking by blue chip brand names and contemporary cutting edge nonsense is getting very boring.
12. Q13: a waste of paper; Q14 don't be ridiculous. The questionnaire is too detailed. I am not affected by the re-sale of artist work. We have stopped doing it as by the time you would have to pay the 4% + VAT etc it is not worth the gallery doing the sale as we do not make enough profit.
13. Q10: We only sell new work, no re-sales. Q20: Already our only market. Q21: Because it does not apply to our business. Yet we still have to fill in & return the forms!
14. Q10: I cannot answer for London. Q13: Cannot answer, have not done one. Q14: I cannot answer for London. Q16: do not do business in London. Q17: Do not know one way or other. Q18: No opinion Q22: Pure speculation on my part, no point.
15. I have stopped dealing in works of living artists in the secondary market directly as a result of ARR. Deal in only works on consignment direct from artist, deceased artists work.

16. Q9, 10, 14, 17, 21, 22: No idea, I'm a print gallery in Hereford. Q13: never sold anything expensive enough. Q16: Don't do business in London. Q18: Don't care, don't pay it. There should be the opportunity for galleries like mine to register as such- we've never sold a print over £400 and hardly ever over £200. All our returns have been NIL and they are just a nuisance. What an incredibly London-centric questionnaire.
17. Q22: no idea.
18. As we have not yet done any artist resales it was not easy to answer this questionnaire.
19. Q9, 10, 14, 17, 21, 22 Don't know. Q16: No business in London.
20. Q5: do not understand the ? Q8: not prepared to divulge. Q9: No idea, my gallery is in North Cumbria. What happened in London is irrelevant. Q 10,11,12,13,14,16,17,18,19,20,21,22 N/A. ARR simply provides me with extra paperwork. I always have a NIL return. What a waste of time and money!
21. Payments should only apply to true secondary market sales, not sales from a gallery when the work has been purchased via a publisher or agent. Most artists do not know about the scheme and receive a very small proportion of money owing. ARR heavily impacts upon the decision to stock an artist's work and pushes galleries to specialise in non-EU artists.
22. From my experience and queries most artists do not like the tax & could not care less about it & think it should never have been introduced (although they will take it if it is there).
23. My gallery sells primarily to the domestic market outside London. ARR has had no impact. Many of the questions were not applicable to my business or I was not in a position to answer.
24. Q14. Respondent added new category - f: do not really care.
25. Q10 cannot state position - am only in a small village. Q13 It would stop me selling prints if I had to pay ARR on them. Q21 Can't answer - never met the artists.
26. Q9 Don't know about London or UK. It isn't good in the West Country. Q10 Don't care about London. This question is presumptive in the extreme. Q14 See 10 above. There really is life outside the M25. If your primary interest in London why ask those of us who are in the rest of the world? I find this very annoying and unhelpful.
27. Drop the scheme immediately.
28. It would be an absolute disaster to extent ARR to deceased artists.
29. Although I have been very active in that field since 1989 and up to 2002, I cannot give a straight answer to many of your questions. The artists and his or her attitude changes. Thank you for interesting study - I wish you had started earlier (There are further very illegible comments).
30. I would be interested to know what happens to the money collected if the artists concerned cannot be contacted.

31. At auctions it is important to clarify if the ARR is based on the hammer price or hammer price and commission. Also why at auctions the buyer pays to ARR and not the seller.
32. I am sorry that my answers are not very helpful but I only sell the work of local living artists to members of the public, so there are no resales. Typical prices are £70-£250. Highest price last year for single painting was £550. I have never had to make an ARR payment and am unlikely to have to.
33. Q9 Not possible to respond. The market is behaving differently for each sector.
34. Our gallery is small and sells low value paintings. Filling in any return at all is an unnecessary exercise. Yet another government blunder in requiring returns of nil input. Q8 our sales are all of small value.
35. Q18. End the whole system.
36. Right now none of my sales are subject to "ARR" This is unlikely to change anytime soon. Q18 ARR has not been part of my business in 15 years and I cannot see this changing.
37. So far all of my artists are living. Only one has collected any money from ARR and he would prefer to collect it directly from me. I would prefer to pay him direct but of course mutual trust must exist with this arrangement. Speaking for myself, the less mail I receive the happier I am.
38. Since ARR has come in I have stopped selling secondary market work. Didn't want the hassle of forms and investigations.
39. Another stealth tax. No more!
40. Very badly worded questions and the stats that result will be misleading.
41. Answered don't know to Q9, Q10, Q14, Q17, Q21, Q22. We are a museum gallery and only sell craft work or painting by artists for the first time. ARR doesn't apply to us. We do not resell any works.
42. ARR is unnecessary.
43. Q8 - N/A Primary market only - n/a. Answered n/a to Q12, Q13, Q14, !Q16, Q18. Q19 - always do anyway. Q20 Will definitely not pursue now.
44. Answered n/a to Q12,Q13,Q14,Q15,Q16,Q20. Don't know to Q21 and Q22. We don't deal with the secondary market at all.
45. We are a very small business - just one year old so I resist having any works of art which are subject to ARR although I did have a few in my possession before ARR was introduced. I would not buy any more.
46. The lower end of the market has been hit worst - too much time, paperwork and trouble for ultra petty payments not even coming to £100 per object. It is a handicap that achieves nothing. Q8 - this is too much work!
47. We do not deal with living or modern artists, only antique works of art. We are fed up with the barrage of paperwork involved with ARR. ARR detracts significantly fro any involvement with living artists. Q14 – madness.
48. Don't know - Q10,Q14,Q15,Q17,Q21 & Q22.
49. N/A - Q12 and Q13. We do not resell artists' work, so have no experience to comment on ARR.

50. Q14 - create confusion.
51. Yes. ARR was having an extremely adverse effect on my business. Payments are always made to just a handful of top (already v successful and wealthy) artists. I am now far less likely to deal in the works of less established artists. It is therefore hurting the key people it was thought it would help. ARR is in restraint of trade as dealers are less likely to sell or swap pictures between each other.
52. I spend more time trying to get refunds from auction rooms who have charged me ARR in error because the artist is dead! The public do not like ARR because it is payable even when they are selling at a loss.
53. I feel that if ARR must exist it should only apply to final dealer to end user sales. As a wholesaler, I pay ARR when I buy at auction. I then pay it again when I sell on to a gallery - who in turn pays it when they sell on to the general public. Thus the collection agency often collects 3 times in the space of a few months on the same painting or sculpture - this seems manifestly unreasonable.
54. Q8, Q13, Q16 and Q20 - n/a. Q22 - not known. This questionnaire is most relative to London Houses that buy work in to sell at profit in secondary market. We do not buy to sell. We sell directly for artists on sale or return basis.
55. Have a category for galleries who only show work from living artists on consignment so that we are exempt from registering and thus completing returns. Q8 - don't have break up that way in a/cs. Approx annual sales £350k/ average sale prob £1500. Q10 - not affected by ARR other than irritating returns. Q12, Q13 - n/a. Q 14 - don't know. Q17 - don't know, Q18 - n/a, Q22 - n/a.
56. Having more than one collection agency is a muddle and an unnecessary waste of time. I am strongly against different rates being charge. Why does big business selling work and huge prices only pay a minimal percentage whilst small businesses selling work at modest prices pays 4%. Can we please have a much lower flat rate - 2% max and same fairness.
57. It seems an unwise burden - most of our sales are too small to attract this extra "tax."
58. Q1- and Q14 - no idea.
59. I am very opposed to the ARR. I have stopped dealing in the work of living artists because of my opposition. After 2012 my marketplace faces Armageddon.
60. This does nothing to encourage collecting in general which s what is needed. Rather it discourages collecting. Only a few people benefit from an expense incurred by many people. Seems like the wrong thing to be doing.
61. Q18 I.e. they appoint their agent. Q22 Can't recall these details but do recall that DACS retain 25% as they have virtual monopoly.
62. A little surprised that the corporate market doesn't warrant its own category of buyer (Q7). ARR works come in to us on consignment from living artists

(directly) and come on consignment from selected galleries, depending on the nature of the project (sales). We are the largest UK "art consultancy", not a gallery or a dealer, specialising in sales and rentals to the larger corporate sector inn UK (and occasionally overseas. Perhaps a category for this sector?

63. Q19 I do not purchase work or sell it on behalf of a client as a result of the ARR. The measure is counter-productive to the people it is supposed to help i.e. the artists. I will not consider buying directly or selling in behalf of a client a work of art. Too much bureaucracy!
64. I have not met a single person in favour of this ridiculous scheme. It puts our business in a precarious position - we cannot compete globally and it is our already small margins on works that suffer. We are a small business and it is us who suffer. Allow us to sell art and promote artists and with luck and effort we will be successful which will always benefit the artist as well as the dealer. A complete waste of time, money and skill.
65. The main failing with ARR is that it is designed to help young, less-established artists who need financial assistance. But, because the work of those artists fetches relatively little, there is no significant return to them through ARR. Indeed, the most needy artists usually get nothing because their work sells at less than the 1000 euros threshold. On the other hand, well-established wealthy artists are further enriched because their work is expensive. We in the trade who do not begrudge assisting young artists, resent lining the pockets of those successful artists who already earn more than us.
66. ARR not really relevant to our business.
67. Q20 Opened gallery in Oct because of this. ARR is a shite idea: it presumes the secondary market to be very profitable. This law was conceived before the internet and auction houses sold retail that makes the market truly transparent. NYC as an art market will become bigger as a result!
68. Q9 This is a little confusing - or at least will take some time to fill out as I am off overseas in 1 hour and I would have to check the figures with my accountant. If you could send me this page again I could do it then. See extra page of comments for 116.
69. Q18 Artists should be allowed to opt out.
70. I am pulling out of all artists that get an ARR payment - this will be to the detriment of newer unknown artists but I am taxed enough with VAT, etc. I certainly will stop trading in the UK if 2012 plan comes into force.
71. Q18 ARR should be abolished. It's a misguided concept.
72. Q19 I only do sale or return now. Q20 I no longer buy in art for the gallery. When a publisher takes on an artists work, they do so at risk. If the work sells successfully, the artists profile is raised and consequently their originals are more in demand and so get sold at a higher value plus their limited editions are more in demand and increase on the secondary market. They can't have it both ways. What if their prints don't sell? Can we galleries return them to the publishers and get a refund? No, the artists have already been paid their commission. They should try publishing themselves.

73. In France it seems that the right is only being collected at auction! Q14 It would, however, have a very negative affect on us as a small business. See extra 2 pages of comments.
74. Q13 I do all the work.

Appendix 3: Artists' Questionnaire

NB Contact details were supplied to us by DACS. They also identified for us those artists who had already received an ARR payment and those who had not, and so responses for these two groups have been identified separately. Question numbers relate to original questionnaire.

1. What percentage of your work falls in the following categories:

All artists

	Paintings and drawings	Prints	Sculpture	Photography	Film and video	Installation	Other
All artists							
100%	90	1	2	4	0	0	14
75%-100%	182	10	14	8	0	0	18
50%-100%	204	16	21	11	3	1	23
25%-100%	211	22	27	14	4	2	26
10%-100%	230	67	38	23	8	8	34
total	242	112	46	35	17	13	38

Artists who have received ARR

100%	33	0	1	1	0	0	5
75%-100%	82	1	7	2	0	0	5
50%-100%	92	5	10	2	0	0	5
25%-100%	95	7	13	3	0	1	6
10%-100%	99	32	17	7	1	3	11
total	103	57	21	8	5	5	13

Artists who have not received ARR

100%	57	1	1	3	0	0	9
75%-100%	100	9	7	6	0	0	13
50%-100%	112	11	11	9	3	1	18
25%-100%	116	15	14	11	4	1	20
10%-100%	131	35	21	16	7	5	23
total	139	55	25	27	12	8	25

2. Please rank (1 high – 6 low) the following sales mechanisms in order of importance:

All artists

rank	Sales direct from studio	Sales via the Internet	Sales through gallery	Sales at auction	Sales at fairs (independent of gallery)	Other
1	56	21	154	10	15	19
2	64	21	41	28	31	15
3	43	31	25	21	25	4
4	21	26	11	33	20	6
5	12	15	13	34	26	4
6	42	36	23	40	28	20
Total	238	150	267	166	145	68

Artists who have received ARR

1	19	3	73	8	1	7
2	27	9	16	19	11	3
3	20	12	5	14	12	0
4	8	9	4	16	6	0
5	6	7	8	9	12	1
6	19	19	10	13	11	6
Total	99	59	116	79	53	17

Artists who have not received ARR

1	37	18	81	2	14	12
2	37	12	25	9	20	12
3	23	19	20	7	13	4
4	13	17	7	17	14	6
5	6	8	5	25	14	3
6	23	17	13	27	17	14
Total	139	91	151	87	92	51

3. How many galleries represent your work?

	0	1	2	3	4 or greater	Total
Total	44	53	44	54	101	296
ARR received	8	15	14	25	63	125
ARR not received	36	38	30	29	38	171
Total	15%	18%	15%	18%	34%	
ARR received	6%	12%	11%	20%	50%	
ARR not received	21%	22%	18%	17%	22%	

4. How many works do you sell per year?

All artists

Sale Price in GBP	690 - 2068.99	2069 – 34483	34483.01 – 137931	137931.01 - 241379	241379.01 - 344828	344828.01 - 1379310	1379310.01+
Sale Price in Euro	1000 – 2999.99	3000 – 50000	50000.01 – 200000	200000.01 – 350000	350000.01 - 500000	500000.01 - 2000000	2000000+
1-5	48	43	24	4	2	1	1
6-10	26	28	10	1	0	0	0
11-20	30	20	4	2	1	0	0
21-50	26	22	10	1	0	0	0
51-100	7	2	1	1	0	0	0
101+	3	3	2	0	0	0	0
Total	140	118	51	9	3	1	1

Artists who have received ARR

Sale Price in GBP	690 - 2068.99	2069 – 34483	34483.01 – 137931	137931.01 - 241379	241379.01 - 344828	344828.01 - 1379310	1379310.01+
Sale Price in Euro	1000 – 2999.99	3000 – 50000	50000.01 – 200000	200000.01 – 350000	350000.01 - 500000	500000.01 - 2000000	2000000+
1-5	7	9	10	2	2	1	1
6-10	6	15	9	1	0	0	0
11-20	11	13	3	1	0	0	0
21-50	15	19	7	1	0	0	0
51-100	4	2	0	1	0	0	0
101+	2	1	1	0	0	0	0
total	45	59	30	6	2	1	1

Artists who have not received ARR

Sale Price in GBP	690 - 2068.99	2069 – 34483	34483.01 – 137931	137931.01 - 241379	241379.01 - 344828	344828.01 - 1379310	1379310.01+
Sale Price in Euro	1000 – 2999.99	3000 – 50000	50000.01 – 200000	200000.01 – 350000	350000.01 - 500000	500000.01 - 2000000	2000000+
1-5	41	34	14	2	0	0	0
6-10	20	13	1	0	0	0	0
11-20	19	7	1	1	1	0	0
21-50	11	3	3	0	0	0	0
51-100	3	0	1	0	0	0	0
101+	1	2	1	0	0	0	0
total	95	59	21	3	1	0	0

Estimated annual income (assuming average selling price equals 90% of lower bound plus 10% of the upper bound in question 4)

	ARR received	No ARR	Total	%
0-£1,000	1	7	8	4%
£1,001-£5,000	2	22	24	11%
£5,001-£10,000	3	22	25	12%
£10,001-£25,000	6	24	30	14%
£25,001-£100,000	25	32	57	26%
£100,001-£250,000	17	7	24	11%
more than £250,000	34	15	49	23%
Total	88	129	217	100%

5. In which of the following brackets has your total annual income fallen on average over the past five years?

	< £25k	£25-£75k	£75-£500k	> £500k	Total
Total	130	83	41	3	257
ARR received	30	41	32	2	105
ARR not received	100	42	9	1	152
Total	51%	32%	16%	1%	
ARR received	29%	39%	30%	2%	
ARR not received	66%	28%	6%	1%	

6. On average what percentage of your income derives from art sales?

	0-25%	25-50%	50-75%	75-100%	Total
Total	79	31	33	142	285
ARR received	10	10	11	86	117
ARR not received	69	21	22	56	168
Total	28%	11%	12%	50%	
ARR received	9%	9%	9%	74%	
ARR not received	41%	13%	13%	33%	

7. Do you believe that ARR payments are:

	Very much against the interests of artists	Slightly against the interests of artists	Neutral for the artist	Slightly beneficial to the interests of artists	Extremely beneficial to the interests of artists	Total
Total	9	14	16	100	149	288
ARR received	6	6	4	45	64	125
ARR not received	3	8	12	55	85	163
Total	3%	5%	6%	35%	52%	
ARR received	5%	5%	3%	36%	51%	
ARR not received	2%	5%	7%	34%	52%	

8. Do you believe that ARR payments are:

	Very much against the interests of dealers	Slightly against the interests of dealers	Neutral for the dealers	Slightly beneficial to the interests of dealers	Extremely beneficial to the interests of dealers	Total
Total	24	111	108	18	9	270
ARR received	9	45	53	3	2	112
ARR not received	15	66	55	15	7	158
Total	9%	41%	40%	7%	3%	
ARR received	8%	40%	47%	3%	2%	
ARR not received	9%	42%	35%	9%	4%	

9. For you personally, would you say that the introduction of ARR has been:

	Very disadvantageous	Slightly disadvantageous	Neutral	Slightly beneficial	Extremely beneficial	Total
Total	5	8	113	108	48	282
ARR received	3	5	12	76	27	123
ARR not received	2	3	101	32	21	159
Total	2%	3%	40%	38%	17%	
ARR received	2%	4%	10%	62%	22%	
ARR not received	1%	2%	64%	20%	13%	

10. For your dealer (the dealer through whom you sell most frequently), would you say that the introduction of ARR has been:

	Very disadvantageous	Slightly disadvantageous	Neutral	Slightly beneficial	Extremely beneficial	Total
Total	5	53	147	14	4	223
ARR received	1	35	60	9	4	109
ARR not received	4	18	87	5	0	114
Total	2%	24%	66%	6%	2%	
ARR received	1%	32%	55%	8%	4%	
ARR not received	4%	16%	76%	4%	0%	

11. In your opinion, will impact of ARR on the UK art market be:

	Very disadvantageous	Slightly disadvantageous	Neutral	Slightly beneficial	Extremely beneficial	Total
Total	8	42	130	55	27	262
ARR received	4	19	68	19	7	117
ARR not received	4	23	62	36	20	145
Total	3%	16%	50%	21%	10%	
ARR received	3%	16%	58%	16%	6%	
ARR not received	3%	16%	43%	25%	14%	

12. ARR payments are currently collected through one of three collecting societies, but most payments are collected by DACS. Individual artists do not have the right to collect on their own behalf. Which of the following options would you prefer:

	Maintain open competition between collecting societies	Create a collecting society monopoly (e.g. under DACS)	Create a monopoly subject to competitive tendering at regular intervals	Allow artists to collect ARR payments in any was they please	Other	Total
Total	76	116	45	27	2	266
ARR received	41	44	19	9	0	113
ARR not received	35	72	26	18	2	153
Total	29%	44%	17%	10%	1%	
ARR received	36%	39%	17%	8%	0%	
ARR not received	23%	47%	17%	12%	1%	

13. It is planned to extend ARR to deceased artists (up to 70 years following their death) in 2012. Do you think this would be:

	Very much against the interests of living artists	Slightly against the interests of living artists	Neutral for the living artist	Slightly beneficial to the interests of living artists	Extremely beneficial to the interests of living artists	Total
Total	10	19	134	43	69	275
ARR received	4	5	55	21	33	118
ARR not received	6	14	79	22	36	157
Total	4%	7%	49%	16%	25%	
ARR received	3%	4%	47%	18%	28%	
ARR not received	4%	9%	50%	14%	23%	

14. If ARR is extended to deceased artists (up to 70 years following their death) in 2012, do you think this would be:

	Very much against the interests of deceased artists' beneficiaries	Slightly against the interests of deceased artists' beneficiaries	Neutral for the deceased artists' beneficiaries	Slightly beneficial to the interests of deceased artists' beneficiaries	Extremely beneficial to the interests of deceased artists' beneficiaries	Total
Total	12	8	16	70	172	278
ARR received	7	3	6	29	74	119
ARR not received	5	5	10	41	98	159
Total	4%	3%	6%	25%	62%	
ARR received	6%	3%	5%	24%	62%	
ARR not received	3%	3%	6%	26%	62%	

15. Has ARR affected the likelihood that a dealer will take your work on consignment rather than direct purchase?

	Increased significantly	Increased a little	No effect	Total
Total	12	14	233	259
ARR received	5	6	99	110
ARR not received	7	8	134	149
Total	5%	5%	90%	
ARR received	5%	5%	90%	
ARR not received	5%	5%	90%	

16. Which statement, in your opinion, best describes the position concerning evasion by dealers with respect to the payment of ARR?

	It is widespread	It sometimes happens	It rarely happens	It never happens	Total
Total	46	87	23	8	164
ARR received	18	39	13	7	77
ARR not received	28	48	10	1	87
Total	28%	53%	14%	5%	
ARR received	23%	51%	17%	9%	
ARR not received	32%	55%	11%	1%	

17. The resale right is presently inalienable (meaning that the artist cannot sell this right). Do you believe that artists should be permitted to sell their resale right?

	Yes definitely	Possibly	Probably not	Definitely not	Don't know	Total
Total	24	52	55	102	55	288
ARR received	4	19	22	52	26	123
ARR not received	20	33	33	50	29	165
Total	8%	18%	19%	35%	19%	
ARR received	3%	15%	18%	42%	21%	
ARR not received	12%	20%	20%	30%	18%	

Artists Comments

Thank you for completing this questionnaire. Do you have any other comments?

1. A body should exist only to administer ARR - the fact that DACS also deals with copyright fees confuses the issue (they seem to deal with ARR OK, but I dislike their conduct on copyright so do not wish to be on board with them).
2. A facility to notify DACS of sales of sales of my work which I am aware of but know the dealers is not evading payment would be helpful.
3. A legible signature from Professor Szymanski would be courteous.
4. Although I have not yet received anything from ARR (perhaps because my works so rarely come up at auction) I feel very strongly that the right should be maintained and see this as a moral issue. I would find it indefensible that the originator of a work of art or their heirs should receive no benefit when an owner makes a profit merely by selling the object on.
5. Although I have signed up with DACS in order to protect my rights, I don't really see this as benefiting me particularly as a jewellery designer. It is possibly more beneficial to fine artists, but I might be wrong. I haven't given any thought about many of the questions posed and have no experience to draw on either. My general feeling is that artists should benefit from the resale of their work, especially if its value has increased.
6. Although my personal benefits from ARR are not significant I believe it is morally correct that the creator of a work benefits, however insignificantly, from resale, and that if the value of a work increases significantly, this will reflect the increase.
7. An artists' reputation is a long-term matter. Most artists deal on sale or return if they sell it is generally at 40% + VAT = 46%. It will take 30 years to find out the real answers to your questions. I left Royal College in 1973, have only painted, no other job.
8. ARR is wholly beneficial although it does not have a principal bearing on practice income. Thank you.
9. ARR levies can put off the small collector with limited funds increasing the price so it is now out of reach. This can be a significant deterrent at auctions - if an item doesn't sell, it does not benefit the reputation of the artist in the long run.
10. As a printmaker I am somewhat below the radar as far as ARR is concerned at present but am hoping that my beneficiaries may gain in the longer term.
11. As always there is a balance which must be maintained to allow any system to work, Ii.e.
12. As always there is a balance which must be maintained to allow any systems to work i.e. the efficiency of the broker, the honesty of the dealer, the maintenance of the existing commission rates via auction house or gallery. (To pass the charge directly on to the artist in rates of commission, prior and across the board would, of course, negate any benefit from a possible resale). Good for the artist in an equal (and honest) world.

13. As far as I am concerned it has made it almost impossible for dealer/collectors from home to buy a consignment of work. In the past they could afford to gain on one and lose on others. None have bought from me since the introduction of ARR, whereas I had 3 or 4 "regulars"!
14. As I am now over 80 years of age and have been exhibiting paintings for 60+ years my concern is for my children and grandchildren - hence my approval of ARR.
15. As someone who makes and sells their work as a mostly non-profitable activity alongside my main employment, I have(so far) had no real need or use for DACS.
16. As this law is very recent the effects are as yet unknown to the average living artist. Copyright law has had a beneficial efect in photography for photographers. Surely the same must apply to artists?
17. At the age of 89 still working at a much slower pace nevertheless I think it is a very interesting project.
18. DACS are very inefficient and slow and their repro rights licensing procedures have most me a lot of work over the years - artists should be able to choose their own agents on track records and effectiveness. I don't know of any mechanism in place for actually operating ARR, and am doubtful that many dealers will bother to implement it. Nice idea, but who will enforce? Yet another bureaucratic red herring in a country with a chronic shortage of exhibition opportunities for living artists, where arts education is abysmal and most of the population are visually illiterate.
19. Dealers in second-hand art (I.e. not direct from the artist) will inevitably raise prices which will slow the art trade generally. Could be beneficial to living artists who do not need to raise their prices in order to cover ARR as a dealer does.
20. Dear Prof Szymanski, May I suggest that you seek the opinion of Mr Brian Sewell of the Evening Standard? His views are well considered and of great interest.
21. Difficult to deal with galleries and auction houses to determine who pays (seller or buyer). Galleries and auction houses who collect and then don't pay on to the painter. They seem to be able to get away with the practice.
22. Don't have any experience of DACS yet as I have only just registered. Could be that the like tax free artists living in Rep of Ireland that only the fat cats will benefit.
23. Don't think upper amount of resale right percentage should be capped - or at least made higher.
24. Every artist I know does not make enough money through the sale of work. Any additional income is welcome. The 50% commission taken by dealers on sale of work is grotesque. The art market is grotesque.
25. Form not completed. Thank you for your questionnaire received recently. You obviously got my details from DACS. My involvement with them is in connection with books/magazine authorship matters and reproductions of

photographs in ??? So I do not think my situation is the same as "artists" as such. I enclose your forms.

26. Form not filled in: comment: "Sorry, I cannot be helpful with this."
27. Have not yet benefited so do not have strong views.
28. How does one know if one's work has been resold? It is impossible to know if dealers are evading payment to artists?
29. I am half-blind - form filling is impossible but I am in favour.
30. I am no longer painting owing to loss of sight.
31. I am presently extremely unsuccessful sales-wise - so you're probably asking the wrong person. Also, the UK perspective, unlike W Europe, is so free market and anti-visual artist that discussions on intellectual property rights are almost a sideshow.
32. I concurred with the Brian Sewell article in the Evening Standard some years ago which lamented Droit de Suite as vendors of valuable pictures would choose US or Geneva salerooms to avoid the tax. Contemporary art is healthy in the UK - one reason being the trickle-down effect from the top of the market. Unfettered market allows art to flourish. I have no real secondary market profile as yet and am directly unaffected. Although my descendants might slightly benefit ...
33. I have completed form on behalf of Harold Kopel who is in a residential home suffering from short term memory loss. He has appointed me as next of kin. I, and his solicitors, etc, am concerned that recently several friends both in the UK and USA have seen his paintings on Ebay - apparently some were sold in this way. There is no way of tracing sellers or buyers, is there? I do not have a computer. When I had to sell his house and about 150 paintings, a good many went to dealers and some to friends (sold to them). E. A. Dewey.
34. I have only had one or two (two maximum) payments by the ARR since Feb. I think I certainly must have had a dozen resales since but no gallery has come forward (they may have just "forgotten").
35. I have returned to study now so I only experienced the ARR briefly. It seemed a positive move but I felt as I sold a lot of work abroad, i.e. out of the system I wouldn't benefit as much.
36. I sell my work entirely through my own efforts. If sold work were registered on a free database it would be far easier to monitor resales.
37. I strongly feel that the resale rights should extend beyond my death and that proceeds should go to my family.
38. I think ARR @ 4% is far too high and is a real disincentive to dealers buying work from the vast majority of artists. Why are big businesses favoured with a much lower rate and small businesses penalised with a higher one. I am totally against this inequity. Please can we have a flat rate lower than 4%. This is a huge extra cost to come out of the often small net profit margins for the great majority of dealers.
39. I think that ARR may be affecting the careers (sales) of artists of promise that are at the point of transition to becoming more established and well known. I

think it works like this …a buyer/collector will take a punt only on a work priced at less than £1000. In other words risk is increased and "cashing in" is compromised. The investor/collector is punished for showing the courage to buy a work from a promising artist. The act of faith shown by the purchaser has to be greater than the affect of ARR on the marketing/sales of artists with works priced in the few hundred pounds bracket is less. As these can still be less considered purchases and not investment acquisitions. For those artists with works priced over £5,000 - selling many works - their market is mature enough to take the impact which may be negligible at this stage.

40. I welcome ARR. For many years I thought it unfair that when an artist sells a work they have no more claim on it, whereas the likes of songwriters get royalties thirty years plus after writing a song. However, it can be implemented is one of my concerns. It is reassuring that people like yourself are looking into these mattes and are keeping the likes of DACS on their toes. Well done.
41. I wonder how you can enforce ARR. Dead artists have fewer bills. Living artists have bills to pay and this system reduces the likelihood of collectors buying work of people who are alive (so they have to look for other work to live by). It is meddling.
42. I wonder whether since I have joined DACS this has worked against me. Dealers seem to be more evasive when they find out that copyright is not theirs, or their buyers?
43. If a work is purchased by a collector and then increases in value ARR is collected on resale. It would in my mind be only fair if the work decreases in value or becomes worthless. The original purchaser should be able to claim a refund! I do and will continue to benefit financially from ARR but I still question its ethical basis. I think it is wrong if yet more benefit to distant heirs (look at the squabbling and lawsuits over Picasso's estate!) of highly successful artists and a great injustice to the people who support artists by buying or showing their work.
44. If artists were permitted to sell their resale right, they could become vulnerable to unscrupulous dealers or others at low points in their careers, i.e. "we won't give you an exhibition unless you hand over your resale rights".
45. I'm not sure of its effect at the moment. I have personally received no resale rights payments. It does not seem to of (sic) affected my buyers …. But they probably do not have a clue what it is. The dealers seem to regard it as an administrative hindrance.
46. I'm sorry this is rather incomplete. I'm not the most successful artist around as you can see from the answers!
47. I'm sure the answers above will reveal nothing of any use: all I will say is that I have sometimes received payment from sales (usually the larger auction houses). I know that some smaller ones consider it beneath their consideration! (perhaps because there is no adequate policing!)

48. Is ARR legal and binding on every gallery auction house and picture framer gallery?
49. It appears to me that ARR is only beneficial to high-profile artists working through high-profile galleries and gives more money to artists who already have a high income. Dedicated, but less high-profile artists are in general on a low income and have little gallery backing (these are the majority) cannot benefit except superficially from ARR. Your questions and criteria show no understanding of the dire economic situation facing the majority of artists. Your questions are aimed at the small controlling elite of the art world and have little relevance to the majority of artists.
50. It is difficult for me to have any record of work sold from studio to private clients (who I do now know).
51. It is early days for a questionnaire such as this to meaningful. I know for a fact (via internet) that at least 5 of my paintings have been sold at auction, beginning in April 07 and most recently last month (June 07). So far I've received no word from the company claiming to represent my interests.
52. It is great in terms of respect for living artists who get very little in terms of royalties compared to musicians and writers but I do not feel that it will greatly enhance our financial position, nevertheless a step in the right direction.
53. It remains to be seen how all this works long term: I.e. we will lose out to New York auctions if there is no ARR there.
54. It seems that visual artists are amongst the most exploited group, with dealers commission rates at 50%. Therefore the retail price of a painting is, for example £2,000. £1,000 goes to the dealer and £1,000 to the artist, but not the artist's costs of framing, etc (which) can be as high as £250 on a £2,000 painting. This effectively means that the dealer is taking 50% of the framing cost!
55. My work is mainly repair to books and counts as "craft" rather than art. I am not a "book artist".
56. Not sure if all these questions apply to me. Also, I think that most artists won't be completely aware of what effects (sic) them in sales of their work. Perhaps someone can explain these to artists - better info!
57. On balance I disapprove of ARR. I believe that once the work is sold the artist loses further rights to it apart from copyright. So far as I know architects to name one example only, have no future rights concerning subsequent future sales of property designed by them.
58. P.S. Thanks you for doing this survey. As I know my work paintings will go up in value & I would like my family, friends to benefit from ARR.
59. Please ask me some relevant questions. The level set for ARR is unfair as most of my work falls below that figure. (It's not possible to make a good living anyway as dealers take a 50% commission)

60. Q.16 raises interesting points about the law with regard to compliance in this area. What incentive, if any exist for galleries? What penalties? Imagine this is a very difficult thing to monitor. I wish DACS every success.
61. Q15. No dealer I know makes direct purchase - all consignment.
62. Q16: in the sense that dealers sell abroad outside the EU, e.g. USA. ARR is a good invention for artists and their beneficiaries when deceased - even if our works are sold by dealers outside the UK/EU to avoid the ARR payments. Artists need ARR to survive and fund their next work creations. Most of us (myself included) sell our work for peanuts on the internet if we can't get a London gallery or outskirts show. Every little helps. When we die, the value of our works increases considerably, its only fair that our deceased beneficiaries benefit (esp if they are a publicly funded charity). Thank you for your time.
63. Q4: I have 3 illustrated books published by Capall Baum and 2 in preparation - but have no figures as to sales - cost per book £15. I have several local books and £5 and £10 each but doubt if they reach 100 per year. I have 5 illustrated maps selling for £2 each and have them printed at 3,000 copies a time. Stocks are low as sales have been few for the last 18 months owing to the death of my wife and several operations to me - but I should be fully recovered in 2 month's time and will be able to resume trading and have a new illustrated book ready for publishing. Best wishes to all concerned with the scheme. It is especially useful for artists producing works for mass production at low prices.
64. Re 15 above: Most artists, as far as I know, take work to galleries (dealers) on consignment, i.e. sale or return basis. Re 16 above: With the emergence of the internet (and in particular E-bay) the practice of buying art in established galleries and re-selling on the internet is widespread. The practice of buying from any other source, including directly from the artist and then re-selling at auctions is also widespread.
65. Re Q8, 10 15: the reason that the replies are neutral for these questions is that my galleries are either ignorant of ARR or take no notice ….
66. Represented the Cartoonists' Club of Great Britain at the first meetings of the ARR, circa 1990.
67. Sadly I am not represented by a London dealer and so this has had no impact on my income. Unfortunately anyone outside the "art world" has little chance of making a living from sales of work. Provincial galleries are little more than shops selling trinkets. Public galleries outside of the major cities rarely make sales.
68. Short term benefit for artists who resale price is low. When the resale price becomes high, the client will simply sell the artwork in Switzerland or the US where the Droit de Suite does not apply
69. Some of my work has recently sold at Christies but apart from knowing I am to receive a small % of that sale I really know very little about this or how it's affecting things overall.

70. Some of your questions/categories are rather "blunt instruments", thus I'm not at all sure if my responses will be of much use to you as I don't seem to be covered by many of them.
71. Sorry - I make public sculpture - no work for galleries but signed up for the resale right just in case anyone tried to sell our sited work at some time in the future - hence it was difficult to fill this in. Apologies for the delay too. Been working away.
72. Speaking personally, I do not enjoy having to spend precious time researching what collecting society I should belong to and what the benefits are, so whichever one could have total control over collecting, or if all could work together for the same deal would be less of a headache. I'm afraid I haven't yet worked out if I should be with DACS (I am registered with them) or with ACS. A lot of my images are stored with Bridgeman Art Library and they favour ACS. So I'm in limbo and not sure what to do.
73. Thank you for undertaking this research. It is important.
74. Thanks for ARR payment each year, much appreciated. Q4 - only get £300-£500 per painting. Would like to see threshold lowered. Q10 - don't deal with dealers.
75. The ARR scheme has created a great deal of administration requiring much paperwork and time, resulting in additional costs which have to be absorbed by the dealers/galleries involved.
76. The trickle-down effect from DACS is just coming on stream. Small cheques come with slightly more "irregularity", i.e. instead of two measley "cheques" for £40 there are now 4 sums. 2008 may bring 8. Dealers will try and avoid buying direct from the artists (dead artists' estates) to avoid this 4%. They would rather mount (??) with the families agreement a commercial show so that only commission, say 50-50 is involved. Your section on ?? incomes is quite amusing.
77. This is very positive for artists who would find it extremely difficult to bring about changes.
78. Too early to know the full effect. Payments are very slow from the auction houses.
79. What about copyrights?
80. When you die you should not benefit. The larger the number of artists, the less money available per person and someone in the family needs to collect it without working for it! Keep collecting money artists are entitled to - I'm always grateful for my tiny share! Good luck with your research.
81. Why are the auction houses using the French description of ARR - is it to confuse the buyer, dealer, etc?
82. Why was I chosen? I make between £3-8000 a year selling my work. I'm obviously way down any league where ARR would affect me.
83. With regard to my answer in Section 4 the number of works sold "approx 30" applies to paintings and drawings - I have not mentioned editions of prints

which, of course, brings it up to hundreds. It is probably best to stick with my "approx 30" reply.

84. Yes - the present percentage is too low for the artist and their should be a rising scale to represent this,
85. Yes - the questionnaire assumes that all artists have experienced/benefited from ARR - there should be a question at the start asking whether ?? Have been collected on their behalf. Also - sales are never constant - the questions regarding these need to be open to this!
86. Yes, how is dacs able to keep informed of all works sold at auction? Do the auction houses have to inform by law the works they sell, to dacs. If not, how would dacs know about it all…

Appendix 4: Artist's Resale Right Interview Write-Up

Overview

The following presents a summation of interviews conducted with artists, dealers and art market professionals (representatives of auction houses, dealer societies, collecting societies and lawyers) in conjunction with our ARR study. The purpose of these discussions was to ensure that our research accounted for the widest breadth of perspectives on ARR within the UK art market as possible. Notably, they afforded us the occasion to discuss issues in depth with key market actors and to unearth more varied anecdotes and opinions about ARR than feasible in our statistical analysis. The general structure of these interview summaries is to introduce the candidate, to state their impressions of ARR and how its introduction impacts their occupation, and lastly, to offer recommendations. Relevant benefits and costs form a key point of debate.

Our ARR questionnaire served as the basis for many of these discussions, though none were limited exclusively to this document. The bulk of our interviews were conducted in Autumn 2007 once the questionnaires had been mailed, though some occurred in the Spring when the questionnaire was still in formation (in such instances, noted with asterisks (*), interviewees were asked to review a preliminary version of our questionnaire and to make suggestions). A summary of key points raised by interviewees is presented first, followed by a complete interview write-up.

Summary of Key Points

ARR Perspectives

1. *ARR as a moral good and economic benefit*
    a. The artists we spoke to were nearly unanimous in favour of ARR:
        i. Economic dividends and parity with royalty schemes of other creative industries form two common rationales.
        ii. Some, though essentially pro-ARR, fear potential flight of capital from ARR liable art.
    b. ARR as a 'moral good' is also enlisted as an argument.
2. *Immoral' tax*
    a. ARR doesn't benefit those who it is intended to help (countering 1., above).
    b. Overall artists' welfare is diminished.
3. *Ambiguities in ARR legislation*
    a. How to define where sales occur?
    b. Where are artists resident?
    c. Exchange rate discrepancies – pound versus euro.
    d. A common grievance is that these ambiguities have enabled DACS to effectively dictate implementation to their advantage:
        i. For example, foreign collecting societies often say they will deal only with DACS irrespective of the presence of ACS.
        ii. It is feared that DACS is excluding competitor agencies from establishing mutual relationships with non-UK collecting agencies.
    e. Lack of awareness that there is more than one collecting society:
        i. Leads to confusion and, in rare cases, double contracts
4. *ARR as disincentive to dealing in the work of younger/speculative artists*
5. *ARR diminishes small margin intra-dealer trading*
6. *Ambiguous evidence on diversion*
    a. But in combination with VAT and rising premiums charged by leading auction houses, it is feared that ARR will eventually divert trade from the UK.
        i. US is typically seen as the main beneficiary.
7. *ARR is burdensome to administer*
    a. Significant up-front implementation costs for auction houses.
    b. Ongoing costs in £20-£30 per transaction range for most auction houses and dealers.
    c. Extensive due diligence and labour hours needed to research and invoice ARR payments.
    d. 2012 derogation will exponentially complicate these issues.

Recommendations:

1. *ARR should be charged on profit, not sale price*
2. *ARR only to be charged at auction*
3. *Raise threshold to €3,000*
4. *Allow galleries to collect ARR for their own artists*
5. *Abolish the 2012 derogation*
6. *Compulsory ARR registration for artists*
7. *Collecting societies should tell auction houses which artists are ARR liable*

<u>Interview record</u> (*<u>by profession</u>*)

<u>ARTISTS</u>

Anonymous (interview conducted by telephone on 28 September 2007)
Anon is a part-time sculptor who produces between ten-15 works per year; smaller-scale pieces are priced between £1,000-£5,000 and larger works commence at £5,000. Anon works with one gallery in Surrey and claims that annual sales vary; in 2006 four sales were conducted. Anon has received one ARR payment, approximately three months post-sale, and registered with DACS upon being contacted by them.

Anon is in favour of ARR in terms of its alignment with "royalties schemes" in other creative industries. Anon admits, however, that his/her knowledge of ARR – how it is collected, the context of its emergence, its potential relevance to diversion and other market actors' opinions of it – is minimal and Anon has not discussed it with Anon's gallery. Anon is in favour of 2012 derogation and of ARR's constitution as an inalienable right.

Darren Baker (interview conducted by telephone on 21 September 2007)
Baker is a full-time painter who produces approximately 30-40 paintings per year; these pieces command between £1,500-£20,000 (at an average price of £4,000-£5,000). Six galleries in the UK and one in Spain exhibit and sell his work, some of which purchase his art as stock though most hold paintings on consignment (for which they command standard 50% sales commissions). Baker has received one ARR payment (with a "quick" turnaround estimated at "three-four" weeks); he signed up with DACS once he was notified of this payment.

Baker feels that ARR is "good" for artists financially and is happy with its current status as an inalienable right. He is content with his current relationship with DACS and believes that collecting societies are beneficial to the interests of artists. Baker understands that ARR could potentially disturb an artist's relationship with his/her gallery, though he has not had any issues with his own galleries about collecting resale royalties (nor have they ever complained about costs of administering ARR).

Nicola Bealing (interview conducted by telephone on 28 September 2007)
Bealing is an oil painter who also occasionally makes prints ("a 95%/5% split"). She produces approximately 100 works per year which are marketed through her three main galleries in the UK (one in London, two regionally). She reckons that she sells approximately half of these new works annually at an average price of £2,500-£3,000; approximately one-two works appear at auction every year. Bealing has received one ARR payment (from an auction sale) and registered with DACS upon being contacted by them.

Bealing notes that she is happy with DACS ("no real complaints") and that she has no particularly "strong" feelings about ARR – she is pleased that it exists but does not expect to earn much income from it and is also aware that her galleries are against it. She feels that the 2012 derogation "seems like a good idea."

Ken Currie (interview conducted by telephone on 21 September 2007)
Currie (born 1960) is a full-time painter who also produces "some" graphic work. He creates between 35-40 artworks per year: large pieces command upwards of £40,000 while smaller pieces fall in the £3,000-£4,000 range. He is represented by Flowers East, in London, to which he sends all of his works on consignment. Currie has received ARR payments "at least half a dozen times," including approximately £6,000 in last calendar year; he registered with DACS in February 2006.

Currie notes that he is happy with DACS and mentions that he has found their turnaround on payments to be equally, if not more, expedient than those from his gallery. His single criticism of DACS is that he fears that they may have missed some sales at smaller auction houses ("they must be more sweeping in their research"). Though Currie expressed awareness that some gallerists are against ARR, he notes that Flowers East has "not complained" about the royalty and that they do not take a cut of his ARR proceeds. He does not feel that the imposition of ARR in the UK art market has negatively impacted the saleability of his art.

Ken Howard (interview conducted by telephone on 22 May 2007)*
Howard (born 1932) is a figurative painter and member of the Royal Academy. He has made "some money" (undisclosed sum) from ARR, mainly through auction sales. He likens ARR to a pension scheme and is in favour of the 2012 derogation to extend ARR payments in the UK up to 70 years after an artist's death. Howard feels that the question, "Do artists think ARR is beneficial"?, is rhetorical – an obvious "yes." He made no further comments and was generally pleased with the questionnaire and our research.

Tim Layzell (interview conducted by telephone on 21 May 2007)*
Layzell (born 1982) is a painter and print-maker of automotive imagery. He sells his work over the Internet, direct from his studio or at events (principally car races or antique car festivals); he has no gallery representation. He produces approximately 20-25 paintings, one-two prints and six greeting cards per year. He sells approximately 20 works per year at an average price of £1,000-£10,000; his average income is in the £25,000-£75,000 range, the majority of which is derived from art sales. Layzell has received one ARR payment (from a painting resale at auction). He is generally enthusiastic about ARR and is in favour of allowing artists to collect however they please. He is neutral on the 2012 derogation.

Christopher Le Brun (interview conducted by telephone on 22 May 2007)*
Le Brun (born 1951) is a painter, print-maker and sculptor, and member of the Royal Academy (where in 2000 he became its first Professor of Drawing); he is a former trustee of the Tate, the National Gallery and the Dulwich Picture Gallery. He is broadly satisfied with ARR, though notes irritation at the delays in ARR payments (often of "two-three months"). Le Brun further observes that his gallerist is 'strongly against' ARR. Le Brun was satisfied with our questionnaire but worries that it may be premature – that not enough time has passed for concerned parties to have attained a solid understanding of the royalty and its implications.

Bernard McMullen (interview conducted by telephone on 27 September 2007)
McMullen is a full-time artist (age 55), based in Manchester. He mainly produces oil paintings, though he also works in acrylic, watercolour and pastel. McMullen has been ill for the past five years, but used to produce upwards of 600 painting annually; his prices are typically in the £2,000-£3,000 range and he is aware of at least one work that sold on eBay for £4,500. Prior to his illness, he used to work with nine galleries (all in UK), but does not do so any more ("they don't know what they're selling"); he occasionally consigns work directly to auction. McMullen has received one ARR payment from four separate painting sales and he signed up with DACS after notification from them.

McMullen expressed awareness of anti-ARR sentiment within the gallery community but he is strongly in favour of the right and is impressed with DACS's efficiency: "Artists need protection. Many sales fall by the wayside. DACS is someone you can turn to for help." He is in favour of 2012 derogation and of ARR's constitution as an inalienable right.

Brian Pollard (interview conducted by telephone on 2 October 2007)
Pollard is a retired GP who has painted part-time over the last 25 years. He works in acrylic and oil, produces approximately 50 works per year and is represented by three galleries (all of which in Devon and Cornwall). These galleries hold his work on consignment and are responsible for *circa* 80% of his sales (at prices between £250-£4,000), with the remaining 20% of his sales coming directly from his studio or via the Internet. Pollard has received one ARR payment from two painting sales, approximately "one-to-two" months after the transaction occurred; he registered with DACS after notification from them.

Pollard notes that he is "generally pleased" with DACS but says that he doesn't have any strong views on ARR – his galleries haven't spoken to him about it and it is not a prominent subject of debate with other artists he talks to. He believes that the 2012 derogation is a "great idea" and has "no problem" with ARR being inalienable.

John Scarland (interview conducted by telephone on 28 September 2007)
Scarland (born 1947) is a full-time artist (and has been so for 20 years). He creates paintings and drawings, figurative and abstract, and produces approximately 70-80 works per year (evenly split between the two media) of which he sells about 70%. He works with two galleries (both regional – he lives in Sussex) who account for 80% of his sales; they hold his work on consignment and do not take a cut of his ARR proceeds. Scarland has received one ARR payment (in Summer 2007) on a work sold through his gallery. He was contacted by DACS about this and has subsequently registered with them; he describes them as being "mostly efficient."

Scarland's general impression is that ARR is beneficial to the interest of artists, however he is concerned that to the extent that this royalty makes buying art "more and more difficult," collectors may buy less ARR compliant artworks and shift their expenditures to other works that are not ARR liable. Even so, he is not aware of any negative impact from ARR on his career, and he is in favour of the 2012 derogation (which he views as a "good thing").

Liam Spencer (interview conducted by telephone on 2 October 2007)
Spencer is a full-time artist who also teaches occasionally; he mainly produces paintings and, to a lesser extent, drawings, generating upwards of 50 works per year at prices between £2,000-£15,000 (£3,000 on average). Spencer works with two galleries on a regular basis (both in Manchester), and some others "on occasion." These galleries are his main sales venues, though he also sells some of his output independently. Spencer has received four ARR payments (some for multiple sales), constituting "several thousand pounds" in total (mainly derived from gallery sales). He registered with DACS "early on;" they already worked with his image reproduction rights and contacted him prior to him receiving ARR payments.

Spencer believes that DACS have been "excellent" and that more competition from collecting societies would only "make things more complicated." He was somewhat more circumspect, though, about DACS's time lag ("often of several months") between an ARR liable sale and its processing. He is aware that galleries are "not keen on ARR," but insists that, "having been an ARR beneficiary, [he] would be crazy not to agree with it…artists need this support. It helps them get by." He is in favour of the 2012 derogation.

DEALERS

Anthony Hepworth (Director, Anthony Hepworth Fine Art)
(interview conducted by telephone on 21 September 2007)
AHFA specialises in Modern British and Irish Art and has an annual turnover of £2 million. Hepworth did not disclose the amount of ARR liable sales his gallery has conducted nor did he state implementation costs; our discussion focused instead on more general pragmatics of ARR.

Hepworth observed that one "problem" is that ARR legislation has essentially been translated and dictated by DACS, and that both DACS and ACS have been slow to return forms. He is particularly irritated about how the cost burden of ARR "unfairly" falls on dealers relative to auction houses: his gallery absorbs the ARR fee while auction houses apply charges to buyers. Because of auction houses' escalating fees (of which ARR is only a part), Hepworth is thus resolved never to buy another living artist's work at auction. He also questioned what the legal recriminations are for avoiding ARR payments? He claims that he is aware of a "number" of dealers who are not claiming such sales and thus not paying the royalty; until legal precedent is established for avoidance, he reckons that "it's a very shady business." Hepworth is not in favour of a collecting society monopoly and, in conclusion, recommends that ARR should only be paid at auction and that it should only be charged on profit.

David Juda (Director, Annely Juda Fine Art)
(interview conducted by telephone on 14/12/07)
AFJA has processed 15 ARR payments for a variety of artists since February 2006, totalling approximately £25,000. Juda notes that the gallery has had to "eat" these

costs because they do not pass them along to buyers. He estimates that the gallery deploys one employee for approximately two days per quarter to manage ARR payments, representing total costs of anywhere from £200-£800 per quarter. AFJA did not incur any "direct implementation costs" (i.e. new computer/processing systems), but Juda is adamant that "real costs have only just started:" the potential 2012 derogation and the tremendous ongoing upsurge in contemporary art market (especially living artists' resales) both serve to "complicate things." His brief is that ARR is an added complication compounded on top of already steep VAT and escalating fees at auction – "over time, added taxation and regulation will be a deterrent to business in UK." He believes that it will have a negative long-term impact on the UK art market, especially in terms of encouraging blue-chip, expensive art to be sold abroad. He also notes that the presence of ARR has encouraged his gallery to begin taking more high price goods on consignment rather than as outright purchases; however, there has been no similar shift for lower price items.

Juda had some very colourful opinions of ARR. One of these was his belief that "ARR is an *immoral tax* on all levels" insofar as it does not benefit the overall welfare of artists, nor those that it ostensibly should ("almost all benefit is to already successful artists"). He remarks that the British government understood this but was forced to accept ARR as part of EU harmonisation without any choice. Juda also critiqued the "whole premise of ARR" which he feels is a deterrent against trading in the work of young/untested artists. Continuing further with this point, he critiqued ARR on the basis that copyright, royalty and compensation structures are different for the visual arts than for music, film and publishing and even in relation to the real-estate industry: "when you resell your house at a large premium, do you give a cut to the builder? No!"

Juda weighed his argument in relation to a general change in sentiment vis-à-vis ARR over the past three decades. When he first started talking to artists about ARR in the 1970s, many were in favour, yet "very few knowledgeable parties" are so today: well-known artists like David Hockney and Anthony Caro that AFJA works with are *against* ARR because they realise the inequity in the distribution of payouts. He also feels strongly that if there was a European referendum on ARR today, professionals would overwhelmingly vote to abolish it. Furthermore, he is not even sure ARR benefits the government: "how much additional money do they really get out of it?" He is also unhappy with DACS's administration of the right.

Juda made the final four closing recommendations: 1) Raise the threshold to €3,000; 2) Allow galleries to collect ARR for their own artists (most would take no fee and monies would be more expediently distributed) – or at least give artists the choice of who should collect (galleries versus collecting societies); 3) Abolish the 2012 derogation; and 4) Get rid of ARR for all of Europe.

Renate Nahum (Co-Director, Leicester Galleries)*
(preliminary questionnaire completed with the following comments in May 2007)
The Leicester Galleries specialise in Modern and Contemporary paintings and drawings, with 10% of their sales conducted in the primary market and 90% in the secondary market. Their inventory is sourced from the following actors (by number of items): 50% from private collectors; 30% from dealers; and 10% from both auction

houses and artists. Private collectors account for 50% of sales, followed by dealers at 30% and auction houses at 20%. London buyers account for 30% of their clientele; UK ex-London for 40%; Europe ex-UK for 5%; and the US for 25%. Nahum did not disclose how many ARR liable sales the Gallery has conducted, but she noted that this amounted to costs of approximately £40 per transaction and that she finds dealing with ARR "very burdensome." Furthermore, she feels that DACS has "behaved appallingly:" their monopolist position should be "curtailed."

Nahum believes that ARR impacts London very negatively and the Leicester Galleries slightly negatively (mainly because the majority of the works they deal in are not ARR liable under the present legislation). She is strongly against the 2012 derogation and thinks that its impact will be extremely negative in London and for her own business, with the US and Switzerland being the main beneficiaries of diversion. Nahum remarks that ARR significantly enhances her Gallery's interest in taking work on consignment rather than outright purchase

Caroline Wiseman (Director, Caroline Wiseman Modern and Contemporary)*
(interview conducted in person on 11 May 2007)
Wiseman is a London-based dealer, specialising in Modern paintings and drawings, and she also sells prints and sculpture. Wiseman sells approximately 400 artworks annually: 125 between €1,000-€3000, 275 between €3,000-€50,000. These sales are evenly split between those in the primary (first-time) and secondary (resale) market. Her artworks are sourced mainly from dealers, artists and other private avenues (30% each); 30% of her sales are to others dealers, 70% to private collectors. Wiseman estimates that 12 sales have been ARR compliant in the last calendar year (six between €1,000-€3000, six between €3,000-€50,000), at an average implementation cost to her business of £30-£40 per transaction.

Wiseman believes that "ARR has had a very negative impact on her business" and that the royalty is "quite burdensome" to deal with. She fears that the 2012 derogation would have an extremely negative impact both on the health of the London art market and on her own operation, with America being the most likely beneficiary from diversion. Wiseman is insistent that the imposition of ARR in the UK has "significantly increased" the likelihood of her taking work on consignment and that it is a "huge disincentive" to dealing in the work of younger/speculative artists whose careers and future sales are uncertain. In particular, she believes that ARR diminishes small margin intra-dealer trading: because ARR is payable on sales revenue, not profit, business risk increases substantially (and potential profit margins shrink) for small margin mid-level transactions which she specialises in. Indeed, she notes that some dealers she is familiar with have stopped trading in ARR compliant works *entirely*.

Wiseman further believes that ARR has a strong negative impact on the "jobbing"/"secondary" class of artists because dealers will have less incentive to incur the risk of trading their work: "ARR is not just about increased administrative costs, but means that sales simply don't happen." Wiseman recommends that ARR should be charged on profit only.

AUCTION HOUSES

Christie's (Richard Aydon and Gerard Barrett)
(interview conducted in person on 6 September 2007)

Christie's position in respect of ARR is that it does not enhance the position of the UK in the global art market, and that given certain circumstances it could undermine it. As a global company they would take steps to ensure that their commercial position would not be threatened if those circumstances, which include a potential art market downturn, were to occur. If their clients were to indicate that they wished to sell in jurisdictions where ARR does not apply and Christie's felt that their competitive position would be weakened if they did not comply with these wishes, then they would have no alternative but to adjust the location of their sales accordingly.

Christie's said that they have always been extremely supportive of the London/UK art market and this formed the basis of their reasoning when they chose to charge ARR to buyers rather than vendors (sellers). They did not want vendors to factor in the issue of ARR when deciding to sell in London as opposed to any other Christie's sites where ARR does not apply (e.g. New York or Geneva).

They acknowledge that ARR is now part of the legislative environment in which they operate across much of Europe and said that they will always comply strictly with those requirements. However in the case of ARR and its operation in the UK, they believe that the enabling legislation and the regulatory framework put in place to manage it is flawed and in need of urgent reform. Their issues include:

Thresholds, Currency and calculations

Setting the initial threshold at €1,000, a level lower than applied in many other European countries, has led to significantly higher numbers of low value transactions being subject to ARR (see our data above). These transactions have little individual value from an ARR perspective (being as low as €40), yet they attract all the accompanying administration costs and Christie's has found them to be the source of most of their queries with the collection agencies such as DACS and the ACS. This reduces their economic value still further.

At the very least, they would like to see a €3,000 initial threshold adopted in the UK to reduce the number of low value transactions and to ease the administrative burden somewhat. If this is not achieved, they said that they would have to seriously look at whether or not they would continue to handle such transactions.

A general point relating to the operation of ARR in auction houses: as they do not know the selling value of an item prior to a sale, they are obliged to carry out most of the work relating to ARR whether or not the lot is sold and regardless of the price it achieves (e.g. identifying the potential application of ARR, highlighting it in our catalogues where we believe it could apply etc). This puts them in a different position to dealers, for example, as the latter only have to review and report on those transactions which exceed the threshold.

Christie's said that they are at a loss to understand the benefit of having the thresholds denominated in Euros.

However, they said that of far greater importance is the burden of having to:

(a) translate every transaction into Euros using a specific ECB rate which changes daily;
(b) apply the relevant percentage rate of charge;
(c) then translate the result back into £ sterling.

They said that this has proven to be the basis for much of their IT based spends in adapting systems to cope with this calculation method and yet they see no benefit in the end result. In fact due to the recent appreciation of the Euro against £ sterling and other currencies it inevitably means that fewer lots exceed the qualifying threshold denying income to artists that this move is supposed to benefit.

They argued that restating thresholds in £ sterling would reduce the level of confusion surrounding the issue of ARR and also reduce the administrative burden.

Collecting Agencies

They said that the Collecting Agencies, particularly DACS, have proven to be a disappointment on a number of fronts when it comes to their administration of ARR.

The current databases maintained by the societies have been less than reliable on several occasions, with qualifying artists being omitted from their lists and incorrect spellings leading to confusion as to whether or not an artist's work is subject to ARR.

Examples of the former include the works of Yan Pei Ming and Li Shuang which they were assured by DACS were not subject to ARR as the artists in question were Chinese. When it subsequently emerged that they in fact are French citizens having acquired passports from France, Christies (and other auction houses) found themselves liable for the ARR in question. In the case of Yan Pei Ming, this has cost Christie's in excess of £28,000 as his works have been selling through them since the commencement of ARR. Christie's said that they have to absorb the ARR as they cannot contact their clients and reopen a closed transaction to request payment from them ex post.

They also argued that the length of time (three years) during which a transaction can be reclassified as being subject to ARR is too onerous and it should be significantly reduced to a matter of weeks. They say it should be clear to them at the time of the transaction or during the immediate aftermath whether or not ARR should be applied.

Furthermore, the lack of a complete and reliable register of artists is not acceptable to them when agencies have been appointed to collect these royalties and who levy fees for so doing. They believe that instead of the current system whereby all artists are effectively deemed to be represented by DACS unless they state otherwise, only those artists who have proactively registered on an international database should be eligible to receive ARR. This would assist in reducing the amount of investigative work which

Christie's has to undertake in respect of ARR, as it also acknowledges the wishes of those artists who are not in agreement with ARR.

While Christie's acknowledges that errors of omission and commission can occur at any stage (and that Christies is no exception in this regard) they believe these errors by DACS have proven to be extremely costly to them. However, they also said that, in the main, their relations with DACS and other agencies have been cordial in terms of their flexibility in dealing with queries that arise, correcting errors and reconciling any invoice and/or payment issues that have arisen.

Transparency

Christie's would like to see a greater level of transparency and accountability in respect of the monies collected by the agencies. The legislation places DACS, in particular, in a privileged position; a suitably high degree of transparency and accountability is therefore appropriate. They would like to be assured that the funds they have paid to the agencies have in fact found their way to the artists in question in their entirety (less the agencies administrative fees) and within a reasonable period of time. They would also like to be assured that funds are not being retained with little or no effort being made to locate the artists in question. They also noted that the significant number of artists from the former CIS countries who are displaying commendable longevity in areas where life expectancy among men is less than sixty years.

Impact of ARR on Christie's business and the future

Due primarily to the unprecedented strength of the Contemporary and Post-War art markets during the period since the introduction of ARR in the UK, Christie's does not believe there has been any perceptible effect on the prices achieved by works of art. However this could easily change in the future if the market cools in the face of other unfavourable economic indicators. As stated above, they would act to ensure that their market position is not adversely affected by ARR.

Regarding the possibility of continuing the derogation indefinitely, in other words limiting ARR to living artists going forward, they very strongly believe that HM government should do all in its power to secure this result. If deceased artists (within the qualifying period) were to be included, the exponential increase in transactions subject to ARR and the amounts levied would, in their view, lead to an adverse response by vendors. They would have to respond to ensure that their market competitiveness is again not affected and take any action they deem appropriate in terms of locations of sales to preserve their position. Christie's said that they believe that the derogation should be permanent and the 70-year rule should not be adopted for all of the reasons listed above.

Bonhams (Chris Watson and Sarah Sweeting)
(interview conducted in person on 13 September 2007)
In the calendar year from 1 July 2006 - 30 June 2007, Bonhams paid £174,000 to 330 artists (on a hammer of £7.2 million). During this period, the *Top 20* artists (by value) received 64% of ARR payments and represented 29% of ARR lots; the *Bottom 200* artists (by value) received 8% of ARR payments and represented 31% of ARR lots. Bonhams estimates a cost of £48 per transaction (figure includes amortised set-up costs); ongoing costs expected to be approximately £27 per transaction.

Watson and Sweeting remain "unsure" whether ARR has affected the competitiveness of the London art market, or that of Bonhams in this region; diversion is ambiguous thus far. They remark that this is likely to change if the upward cap on ARR charges is removed or if the contemporary art market plateaus or declines – the US, Switzerland and Far East are the most likely beneficiaries, in this order. In general, they find ARR to be "very burdensome" to implement (reflected in the £48 per transaction cost) and fear that the 2012 derogation will have a very negative impact on London's position in the art market and on the business Bonhams conducts in contemporary art (this impact is "slightly negative" on the firm's overall business enterprise).

Bonhams' alternative mode of accounting for ARR was also discussed. For example, the auctioneer, unlike competitors such as Christie's and Sotheby's, actually applied ARR to the *seller* for the first several months of ARR's introduction in the UK market, though it stopped doing so and passed ARR on to the *buyer* once it was clear that its competitors were doing otherwise (for last 12 months). Bonhams also initially began charging ARR at €800 hammer price (which, with buyer's premium, brought the figure to €1,000) whereas its competitors only began charging at a hammer price of €1,000. Bonhams did so because their legal counsel suggested that the ARR legislation was unclear on this issue and that it was therefore prudent to calculate it based on the actual cost to the collector (defined as hammer price plus buyer's premium) rather than the market standard of hammer price, alone. Under this system, Bonhams gave collecting societies ARR as percentage of the hammer price and held the remainder in escrow. (*As of 1 January 2008, Bonhams has fallen in-line with the other auction houses on this fee structure and will now only charge ARR on the hammer price*.)

Watson and Sweeting feel that DACS is "effectively a monopoly," despite rivalry from ACS. This raises questions about DACS's efficiency and the auditing and monitoring of their collection services. They sense that dealers are 'strongly opposed' to ARR, that collectors are "modestly negative" ("mainly they just feel that it is an unnecessary additional tax") and that artists' perspectives are "mixed:" those "in the middle" are most pleased, while both the strongest and lowest income earners "don't care much" (the former because their ARR income is modest by comparison to ordinary sales commissions; the latter because payments are nominally minute).

Watson and Sweeting's primary recommendation is to establish *compulsory ARR registration for artists*. This would eradicate the risk of not knowing whether or not an artist is ARR compliant (it would also cut down on due diligence and administrative expenses for professional art businesses). Indeed, one of their main qualms with the current regime is that DACS can (and does) approach auction houses retrospectively for ARR payments on lots the auction house was not otherwise aware were ARR liable (i.e. a Chinese artist who, it is only revealed several months after a sale, also has French nationality). In such cases, Bonhams must pay these costs out-of-hand. Watson and Sweeting are also strongly in favour of raising the threshold from €1,000 to €3,000: the firm allocates an 'inordinate number of resources for marginal nominal payments' in this price range.

MacDougall Auctions (William MacDougall, Director)
(interview conducted in person on 20 September 2007)
MA is a Russian art auction house, established by MacDougall in 2004. It conducts two sales per year, the first two of which netted £2 million while the most recent at the time of our meeting (June 2007) netted 2007 (*their even more recent November 2007 auction grossed £11 million*). MacDougall notes that most of the firm's clients are based in the US and Switzerland and he offers the following geographical distribution of the Russian art market: in terms of buyers, 90% are Russian born and more than 50% live in Moscow; in terms of sellers, 90% actually live outside of Russia with large representation in the UK (approximately 10%), the US, Israel and the EU. London, in fact, is the biggest Russian art market, followed by New York (both of which therefore eclipsing Moscow).

MacDougall does not believe that there has been any diversion effect related to ARR for his business: scaling and the upward cap greatly reduce this risk. He observes that it is really in the £10,000-£30,000 range where you might expect to see diversion, though it has never been cited as a deterrent: none of MA's consignors have mentioned their reluctance about ARR and although there is a 'modest' degree of resistance on behalf of buyers, MacDougall feels that this has more to do with escalating buyer's premiums at major auction houses over the past few years than with ARR as such (MA, he urges, has a lower fee structure than Sotheby's and Christie's though it is considering whether to replicate their fee model). For MacDougall, the biggest burden of ARR is having to explain the royalty to clients – many of whom are unaware of the legislation and/or do not realise that it also applies to the Russian Federation – and to calculate relevant charges.

MacDougall made some interesting points about collecting societies, over and above general administrative difficulty of identifying what collecting society to use (i.e. DACS or otherwise). Notably, the only Russian collecting society he is aware of is run by Russian art dealer Matthew Bown (of Izo Gallery) who is based in London. Izo "claims to distribute money back to artists more quickly than DACS's but also charges higher fees (20%)." MacDougall is fearful that there is a significant conflict of interest here and that Izo is trying to cynically use the collection society as a means of strengthening relationships with artists that it also has an interest in representing and selling. He feels that this is a "significant problem" with the ARR legislation. Because of this problem, MA would "ideally pay artists directly" but this is not an option under the present regulations.

Sotheby's (Tom Christopherson, Michael Hart, Josh Pullan)
(interview conducted in person on 27 September 2007)
ARR eligible art accounted for 5% of Sotheby's hammer price in the UK in 2006. Between 1 August 2006-30 July 2007, there were: 1,427 ARR eligible lots; 527 ARR eligible artists; and £1.3 million of ARR payments (this against a hammer price of £69.5 million on ARR eligible lots, and total hammer price of £714.2 million (and 31,405 lots)). Sotheby's ARR payouts were distributed in the following break-out: the *Top 20* artists (by ARR value) account for 46% of ARR payments and 19% of total ARR lots; the *Bottom 200* artists (by ARR value) account for 2% of ARR payments and 17% of total ARR lots. The estimated total cost of ARR implementation in 2006 was £54,947; the estimated ongoing per transaction is £21.64 (based upon 891 ARR payable lots and ongoing costs of £19,285 in Q1 and Q2 2007). In Q1 and Q2 2007, Sotheby's sold 891 ARR lots (6% of total UK lots); if the 2012 derogation were in place during this same period (thus extending ARR to sales on artists deceased up to 70 years), Sotheby's would have sold an additional 2,186 lots (17% of total UK lots), representing a 245% increase over existing capacity.

The interviewees feel that evidence of ARR-related diversion from the UK art market is ambiguous. The main reason for this is that it is currently being hidden by the great recent expansion of the UK contemporary art market. The ARR cap and the fact that Sotheby's charges ARR to buyers constitute the main alternative explanations for why this is so. Presently, ARR is something "regularly raised in consignment discussions with collectors," but on balance it does not divert where works are sold and/or when. However, if the cap were removed, "we would have to advise collectors to sell elsewhere" for the major blue chip lots. This could have a sizeable negative impact on the UK art market, with the US, followed by Switzerland and France, being the main beneficiaries.

The interviewees note that there is "nothing surprising" about where ARR costs fall: legal costs are mainly in implementation (i.e. not running costs), while other implementation costs mainly fall upon junior administrators (which can make education/training costs steep as these staff members have high turnover). The problem, however, is that even after the implementation phase, ARR administration continues to be "quite costly:" "it's not like pushing a button…there is no standard procedure." Private Treaty Sales offer a good example: because such sales are private (meaning that, for competitiveness reasons, the firm has to be careful about how such sales are disclosed), Sotheby's must bring these forward to collecting societies on an individual basis. This takes time, resources and further due diligence; it cannot be linearly streamlined into a traditional auction sales accounting costs. In general, considerable due diligence is involved in determining who is ARR eligible (up front, this is done by cataloguers; at back, between more senior Sotheby's specialists and collecting societies) and there have been instances when DACS has contacted them post-sale about ARR liable lots that they then had to pay out-of-pocket (as expressed in our interviews with Bonhams and Christie's, this typically involved Sotheby's being informed that an artist, unbeknownst to them, had a dual-nationality in an EU country). "ARR involves a huge chain of communication that we all have to be aware of in our daily work," the interviewees remark, concluding that they find it "very burdensome."

Several key issues with ARR were highlighted over the course of our discussion. One concerned the ambiguity, within the legislation, about *where* sales occur. A second concerned "mixed messages" between Sotheby's and the collecting societies over who they were supposed to be paying (this therefore being a shortcoming, in practice, of having multiple collecting societies). Third, the interviewees remark that rounding differences on a daily spot rate basis between £ and € adds to confusion between Sotheby's and collecting societies over the precise monies due; this should be simplified. Fourth, although the interviewees describe Sotheby's relationship with DACS as "fine," they feel that the agency is "not always efficient" (their Q2 2007 invoice was one month late) and that Sotheby's is in fact doing all of the research and administration for ARR. This is particularly aggravating when Sotheby's has done due diligence on ARR liable artists, even sharing their findings with DACS pre-sale, only to have DACS inform them months later that certain artists are, in fact, owed royalties.

The interviewees made the following recommendations: 1) Keep open competition amongst collecting societies (the administrative hassle of dealing with more than one society is more attractive than having a collecting monopoly); and 2) Collecting societies should be obliged to tell auction houses which artists are ARR liable.

COLLECTING SOCIETIES

Design and Artists Copyright Society (Joanna Cave and Tim Sherman)
(interviews conducted 11 June and 11 October 2007)

We are grateful to DACS for allowing us to use their database of artists and dealers for the purposes of our questionnaire.

DACS were generally of the view that the system is working well, considering the difficulties involved in getting things started. In particular, they stress that the art market is flourishing despite a number of apocalyptic views expressed about the consequences of introducing ARR. DACS are conducting their own review, and will publish their findings in due course.

The commission charged per transaction has been a matter of some controversy. Initially DACS indicated that they might need to charge up to 25% per transaction. In the event, however, they decided to charge 15%, and they claim that this is necessary to recover their costs and is quite transparent (although this is not independently audited).

In the light of the claim made that some artists were opposed to ARR, and might return payments in protest, DACS confirmed that they had not had any payments returned as yet.

On the issue of dealers buying on consignment instead of purchasing outright, DACS argued that this might reflect ignorance on the part of dealers of the three year bought to stock exemption.

Artists Collecting Society (Jessica Tier)
(interview conducted in person on 20 September 2007)
ACS was established in June 2006 following requests from the Society of London Art Dealers (SLAD) and the British Art Market Federation (BAMF) who were fearful of DACS's monopolist position. ACS is funded by the Bridgeman Art Library which represents 600 UK for visual rights. ACS began invoicing in December 2006 and received its first payments in January 2007; it invoices quarterly.

Tier remarks that ACS's strategic advantage resides in the fact that it pays artists within seven days ("we know where everybody is"). Also, because ACS was established to deal solely with ARR (though the Bridgeman Art Library also collects, manages and markets reproduction rights) it maximises the efficiency of ARR collection/distribution. ACS's strategic disadvantage is that it is only capable of invoicing artists who sign up with it. Indeed, "many had already committed (by default or otherwise) to DACS by the time we were fully functioning in Autumn 2006." Also, DACS has reciprocal agreements with foreign collecting societies whereas ACS does not. This means that ARR proceeds for UK-based sales of non-UK artists resident overseas go, by default, through DACS – and it often leads to "confusion" over who foreign parties are to pay on overseas sales concerning ACS-represented artists.

Tier feels that evidence of ARR-related diversion from the UK art market is ambiguous because of the current market boom. Big dealers that she has spoken to, for example, say that diversion is not much of an issue; she expects it to impact smaller dealers considerably more. She also notes that ACS has been 'surprised' by the level of cooperation they have received from UK dealers, even though they estimate that at least 30% of dealer activity is off-record.

In conclusion, Tier finds that there is a "lack of awareness" on behalf of artists that there is more than one collecting society. This leads to confusion within the market – and, in rare cases, double contracts. Despite ACS's presence, she feels that DACS "definitely still hold the monopoly" and she is in favour of keeping competition amongst collecting societies.

INDUSTRY ASSOCIATIONS

British Antique Dealers Association (Mark Dodgson, Deputy Secretary General)
(interview conducted in person on 13 September 2007)
The majority of BADA's affiliates specialise in antiques; only approximately 25% are in the fine art market, of which only a fraction deal in ARR compliant art. For Dodgson, the "real" significance of ARR does not therefore reside in its present articulation but in the 2012 derogation.

Dodgson raised the following points in relation to the ARR and DACS. First, though the ARR's UK extension has been justified as a means to make the European art market more competitive, he questions the validity of this: was there really a distortion in the first place? This may be a "red herring" as low value artworks tend to be linked to domestic markets anyhow. Dodgson also questions the legal viability of DACS to be the default collecting society and the notes that some BADA members, especially in the beginning, found DACS "arrogant" – that they imposed demands "too forcefully." The pseudo-monopoly status of DACS was also raised: only when ACS entered did DACS reduce fees from 20% to 15%. Lastly, he fears that DACS is excluding competitor agencies from establishing mutual relationships with non-UK collecting agencies (which, in turn, are saying to ACS that they deal solely with DACS).

The Society of Fine Art Auctioneers (Clive Stewart-Lockhart, Chairman of SOFAA, and Senior Picture Specialist, Dreweatt Neate (Fine Art Auction Group))

(interview conducted by telephone on 14 September 2007)

DN is the leading exclusively regional auctioneer and valuer in the UK; SOFAA is a professional body for specialist British art firms and comprises 50 auction house members and an additional 100 valuer members. Stewart-Lockhart contends that the biggest problem up front for implementing ARR payments is determining *who* is ARR liable. What, for example, of living artists who no longer work with galleries? He is fearful that smaller auction houses simply do not have the means to deal with ARR administration. He regards the 2012 derogation as "complete lunacy" and fears that, from a practical standpoint, it will take extreme measures – and therefore significant costs – to track down the estates of deceased artists, British and foreign. He believes that the average English auction house will not have much to say about the potential diversion-effect of ARR because the minor regional artists they deal in are a non-issue (i.e. they have no overseas market). Stewart-Lockhart challenges how DACS "acts like a government body," even though it is not; DACS's role needs to be clarified. He also questions what percent of money collected by DACS is passed along to artists (and how long this takes).

Stewart-Lockhart's primary recommendation is for DACS and other collecting societies to publish an ever-growing database of ARR liable artists. This should be made available to market professionals on an updated basis and enumerate all of those who are eligible to receive ARR proceeds. Lastly, he feels that a collecting society monopoly open to competitive tendering is the best option for royalty collection, moving forward ("a plethora of collecting societies would be a nightmare").

The Society of London Art Dealers (Christopher Battiscombe, President)

(interview conducted in person on 13 December 2007)

SLAD comprises over 100 London dealers, 64% of which deal in ARR liable art today; this number would increase to 87% under the 2012 derogation (The Society of London Art Dealers, *Biennial Members Survey 2007*, p.12). SLAD is a strong opponent of ARR. Battiscombe highlighted the fact that it is a "disincentive to trade," that it "cuts into dealer margins" and that it is riddled with "too many ambiguities" as three leading explanations for SLAD's aversion to the royalty. On the latter, for example, he argued that *where* sales are to be registered is unclear in the legislation as is the status of prints: if a dealer covers costs of producing a print and then purchases one from the artist, an eventual sale to a collector will technically be ARR liable although this is only the first "real" sale. There is also a fractional ownership ambiguity: if three parties co-own a work and one sells his share to another, is this sale ARR liable? For DACS, the answer is "yes," although in practice this is "illogical" since the good has not changed hands. Ironically, the *laissez-faire* attitude of the French about taxation means that most French don't even pay ARR (this discrepancy exceeding differences in legislation between the UK and France – divergent price thresholds and the fact that only French auction sales are ARR liable whereas auction and dealers sales are in the UK). His broader point here is that although ARR was introduced in the UK to harmonise competitiveness, in fact it is only "applied" in a handful of countries where it theoretically exists; this unduly punishes the UK which actually applies the royalty.

Battiscombe feels that it is simpler to have one collecting society, but he is fearful that a DACS monopoly would lead to higher fees and that they would be dismissive of incremental issues and debate. Even so, he recognises that "the way things are set up, you must have a default collecting society." Thus Battiscombe's gripe with DACS does not concern its pseudo-monopoly status as such, but the fact that he fears it is trying to stop ACS from collecting efficiently: "many foreign collecting societies say they will only deal with DACS, even though artists may be represented by ACS." It is imperative, in short, that ACS can function on level playing field.

During our conversation, Battiscombe presented notes from a recent meeting he had with Ceri Witchard, of the Intellectual Property Office, on 6 November 2007. Some of the topics discussed were as follows. First, the bureaucratic problem of administering ARR: Battiscombe and Witchard estimate costs in the range of £30 per transaction for British dealers, with an inordinate amount of administration being allocated to a large volume of small ARR payments (with the "lion's share" of money going to a small percentage of artists). Second, economic consequences dealing with ARR liable art: dealers, unlike auction houses, must "eat" ARR costs, and Battiscombe and Witchard question how many of the approximately 6,800 UK dealers that do not belong to trade associations actually pay ARR? Third, the aforementioned print ambiguity. Fourth, unintended consequences of ARR: the trend from purchase to consignment relations between dealers and artists means that artists are getting less money from up-front sales; and how ARR diminishes intra-dealer trade since a tax must be paid every time a work is sold. And lastly, ongoing issues with DACS: Battiscombe and Witchard feel that DACS is determining how ARR should be interpreted but this is "unfair" since they are not neutral (the problem is that cost of litigation is prohibitive); they also feel that DACS displays a lack of transparency (on monies paid out, holding time, etc.).

Battiscombe offered the following recommendations at the end of our discussion: 1) Increase the ARR threshold from €1,000 to €3,000; 2) Abolish the 2012 derogation ("We need to guard against myth that 2012 will not be too significant, as based upon fact that ARR has not had a major negative diversionary impact on UK art market to date."); 3) Make use of collecting societies voluntary; and 4) Only apply ARR at auction.

OTHER

Henry Lydiate (Founder, The Henry Lydiate Partnership, founding member, ArtLaw, and a member of the DACS Board since 2001)
(interview conducted by telephone on 18 December 2007)
Lydiate is an art lawyer who lobbied extensively, in collaboration with DACS, to extend ARR to the UK in 2006. He has been professionally involved in art law since the 1970s.

Lydiate believes that the current anti-ARR "fuss" of British art market professionals is both "futile" and "misdirected:" the contemporary art market boom in the UK "proves them wrong" (because it suggests that their fears of diversion away from the British art trade are unfounded). Lydiate does not feel that this diversion risk will increase in the future, even if the 2012 derogation is brought into effect: "if collectors want work, then they buy it." The only people who complain about ARR, he remarks, are market professionals. He feels that their complaints are "bogus," though, as there is "no reason" why they cannot automate ARR payments. Furthermore, "dealers haven't lost anything because they just pass on costs to buyers" ("my heart *bleeds* for dealers"). Lydiate is also unconvinced of the shift from purchase-to-consignment relationships between dealers and artists noted by some of our other interviewees ("it's rubbish"). If there is an increase in the tendency to hold works on consignment, it is more a question of how business practice has changed in response to technological capabilities than anything to do with ARR: "dealers used to need to have physical inventory to present to collectors, now they only need JPEGS."

For Lydiate, the strongest argument in favour of ARR concerns "*just rewards*." In other words, he advocates ARR on moralistic/philosophical grounds – artists deserve to share in the rising value of their art. When asked if artists should then be economically liable to collectors if their work drops in value, Lydiate responded that "buyers and sellers determine market values, whereas artists have no influence on whether the price goes up or down." This further explains his view that ARR should exist on a moralistic basis: if prices rise, artists are *morally entitled* to share dividends; if prices drop, it is *morally improper* to hold artists liable. Lydiate also defends ARR on the grounds that with compulsory (or at least default) collecting societies it is easy to manage; and that for a large number of artists, even modest ARR payments are "really significant" ("most only live on air"). Because of the latter, he is content with the present €1,000 threshold as it brings in a "vast number of further artists."

Lydiate's two primary qualms with ARR legislation in the UK are that it introduced rights for living and deceased artists in two different phases ("this should have been done in one fell swoop") and that it failed to create a government regulated collecting society monopoly ("DACS should have been named outright"). Indeed, he sees no reason why, if this collecting society was appropriately regulated, the risks of inefficiency and over-charging stemming from monopolisation could not have been avoided. He is aware of the economic arguments against monopolisation but feels that it is a "waste of money and time" to have competitors and that this has only added to "confusion" over where to send money and invoices. Despite drawbacks, he far prefers the present collecting society regime to letting artists and dealers collect ARR however they please: many artists do not have galleries, most artists are poor administrators and most artists and galleries do not have the scope to collect efficiently. In his opinion, Italy offers a good counter-example of how this type of collecting setup has failed. Lydiate is also strongly in favour of ARR's present constitution as an inalienable right. Lacking this, dealers would use their power to sign away artist's rights ("just like moral rights").

At the end of our conversation, we also discussed the Projansky Contract ("The Artists' Reserved Rights Transfer and Sale Agreement"), developed by New York conceptual art dealer Seth Siegelaub and lawyer Robert Projansky in 1971, and California's own version of droit de suite which came into effect in 1977. In Lydiate's opinion, the main drawback to the Projansky Contract, despite its popularity within the avant-garde community, was that it undermined privacy of contract as defined under worldwide civil law. In other words, even if one signed the contract – which pushed ownership more into the realm of leasing/renting (it stipulated that artists not only profit from resale proceeds but have an ongoing say in where artworks are exhibited, how image rights are controlled, etc.) – there was simply no way to enforce it upon resale. Also, no centralised database was ever established to monitor what artworks were within the Projansky Contract universe (unlike real-estate ownership); if it was ever to work, a national, or even international, registration system would need to be established. Similarly, California's ARR legislation was "poorly" composed: it depended upon a "domino-effect" in which other States would adopt ARR that never occurred. Lydiate concluded by saying that it would be interesting to revisit the California law but that he had "no idea" what the politics of this would be.