Response by The British Art Market Federation to the European Commission's Consultation on the Implementation and Effect of the Resale Right Directive

The British Art Market Federation welcomes the opportunity to respond to the European Commission's consultation on the implementation and effect of the Resale Right Directive (2001/84/EC)

INTRODUCTION

The British Art Market Federation

The British Art Market Federation (BAMF) represents all the major elements of the UK's art and antiques market, from the larger auction houses, Christie's, Sotheby's and Bonhams, employing several hundred full and part-time employees, to hundreds of small and medium sized businesses. BAMF includes the following sector-specific organizations: The Society of Fine Art Auctioneers, which represents a number of small and medium sized auction houses from throughout the UK; The Royal Institution of Chartered Surveyors, which represents a number of specialist art valuers; The Association of Art & Antiques Dealers (LAPADA), which represents some 600 UK businesses with an average number employed per business of 3 to 4, over 60% of whom are full-time employees; The British Antique Dealers Association (BADA), which has 373 members, 34% of which employ four or more staff, including the proprietor; and The Society of London Art Dealers (SLAD), which represents 125 businesses, 75% of which have no more than five full-time staff. The Federation also represents specialist organisations of dealers such as the Antiquarian Booksellers' Association (ABA) with 230 members in the UK.

The British art and antiques market is made up of approximately 10,300 businesses, directly employing 60,000. In 2009, it spent an estimated £1.3 billion on support services such as conservation and restoration, specialized shipping and insurance, printing and advertising, supporting a further 66,000 jobs[1]. The British art market is particularly active in cross-border trade, attracting art sales from throughout the world (see below) and is the largest art and antiques market in the European Union.

The Sector of the Art Market affected by the Resale Right

The general term 'art market' is often used to encompass all fine and decorative art and antiques, from classical and medieval artifacts to contemporary art. For the purposes of BAMF's response to the European Commission's questionnaire, we use this term specifically in relation to the sector of the art market actually or potentially within the scope of the Artists' Resale Right (ARR), namely fine art (paintings, drawings, sculpture, collages) by living artists and by artists who died less than 70 years before the date of the resale ('deceased artists').

[1] Arts Economics (2011) *The British Art Market: A Winning Global Entrepôt*. BAMF: London. For a detailed examination of the economic impact of the British art market see Appendix

The Global Art Market: Local, versus International, Art Markets

In the context of the analysis of the working and effects of the Artists' Resale Right Directive, it is relevant to draw a distinction between domestic and international markets. This distinction is of relevance when considering the diversionary effects of the Resale Right.

The diversionary effects of ARR or fiscal surcharges on art sales are strongest for the highest value objects[2].

Domestic art markets, which often function alongside international markets (London being a good example of this) are commonly based on a high volume of lower value sales, mostly sourced locally and for the most part sold to local buyers. Although these markets are less vulnerable to international competition, because the costs involved in relocating them are greater than gains that might be made by moving the transaction elsewhere, they are dominated by smaller businesses which are vulnerable to regulatory burdens that increase their costs. **The primary effect on smaller companies operating in domestic markets is the burden of administration, and therefore added cost, involved in processing ARR payments.**

The global art market for the most valuable works of art is distinct from local markets and is concentrated in a few international market 'hubs'. In the European Union these are London and Paris. These are supplemented by international art fairs, the largest of which is the annual TEFAF Maastricht Fair. The annual Frieze Art Fair in London is a major event for Contemporary art. The success of international 'hubs' depends on assembling a critical mass of the highest value works for sale at any one time. As supply of the most valuable artworks coming onto the art market is limited, this will involve sourcing works from throughout the world to bring them together either in a major auction sale or at an art dealers' fair.

European art market hubs face intense international competition, principally from the US (New York) and China (Hong Kong), when competing to attract sales, a fact that was recognized in Recital 7 of the Resale Right Directive.

In our response to the European Commission's questionnaire, we have focused on the evidence of market distortion and on the administrative burden that the ARR system imposes on small businesses in the art market. We have also sought to consider this evidence in the context of the Directive's Internal Market objectives.

[2] Although the provision in Article 4 limits ARR to €12,500 per transaction prevents ARR from continuing to increase for sales above €2 million.

SUMMARY

1. Market distortion in the context of the Directive's aims:
The Directive came into being because the European Commission was persuaded both by its own research[3] and through research commissioned by collecting societies[4] that ARR affected the location of art markets. BAMF has consistently pointed out that the diversionary forces that ARR exerts on the internal EU art market are just as likely to affect the relationship between the EU and external art markets. There is therefore an inherent risk to the competitiveness of the EU's market, particularly for higher value art, in introducing ARR independently of the rest of the world, unless it is preceded by an agreement to introduce ARR at an international level.

2. This risk was significantly reduced by the derogation limiting ARR to the work of living artists because, as the data below confirms, the sector of the fine art auction market accounted for by the resale of the work of living artists in the UK is small (14% of fine art by value).

Even so, the EU has already lost over 14% global share by value in the market for the works of living artists in the last three years, while external markets such as China, US, Switzerland and the rest of the world have gained share.

But the market for the work of deceased artists accounts for a substantially larger proportion of the fine art market (48% by value) and it includes a higher proportion of individual sales above €50,000, which are the most vulnerable to diversion towards markets with lower relative transaction charges. The termination of the derogation clearly brings with it a far higher risk that sales will be lost to third countries.

3. Although ARR may only be one of many factors causing the present shift in the art market away from the EU, the aggregation of many factors leads to the loss of market share over time. **Given that the EU's market is already losing position, now is the time to take positive steps to prevent its further decline rather than passively letting competitive impediments build up even more**. ARR may not be the sole factor in the EU's relative decline, but it is certainly a contributory factor which is likely to have an increasing effect as time goes on by deterring major art sales from taking place in the EU. **Furthermore customer perception is an important factor in determining the place of sale. The existence of ARR on sales adds to the increasing perception, particularly on the part of overseas clients, that the EU is a complicated and expensive place to do business.**

4. The European Commission has pointed out that, because the derogation still exists, it is harder to assess the full impact of the Directive on the EU's art markets, particularly on the UK with its large and international art market. Of course a study conducted in a few years time, after the derogation has expired, is likely to produce more definitive conclusions. But if, as the evidence so far suggests, substantial sales

[3] COM(96) 97 final, pp.14 -19
[4] In particular Becker L. et al (1995), *The Droit de Suite*. IFO Institute: Munich. This study was commissioned by the French and German authors' societies, ADAGP and BILD-KUNST and by GESAC (The European Grouping of Societies of Authors and Composers).

are ceded to our overseas competitors, the damage will have already been done. **Markets once lost are very hard to regain**, as Paris found when its art market was significantly affected by fiscal changes in the 1950s. It may be a useful intellectual exercise to establish *post facto* the reasons for a decline in market share, but it would be of no consolation to those whose livelihoods have been affected.

5. We therefore welcome the Commission's study at this stage so that the risk involved in a massive extension of the ARR, without first securing an international agreement, are thoroughly assessed while steps can still be taken to avert the possible consequences for art businesses.

6. We acknowledge that the UK has the most to lose. It accounts for 59% of the total value of the EU market for the work of deceased artists, and accounts for 22% of all lots sold at auction worldwide for over €50,000 (and 26% by value).

7. Because of the limited application of ARR in the UK since 2006, the evidence of the diversionary impact is more limited than it otherwise would be. But the data set out in detail in answer to Questions 1 and 5 below give a clear indication of its actual and potential impact:

a) **There is no sign that the introduction of a single system of ARR on the work of living artists has resulted in a transfer of sales from the UK to other EU art markets.** The market share of most other art markets within the EU has remained generally static over the period 2005 to 2010. Therefore it would appear that the relative national shares of the EU's internal art market have remained unaffected by the introduction of a single system of ARR on living artists.

b) **The UK's share of the global market for the work of living artists has lost ground.** Although the boom in contemporary art in 2007/8 disguised the effect of the introduction of ARR, and the market slump in 2009 had an adverse effect on nearly all global markets, it is noticeable that, when the global contemporary art market returned to equilibrium in 2010, there was a much more rapid recovery in the US and China than in the UK. **Indeed for the first time, sales of contemporary art in China overtook the UK in 2010, making China the second largest global market in the sector, next to the US**.[5]

8. **The market at immediate at risk of diversion when the derogation comes to an end is for sales above about €50,000 in the 48% of the fine art market covered by the work of deceased artists.** It should be pointed out that the threshold figure of €50,000 depends upon the relative costs of shipping a work from one country to another and the amount of ARR avoided. This can vary. It is not, of course, a factor for the substantial number of works currently imported for sale in the UK from outside the EU. These are easily diverted elsewhere. Since major art markets depend on assembling a critical mass of the best works of art in one place, the loss of imports is likely to have a knock-on effect by adding an incentive to export from the EU in order to participate in the most successful market hubs.

[5] Arts Economics, *The Global art Market in 2010, Crisis and Recovery*, TEFAF, Helvoirt, 2011

9. The Increase in Global Competition

Some commentators have sought to explain the rise of the Chinese art market as being an inevitable consequence of the explosion in the number of high net worth individuals (HNWIs) in China and the Asia Pacific region. While this may account for the rising impact of Chinese art collectors, it does not necessarily account for the rise in Chinese art markets. As art is mobile, it can (with some exceptions such as the export control of national patrimony) be sold wherever the conditions are the most favourable. If art markets existed only where there was the highest concentration of HNWIs, Germany should be the largest market in the EU, rather than the UK (see Table 1 below). Japan has a much larger population of HNWIs than China but has not become an international centre for the art market in the region.

The Chinese authorities certainly recognize the part played by fiscal and other costs in the location of markets themselves. For a number of years, Chinese buying has been having an increasing impact on the worldwide market for fine wines. However it was not until the authorities in Hong Kong decided in 2008 to abolish the tax on wine that the market in Hong Kong took off, to become one of the largest of its kind in the world.

The increase in the value of Russian art in sales in the US, UK and France gives testimony to the buying power of the new Russian rich, who buy wherever the best Russian art is sold. However, this increase in value has not been accompanied by a rise in the art market in Russia itself, mainly because the conditions surrounding the market there are considered to be less favourable than in the other international art centres.

Table 1. Number of High Net Worth Individuals (1000s)

Country	2006	2007	2008	2009
UK	485	491	362	448
Germany	798	833	810	862
China	345	413	344	477
US	2,920	3,019	2,460	2,866
Japan	na	1,517	1,336	1,650

Source: Cap Gemini/ Merrill Lynch(2008-2010)

10. Regulatory Cost of Resale Right

We are concerned about the impact of the administrative cost of ARR on art businesses, particularly on the smaller businesses that make up most of the British art market. Businesses have now had five years to assess these. **Given the 244% increase in the number of sales that would be liable by extending ARR to the work of deceased artists, the added administrative impact, particularly on small businesses, is likely to be very substantial.**

11. Data recently published by the leading British collecting society (DACS)[6] and factual evidence supplied by art market businesses indicates that the ARR costs amount to at least 24.5% of the total payments made between February 2006 and October 2010. Why the administration of ARR is so burdensome for art dealers and auction houses, costing between £23.00 and £53 per transaction is explained in detail in our response to Question 6. The administrative difficulties mainly result from the

[6] DACS(2010) *Westminster Briefing, Issue 2*. October 2010.

uncertainties involved in the identification of which sales are liable to ARR. These uncertainties are bound to increase if ARR is extended to the more numerous sales of work by deceased artists. At the moment it is only necessary to establish whether or not the artist is alive and, if so, whether he is a citizen of the EU (or of reciprocating countries).

For sales of the work of deceased artists it is necessary not only to establish the date of death, but more significantly the citizenship of the artist at the date of death and whether his or her heirs are citizens of the EU. The fact that there is no international agreement on ARR makes the definition of nationality necessary and therefore adds to the relative administrative burden on EU art businesses. The existence of an international agreement would therefore eliminate this problem as well as reducing the risk of market diversion.

12. These difficulties could also be ameliorated by introducing reforms to the way ARR works. We suggest that it should be a condition that an artist or his heir must register either with a collecting society or on a central database if he wishes to exercise his right to receive payments. Such a rule ought substantially to reduce the administrative burden on smaller art businesses and would not be an arduous condition to place on artists or their heirs.

13. The ‘double taxation’ effect magnifies the impact of ARR on the market. Since any sale involving a dealer or auction house is liable to ARR on the full value of each sale, a series of related transactions are taxed repeatedly. **Unlike indirect taxation, ARR does not relate to the profit margin but to the full price each time a work of art changes hands.** A dealer buying at auction therefore pays ARR on the purchase price and has to pay it again on his resale price. This could be rectified by introducing a system similar to VAT, which allows the tax paid on purchases to be deducted from the tax charged on resale.

14. In considering the benefits of a harmonised system of ARR, it seems relevant to compare the costs of administering the ARR system with the benefits that it produces for artists (see answers to Question 7). The ARR system in its present form is costly and cumbersome to operate and it introduces a disproportionate burden on businesses. By comparison, the benefits appear limited. **From the information available, it would appear that less than 2% of British artists have received payments from the leading collecting society (DACS) since ARR was introduced in 2006 and that the overall cost of distributing £10.5 million to a small minority of artists was in the region of £2.58 million.**

15. **The need to put in place an international agreement on ARR before extending ARR further in the EU:**

We have not, in our response, repeated the arguments for or against the ARR in principle. These have been well rehearsed, but they are irrelevant to an assessment of the economic effect of this Directive. Whatever the strength of the arguments in favour of or against the principle of ARR may be, it is clear from the logic of the Directive itself that the risk of diversion of sales and the consequent loss of revenue and employment in EU art markets could be avoided if an international agreement on ARR preceded any further extension of ARR.

RESPONSES to CONSULTATION

1. Please describe developments in the art market in your country over the period 2005-2010.
It would be helpful if you could describe these developments:

a) With respect to trade in the works of: (i) living artists; and (ii) deceased artists

b) By sector: (i) auction houses; (ii) art market galleries and dealers

c) By price range (up to €50,000; €50,000 - €200,000; €200,001 - €350,000; €350,001 - €500,000; and above €500,000)

The figures below are for auction sales only. Information on sales by dealers is incomplete and is generally based upon polling and on the limited general information available about the turnover of dealers and galleries. It can not therefore be broken down into the price ranges set out in the questionnaire. We therefore do not have precise figures for the dealer sector of the fine art market for contemporary and modern art. According to Arts Economics (2011)[7], globally in 2010 the split between dealer and auction sales was 51% dealers to 49% auctions by value, and in the UK dealers accounted for approximately 55% of the value of sales. The sales outlined in the tables below could therefore be estimated to represent less than half of the total sales in the given sectors

Development of British Contemporary Art Market

The tables below follow the division between sales of the work of living and deceased artists as set out in Questions 1 and 5. Although this reflects the divide between the derogation and the directive as a whole, it does not necessarily mirror the way the art market works in practice[8]. Dealers' exhibitions and auction sales of contemporary art will include both the work of living and dead artists. The market does not make a distinction based on longevity but on genre. This is significant in the context of ARR: **even though ARR may affect only a proportion of the contemporary art market, if it causes a diversion of sales, other works not liable to ARR, are also likely to go with them: successful markets and auctions both depend upon critical mass.**

Taking the wider definition of contemporary art (broader therefore than solely living artists) the period 2005 to 2010 has seen considerable fluctuations in the value of this sector. 2008 represented a high point for contemporary art with the global auction turnover of €915 million. 2009 witnessed a substantial (66%) fall in the global market to its lowest level since 2005. In 2010, the global market returned to a level just above the value of the global market in 2006, with sales recovering 86% on 2009[9].

Although the UK continues to represent the largest contemporary art market in the European Union, its global market share by both value and volume has been gradually declining over the period. This is mirrored by a general decline of the EU contemporary art market confirming that the UK's loss of global market

[7] Arts Economics (2011) *op. cit.*
[8] Contemporary art is often defined as the works of artists born after 1945, but even this excludes some older contemporary artists.
[9] Arts Economics (2011) *op. cit.*

share is not benefiting other EU art markets but is being lost to markets outside the EU.

In 2009, China overtook France to become the world's third largest market for all art and antiques. In 2010 China overtook the UK for the first time and, significantly in the context of this study, became the world's second largest market for contemporary art. A cause for concern is the much greater recovery of the contemporary art markets in the US and China than in the EU in 2010. In the context of a general recovery of 86% from the low point of 2009, US growth was 120%, China was 121% and the EU recovered only by 39%. Although the UK achieved a higher rate of growth than the EU as a whole with a recovery of 43%, its recovery was far less pronounced than in the US or China.[10]

Contemporary art is the most mobile sector of the art market and one of the most volatile. As we have pointed out in our introduction, the growth of the Chinese art market cannot simply be explained by the rise in the number of HNWIs in the region. It may explain the rise in value of Chinese art, but it does not explain the rise of the Chinese market itself. The experience of Japanese, Russian and Middle Eastern buying indicates that the impact of buyers is not necessarily reflected in the transfer of the market itself. These areas have small art markets relative to the number of HNWIs there.

Europe still has 30% of all HNWIs worldwide and yet the EU's share of the global market for contemporary art, the main entry point for HNWIs coming into the art market, has been declined in value since 2005.

It is also worth pointing out that European artists are strongly represented in the global resale market and their work does not have to be sold in the EU to achieve the highest prices. For example the most expensive work by any living artist, the British artist Lucien Freud's *Benefits Supervisor Sleeping*, was sold at auction in New York in 2008 for $33,641,000. A recent study has found that the US already has 29% of the auction market for the work of living European artists.[11]

There is mounting anecdotal evidence that the existence of ARR in the EU is a factor in persuading sellers to sell in already very dominant markets where ARR is not applied. **Many studies have recognised that ARR is one of many factors that affect the location of sales, but it can not entirely be a coincidence that the EU, which is alone among major art markets in applying the Resale Right, has steadily been losing global market share in the contemporary art market.**

[10] Arts Economics (2011) *op.cit.*
[11] Arts Economics (2011) *op.cit.*

The Market for Works by Living Artists[12]

Table 2. The Market For Works by Living Artists

i. Total Auction Sales Year-by-Year (Euro Millions)

COUNTRY	2005	2006	2007	2008	2009	2010
UK	€ 112.76	€ 179.59	€ 354.45	€ 506.31	€ 109.09	€ 199.35
EU	€ 166.02	€ 268.14	€ 465.84	€ 614.53	€ 206.02	€ 319.13

Source: Arts Economics (2011) with data from Artnet (2011)

ii. Total Auction Transactions Year-By-Year (Number of Lots Sold)

COUNTRY	2005	2006	2007	2008	2009	2010
UK	3,479	4,895	5,763	7,043	4,291	5,356
EU	12,084	16,009	18,581	23,658	21,865	27,609

Source: Arts Economics (2011) with data from Artnet (2011)

iii. Global Market Share by Value

COUNTRY	2005	2006	2007	2008	2009	2010
UK	24.8%	23.0%	27.4%	36.4%	19.4%	18.6%
EU	36.6%	34.4%	36.1%	44.2%	36.6%	29.8%

Source: Arts Economics (2011) with data from Artnet (2011)

iv. Global Market Share by Volume

COUNTRY	2005	2006	2007	2008	2009	2010
UK	15.6%	15.5%	15.3%	15.5%	10.4%	10.0%
EU	54.1%	50.8%	49.4%	51.9%	53.1%	51.6%

Source: Arts Economics (2011) with data from Artnet (2011)

v. EU Market Share by Value

COUNTRY	2005	2006	2007	2008	2009	2010
UK	67.9%	67.0%	76.1%	82.4%	53.0%	62.5%
EU	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Source: Arts Economics (2011) with data from Artnet (2011)

vi. EU Market Share by Volume

COUNTRY	2005	2006	2007	2008	2009	2010
UK	28.8%	30.6%	31.0%	29.8%	19.6%	19.4%
EU	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Source: Arts Economics (2011) with data from Artnet (2011)

An indication of the UK's unique position in the EU is that average prices at auction in market for living artists' works in the UK have been consistently higher than in other member states in the EU. During the period from 2002 to 2010, prices in France

12 *Note: Works by living artists are works of art sold at auction by artists that have no recorded death date and are alive at the time of sale. The data given in the tables in Sections 1 and 2 is based on data sourced from Artnet. Artnet cover the major auction houses in all countries, but do not include some minor sales and smaller houses and therefore may slightly understate actual sales. All sales values and prices are based on hammer prices at auction (excluding premiums and commissions).*

averaged 22% of those in the UK, while prices in Italy and Germany were 25% and 13% respectively. In 2010, average prices in the UK were 3.2 times those of the EU as a whole. This reflects the UK's position, albeit slowly declining, as a global player in the art market.

Developments in the Market for the Work of Deceased Artists

The market for the work of deceased artists cannot be precisely separated from the market for the work of living artists. There is a considerable overlap, particularly for sales at the global end of the market, as auction houses and galleries combine both the work of deceased and living artists in order to assemble sales of sufficient value to attract international buying. There is also an overlap between the deceased artists within the scope of the Directive and those who died more than 70 years ago.

The global market for 'modern' art as defined by artists dead within 70 years of a sale, suffered a less severe decline than the contemporary market in 2009, falling by only 38%. Global recovery in 2010 returned this sector to its highest level since 2005. In 2010 the UK maintained a share of 20% of the global market.

It is therefore clear that the UK's position is already under pressure in the 'modern art' sector, the single largest part of the fine art market, accounting for 48% of sales by value worldwide. **Adding ARR to sales in this category without first ensuring that there is a global agreement, can only exacerbate what is already a dangerous competitive situation.**

The Market for Works by Deceased Artists (Deceased Within 70 Years of the Date of Sale)[13]

Table 3. The Market for Works by Deceased Artists

i. Total Auction Sales Year-by-Year (Euro Millions)

COUNTRY	2005	2006	2007	2008	2009	2010
UK	€ 410.53	€ 660.44	€ 939.94	€ 900.56	€ 277.38	€ 695.38
EU	€ 637.17	€ 1,019.21	€ 1,373.15	€ 1,295.01	€819.96	€ 1,176.84

Source: Arts Economics (2011) with data from Artnet (2011)

ii. Total Auction Transactions Year-By-Year (Number of Lots Sold)

COUNTRY	2005	2006	2007	2008	2009	2010
UK	10,554	12,543	12,753	12,377	8,671	11,093
EU	37,207	45,122	49,786	55,198	51,775	61,648

Source: Arts Economics (2011) with data from Artnet (2011)

iii. Global Market Share by Value

COUNTRY	2005	2006	2007	2008	2009	2010
UK	26.6%	27.1%	28.8%	33.9%	16.9%	19.9%
EU	41.3%	41.8%	42.1%	48.8%	49.9%	33.7%

Source: Arts Economics (2011) with data from Artnet (2011)

[13] Note: Works by deceased artists are works of art sold at auction by artists that died within 70 years of the date of sale.

iv. Global Market Share by Volume

COUNTRY	2005	2006	2007	2008	2009	2010
UK	16.3%	16.2%	15.0%	13.9%	10.1%	10.3%
EU	57.4%	58.5%	58.7%	61.8%	60.1%	57.4%

Source: Arts Economics (2011) with data from Artnet (2011)

v. EU Market Share by Value

COUNTRY	2005	2006	2007	2008	2009	2010
UK	64.4%	64.8%	68.5%	69.5%	33.8%	59.1%
EU	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Source: Arts Economics (2011) with data from Artnet (2011)

vi. EU Market Share by Volume

COUNTRY	2005	2006	2007	2008	2009	2010
UK	28.4%	27.8%	25.6%	22.4%	16.7%	18.0%
EU	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Source: Arts Economics (2011) with data from Artnet (2011)

Table 4. Sales by Price Segment

a. The Market for Works by Living Artists

i. Share of Value of Sales by Price Band (2005-2010)

2005	€0-€50,000	€50-€200,000	€200-€350,000	€350-€500,000	More than €500,000
UK	20.6%	24.9%	12.1%	8.3%	34.1%
EU	35.9%	23.3%	10.1%	6.2%	24.6%
TOTAL	28.0%	23.0%	11.2%	7.3%	30.5%
2006	**€0-€50,000**	**€50-€200,000**	**€200-€350,000**	**€350-€500,000**	**More than €500,000**
UK	18.4%	25.4%	15.4%	8.8%	32.0%
EU	31.9%	24.2%	12.3%	7.1%	24.4%
2007	**€0-€50,000**	**€50-€200,000**	**€200-€350,000**	**€350-€500,000**	**More than €500,000**
UK	13.3%	21.4%	11.0%	10.3%	44.1%
EU	22.9%	22.2%	10.0%	8.9%	35.9%
2008	**€0-€50,000**	**€50-€200,000**	**€200-€350,000**	**€350-€500,000**	**More than €500,000**
UK	10.1%	14.7%	8.4%	7.6%	59.1%
EU	19.4%	16.3%	7.9%	6.7%	49.7%
2009	**€0-€50,000**	**€50-€200,000**	**€200-€350,000**	**€350-€500,000**	**More than €500,000**
UK	25.9%	25.7%	13.1%	8.8%	26.4%
EU	43.9%	23.3%	10.0%	6.3%	16.6%
2010	**€0-€50,000**	**€50-€200,000**	**€200-€350,000**	**€350-€500,000**	**More than €500,000**
UK	18.9%	18.0%	15.7%	7.9%	39.5%
EU	34.5%	20.4%	12.4%	6.4%	26.4%

Source: Arts Economics (2011) with data from Artnet (2011)

ii. Share of Volume of Transactions by Price Band (2005-2010)

2005	€0-€50,000	€50-€200,000	€200-€350,000	€350-€500,000	More than €500,000
UK	89.2%	7.9%	1.5%	0.7%	1.6%
EU	95.8%	3.3%	0.5%	0.2%	0.5%
2006	**€0-€50,000**	**€50-€200,000**	**€200-€350,000**	**€350-€500,000**	**More than €500,000**
UK	86.5%	9.5%	2.2%	0.8%	2.2%
EU	94.2%	4.3%	0.8%	0.3%	0.7%
2007	**€0-€50,000**	**€50-€200,000**	**€200-€350,000**	**€350-€500,000**	**More than €500,000**
UK	80.1%	13.7%	2.6%	1.5%	3.1%
EU	91.8%	5.9%	1.0%	0.5%	1.0%
2008	**€0-€50,000**	**€50-€200,000**	**€200-€350,000**	**€350-€500,000**	**More than €500,000**
UK	82.8%	10.9%	2.3%	1.3%	2.4%
EU	93.5%	4.5%	0.8%	0.4%	0.7%
2009	**€0-€50,000**	**€50-€200,000**	**€200-€350,000**	**€350-€500,000**	**More than €500,000**
UK	91.1%	6.6%	1.2%	0.5%	1.0%
EU	97.1%	2.3%	0.4%	0.1%	0.3%
2010	**€0-€50,000**	**€50-€200,000**	**€200-€350,000**	**€350-€500,000**	**More than €500,000**
UK	99.3%	0.5%	0.2%	0.0%	0.0%
EU	78.3%	15.1%	2.9%	1.4%	4.1%

Source: Arts Economics (2011) with data from Artnet (2011)

b. The Market for Works by Deceased Artists (Deceased Within 70 Years of the Date of Sale)

i. Share of Value of Sales by Price Band (2005-2010)

2005	€0-€50,000	€50-€200,000	€200-€350,000	€350-€500,000	More than €500,000
UK	18.2%	19.1%	12.0%	7.6%	43.2%
EU	32.1%	21.3%	9.8%	5.9%	30.8%
2006	**€0-€50,000**	**€50-€200,000**	**€200-€350,000**	**€350-€500,000**	**More than €500,000**
UK	13.5%	16.0%	8.3%	6.2%	55.9%
EU	24.9%	19.2%	7.9%	5.8%	42.2%
2007	**€0-€50,000**	**€50-€200,000**	**€200-€350,000**	**€350-€500,000**	**More than €500,000**
UK	10.2%	12.7%	7.4%	5.5%	64.2%
EU	20.7%	16.5%	7.6%	4.9%	50.4%
2008	**€0-€50,000**	**€50-€200,000**	**€200-€350,000**	**€350-€500,000**	**More than €500,000**
UK	8.8%	11.4%	7.1%	5.3%	67.3%
EU	21.5%	15.6%	7.6%	5.1%	50.3%
2009	**€0-€50,000**	**€50-€200,000**	**€200-€350,000**	**€350-€500,000**	**More than €500,000**
UK	19.2%	18.8%	11.0%	6.8%	44.2%
EU	27.2%	16.3%	7.4%	4.7%	44.4%
2010	**€0-€50,000**	**€50-€200,000**	**€200-€350,000**	**€350-€500,000**	**More than €500,000**
UK	10.0%	10.6%	5.7%	5.2%	68.5%
EU	23.8%	15.8%	7.3%	5.0%	48.2%

Source: Arts Economics (2011) with data from Artnet (2011)

ii. Share of Volume of Transactions by Price Band (2005-2010)

2005	€0-€50,000	€50-€200,000	€200-€350,000	€350-€500,000	More than €500,000
UK	88.6%	7.6%	1.8%	0.7%	1.3%
EU	94.8%	3.9%	0.6%	0.2%	0.4%
2006	**€0-€50,000**	**€50-€200,000**	**€200-€350,000**	**€350-€500,000**	**More than €500,000**
UK	86.8%	8.8%	1.7%	0.8%	1.9%
EU	93.7%	4.7%	0.7%	0.3%	0.6%
2007	**€0-€50,000**	**€50-€200,000**	**€200-€350,000**	**€350-€500,000**	**More than €500,000**
UK	84.4%	10.0%	2.1%	1.0%	2.6%
EU	93.2%	4.9%	0.8%	0.3%	0.8%
2008	**€0-€50,000**	**€50-€200,000**	**€200-€350,000**	**€350-€500,000**	**More than €500,000**
UK	86.2%	8.6%	1.9%	0.9%	2.3%
EU	94.6%	3.9%	0.7%	0.3%	0.6%
2009	**€0-€50,000**	**€50-€200,000**	**€200-€350,000**	**€350-€500,000**	**More than €500,000**
UK	91.0%	6.2%	1.3%	0.5%	1.0%
EU	96.3%	2.7%	0.4%	0.2%	0.3%
2010	**€0-€50,000**	**€50-€200,000**	**€200-€350,000**	**€350-€500,000**	**More than €500,000**
UK	89.3%	6.8%	1.4%	0.8%	1.8%
EU	95.7%	3.1%	0.5%	0.2%	0.4%

Source: Arts Economics (2011) with data from Artnet (2011

Table 4 indicates that the British art market is reliant for its global status on individual sales above €50,000. In 2010 sales above €50,000 accounted for over 90% of the value all sales in the deceased artists' sector described above, despite representing only 11% of all sales at auction. The UK holds a 21% global share by value of works sold above €50,000 in this sector (with the US at 40% and China at 24%). In terms of volume, the UK's share of this high-priced segment is 16% of all global transactions.

2. Please describe the factors that have influenced the developments in, and the competitiveness of, the art market in your country over this period:

- **With respect to the works of: (i) living artists; and (ii) deceased artists**
- **By sector: (i) auction houses; (ii) art market dealers and galleries**
- **By price range**
- **With respect to third countries**

See our comments above on the developments of the market and the scale of global competition. With respect to third countries, the diversionary effect of ARR is clearly greater the more valuable a work becomes and is more pronounced where the work is located outside Europe before sale.

There is a clear incentive for a vendor to relocate a sale if the cost of moving a work of art from one country to another is less than the amount of the royalty payable, assuming the sale would be liable to ARR. To test this assumption, the costs to pack, ship and insure a work from the UK to the US were used as a test case[14]. The costs for collector or vendor to pack, wrap, crate and export an individual work of approximately 61cm x 92 cm door to door from London to New York is estimated in the table below using quotes from leading art shippers.

Table 5. Shipping Costs London to New York

Transit Procedure	Cost
Export from UK charges	
Collection from central London	€100
Warehouse handling in/out	€40
Construction of 1 standard gallery case with polystyrene-lining @ 109 x 23 x 83cm, 35kgv	€100
Part load delivery to London Heathrow	€190
Export customs clearance	€85
Airline handling	€80
Airfreight to arrival JFK	€90
Airline surcharges at current rates	€55
Service and documentation	€100
Insurance based on value of €50,000	€125
Import to US charges	
Estimated US customs user fee	€85
Customs clearance services	€120
Bonds and services	€40
Airline import service charge	€50
Delivery from JFK airport to NYC	€175
Intervention and coordination	€80
Total	**€1,515**

Source: Arts Economics (2011)

This table uses estimates based on a work of art worth €50,000. In Table 6 the transit costs are compared at varying price levels to the royalty due on the sale (ignoring other costs of sales, VAT etc).

Table 6. Transit Costs versus Resale Royalties

Price	Transit Costs	Net Price	Royalty Due	Net Price
€35,000	€1,480	€33,520	€1,400	€33,600
€40,000	**€1,490**	**€38,510**	**€1,600**	**€38,400**
€45,000	€1,505	€43,495	€1,800	€43,200
€50,000	€1,515	€48,485	€2,000	€48,000
€100,000	€1,640	€98,360	€3,500	€96,500
€150,000	€1,765	€148,235	€5,000	€145,000

Source: Arts Economics (2011)

Using these shipping estimates, with the lower rate of the levy at 4%, there is an incentive to transport works abroad to avoid the levy for sales of works of €40,000 or more. **In other words, for works greater than €40,000, it will be cheaper for**

[14] This example and Tables 5 and 6 are taken from Arts Economics (2011) *op. cit.*

vendors to pack, crate, insure and export works over to New York for sale than it would be to sell them in the UK and be liable for the levy. In 2010, eligible sales above €50,000 in the UK were valued at around €613 million (including €106 million for living European artists and €507 million for eligible European heirs).

The above calculations do not take into account the deterrent effect that ARR has on art imports. For these the comparative cost of transport are irrelevant since the artworks are coming from outside the EU and could therefore be diverted elsewhere with little or no additional cost (or indeed a saving in transport costs if they are coming from an art market country). Imports play a significant part in maintaining the UK's position as a global entrepôt (see below). The major auctions of modern and contemporary art held by the leading auction houses in London typically contain between 40% and 50% of lots imported from outside the EU. These can be easily identified by a symbol indicating that they are subject to import VAT.

It should be noted that the harmonized EU system of import VAT was specifically designed to prevent EU art markets from being put at a disadvantage in attracting sales from outside the EU. Subject to certain conditions, the 'Temporary Import Scheme' allows an artwork to be imported for sale from outside the EU without the requirement for immediate payment of import VAT. If the artwork is then bought at auction or through a dealer within a set period, and it is then re-exported, the import VAT falls away. It is only when it is bought by an EU citizen and it remains here that the import VAT is payable on purchase. This ensures that import VAT has a neutral effect on the competitiveness of EU art markets and on EU buyers.

Unlike the EU's system of VAT which has a neutral effect on sales, ARR specifically discriminates against art sales that take place in EU Member States.

3. What role, if any, has the resale right played in the development of the art market in your country? What effect has it had on trade in the internal market? What effect has it had in terms of the competitiveness of the art market in your country vis-à-vis other relevant markets that do not apply the resale right?

The evidence (see above) demonstrates that the UK's share of the global market for the work of living artists has declined since 2005.

The decline in the UK's share of the living artists market has not led to a corresponding increase in other EU markets.

By introducing an additional charge that is absent in competing third country art markets, it has contributed to the general decline in the UK's market share.

4. What is the outlook for the art market in your country? What are the major risks and opportunities facing the sector?

The global art market has recovered strongly since the slump of 2009. There is widespread optimism among dealers and auctioneers that this recovery will continue. However, there is a serious question mark over the extent to which this global recovery will be reflected in the UK. Given a level playing field with our overseas competitors, we see no reason why we should not hold our own. But the steady decline in the UK's global market share is not encouraging and the fact that China has overtaken the UK to be the world's second largest art market is a sobering reminder that the art market is mobile and highly competitive.

We are very concerned that the perception is growing that the EU is a complicated and expensive place to do business. ARR may only be one of many factors that create this perception, but it is a powerful one and it directly affects the most valuable sector of the fine art market and the one which we must retain here if we are to maintain our position as an international art market. Given the delicate state of the British art market's global position, extending ARR to such a substantial segment of the art market carries enormous risks.

As for opportunities, we would be confident in the future provided that we can compete on equal terms with our overseas rivals, since we still have the skills and expertise needed.

A successful art market creates huge opportunities to generate wealth and employment (see Appendix). Given a competitive environment in the UK, the art market will continue to support employment and wealth creation.

5. It would be helpful if you could further support your answers to Qs1-5 above with as much evidence as possible, including the following market data for each year over the period 2005- 2010:

- **art market turnover**
- **value of sales by auction**
- **value of sales by dealers and galleries**
- **volume of auction and dealer sales by price range (up to €50,000; €50,001 - €200,000; €200,001- €350,000; €350,001- €500,000; and above €500,000)**
- **imports of works of art**
- **exports of works of art**

For art market turnover, value and volume of sales see data in response to Question 1.

UK Art Imports and Exports – Trade Data:[15]

[15] The information given in these tables is based on data extracted from Eurostat. Statistics in the Eurostat database on external trade and intra-EU trade are compiled on the basis of specific Community regulations which are also, by law, the basis for the compilation of statistics published nationally by each Member State. Nonetheless, methodological differences do sometimes arise, where EU and national statistics do not match exactly, for example due to errors in reporting or under-reporting. Intra-EU trade statistics cover all arrivals and dispatches of goods recorded by each Member State. Arrivals are goods already in free circulation within the EU which enter the statistical territory of a given Member State. Dispatches are goods in free circulation within the EU which leave the statistical territory of a given Member State to enter another Member State. Statistics on trade with third countries or extra-EU trade covers all movable property imported and exported by the EU. Imports are goods which enter the EU from a third country and are placed under the customs procedure for free circulation, inward processing or processing under customs control immediately or after bonded warehousing. Exports are goods which leave the EU for a third country after being placed under the customs procedure for export or outward processing or following inward processing. Statistics on trade with third countries do not, therefore, include goods in transit or those placed under a customs procedure for bonded warehousing or temporary entry (for art fairs or exhibitions for example), nor do they include re-export following entry under one of these procedures.

Table 7. UK Art Trade Data

a. Imports (Works of Art and Antiques)

i. Imports of Works of Art and Antiques to the European Union (Million Euro)

Imports To:	2005	2006	2007	2008	2009	2010
UK	€1,621.51	€1,873.00	€2,195.29	€1,534.92	€1,076.02	€1,545.16
EU27	€3,056.03	€3,366.13	€4,151.05	€3,525.24	€2,447.62	€3,096.64

Source: Arts Economics (2011) with data from Eurostat (2011)

ii. Share of Extra-EU Imports in Total Imports of Works of Art and Antiques

Imports To:	2005	2006	2007	2008	2009	2010
UK	94.3%	92.3%	93.7%	88.7%	93.6%	90.9%
EU27	84.1%	83.8%	87.9%	83.9%	85.0%	86.4%

Source: Arts Economics (2011) with data from Eurostat (2011)

iii. Market Share of EU Imports of Art and Antiques

	2005	2006	2007	2008	2009	2010
UK	53.1%	55.6%	52.9%	43.5%	44.0%	49.9%
EU27	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Source: Arts Economics (2011) with data from Eurostat (2011)

iv. Change in Imports Year-on-Year

	2005/06	2006/07	2007/08	2008/09	2009/10
UK	15.5%	17.2%	-30.1%	-29.9%	43.6%
EU27	6.1%	14.6%	-10.1%	-19.5%	14.6%

Source: Arts Economics (2011) with data from Eurostat (2011)

b. Imports of Fine Art (Paintings, Collages and Sculpture Only)

i. Share of Fine Art in Imports in All Imports of Works of Art and Antiques

	2005	2006	2007	2008	2009	2010
UK	65.0%	70.0%	70.6%	73.0%	75.8%	78.0%
EU27	60.9%	68.8%	71.9%	64.8%	69.1%	71.7%

Source: Arts Economics (2011) with data from Eurostat (2011)

ii. Imports of Fine Art to the European Union

	2005	2006	2007	2008	2009	2010
UK	€1,054.57	€1,310.41	€1,549.36	€1,121.15	€816.15	€1,204.70
EU27	€1,860.14	€2,317.06	€2,985.69	€2,283.67	€1,690.16	€2,219.61

Source: Arts Economics (2011) with data from Eurostat (2011)

iii. Share of Extra-EU Imports in All Imports

	2005	2006	2007	2008	2009	2010
UK	95.8%	91.7%	92.5%	87.3%	93.2%	90.3%
EU27	67.0%	68.1%	74.9%	68.0%	67.4%	76.0%

Source: Arts Economics (2011) with data from Eurostat (2011)

iv. Market Share of EU Imports of Art

	2005	2006	2007	2008	2009	2010
UK	56.7%	56.6%	51.9%	49.1%	48.3%	54.3%
EU27	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Source: Arts Economics (2011) with data from Eurostat (2011)

v. Change in Imports Year-on-Year

	2005/06	2006/07	2007/08	2008/09	2009/10
UK	24.3%	18.2%	-27.6%	-27.2%	47.6%
EU27	24.6%	28.9%	-23.5%	-26.0%	31.3%

Source: Arts Economics (2011) with data from Eurostat (2011)

c. Exports (Works of Art and Antiques)

i. Exports of Works of Art and Antiques to the European Union

	2005	2006	2007	2008	2009	2010
UK	€3,298.58	€3,149.88	€3,156.36	€2,679.74	€1,747.70	€2,559.23
EU27	€4,787.37	€5,196.47	€5,117.80	€4,759.80	€3,513.46	€4,224.58

Source: Arts Economics (2011) with data from Eurostat (2011)

ii. Share of Extra-EU Exports in Total Exports of Art and Antiques

	2005	2006	2007	2008	2009	2010
UK	95.0%	95.6%	95.1%	92.5%	92.5%	92.4%
EU27	89.3%	91.0%	89.9%	87.9%	87.2%	88.9%

Source: Arts Economics (2011) with data from Eurostat (2011)

iii. Market Share of EU Exports of Art and Antiques

	2005	2006	2007	2008	2009	2010
UK	68.9%	60.6%	61.7%	56.3%	49.7%	60.6%
EU27	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Source: Arts Economics (2011) with data from Eurostat (2011)

iv. Change in Exports Year-on-Year

	2005/06	2006/07	2007/08	2008/09	2009/10
UK	-4.5%	0.2%	-15.1%	-34.8%	46.4%
EU27	8.5%	-1.5%	-7.0%	-26.2%	20.2%

Source: Arts Economics (2011) with data from Eurostat (2011)

d. Exports of Fine Art (Paintings and Sculpture Only)

i. Share of Fine Art in Exports of Works of Art and Antiques

	2005	2006	2007	2008	2009	2010
UK	63.1%	61.8%	74.5%	75.3%	76.9%	79.8%
EU27	62.5%	65.3%	74.3%	73.7%	75.8%	75.5%

Source: Arts Economics (2011) with data from Eurostat (2011)

ii. Exports of Fine Art from the European Union

	2005	2006	2007	2008	2009	2010
UK	€1,852.69	€1,688.79	€1,993.58	€1,698.80	€1,007.13	€1,464.05
EU27	€2,593.14	€2,898.25	€3,194.23	€2,906.64	€2,060.14	€2,327.17

Source: Arts Economics (2011) with data from Eurostat (2011)

iii. Share of Extra-EU Exports in Total Exports

	2005	2006	2007	2008	2009	2010
UK	95.8%	95.4%	95.8%	93.1%	92.0%	94.3%
EU27	91.7%	92.0%	90.7%	89.3%	88.2%	89.7%

Source: Arts Economics (2011) with data from Eurostat (2011)

iv. Market Share of EU Exports

	2005	2006	2007	2008	2009	2010
UK	71.4%	58.3%	62.4%	58.4%	48.9%	62.9%
EU27	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Source: Arts Economics (2011) with data from Eurostat (2011)

v. Change in Exports Year-on-Year

	2005/06	2006/07	2007/08	2008/09	2009/10
UK	-8.8%	18.0%	-14.8%	-40.7%	45.4%
EU27	11.8%	10.2%	-9.0%	-29.1%	13.0%

Source: Arts Economics (2011) with data from Eurostat (2011)

e. Net Exports of Fine Art[16]

	2005	2006	2007	2008	2009	2010
UK	€798.12	€378.38	€444.21	€577.65	€190.97	€259.36
EU27	**€732.99**	**€581.20**	**€208.54**	**€622.97**	**€369.98**	**€107.56**

Source: Arts Economics (2011) with data from Eurostat (2011)

Statistics on imports and exports demonstrate that the success of the British art market is built on cross-border trade, making it one of the two largest entrepôt markets in the world. London's success therefore is not built on sourcing business locally, but on the flow of works of art in and out of London for sale.

The UK is the largest importer and exporter of art in Europe, and is a net exporter of works of art. In 2009, for example, the main destination for the country's exports of works of art and antiques was the US with a 46% share, followed by Switzerland with 25%. Other important export destinations included Russia, China, Greece and the UAE with a combined share of just under10%. In total, 94% of all exports from the UK (or £2 billion) went to destinations outside the EU, with the remaining 6% to EU member states.

In the same year imports came largely from the other major global art markets around the world such as the US (54%) and Switzerland (29%). Over 90% of these imports were of fine art. The other main import sources were China, France, Germany, Italy and the Netherlands with a combined 8% share. Some 92% of imports of art and antiques (£1.8 billion) in 2009 were from extra-EU destinations, and the remaining 8% (£149 million) were from EU states.

6. What is the cost of administering the resale right royalty (a) for living artists; and (b) on behalf of deceased artists? Who bears this cost?

The cost of administering ARR

One of the major criticisms of the ARR system is the high cost of collecting and distributing often small ARR payments.

[16] Net exports are measured as exports minus imports and are a measure of a nation's balance of trade. A positive figure implies a trade surplus in works of art (a nation is exporting more art than they are importing), whereas a negative figure is a trade deficit or trade gap (where they are importing more than they are exporting).

The cost of administering ARR falls on collecting societies and on the art market. The former are entitled to deduct their cost from the payments made to benefiting artists. For the art market, the costs cannot be deducted from payments. Although the breakdown of the collecting societies' costs is not made public, it is possible to deduce some idea of costs from published information.

A recent briefing published by DACS, the UK's leading collecting society, revealed that between February 2006 and October 2010 a total of £10.5 million was paid to over 1,800 artists, at an average royalty payment of £360[17]. It would appear therefore that DACS made approximately 29,000 individual payments. As DACS is a 'not for profit' organization, its 15% fee can be presumed to reflect the costs of administering ARR payments. DACS's total costs for distributing £10.5 million would be £1.85 million[18] or a cost for each distribution of about £63.40 (or approximately 17.5% of the average payment of £360). The average cost of distribution for each benefiting artist appears to have been just over £1,000.

To these costs should be added the administrative costs absorbed by the art market itself. A study published in 2008 put these at an average of £25 per transaction, excluding the amortization of set-up costs[19]. The cost to the art market for the 29,000 payments would be approximately £729,000.

The overall costs for distributing £10.5 million to the 1,800 artists benefiting from ARR payments would therefore seem to be in the region of £2.58 million, or about 24.5% of the amount distributed.

In order to explain the causes of the considerable costs that ARR imposes on art businesses, we set out the analysis made by the 2008 study:

Determining the Cost to Dealers and Auction Houses of Administering the ARR[20]

In order to determine the scale of the cost to the art market the procedures that dealers and auction houses have to take in order to account for the ARR payments have been identified.

Dealers provided a detailed list of the processes and working time required for completing a quarterly ARR submission. To determine the average time for administering ARR, the processing time per quarterly submission was divided by the number of ARR transactions for that period. The figures provided by the participating dealers amounted to an average of 35 minutes per transaction. A professional labour rate of £40/hour, reflecting the expertise of those involved (proprietors/accountants) was then applied.

The dealers' average cost per ARR transaction works out at £26.50.

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[17] DACS (2010) *Westminster Briefing Issue 2*. October 2010.
[18] To have distributed £10.5 million net of their 15% fee, DACS would have collected £12.35 million in ARR.
[19] Toby Froschauer, T. (2008) *The Impact of Artists Resale Rights on the Art Market in the United Kingdom,* January 2008, Antiques Trade Gazette, London.
[20] Extracted from Froschauer (2008), *op.cit*., pp.8-12

Dealers indicated that the following steps were required when processing ARR payments.

(i) Determining eligible artists and works.
Many of the dealers interviewed indicated that they have had to spend a significant amount of their own time to determine which artists qualify for an ARR payment, because the collecting agencies' databases that purport to identify eligible artists are not comprehensive. Dealers are compelled to perform this research because they assume liability for missed ARR payments, whereas collecting agencies assume no such responsibility.

(ii) Pricing thresholds that are denominated in euros.
Although most dealers are aware that the collecting agencies are expected to perform the calculations necessary to determine the royalty payment, in order to be aware in advance of their liability and to ensure invoicing accuracy, many dealers consider that they must do these calculations themselves. For instance, one middle market dealer indicated that on several occasions he performed the pounds to euros conversion, only to realize that the price for the work of art on the date of sale fell below the €1,000 threshold because of fluctuations in the exchange rates.

(iii) The processing of ARR corrections and refunds.
Several galleries indicated that they had to correct the ARR levy assessments provided by the collecting agencies. These corrections involved the processing of additional ARR payments after the sale transaction was completed and the refunding of ARR levies erroneously charged to clients.

For auction houses, the transient nature and volume of sales is such that sale transactions occur very quickly. Once a consignment has been sold, the buyer is charged and seller is paid within a few weeks of the sale. Auction houses must therefore be certain, prior to a sale, which art objects qualify for ARR and which do not, so that the parties involved can be charged accordingly and the transaction resolved. Auctioneers need to determine the correct amount of ARR for two reasons: to make potential purchasers aware of which works qualify by indicating them in the catalogue before the sale, and after the art sale, to invoice purchasers correctly. When an eligible artist's ARR payment is overlooked (either by a collecting agency or by the auction house itself) the auction house becomes liable at a later date for payments not collected from the purchaser at the time sale.

Auction house representatives provided a cost per transaction including expenditures incurred during the set-up phase and a cost per transaction excluding set-up costs. The initial set-up costs were amortized across qualifying lots processed in approximately one year of administering ARR. These are likely to decline as more ARR transactions are processed (although, if ARR extends to deceased artists, there will be further substantial set-up costs at that time). The costs excluding set-up fees address purely the time and labour costs across the several departments responsible for administering ARR payments on an ongoing basis. The auctioneers' calculation of the transaction costs ranged between £23.30 and £53.60 depending on whether or not they had included set-up costs.

Key Factors that Have an Effect on Costs for Auction Houses

(i) The set-up costs across several departments.
Auction houses in London are large streamlined companies and administering the ARR payments has an impact across several of their departments. Outside legal consultation to determine ARR includes: artist and object qualification, level of information requests, and artists' allocation among collecting agencies. IT modification involved rewriting or replacing existing software, and implementing new internal procedures for business management, monitoring and accounting. Once these protocols were established, staff required training to mitigate the new procedures.

(ii) Determining qualifying artists.
Like dealers, auction houses explained that the burden of determining eligible artists has fallen onto their shoulders. For small auction houses, having to determine the eligibility of relatively undocumented artists puts more strain on already limited resources. For large auction houses determining qualifying artists is complicated by the volume of lots as well as the difficulty of establishing the nationality of some artists.

(iii) The processing of omissions and refunds.
All of the auctioneers interviewed indicated that they had received inaccurate invoices from the collecting agencies, involving omissions and additions of payments due, which had to be reconciled between the auctioneer and collecting agency. When these omissions had been resolved the auction house then had to update their existing monitoring systems.

Some Specific Administrative Difficulties[21]

In addition to the processing costs born by the market, there have also been other unpredictable costs resulting from errors made by the collecting agencies or through general lack information about qualifying artists.

DACS has a database of artists on its website but this carries a disclaimer that, even if an artist's name does not appear, he or she may still be entitled to receive ARR. The absence of a detailed and reliable database lies at the heart of the difficulties that the whole system creates for the art market, since dealers and auction houses cannot determine for sure whether or not a lesser-known artist qualifies to receive the royalty (i.e. whether he or she is a citizen of the EU or EEA or of a small number of other countries that reciprocate). Auction houses must therefore identify which artists qualify for the royalty prior to the sale so that the lots subject to the ARR can be identified in the auction catalogue and accounted for before the proceeds of the sale are distributed. In cases where an eligible artist has been misidentified by a collecting agency, the auctioneer is no longer able to pass on the royalty to the vendor or the purchaser, and becomes liable for the royalty payments, since under the terms of the legislation his liability continues for as long as six years after the sale.

[21] These are extracted from Froschauer (2008) *op.cit.*, pp 13 – 15 and relate to the period February 2006 to August 2007.

Collecting societies assume no responsibility for omitted names or nationality errors on their databases. There are many examples of the chaos that surrounds the system of ARR and which adds costs and uncertainty to the art market.

One auction house reported four instances where the nationality of an artist had been misidentified before the sale by DACS. In two of the cases the auctioneer was assured that the artists Yan Pei Ming and Li Shuang were Chinese, and therefore not subject to ARR. When it subsequently became clear that to the collecting society that they were, in fact, French citizens, the auctioneer became liable for ARR payments on sales of the artists' work, even though the royalty had not been collected from the purchasers at the time of sale. The auction house was responsible for payments in excess of £28,000, simply because of a lack of reliable information about the artists.

In two additional cases the collecting society had misidentified American artists as being European. The auction house disclosed that DACS had insisted the artist Christo had registered as Bulgarian and that they must collect ARR on sales of his work. However, when the artist himself contacted the auction house directly to explain that he was in fact American, the auction house was required to refund eight of their clients who had wrongly been charged ARR. A similar situation occurred with the artist Claes Oldenburg who contacted the auction house directly to convey that he was American and not Swedish.

As well as losses incurred as a result of a failure to indicate that an artist qualified for the ARR, there were additional costs associated with correcting the errors and refunding ARR payments.

Not even the collecting agencies themselves seem to know for sure which artists qualify. Several dealers claimed that collecting societies had contacted them repeatedly seeking information on particular artists' status and nationality to determine eligibility, as they themselves did know whether or not the artists qualified for ARR. One prominent auctioneer indicated that collecting societies had made as many as 20 queries on artist qualification per quarter and that up to 12 omissions per quarter were the result of wrongful determinations of eligibility. Processing these omissions involved staff across several of their departments including specialists, business administrators and accountants.

7. How many artists have benefited from the resale right for each year over the period 2005-2010? What is the value of the royalties that have been distributed (a) to living artists; and (b) on behalf of deceased artists?

There is a considerable lack of transparency in the way that collecting societies operate. They publish very little detailed information about the number and size of payments that they make to artists.

DACS's most recent briefing, published in October 2010 ('DACS Westminster Briefing'), reported that, since ARR was introduced in the UK in 2006, the Society had made distributions to 1,800 qualifying artists, although no information was provided as to how this sum was shared between individual artists and whether undistributed funds were being retained.

Even allowing for the fact that the smaller UK collecting society, The Artists' Collecting Society (ACS), which represents only artists mandated to collect for them and reportedly has made payments to fewer than 50 artists, it appears that ARR has benefited far fewer artists than had been predicted by DACS before ARR was introduced in the UK.

In its Briefing for Parliamentary Candidates issued in 2005, DACS predicted that the introduction of ARR in the UK "will make a huge difference to thousands of artists in the UK". The 2004 Labour Force Study stated that there were 148,700 working artists in the UK. This figure included commercial and graphic designers, but it was conservatively estimated that there were between 85,000 and 90,000 working artists in the UK. In a briefing note, issued in 2008, DACS stated that: 'DACS's own calculations show that … at least 50% of eligible living artists will benefit.'

It is now clear that, in the largest art market in Europe, with a lower threshold than specified in the Directive (all sales above €1,000 are eligible), fewer than 2000 artists from throughout the whole European Union and other qualifying countries have received payments.

The 2009 *Eurostat Labour Force Survey* reveals that there were 168,232 'sculptors, painters and related artists' living in the 27 member states of the EU. This figure does not include artists whose main employment is derived from other activities (e.g. teaching), nor does it include unemployed artists. It is therefore likely to be a conservative figure for EU artists who qualify to receive ARR.

Research carried out in 2011 by Arts Economics of auction sales found that works by 5,072 living European artists appeared on the auction market in the EU in 2010[22].

From these sets of data it appears that, even based on a very conservative estimate of the total number of artists working in the EU, 97% of all artists gain nothing from ARR.

It is also highly questionable that ARR does much to benefit artists in financial need. A study in 2008 by the UK Intellectual Property Institute found that 70% of the artists who had received ARR payments classified themselves in the top two quintiles of national household incomes (average of £49,320)

Although Collecting Societies do not release details of the breakdown of payments made to artists, this was analysed by a study in 2008[23] which gathered together details of payments made by art auction houses and dealers in the UK in the first eighteen months after ARR came into effect in 2006. This is set out below:

An Analysis of ARR Payments

The quantitative data necessary to determine the artists who have benefited, and the volume of royalties collected, has been supplied by the art market directly. Dealers and auction houses were asked to submit a detailed list of payments made from 14

[22]Arts Economics (2011) *op. cit.* This figure covers all recorded auction sales, including those below €3,000.

[23] Froschauer(2008) *op. cit.,* pp. 16-18

February 2006, the date of ARR implementation, until 31 August 2007. These were amalgamated in order to produce as complete a picture as possible of the pattern of payments. The study covers those businesses that have had the most sales liable to the ARR, including the largest auction houses and the most established secondary market dealers. DACS's website indicated that by September 2007 it had collected £3.5 million and by January 2008 it had collected £4 million in royalty payments since the introduction of ARR. Froschauer's data, collected from dealers and auction houses records total payments of £3.7 million for the period up to 31 August 2007, confirming that the majority of payments were picked up by Froschauer's research.

Summary Conclusions

The total number of individual sales on which ARR was paid:	4,744
The total gross ARR payment on these transactions[24]:	£3,758,903
The total number of artists benefiting:	1,104
The British artists who benefited:	568

Table 8. Distribution by Value

Price Band	Number of Transactions	Percentage of Total Collected
€1,000 - €2,999	1,282	27.0%
€3,000 – 49,999	2,686	56.6%
€50,000 – 199,999	430	9.1%
€200,000 – 349,999	218	4.6%
€350,000 – 499,999	57	1.2%
€500,000 – 1,999,999	56	1.2%
€2,000,000 +	15	0.3%
Total Transactions	**4,744**	

- 83.6% of transactions liable to ARR were for sales below €50,000.
- The top 10% of artists benefiting shared out 80% of the total ARR paid.
- The top 20 benefiting artists received 40% of the total collected. These included Gerhard Richter, Frank Auerbach, Damien Hirst, Antoni Tapies, David Hockney, Miguel Barcelo, Lucien Freud and Banksy.
- During this period, the artist benefiting from the highest total ARR payments received £161,000, the lowest received £28 (before the deduction of the charge made by collecting agencies).
- 316 artists received less than £100. It is not known how much foreign artists received after the distribution charges made by collecting agencies, as no published audit trail exists. One Russian artist, for example, was entitled to a royalty on a sale in the UK of only £38.00, before such deductions.

[24] Figures are as paid by the art market and do not take account of the deduction made by collecting agencies

Artists Benefiting from Lowering the Mandatory Threshold to €1,000

- 331 artists received payments solely as a result of the British Government's decision to reduce the threshold below €3,000.

- 233 British artists benefited, representing 41% of the British artists who received ARR payments.

ARR Payments in Relation to Collection Costs

- Taking the high (£53.60) and low (£23.30) costs to the art market of collection, the total cost to the art market was between £254,278 and £110,535 or between 6.8% and 2.9% of the ARR paid.

- 112 artists received gross payments of less than £40.

- Assuming that the commission charged by collecting agencies is 15%, they will have deducted a total of £563,836 from the total ARR of £3,758,903 leaving £3,195,067 to be distributed to benefiting artists.

- The total cost of distributing payments (art market and collecting agencies) was between about £675,000 and £818,000.

8. What is the value of the royalties that have been collected but not distributed? How are these monies being used?

As this information is not made public by collecting agencies, we are not able to comment on the scale of undistributed royalties. We have been assured that undistributed royalties will be returned to the original payer if they are still retained by the collecting society after six years from the date of the sale.

9. What is the role of the resale right in fostering artistic creativity?
Please support your answers with as much evidence or explanation as possible.

We have found no evidence to suggest that ARR fosters artistic activity. In the 1990's and early 21st century, there is general agreement that the most exciting and creative places for contemporary art were Britain and the United States, neither of which applied ARR. Since then Chinese contemporary artists do not seem to have been hampered in their creativity by the absence of ARR. **It is especially difficult to see how making ARR payments available to the descendants of artists, decades after their death, stimulates artistic creativity.**

However a thriving art market is crucial to artists. There is a strong and mutually advantageous link between artists and the market. Artists are by no means united behind the concept of ARR and many prominent artists have publicly expressed their opposition to the Directive.[25] Gallery owners play a key role in supporting and encouraging artists through the promotion of their work and, without a strong and well organised market for their work, artists would find it harder to exploit their work and to make a living from their skills. There are many examples of the significance of the bond between artist and dealer - Picasso with Kahnweiler, Monet and others with Durand-Ruel and Stanley Spencer with Dudley Tooth.

This is acknowledged by many artists, among them Arnulf Rainer:

'As an artist I want art dealers and galleries that are economically sound and financially well equipped to represent me both at home and on the international art market.'[26]

And Sir Anthony Carro:

'Culture and Art are fundamental facets of British life. Whilst re-examining the creative harvest of the 20th Century attention has to be given to our own artists. They shaped art movements and acclaimed international admiration. Their efforts were nourished and sustained through innovative regeneration programmes as well as by an unprecedented renaissance of new museums. The endless contributions of many farsighted gallerists and art dealers and a strong performing Art Market turned London's Art Scene into a vibrant and unique environment for which Britain is much respected.'

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[25] For example David Hockney, Sir Howard Hodgkin, Michael Craig-Martin and others in a letter to the Times, 20 January 2006 and over 60 leading artists who petitioned the European Parliament against the Directive

[26] From Sailer, J. and Rainer, A. (2004) *Art Market Matters: The Artist and Droit de Suite*, TEFAF: Helvoirt.,(p. 59).

Appendix : Economic Impact[27]

The art market makes a significant contribution to the British economy, in terms of the employment and the skills that it generates and through related expenditure which supports indirect employment.

a) Businesses and Employment

The British art trade is a high value employer, with some 10,000 businesses directly supporting over 60,000 jobs. (These figures include all dealer firms listed in directories and an estimate of those not advertised in directories, together with specialist art auction companies and auction houses that hold art sales only as part of their activities). Although businesses vary, the average dealer employs 3-4 people and the average auction house 20.

Predominance of Smaller, Knowledge-based Businesses

The British art and antiques market is mostly made up of a number of small, knowledge-intensive businesses that employ a gender-balanced mix of highly educated individuals. The cultural industries play a leading role in the move towards a knowledge economy.

In the auction sector, there is a large variation in the size of enterprises and in the numbers employed. Some of the smaller auction houses employ between 5-10 staff, whereas the top auction houses of Christie's, Sotheby's, and Bonhams employ some 1,850 staff in the UK.

Survey evidence from British art and antiques dealers reveals that most companies employed three or four people, classifying them as "small to medium enterprises" (SMEs), with the majority also categorised as small companies in terms of turnover (less than £8.5 million per annum).

Division between Full Time and Part Time Employment

Employment in the top-tier auction houses tends to be predominantly full-time, with only 15% of workers in part-time or temporary positions. In the UK economy as a whole the average is slightly higher at 22%. This proportion is significantly higher in the second tier auction houses which showed on average 47% of workers in part-time and temporary employment.

36% of cultural workers in the UK are in part-time or temporary contracts versus 31% for the labour force as a whole. The art dealer sector is similar to the workforce overall, with 68% working full-time and 32% part-time or temporary.

Gender Balance of Employment

The average female share of employment in the top tier auction sector is 53%. In the second tier houses, the share of male and female employment is balanced at 50:50. The art dealer sector in the UK is more male dominated with an average gender breakdown on 57% male and 43% female.

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[27] The e information in the appendix is taken from Arts Economics (2010) *The British Art Market: A Winning Global Entrepôt,* BAMF: London.

An Educated Workforce
Cultural workers tend to be more highly educated than the wider labour force. 48% of workers in this sector have third level/ university education versus 31% of the general UK labour force, 26% of the labour force in the EU (and 35% in the US). In the top-tier auction houses, it is estimated that the share of employees with a university education is as high as 88%. In the second tier houses there is much more variation between individual companies, but on average the share of those with university degrees is 33%. Some 59% of art and antiques dealers in the UK hold similar third level qualifications.

b) Fiscal Contribution
Another significant way in which the art market contributes to the UK economy is via the taxes and levies it pays directly to the Exchequer on sales, incomes and profits. Table 1 is a highly conservative estimate of the total tax revenue generated by the art market. In 2009, a poor year for the market, at least £911 million accrued to the Exchequer, down from an estimated £1.2billion in 2008. Income tax and national insurance were the largest component (48%) of total fiscal revenues in 2009. The net VAT reported in Table 1 is a conservative estimate, but it is at a comparable level with other similar economic sectors. Corporation taxes represent a very conservative estimate based on a uniform rate of profit, and based on a particularly poor year of aggregate sales in 2009.

Table 1. Treasury Take from the Art Trade 2008 and 2009 (£ millions)

YEAR	TOTAL	CORPORATION TAX	NET VAT	INCOME TAX
2008	£1,150.1	£472.3	£263.5	£414.3
2009	£910.9	£322.9	£173.7	£414.3

Source: Arts Economics (2010) NOTE: VAT on sales in 2009 was temporarily reduced to 15% (from 17.5%). Net VAT is an estimate of VAT on sales less input taxes plus net import VAT.

c) Ancillary Impact
The British art market also creates substantial revenue and jobs though a range of ancillary businesses and support services used by dealers and auction houses. It is estimated that in 2009, the UK art trade spent £1.3 billion on support services, employing close to 66,000 people. These figures were down from a high of £2.0 billion and close to 98,000 jobs in the recent peak of the market in 2008.

Table 2. Ancillary Expenditure and Employment UK Art Trade 2008 and 2009

SERVICE	EXPENDITURE 2008 (€M)	EXPENDITURE 2009 (€M)	NUMBERS EMPLOYED 2008*	NUMBERS EMPLOYED 2009*
Advertising and Marketing	£520.06	£356.35	25,172	17,625
Auditors, legal and professional fees	£198.10	£135.74	9,588	6,714
Banking Interest and Fees	£175.21	£120.06	8,481	5,938
Conservation and Restoration	£267.54	£183.32	12,949	9,067
Insurance and Security	£202.15	£138.52	9,785	6,851
Packing and Shipping	£197.48	£135.32	9,559	6,693
Printing, photography, catalogues	£247.40	£119.51	11,975	5,911
Technology	£214.43	£146.93	10,379	7,267
TOTAL	£2,022.37	£1,335.75	97,888	66,066

*Source: Arts Economics (2010) *Numbers employed based on the median UK salary in 2008 and 2009.*

The Art Market's Support for Specialized Skills
The art and antiques market fosters specialized skills that might not thrive without its support. These include conservation and restoration which have developed into a specialized industry of their own, with their own academic and training infrastructure. Similarly, although insurance, packing and shipping are used in many industries, the art trade has spawned the development of high value niche market businesses to cater for the particular needs of buyers and sellers in the art market.

Increases in efficiency yielding technology and communications are significantly affecting the UK art market and are expected to be a key area for growth in the future, due both to real advances in communications and IT, and a phase of catch-up by the market from years of being grossly under invested in technology.

d) Invisible Effects – The Art Market as an Attraction for Tourism
The art market supports revenues and employment indirectly by adding to the cultural and historical attractions available to visitors to London and other centres throughout the country. Cultural tourism is one of the largest and fastest growing sectors of global tourism markets, and art, culture and the creative industries are increasingly being used to promote destinations.

The International Passenger Survey revealed that 7.4 million visitors from overseas (or 23%) visit museums or art galleries. London is a hub for tourists interested in the art market and over half of inbound tourists to the city on holidays visit art venues during their stay.

A recent study by Deloitte found that the visitor economy as a whole directly generated 4% of the UK's GDP and, when the indirect contribution of related sectors in the supply chain to tourism were taken into account, the estimated contribution of tourism to GDP was 8%, or £114 billion.

It is thought that cultural tourism accounts for at least 40% of all tourism, giving an estimated 1.2 million jobs in that sector in 2010.

Cultural tourists have also been shown to be the highest spenders within different tourist segments. It is estimated that at least 28% of spending by overseas visitors to the UK is directly motivated by arts, cultural and heritage.

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