

The EU Directive on ARR and the British Art Market

Prepared for
The British Art Market Federation by
ARTS ECONOMICS



Foreword

In 2011 Arts Economics produced extensive data for the British Art Market Federation and the European Art Market Coalition to assist them in their response to the European Commission's detailed consultation on the implementation and effect of the Artists' Resale Rights Directive. This report brings this research up to date by examining UK and EU sales in the relevant sectors of the art market since 2011. The research is based on extensive analysis of auction and dealer data in the global and EU art markets.

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Summary

- The sectors of the UK art market that are affected by ARR are defined as Modern art and Post War & Contemporary. Together these two sectors accounted for 70% of the UK fine art market by value in 2013.
- In 2013, Post War & Contemporary art was the largest sector of the UK market with 39% of sales by value.
- Auction sales in Post War & Contemporary art in the UK dropped 12% year-on-year in 2013, against the background of an 11% rise in the global market as a whole. The US experienced a 20% rise and China 17%.
- The UK's global market share in the Post War & Contemporary sector more than halved in the five years to 2013 (from 35% in 2008 to 15% in 2013).
- From 2011 to 2013, sales in the UK's market for the work of living artists dropped 8% in value in contrast to the US, where sales grew 6%. In the five years from 2008 to 2013, sales in this sector in the UK have fallen by 22%, versus almost 70% growth in the US in the same period.
- The UK has lost global market share in the market for living artists' works since 2008, dropping 21 percentage points from 37% in 2008 to just 16% in 2013.
- Focusing specifically on the market for the work of European living artists, global sales at auction have grown by 12% from 2008 to 2013. However the EU as a whole saw a 9% drop in the value of sales. Sales in the UK contracted by 31% over the five-year period, in contrast to the US, where aggregate sales of the work by European living artists grew 44%.
- The UK lost significant market share in the global market for European living artists, dropping 24 percentage points from 2008 to 2013, whereas the US gained 6% in the same period.
- Focusing specifically on the "heirs market" (works by artists deceased within 70 years of the sale), sales in the UK fared well up to 2011, but were stagnant during 2012 and fell by 10% in value in 2013. In contrast, the US market grew 62% in value in the period from 2011 to 2013.
- The UK held a 15% share of the global "heirs market" in 2013, down 2% year-on-year. The US dominated the sector, with 38% by value.
- In the "European heirs" market (works by European artists deceased within 70 years of the sale), in the three-year period from when ARR was

fully extended to this sector, the UK has lost share and seen a decline in sales.

- While globally the “European heirs” sector as a whole grew in value from 2011 to 2013, it is clear that sales are being diverted from Europe to the US and other external regions: the EU as a whole witnessed a 12% contraction in sales over the three years and, UK sales fell 19%.
- The UK was the largest individual market in the “European heirs” sector in 2011 when ARR was first introduced (with a 39% share versus 28% in the US). However, since then, the UK’s loss of 9% share and a concurrent rise of 9% in the US, has meant that the US is now the largest market for sales of European artists in this category worldwide.
- From 2010 to 2013, the share of the UK in global sales of Old Master paintings and Impressionist and Post-Impressionist works remained stable.
- Works by fewer than one in 100 British artists eligible for ARR appeared on the entire EU auction market in 2013.

1 General Background

In 2013, the value of the British market for fine and decorative art and antiques reached a total of £8.0 billion, down 3% year-on-year in GBP terms. The UK was the third largest market globally in 2013, with a share of 20% of world sales by value, down 3% on 2012. The EU as a whole also lost global share, falling 3% in share year-on-year to 32% in 2013. This is down 21 percentage points from 2003 when it accounted for 53% of the value of the global market.

However, internally within the EU, the hierarchy of sales has remained stable over the last ten years, with the UK consistently having by far the highest total sales by value. The UK was the largest market again in 2013 with 63% of total sales.

2 Introduction

This report examines the recent performance of the British art market, in the sectors liable to or affected by Artists' Resale Royalties (ARR). It follows on from a number of studies published in the context of the European Commission's consultations on ARR. The European Commission's conclusions were published in 2011 (*Report on the Implementation and Effect of the Resale Right Directive 2001/84/EC*). It examined the period from 2006 to 2010, during which ARR was applied in the UK only to resales of the work of living artists.

The Commission found that European markets had come under significant pressures, particularly with respect to international competition, and had lost market share in the period since ARR was introduced. However, despite the correlation between the introduction of the levy and the loss of share, the Commission considered that it was difficult to show causality. While the report found no clear patterns that could conclusively link the decline in the European market specifically and solely with ARR, it noted that:

*"In summary, sellers will rationally move to do business in those markets where the transaction will be most beneficial, and the resale right is one in a number of factors that play a role in the choice of sales location... there are clearly pressures on European art markets, in all price ranges, and for both the auction and dealer sectors, and it is recalled that the scope of the application of the resale right will be significantly expanded following the ending of the derogation for the works of deceased artists on 1 January 2012."*¹

At that time, Arts Economics compiled and analysed relevant market data for detailed responses to the Commission by BAMF on the effects of ARR. Some of the main conclusions found from this analysis were:

¹European Commission (2011) Report on the Implementation and Effect of the Resale Right Directive (2001/84/EC <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52011DC0878>.

² Post War & Contemporary art is defined here as artists born after 1910 (with the addition of a small number of exceptional names that are included in the cohort based on their relevance). Modern is defined as artists born between 1875 and 1910. Data on the global market is from Arts Economics (2014) *The TEFAF Art Market Report*

- That the UK's share of the global market for the work of living artists had declined from 2005 to 2010, dropping 6 percentage points from 25% to 19%. 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 was 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.
- There were no signs that the introduction of a single system of ARR on the work of living artists had resulted in a transfer of sales from the UK to other EU art markets. The market share of most other art markets in the EU remained generally static over the period 2005 to 2010. The internal art market had remained unaffected by the introduction of a single system of ARR on living artists: the decline in the UK's share of the living artists market since the introduction of ARR had therefore not led to a corresponding increase in other EU markets as the Directive had envisaged. The UK's declining share was therefore a net loss to the EU as a whole.
- The administrative costs of ARR on art businesses, particularly on the smaller businesses that make up most of the British art market, were onerously high, particularly relative to the net benefits to artists. The research showed that at least 98% of all artists in the UK received no benefits from ARR whatsoever.

The data presented by Arts Economics appeared to demonstrate that the introduction of an additional charge, absent in competing third country art markets, had contributed to the general decline in the UK's market share. Although ARR may only have been one of many factors causing the shift in the art market away from the EU, the aggregation of many factors leads to the loss of market share over time. It was concluded that, while ARR may not be the sole factor in the EU's relative decline, it was a contributory factor which was likely to have an increasing effect as time went on, by deterring major art sales from taking place in the EU.

It was also noted that perception was an important factor, and that the existence of ARR on sales was adding to an increasing perception, particularly on the part of overseas clients, that the EU was an increasingly costly and complicated place to do business.

Since the European Commission's report, ARR has been extended in the UK to European artists' heirs for 70 years after the date of the sale from January 1, 2012. The present study therefore examines the larger segment of the market covering both the work of living artists and that of the heirs of deceased artists, which extended the coverage of ARR from 21% of the value of the fine art market to 70%.

This report is divided into five main areas of analysis, each increasingly focused on a more specific segment of the market.

Section 2 examines the UK's Modern and Contemporary art sectors as a whole, within which the categories qualifying for ARR are found.

Although not every sale in this overall category will be liable to ARR (it applies to the work of EU artists only), the UK's preeminent position as a global market hub is greatly dependent on assembling a critical mass of works for sale in order to attract international buyers. This does not depend solely on local supply but by sourcing works from overseas. It is important therefore in assessing the effects of the ARR Directive that sales of the wider Modern and Contemporary sectors are examined , as these sales are the basis for the sale of qualifying works, which are not sold in isolation but as part of this larger cohort.

Section 4 looks at the market for the works of living artists in the UK (which form part of the Post War & Contemporary sector), first including works sold in the UK created by artists of all nationalities, and then focusing down further (in Section 5) on the market for works by European living artists only, which are the sales which have been specifically eligible for ARR since 2006.

In the same way, Section 6 considers the "heirs market", that is the market for works of art sold within 70 years of an artist's death. It first examines the performance and global market share in the wider sector of works by deceased artists of all nationalities sold in the UK. Then in Section 7, the analysis again narrows its focus to consider only deceased European artists, and hence those heirs specifically eligible to ARR since January 1, 2012.

2 Modern and Contemporary Art Sales in the UK

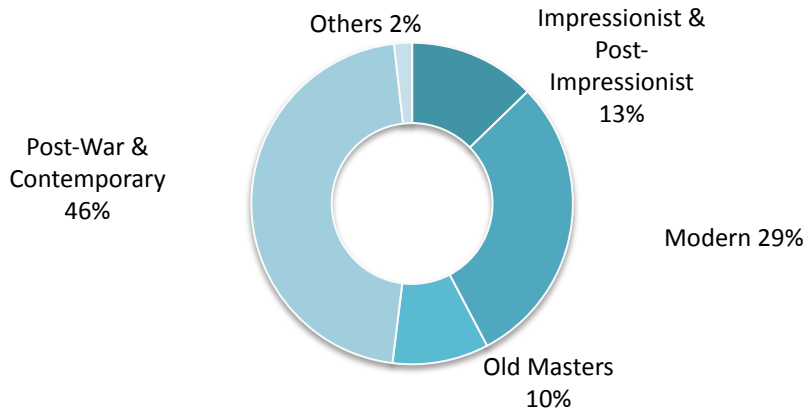
In terms of value, fine art has dominated decorative art and antiques over the last few years, especially at the higher end of the market. Within the fine art market, the highest individual prices, largest aggregate sales and most significant growth in 2012 and 2013 has been in Post War & Contemporary art.

In 2013, Post War & Contemporary art accounted for 46% of the value of the fine art auction market, and together with the Modern art sector made up 75% of all global fine art sales.² In the UK in 2013, Post War & Contemporary art was also the largest sector of the market, with 39% of fine art sales by value (and 34 % of all transactions). Modern art was the second largest, with a share of 31% of the value of fine art auction sales and 26% of transactions.

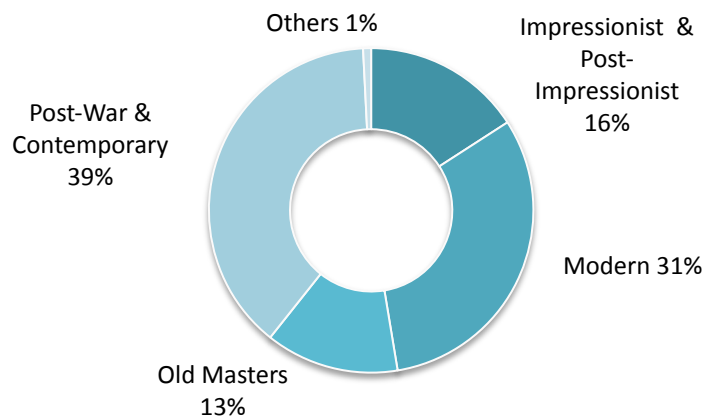
² Post War & Contemporary art is defined here as artists born after 1910 (with the addition of a small number of exceptional names that are included in the cohort based on their relevance). Modern is defined as artists born between 1875 and 1910. Data on the global market is from Arts Economics (2014) *The TEFAF Art Market Report 2014*. TEFAF: Helvoirt.

Figure 1 Distribution of the Fine Art Auction Market by Sector in 2013

a. Global



b. The UK



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While the UK has held its position in some older sectors of the market, since 2010, its share of Modern and Post War & Contemporary markets has declined.

Significantly, auction sales in Post War & Contemporary art in the UK dropped 12% by value year-on-year in 2013, in marked contrast to competing markets. In 2013 the global market in this category increased in value by 11%, reaching its highest ever recorded level of €4.9 billion in auction sales.

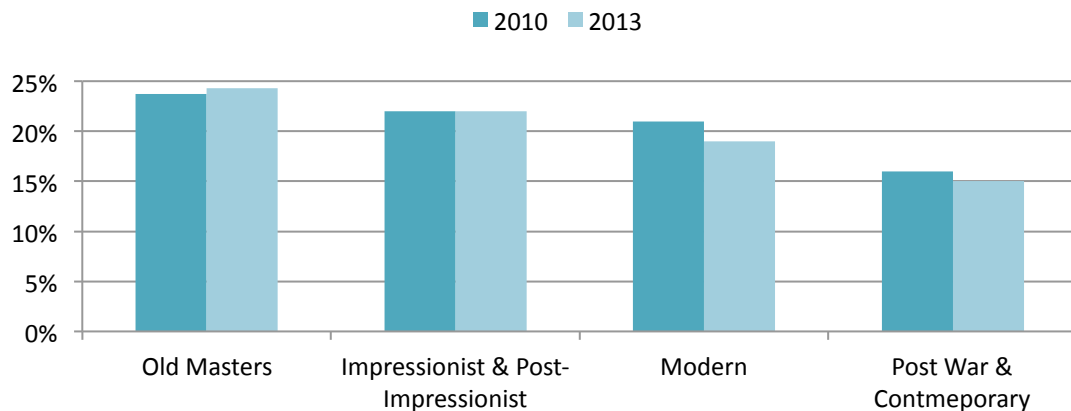
The US market saw growth of 20% in value in the Post War & Contemporary art sector (and had the highest market share of 44%), while sales in China advanced 17% year-on-year (maintaining the second highest market share of 26% by value).

The UK's share of the global market for Post War & Contemporary art more than halved in the five years from 2008 (from 35% to 15%). In the last four years,

while other markets have recovered and stabilised, the UK has continued to lose share.

Interestingly, this has not been the case in other fine art sectors. From 2010 to 2013, for example, the UK's share of sales of Old Master paintings and Impressionist and Post-Impressionist works increased slightly or remained stable.

Figure 2 The UK's Global Market Share by Sector: Fine Art Auction Sales



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3 The Markets Directly Affected by ARR

On January 1 2006, Artists' Resale Royalties, a levy on art resales intended to benefit artists and their heirs, was introduced throughout the EU under Directive 2001/84EC. This Directive imposed a uniform system of ARR throughout all EU member states. On January 1 2012 it was extended in the UK to the heirs of deceased artists for sales up to 70 years after the artist's death.

Given that ARR is in place in the EU and not in the other major global art markets such as the US and China, there has been considerable debate regarding its impact on the UK art market and the potential diversion of trade in the high value Contemporary and Modern sectors. To assess the effects the Directive has had on sales in recent years, it is necessary to focus on the parts of the Modern and Contemporary market potentially affected by ARR: the resale market for works by living artists and the resale market for works by artists deceased within 70 years of the date of the sale, or the heirs market.

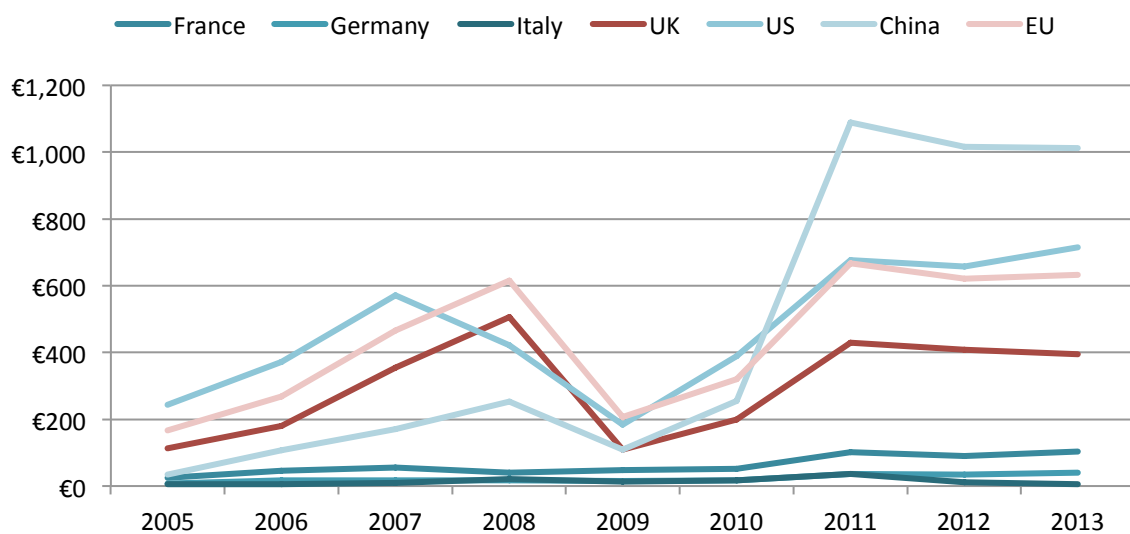
4 The Market for Works by Living Artists

In terms of overall value, the market for the works of living artists, regardless of their nationality, accounted for 21% of fine art auction sales by value in 2013 in the UK and 31% of all transactions. Between 2006 and 2008, UK sales grew against a background of a worldwide boom in Contemporary art. Like most markets, it then contracted severely in 2009. The UK achieved a stronger

recovery than many other European markets in 2010, increasing by 83%, versus the rest of the EU where sales rose by only 24%. Nonetheless, these increases were significantly less than in China and the US (which saw a rise in sales values of 112% and 133% respectively).

Since 2010, the UK market has been stagnant or has declined. From 2011 to 2013 sales in the UK dropped 8% in value, whereas US sales grew 6%. In the five-year period from 2008 to 2013, sales in the UK fell by 22%, whereas in the US they grew by 70%.

Figure 3 Total Sales of Works by Living Artists at Auction 2005-2013

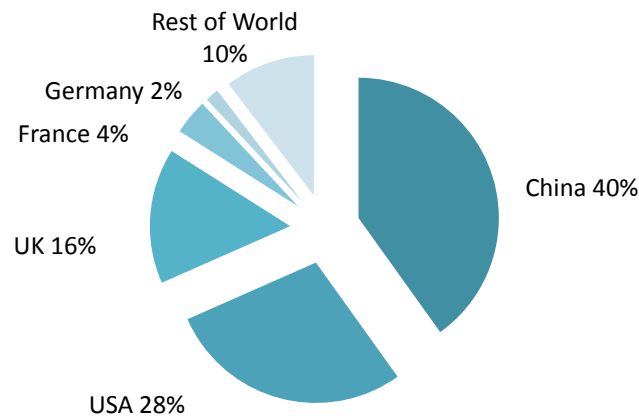


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In terms of global market share, the UK has lost share in the market for living artists' work since 2008, dropping 21 percentage points from 37% in 2008 to just 16% in 2013. China made significant gains, albeit from a very low base, and was the largest market by value in 2013. The US had the second largest share of the sector, with a 28% share of total sales.

It is worth noting that of the 8,728 artists whose work was sold at auction in the US in 2013, 20% were European artists, and the share of European artists selling in the US has increased 2% from 2011. In the UK, 44% of the 3,540 living artists whose work was sold at auction in 2013 were European.

Figure 4 Market Share by Value of the Works of Living Artists of All Nationalities at Auction 2013



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Table 1 shows the change in the share of the market for the works of living artists over the last five years at varying price points. The UK, and the EU generally, have lost the most share at the higher priced ends of the market. Although the UK still retained a 20% share of the market for works priced over €200,000, this share has more than halved over the five year period from 2008 to 2013.

Table 1 Market Share by Value of Living Artists at Auction 2013

	All Works			Works Over €50,000			Works Over €200,000		
	2008	2013	Change	2008	2013	Change	2008	2013	Change
France	2.9%	4.1%	1.1%	1.6%	2.7%	1.1%	1.1%	2.2%	1.0%
Germany	1.2%	1.6%	0.3%	0.5%	0.8%	0.2%	0.1%	0.4%	0.3%
Italy	1.5%	0.3%	-1.2%	0.8%	0.5%	-0.3%	0.3%	0.3%	0.1%
Sweden	0.4%	0.6%	0.2%	0.1%	0.3%	0.2%	0.1%	0.3%	0.2%
Switzerland	0.3%	0.4%	0.1%	0.1%	0.2%	0.1%	0.0%	0.2%	0.2%
Austria	0.5%	0.6%	0.2%	0.1%	0.3%	0.2%	0.0%	0.1%	0.1%
UK	36.4%	15.6%	-20.8%	40.7%	18.0%	-22.7%	44.5%	19.7%	-24.8%
EU	44.2%	25.1%	-19.1%	44.3%	22.9%	-21.4%	46.3%	23.1%	-23.2%
US	30.3%	28.3%	-2.0%	31.0%	31.9%	0.9%	31.6%	36.3%	4.6%
China	18.2%	40.1%	21.9%	19.5%	41.0%	21.5%	18.6%	37.9%	19.3%

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Against the background of the EU's general decline in global market share, the UK still remains the EU's largest market for living artists' works, accounting for 62% of sales by value in 2013 and has averaged 67% over the last five years. France has been consistently in second place with 16% in 2013 (and an average of 15% since 2008) and Germany has also ranked third each year of the last five years, averaging 5%. France has a higher share of the volume of

sales than the UK, with 24% of all transactions in 2013, followed by Italy with 19% and then the UK with 17%.

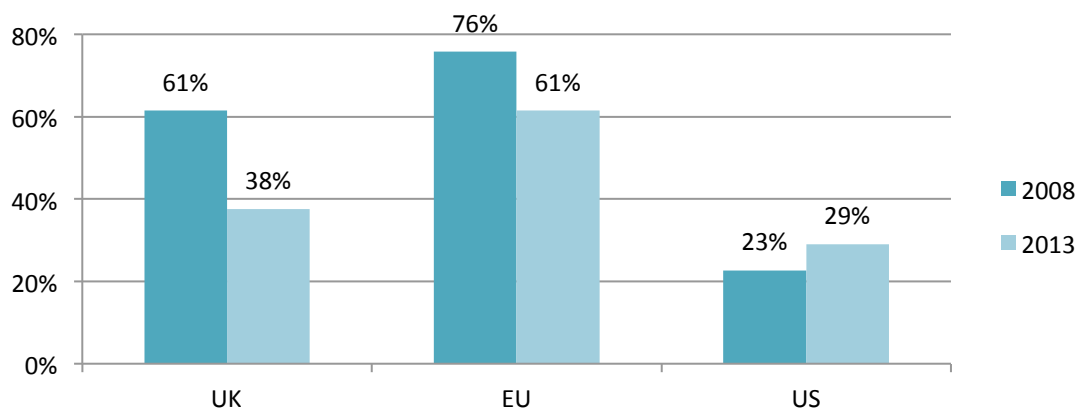
Average prices in the UK in 2013 were over five times those in France and Germany and over ten times most of the smaller markets in Europe. At the top end of the market, the UK dominates sales, with 90% of the value of the market for living artists works sold over €500,000 and 92% of those sold over €1 million.

5 The Market for Works by European Living Artists

In the market for European living artists (i.e. those specifically eligible for ARR in Europe), worldwide sales at auction have grown by 12% over the period from 2008 to 2013. However, the main gains in value have not been in Europe. The EU as a whole saw a drop in sales of 9% and values in the UK contracted by 31% over the five-year period. This is in marked contrast to the US, where sales by European living artists grew 44%.

The divergent performance of sales has been reflected in changing market share in this sector over time: the UK lost significant market share, dropping 24 percentage points from 2008 to 2013, whereas the US gained 6% in the same period. While the UK remained ahead of the US in terms of value in 2013, there were 5% more transactions by volume at auction in the US than in the UK in this sector, and more works by 7% more individual European artists sold in the US than in the UK during the year.

Figure 5 Market Share by Value of European Living Artists Work Sold at Auction 2013



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In the context of the ARR Directive it is worth noting that there were altogether 1,255 qualifying living artists whose work was sold at auction in the UK in 2013, at prices making them eligible to receive ARR payments (over €1,000). This includes both British and other European artists. Of these eligible artists, 600 were British. The *UK Labour Force Survey* states that there were 52,000 visual artists working in the UK in 2013. This is likely substantially to understate the total

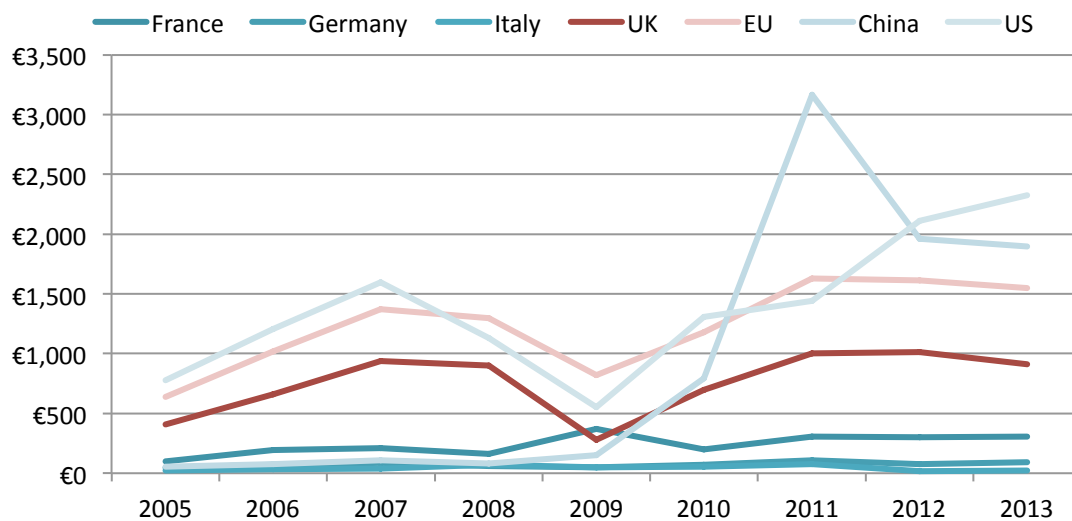
number of artists in the UK as many work primarily in other creative and non-creative industries and register other jobs such as teaching and design as their first profession on the Census³. Even given this low estimate of the total number of artists in the UK, ARR could still only have benefitted one in 100 British artists in 2013.

6 The Heirs Market

The “heirs’ market” (specifically the work of artists deceased within 70 years) accounted for 48% of fine art auction sales by value in the UK in 2013 and 42% of all transactions. Despite some volatility, including a strong contraction in the market in 2009, the sector fared relatively well up to 2011, growing 54% in nominal value from 2006 to 2011.

However, during 2012 sales stagnated, growing by just 1%, and in 2013 they fell 10% in value. In contrast the US market grew 62% in value in the period from 2011 to 2013. In spite of a volatile performance in this sector in the Chinese market, China has seen its market grow by over 20 times in the last ten years.

Figure 6 Total Sales by Value in the Heirs’ Market at Auction 2005-2013



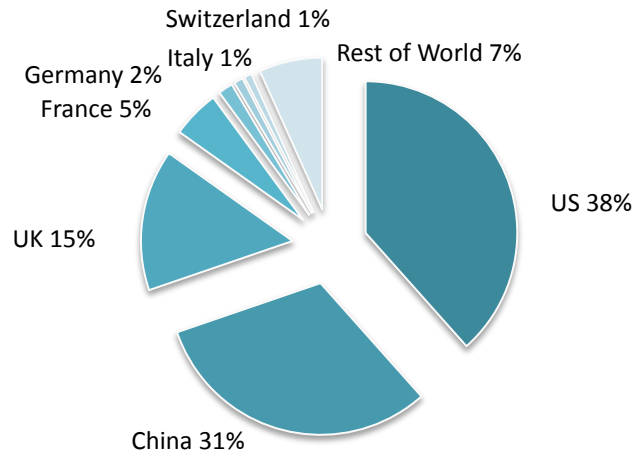
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In terms of market share, the UK held 15% of this market in 2013, down 2% year-on-year. The US dominated, with 38%, as it became the leading marketplace for sales of the highest priced works of art. At the higher end of the market (works priced over €1 million), the US had a 58% share. It is interesting to note

³ Figures from the DCMS compiled in their *Creative Industries Economics Estimates 2014* show that of the 2.6 million individuals employed in the creative industries in the UK, there were at least 102,000 involved in crafts, 166,000 in design and 277,000 in the visual and performing arts and music. Many of these individuals are visual artists, although may not be classified as such in the Census and Labour Force Surveys.

that 42% of the artists whose works were sold for over €1 million in the US in this sector were European.

Figure 7 Share by Value of Heirs Market at Auction 2013



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Table 2 shows that the UK and EU generally lost share in this sector from the start of 2012 to the end of 2013, as higher value sales increasingly took place in the US. As in the living artists' sector however, the hierarchy of sales within the EU did not change year-on-year, with the UK remaining by far the largest market, with just under 60% of sales by value, with France at 20% and Germany in third rank with 6%. Within the EU, the UK has consistently accounted for the highest average prices in this sector, and in 2013 these were five times those in the next largest market, France, and up to 15 times those in smaller European markets.

In the highest priced segments of the market, the UK dominates sales, with an 82% share of the value of the market for works sold over €500,000 and 86% of those sold over €1 million.

Table 2 Share by Value Heirs Market

	All Works			Works Over €50,000			Works Over €200,000		
	2012	2013	2012-2013	2012	2013	2012-2013	2012	2013	2012-2013
France	5.0%	5.1%	0.0%	4.1%	4.1%	0.0%	3.6%	3.4%	-0.2%
Germany	1.3%	1.6%	0.3%	0.7%	0.9%	0.2%	0.4%	0.6%	0.2%
Italy	0.3%	0.3%	0.1%	0.5%	0.6%	0.1%	0.4%	0.4%	0.0%
Sweden	0.7%	0.5%	-0.2%	0.5%	0.3%	-0.1%	0.3%	0.2%	-0.1%
Austria	0.4%	0.5%	0.1%	0.2%	0.3%	0.1%	0.2%	0.1%	-0.1%
UK	17.0%	15.1%	-1.9%	18.4%	16.1%	-2.3%	19.8%	17.0%	-2.8%
EU	27.1%	25.5%	-1.5%	25.2%	23.2%	-2.0%	25.0%	22.2%	-2.8%
China	32.8%	31.3%	-1.5%	32.7%	31.6%	-1.1%	29.5%	28.9%	-0.6%
US	35.3%	38.4%	3.1%	38.5%	41.8%	3.3%	42.8%	46.5%	3.7%

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7 The “European Heirs” Market

Looking specifically at the market for the work of European artists deceased within 70 years of the sale (the “European heirs” market), in the three-year period from when ARR was fully extended to this sector, the UK has lost share and seen a decline in sales.

Table 3 shows the total sales values in this sector from 2011 to 2013. While the sector as a whole grew in value over the period, it is clear that sales are being diverted from Europe to the US and other external regions. The EU witnessed a 12% contraction in sales over the three year period and within it, UK sales fell 19% in contrast to significant increases in the US and China.

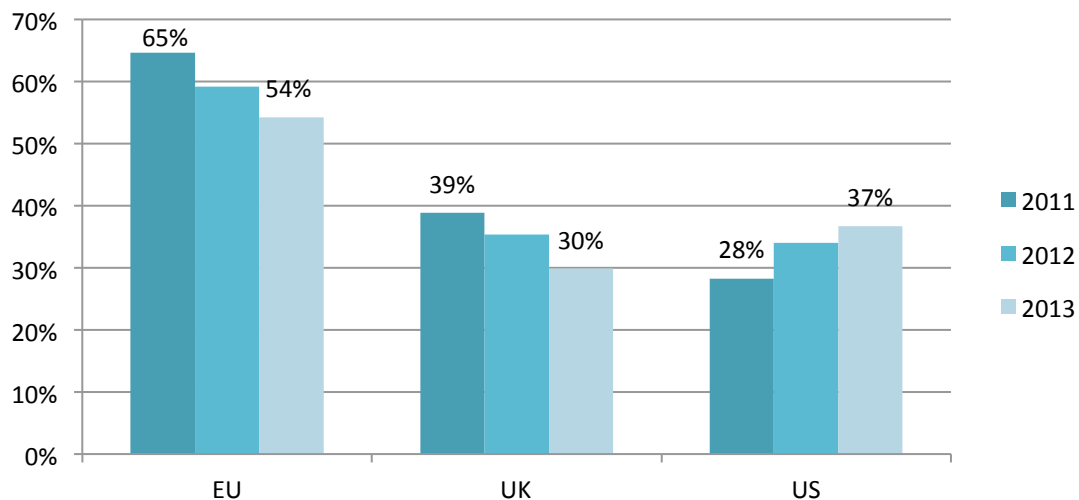
Table 3 Total Sales by Value of the European Heirs Market

	2011	2012	2013	Change in Sales
World	€ 2,046.2	€ 2,129.4	€ 2,152.5	5%
EU as a Whole	€ 1,323.0	€ 1,259.3	€ 1,167.5	-12%
US	€ 578.9	€ 725.2	€ 789.8	36%
UK	€ 794.6	€ 753.8	€ 642.9	-19%
France	€ 240.7	€ 238.9	€ 231.1	-4%
China	€ 80.8	€ 75.3	€ 140.1	73%

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This trend has significantly altered market share in this sector. The UK was the largest national market in the sector in 2011 (with a 39% share versus 28% in the US). However within two years of the introduction of ARR, the UK's loss of 9% share, and a concurrent rise of 9% in the US, has meant that the US is now the largest market for sales of European artists in this category worldwide. China's share, although still relatively small, nearly doubled over the period from 4% to 7%.

Figure 8 Market Share by Value of European Heirs at Auction 2013



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8 Outlook

There are clear signs that the UK's position as a global market hub is under pressure. In the key areas of Modern and Post War & Contemporary art, which together account for 48% of the UK art and antiques market as a whole and 70% of the fine art market, sales in the UK have continued to decline.

In the sector for works by living artists, sales have declined over the last few years, in marked contrast to the performance of external markets, such as the US. The ARR was extended to the work of deceased artists in January 2012. Since then, sales in this category have also declined.

There has been much discussion about the effects on the British art market of the ARR levy since its introduction in 2006 and its extension to the work of deceased artists in 2012. The continued fall in both overall value and market share in the two sectors liable to ARR would suggest that the presence of this levy on sales in the UK, but not in competing overseas markets, is contributing to the UK's decline, particularly as the UK is experiencing better fortune in other areas of the fine art market that are not affected by ARR.

The British art market's dominance has to a very large extent been dependent on successfully competing with global rivals to attract the best works of art for sale in the UK. Britain's future position is therefore vulnerable to fiscal and regulatory changes, which might disadvantage Britain in an increasingly competitive global art market.