

DACS

Artist's Resale Right: Response to the Intellectual Property Office's questionnaire

May 2014

Executive Summary

Established by artists for artists, DACS is a visual artists' rights management organisation, representing over 80,000 artists worldwide. Part of a global network of visual arts collecting societies, DACS is committed to maximising revenues for visual artists so that they can continue to create and innovate, thereby contributing to the UK creative economy.

DACS has paid nearly 3,500 artists more than £30 million in resale royalties since the introduction of the Artist's Resale Right in the UK on 14 February 2006.

This report provides information in response to a set of questions posed by the Intellectual Property Office (IPO) as part of an evidence gathering exercise on the Artist's Resale Right (ARR). The evidence gathered by DACS provided the following key points:

- On average, 70% of British artists to whom DACS made resale right payments in the last three years received their royalties in respect of sales in the value banding €1000 to €3000
- In 2013 each auction house sold on average 30 works in the value banding €1000 to €3000
- In 2013 each gallery or art dealer sold on average 5 works in the value banding €1000 to €3000
- Auction houses received 85% of all Artist's Resale Right royalty invoices over the past three years

In order to assist the IPO further, DACS gathered additional information by way of a survey. Our survey was open for 13 days from 14th – 26th May 2014 and was sent directly to 2,887 DACS members, around 1,300 of whom receive resale royalties either as a beneficiary or an artist. The survey was also circulated to arts organisations and promoted to non-members via social media.

Survey facts:

- 512 people responded to the survey
- 398 respondents were artists; 79 were beneficiaries and 23 were both
- 173 respondents had not received resale royalties and 322 had received resale royalties

Our survey was answered by a range of artists and estates including sculptors, photographers, painters, printmakers, emerging artists and established artists. The key findings of our survey are:

- **32.7%** of respondents want the threshold for Artist's Resale Right to be abolished
- **90.7%** of respondents were against raising the threshold for Artist's Resale Right above €1000
- **32%** of artist respondents and **34%** of beneficiary respondents earn under £15,000 per annum
- **132** respondents provided assistance to art market professionals: **128** respondents did this for no fee

- Of the **173** respondents who had not received resale royalties, **52%** said they would have if there was no threshold for Artist's Resale Right.

It is clear from the survey that a majority of artists are opposed to an increase in the threshold for the Artist's Resale Right and that a significant number want to see the threshold abolished. The survey allowed respondents to comment on the reason for their answers and many were willing to justify why they want to see the threshold abolished:

"I don't understand why there should be a threshold. If there isn't one it means that even established artists or those just starting out can benefit from the re-sale of their work."

Rachael Noon, artist

"All artists should benefit from this. The threshold implies that only the work of artists commanding a high price should receive a cut. However, all artists are worth it."

Sigrid Holmwood, artist

From this and previous research, DACS has established that the Artist's Resale Right is a vital source of income for many artists. Royalties are used to pay for living expenses, studio space and art materials. It is an enabler for artists to continue their practice, to make more works and to add to the cultural fabric of the UK.

Artist's estates also benefit from sales of works in the €1,000 to €3,000 bracket. Many of these estates inherit the challenging task of managing an artist's estate and use resale royalties to meet the considerable costs of maintaining an artist's legacy. This includes the costs of storage, conservation, cataloguing, research, insurance and restoration.

Our survey highlights the significant role artists and artist estates play in assisting the art market and therefore continuing to add value to the artist's work. Much of this work, including helping authenticating work and providing provenance is done for no fee and has a direct impact on adding cultural and monetary value to the artist's work, which serves to benefit the art market and wider economy.

1. To how many British artists (in each of the last 3 years) did your collecting society make a payment in respect of sales in the value banding €1,000 - €3,000 (sterling equivalent)?

In 2011 DACS made payments to **256** British artists in respect of sales in the value banding €1,000 - €3,000.

156 of these artists were unique to this range, i.e. they did not make any sales above €3,000 in this year.

In 2012 DACS made payments to **465** British artists in respect of sales in the value banding €1,000 - €3,000.

291 of these artists were unique to this range, i.e. they did not make any sales above €3,000 in this year.

In 2013 DACS made payments to **469** British artists in respect of sales in the value banding €1,000 - €3,000.

282 of these artists were unique to this range, i.e. they did not make any sales above €3,000 in this year.

2. To how many British artists overall – irrespective of value bandings – did your collecting society make a payment (in each of the last 3 years)

In 2011 DACS made payments to a total of **375** British artists. This means that **71%** of these artists received payments in respect of sales in the value banding €1,000 - €3,000.

In 2012 DACS made payments to a total of **674** British artists. This means that **69%** of these artists received payments in respect of sales in the value banding €1,000 - €3,000.

In 2013 DACS made payments to a total of **663** British artists. This means that **71%** of these artists received payments in respect of sales in the value banding €1,000 - €3,000.

It is clear that even where the number of total sales increases, there is still a very high proportion of artists who receive resale royalties because they are selling their works within the €1,000 - €3,000 value banding. Between 2011 and 2013, there was an increase of more than 40% in the number of artists receiving royalties.

3. What is the overall number of resales that resulted in a payment to/by your collecting society (in each of the last 3 years)

DACS invoices art market professionals on a regular basis, however DACS will also submit a request for information on a quarterly basis. This request for information is in relation to sales in a previous quarter. Therefore, in an instance where DACS receives a payment following a request for information in January one year, this is for a sale that happened between October and December the previous year.

This time delay means that our annual figures for numbers of sales invoiced and numbers of sales paid will not match up year to year due to this ebb and flow of payments.

Year	Number of Sales Invoiced	Number of Sales: Artists Paid
2011	3,838	3,078
2012	7,701	5,445
2013	9,618	8,931

4. What is the pound sterling total that your collecting society paid (in each of the last 3 years) in respect of sales in the value banding €1,000 - €3,000 (sterling equivalent)?

In order to answer this question transparently and clearly, we have provided both net and gross payments in respect of sales in the value banding €1,000 - €3,000.

Year	Gross payment	Net payment	Number of artists paid	Number of British artists paid
2011	£58,237.63	£49,501.95	332	256
2012	£106,315.79	£90,368.09	614	465
2013	£151,159.58	£128,484.85	710	469

The amount of gross payment has increased by almost £50,000 each year. Whilst the extension to deceased artists receiving resale royalties from 1st January 2012 impacts on this increase, it does still demonstrate that art works are increasingly being sold in the value banding €1,000 - €3,000. This means that the lower threshold of €1,000 continues to benefit an increasing number of artists.

Our data also shows that a very high proportion of the artists paid each year in respect of sales in the value banding €1,000 - €3,000 were British artists. In 2013 alone British artists made up 66% of all artists paid.

5. What is the pound sterling total that your collecting society has paid across all value bandings (in each of the last 3 years)?

In order to answer this question transparently and clearly, we have provided both net and gross payments of resale royalty payments across all value bandings in each year.

Year	Gross payments	Net payments	Number of Artists paid
2011	£3,012,689.31	£2,560,785.69	708
2012	£5,239,775.78	£4,453,808.94	1232
2013	£9,492,228.38	£8,068,392.87	2177

It is significant that the number of artists receiving royalties in respect of sales in the €1,000 - €3,000 value banding is very high. In 2011, the number of artists selling works for €1,000 - €3,000 made up 47% of all artists paid for Artist's Resale Right. In 2013, 710 artists were paid in the lower value banding.

6.

a. How many individual businesses do you deal with for ARR transactions annually?

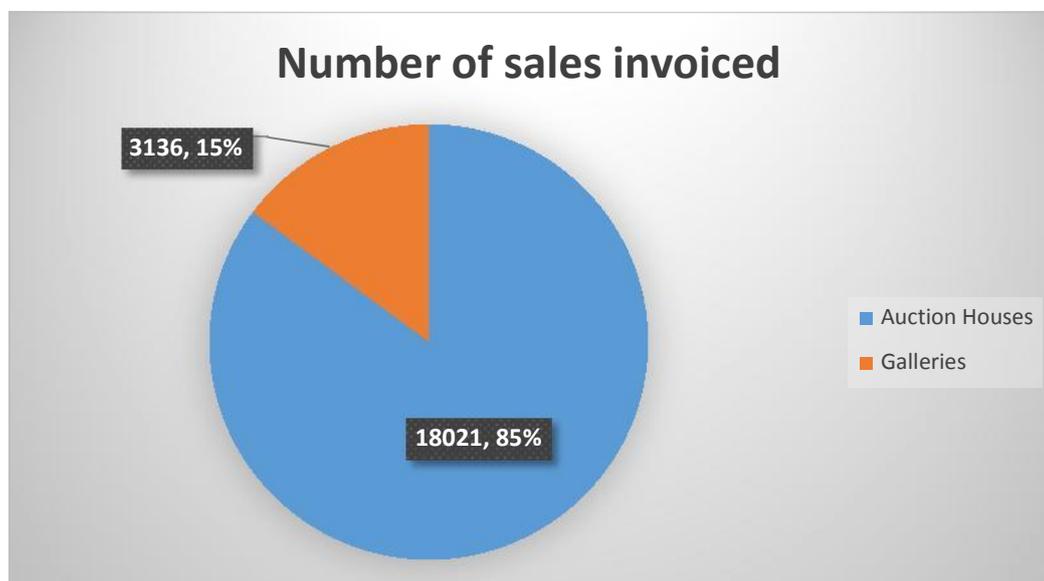
Between 2011 and 2013 DACS has dealt with a total of 115 auction houses and 214 galleries
 In 2011 DACS dealt with 163 businesses
 In 2012 DACS dealt with 223 businesses
 In 2013 DACS dealt with 243 businesses

b. What proportion of these businesses are auction houses (rather than dealers or galleries)?

In 2011 DACS dealt with 163 businesses: 57 were auction houses and 106 were galleries.
 In 2012 DACS dealt with 223 businesses: 87 were auction houses and 136 were galleries.
 In 2013 DACS dealt with 243 businesses: 90 were auction houses and 153 were galleries.

DACS deals with a larger number of galleries, however it is actually the auction houses with whom DACS deals more frequently. Galleries only contributed 15% of all sales invoiced by

DACS in the last three years, as demonstrated by the chart below. This represents 3,136 sales over three years across all galleries. In comparison, auction houses had 18,021 sales invoiced in three years.



7. Of those British artists to whom your organisation made a payment in respect of sales in the value banding €1,000 - €3,000 (sterling equivalent), what percentage are living artists?

In 2011 we only made payments to living artists as the Artist's Resale Right was extended to cover deceased artists from 1st January 2012. In 2012, 74% of artists receiving royalties in respect of sales in the value banding €1,000 - €3,000 were living artists. In 2013, 58% of artists receiving royalties in respect of sales in the value banding €1,000 - €3,000 were living artists.

DACS fully supported the right to be extended to cover deceased artists and in March 2011 we responded to the European Commission's 'Consultation on the Implementation and Effect of the Resale Right Directive' at **Appendix 1**. Our response to the Consultation outlined the need to extend the right to cover beneficiaries who fight a constant battle to maintain their estates.

The estate of Sir Kyffin Williams KBE, RA (1918 – 2006) is represented by Nicholas Sinclair, who responded to our survey. Nicholas told us that "[the Artist's Resale Right] has been essential to support my work with the Sir Kyffin Williams Estate" which involved working with

Bonham's, Christie's and Rogers Jones to identify fakes and authenticate and date Sir Williams' paintings.

Nicholas also told us that he has been involved in researching and writing for publications such as the 2007 Royal Academy of Art publication *The Art of Kyffin Williams*, as well as working on two exhibitions. Nicholas did not charge a fee for his work with both galleries and auction houses, however he is not alone in doing so. Responses to our survey showed that 97% of artists who assisted art market professionals did not charge a fee for their work, with the remaining 3% stating that they only charged a fee occasionally.

Nicolas Sinclair wrote in his survey response that "without necessarily being aware of it, both auction houses and galleries have benefited financially from the work I do with the Sir Kyffin Williams estate because, with the publication of books giving his work greater visibility and presence, the value of the work has steadily increased. To date I have been involved in the publication of five books on Sir Kyffin Williams. Without ARR this work would not be possible."

8. Of the eligible transactions that your organisation processed in each of the last 3 years, in respect of sales in the value banding €1,000 - €3,000 (sterling equivalent), what proportion are from (a) galleries or art dealers? (b) auction houses?

The table below shows the percentage of all eligible transactions for both categories of art market professional in respect of sales in the value banding €1,000 - €3,000.

The table also shows the number of galleries/auction houses and the number of sales made in the value banding, therefore providing an average of sales per institution. This is more representative of what the institutions were actually dealing with on a year to year basis.

Sales in respect of value banding €1,000 - €3,000					
Year	Institution type	Percentage of all eligible sales that were in this banding	Number of institutions that made a sale in this banding	Number of sales in this banding	Average sale per institution
2011	Gallery/art dealer	34%	51	191	4
2011	Auction house	31%	53	1020	19
2012	Gallery/art dealer	38%	91	474	5
2012	Auction house	30%	82	1910	23
2013	Gallery/art dealer	36%	99	481	5

2013	Auction house	31%	84	2526	30
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As demonstrated by the table above, galleries and art dealers in particular made fewer sales in the value banding €1,000 - €3,000 per year on average than the auction houses. This would suggest that the administrative burden on the galleries is comparatively low.

Additional Information

DACS would like to take the opportunity to supply additional information to the IPO arising from the data we compiled from our survey on the Artist's Resale Right.

The Artist's Resale Right in other European countries

We asked our Sister Societies to tell us about the Artist's Resale Right in their country and we received responses from 15 societies in different countries.

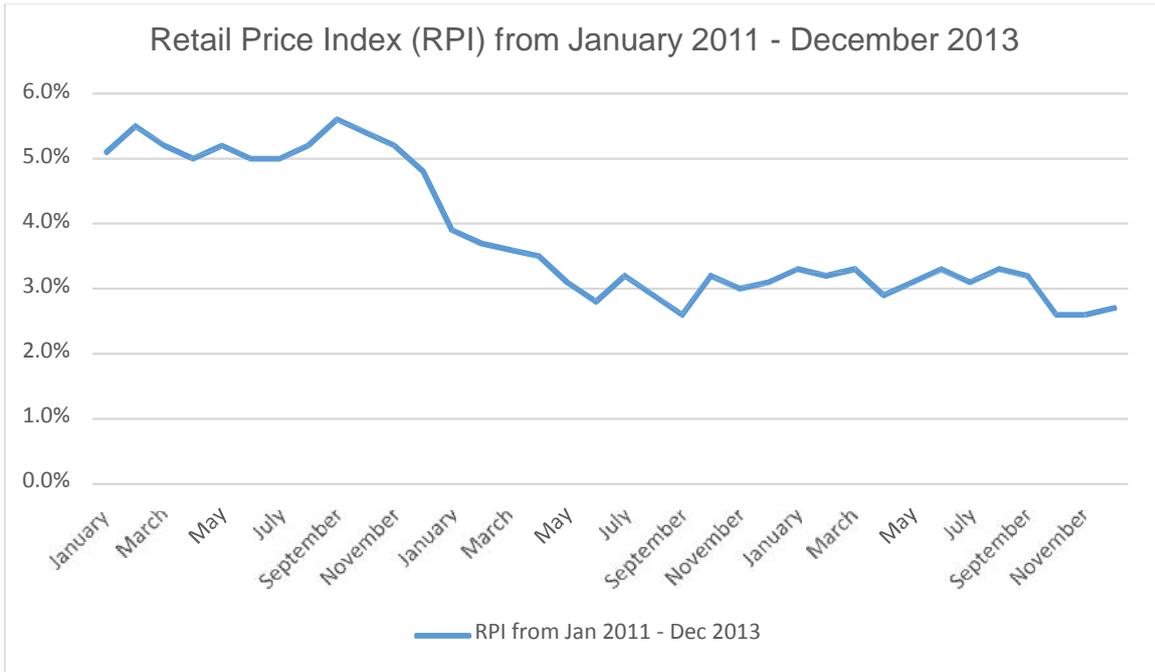
Many European countries have a very low Artist's Resale Right threshold. In six of these 15 countries the resale right threshold is well below €1,000 – the lowest being €16 at present in Hungary. The six countries are: Germany (€400), France (€750), Finland (€255), Sweden (€231), Denmark (€300), Estonia (€64) and Hungary (€16). Countries such as France and Germany have a large art market and therefore deal frequently with resale royalties. In Sweden, Denmark, Hungary and Norway the cap and threshold for the Artist's Resale Right is set at each country's national currency rather than the Euro.

The responses from our Sister Societies highlighted distinct dissatisfaction with the Artist's Resale Right threshold in countries where it is higher than €1,000, with four Sister Societies currently involved in lobbying for a reduction. In Norway the threshold for the Artist's Resale Right is currently €3,000, however this is largely due to the fact that the Norwegian Government did not want to damage an existing art tax. Nevertheless, the visual artists collecting society BONO is lobbying against the discrimination caused by such a high threshold. In Ireland, Austria and the Netherlands, where the threshold is equally high, our Sister Societies are also lobbying to lower this and thereby prevent artists missing out on royalties.

The Artist's Resale Right in the UK

Since its introduction in 2006, the cap on the resale royalty has been fixed at €12,500. In February 2006, when the Artist's Resale Right was introduced in the UK, the retail price index (RPI) was 2.4%. The table below shows the variation of RPI between January 2011 and December 2013, which begins to stabilise at around 3%. Statistics from HM Treasury's medium-term forecasts plot a steady growth in RPI over the next 4 years to 3.2%¹. Based on an average RPI of 3% per annum between 2007 and 2013, the value of the €12,500 capped resale royalty has fallen by more than 20% in real terms, at the same time as auction house premiums have been steadily increasing.

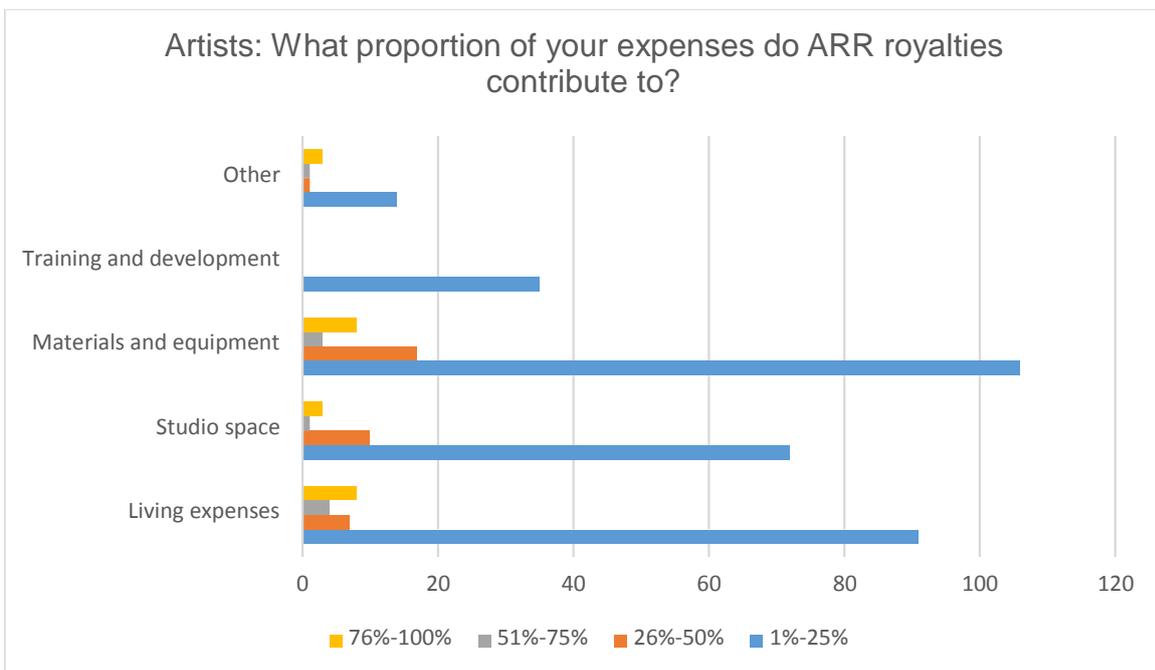
¹ *Forecasts for the UK Economy: May 2014*, Medium-term forecasts p18, HM Treasury, 2014: <https://www.gov.uk/government/publications/forecasts-for-the-uk-economy-may-2014>



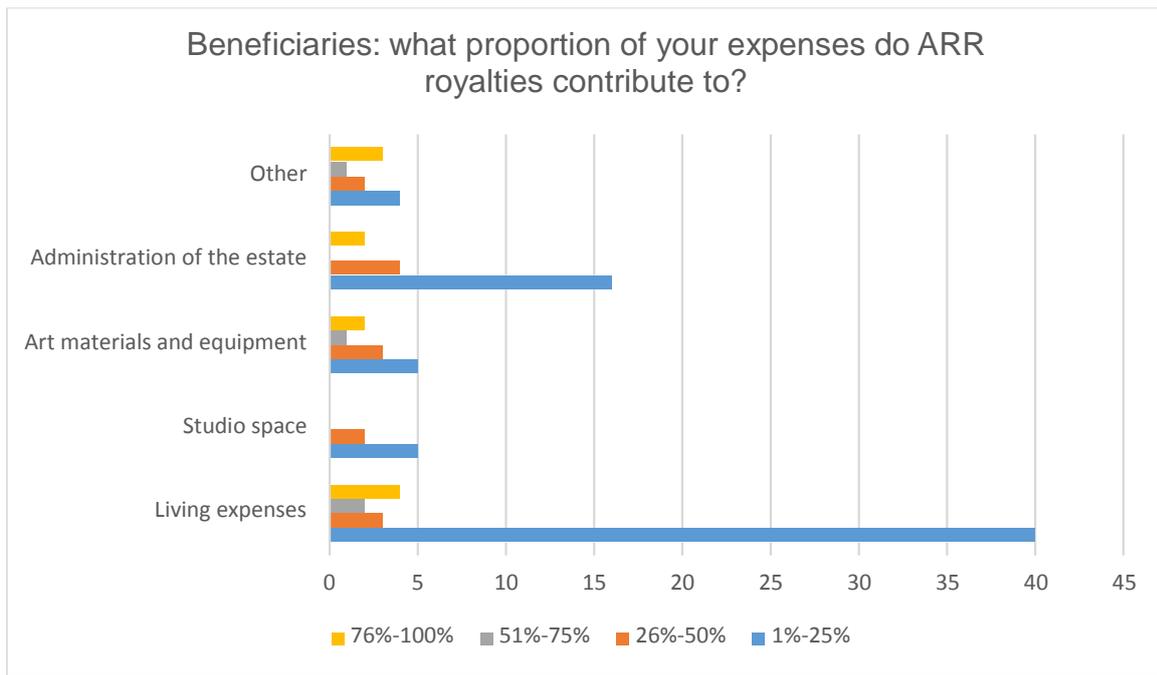
Source: Office of National Statistics

Our survey asked those artists and estates who currently cannot receive resale royalties whether they would have been able to if there was no threshold. Of those who responded to the question, 52% said they would have received resale royalties.

Our survey showed that the average income of both artists and estates were low, with 32% of artists and 34% of estates responding that their income was between £0 and £15,000 per annum. Artists and beneficiaries also told us how they used the money they received from resale royalties, as shown in the tables below. A significant number of artists relied on resale royalties for living expenses and materials and equipment.



For beneficiaries, a greater proportion of the royalties they receive from the Artist's Resale Right contributed to administering the estate and living expenses.



DACS makes every effort to ensure that all auction houses, galleries and art dealers comply with their obligations in respect of the Artist's Resale Right. However, we have been made aware by both artists and art dealers that some art market professionals are not declaring resale royalties where they are due. DACS is not sure of the full extent of this non-compliance, which inevitably results in loss of earnings for artists and beneficiaries.

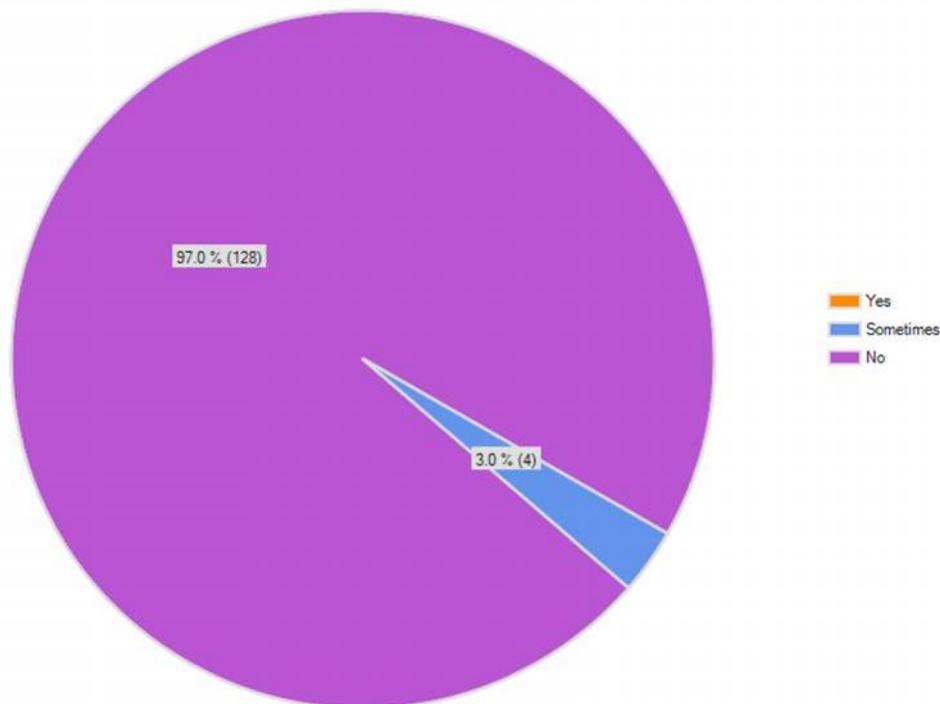
Artist's support for the Art Market

Artists and beneficiaries frequently assist art market professionals in many ways, as demonstrated by Nicholas Sinclair's testimonial above.

In our survey we asked artists and estates if they had ever been asked by art market professionals (galleries or auction houses) to assist them, for example in verifying works. Almost half (46%) said they had often or sometimes assisted auction houses, galleries or dealers. As you can see from the chart below, the number who received payment for this work is minimal – only four respondents had received payment.

Jonathan Gosling, a beneficiary, also told us of the ways in which he is feeding back into the UK cultural heritage, supporting the art market and allowing access to an artist's work: "I use most of the income to support scholarly interest in the artist's work (I donate significantly to the Tate Archive, for example, for this artist and others related to him); and I enable free access to his reproductions of his work for educational and public purposes." (Jonathan Gosling, beneficiary).

Have you charged a fee for your assistance?



Testimonials from artists and beneficiaries (from DACS's survey on the Artist's Resale Right)

"A threshold] is not fair or relevant to the principle of royalties"

Ian Wallace, artist

"The re-sale value of an artwork is tied to the ongoing work and reputation of the artist. In a sense the artist is still working on and contributing to the value of their works even after they have been passed onto the secondary market. This is a unique situation in which the work and value creation of the artwork remains the job of the artist for the whole of their life. Therefore it is only fair that artists should get a cut.

Sigrid Holmwood, artist

"It makes dealers and auction houses think that, without us, there would be no jobs for them in the first place."

Tom Hammick, artist

"I am really concerned that we have to fight for the ARR at all - I thought this was one tiny bit of security we had for ourselves and for our children as beneficiaries."

Annie Kevans, artist

"The artist should benefit from any sales, just as other royalties benefit actors, musicians etc."

Charles Thomson, artist

"ARR is an important part of an artists' income. Visual artists are no different from musicians and it is deeply unfair that commercial bodies and dealers benefit from the resale. It is hard enough to make a living as an artist especially with decreasing funding streams and a depressed economic market."

Anonymous

"I think an artist has a more difficult time than a writer or illustrator in that we don't on the whole have 'agents' to help us facilitate the exhibiting of our work, though I know there are art consultants and galleries (if the artist is fortunate in finding one who likes their work) who place and exhibit their art. I would imagine that the majority of artists have to do it themselves - exhibit in group exhibitions, open studios or similar."

Janet Patterson, artist

"Insurance and storage of works are major expenses and form 70 % of estate costs. Other significant expenses are archival and documentary, including digitisation of photographic records, creating and updating database of works and information. I personally do the administration and answer queries and requests for information without reimbursement."

Susanna Heron, artist and beneficiary

Appendix 1



**EC Consultation
on the Implementation and Effect of
the Resale Right Directive (2001/84/EC)**

**DACS Submission
March 2011**

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Interest Representative Register ID number: 99520725349-46

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Executive Summary

Established by artists for artists, DACS (the Design and Artists Copyright Society)¹ is an innovative visual artists' rights management organisation, representing over 60,000 creative individuals including fine artists, photographers and illustrators from the UK and abroad. Part of a global network of visual arts collecting societies, DACS is committed to maximising revenues for visual artists so that they can continue to create and innovate, thereby contributing to the UK economically, socially and culturally.

DACS has paid nearly 2000 artists more than £11.4 million in resale royalties since the introduction of the Artist's Resale Right in the UK on 14 February 2006.

DACS is the representative voice of visual artists and their heirs and beneficiaries in the UK. We are directly mandated by nearly 3,400 UK artists to administer their Artist's Resale Right. We also indirectly represent many thousands of European artists through international agreements. In addition DACS represents all other artists, excluding only the 397 who have chosen alternative UK collecting societies.²

Artists' Earnings

Over the past five years, as a not-for-profit organisation, DACS has distributed £34.5 million in royalties to visual artists for copyright licensing, Artist's Resale Right and collective licensing. This represents a direct financial investment into creativity and innovation. DACS' total distributions to artists represent almost twice as much as the investment made by Arts Council England to individuals for visual arts related activities over a similar period.³

In order to inform this submission, DACS undertook a substantial survey of UK visual artists and their beneficiaries, attracting nearly 1,900 responses. The survey was independently audited to ensure objectivity. We believe this to be the largest survey of its type. The survey asked artists to consider the market in their work over the period 2005-2010 and what factors had influenced changes in this market. In this survey 68% of artists said their royalties were a 'very significant' or 'quite significant' incentive for them. 99% of artists who have received Artist's Resale Right royalties indicated that the Right had had no negative impact on the market in their work.⁴

The UK Art Market

Despite fears that the Artist's Resale Right would divert sales from the UK to countries which do not have an equivalent right, there has been no evidence to support this. Opponents of the Artist's Resale Right claimed that its implementation in the UK would drive sales to countries where there was no equivalent right. The two key markets identified were Switzerland and the US. And yet, the UK market outgrew both the US and the Swiss markets substantially during 2007-2008, at a rate of 10.8% growth compared to -18.8% and -13% respectively. In fact, taking a long view, during 1998-2008 the UK market recorded substantially stronger growth than these two competing markets.⁵

1 For more information on DACS, see Appendix 1, or visit www.dacs.org.uk

2 The UK Artist's Resale Right Regulations mandates the collecting society which manages copyright on behalf of artists to administer the Right on behalf of artists who have not expressly chosen a collecting society. To the best of our knowledge, Artists' Collecting Society currently represents 380 artists, Artists' Rights Administration Ltd represents 17 artists

3 *Briefing Note: Visual Arts*, Arts Council England, February 2010, p7

4 DACS Artist's Rights' Survey (February 2011). For more information visit www.dacs.org.uk

5 *The International Art Market 2007-2009: Trends in the art trade during global recession* prepared by Dr Clare McAndrew, 2010, p24

Executive Summary

After the US, the UK art market is the second largest in the world and has grown substantially in the last five years, despite a global recession. During 2003-2008 the UK art market grew an average of 23% per annum, overtaking even the US in 2008. Despite the impact of the global recession, the art market has already shown signs of a strong recovery.⁶

The Artist's Resale Right represents a tiny percentage of the value of the UK art market, at 0.04%. Even when the Right is fully implemented to include beneficiaries and heirs in 2012, the Right still only equate to less than 0.4% of the modern and contemporary art market and 0.15% of the entire UK market.

There is a perception that art dealers are unfairly burdened by this Right, due to the nature of their business and the decision taken by many dealers to absorb the cost of the royalty into their overheads. However, DACS' figures indicate that royalties paid by art galleries and dealers in 2009 accounted for just 10% of the total resale royalties paid, at €338,181.⁷ Therefore in 2009 the resale royalties paid by UK art dealers represented 0.0054% of the value of this trade.⁸

Since 2008, the global financial recession has inevitably depressed the UK art market. However, it is important to note that auction house premiums have been steadily rising without any negative impact on the competitiveness of the art market. As a percentage of other costs associated with buying a work of art (e.g. buyer's premium), the Artist's Resale Right is a decreasing cost.

Administering the Artist's Resale Right

The costs of administering the Artist's Resale Right are modest. In a survey of art market professionals, 60% of art market professionals said their own administration of the resale right took less than five minutes and cost them less than £10 per quarter.⁹ This cost will not increase by a large proportion from 1 January 2012 since the majority of the art trade already have systems in place to manage the Right.

DACS makes a 15% charge on the royalties collected for artists whilst limiting the burden carried by the art trade by providing a number of tools to assist them. We are continuing to invest in IT and business systems which make collection and distribution easy and cost-effective.

Undistributed funds arising from the Artist's Resale Right make up less than 3% of what DACS has collected since the Right was implemented in the UK. This percentage fluctuates at different stages of the cycle of collecting and paying resale royalties. Much of this is made up of money for foreign artists whom we can not pay through a sister society (and for whom we must therefore search); money for deceased UK artists from European countries; and money held awaiting resolution of administrative issues, for example, fulfilling our obligations around withholding tax.

Benefitting from the Artist's Resale Right

UK artists earn considerably less than the UK national median wage and have to rely on a portfolio of earnings from a variety of sources. The current recession coupled with public funding cuts¹⁰ in the UK has a disproportionate impact on these individuals. The Artist's Resale Right provides a valuable source of income for UK artists and from 1 January 2012 it will provide a valuable income for the families and beneficiaries of artists who safeguard the UK's cultural heritage.

6 "The austerity imposed by the crisis has been relegated to a distant memory. Collectors are back in the market, not just as observers but as active participants. Over the last three years, revenue from the Contemporary art sales in London has been rising: Christie's and Sotheby's evening sales generated £22.3m in February 2009, £79.5m in February 2010 and £83.2m in February 2011." (*Contemporary Art 2011: A New Lease of Life!* Artprice, February 2011)

7 See Appendix 2 for details of DACS' Artist's Resale Right collections 2006-2010

8 *The British Art Market: A winning global entrepôt*, by Arts Economics, 2010 p7

9 The Artist's Resale Right in the UK, Submission to the post-implementation review conducted by the UK Intellectual Property Office/Design and Artists Copyright Society (February 2008)

10 For example funding to individuals for visual artists related activities from Arts Council England (the UK's largest arts funding body) was cut by half during 2007-2009, and is set to diminish further.

Executive Summary

Far from presenting a risk to the future of the UK art market, the full implementation of the Right from 2012 will provide desperately needed funding for artists' families and beneficiaries, who inherit the burden of managing an artist's estate, including the costs of storage, conservation, cataloguing, research and restoration.

The decision by the UK Government to delay the full implementation of the Artist's Resale Right to 1 January 2012 has resulted in a significant loss of earnings for artists' families and beneficiaries. Looking at sales by the two biggest auction houses for the years 2008, 2009, and 2010, more than £9.1 million in royalties for estates were lost due to this delay.¹¹

Alberto Giacometti's *Walking Man I* (1960) sold at auction in February 2010 for a record-breaking £58 million. The buyer's premium payable on this artwork was £7 million. If the UK Government had fully implemented Artist's Resale Right from 1 January 2010, the resale royalty payable would have been €12,500. This represents 0.16% of the buyer's premium and 0.02% of the hammer price.

¹¹ Based on sales information published on www.sothebys.com and www.christies.com

Q1

Please describe developments in the art market in your country over the period 2005-2010.

Growth of the UK Art Market

In the last five years, the UK art market has seen substantial growth across all sectors of the market, and of course, a recent decline driven by the global downturn. In 2005 the value of the UK art market was estimated at €8 billion. It rose to a peak of €14.4 billion in 2007 before dropping to €9.1 billion in 2009.

By the peak of 2007, art market prices had been growing steadily for seven consecutive years.¹² In fact, during 2003-2008 the UK art market grew an average of 23% per annum.¹³ Notably, the UK market overtook the US in 2008 with the largest market share (by revenue), as the US felt the impact of the global recession first.¹⁴

In 2009 the UK art market made up 29% of the global market, and 57% of the EU trade.¹⁵

Table 1

The UK art market 2005-2009¹⁶

	Global art market value (million €)	UK share of global market	UK art market value (million €)
2005	28,800	28%	8,000
2006	43,300	27%	11,700
2007	48,000	30%	14,400
2008	42,200	34%	14,300
2009	31,300	29%	9,100

The Contemporary Art Market

The sector of the UK art market affected most by the rise and fall experienced in the last five years has been the contemporary art market. Artprice reports that contemporary art prices increased by more than +225% between 2002 and 2008. Over the same period, contemporary art's share for the artworks selling above \$100,000 (€71,857) increased from 4% to 20%.¹⁷ Contemporary art became the largest category of art by value at the major auction houses of Christie's and Sotheby's in 2007.¹⁸

However, Artprice's global art price index shows that contemporary art works lost 34.4% of their value in 2008.¹⁹ Despite this substantial reduction, the contemporary art market has not collapsed. Artprice commented in their report on the 2009 art market that, "although considerably leaner, the contemporary art market is not in such a bad condition: it has in fact quite simply reverted to its 2004 price levels, i.e. the last year before the speculative bubble really became apparent."²⁰

Diversion of Sales

Opponents of the Artist's Resale Right claimed that its implementation in the UK would drive sales to countries where there was no equivalent right. The two key markets identified were Switzerland and the US.

¹² *Art Market Trends 2007*, Artprice, 2008, p20

¹³ *The British Art Market: A winning global entrepôt*, by Arts Economics (June 2010), p6

¹⁴ *Art Market Trends 2008*, Artprice, 2009, p9

¹⁵ *The British Art Market: A winning global entrepôt*, by Arts Economics (June 2010), p6

¹⁶ Figures sourced from *The International Art Market 2007-2009: Trends in the Art Trade during Global Recession* prepared by Dr Clare McAndrew, 2010, p19 and Artprice's annual publication of *Art Market Trends* see www.artprice.com for more information

¹⁷ *Art Market Trends 2009*, Artprice, 2010, p7 (conversion to Euros calculated at USDI= €0.71

¹⁸ *The Global Art Market Today*, TEFAF, prepared Dr Clare McAndrew, 2010, p21

¹⁹ *Art Market Trends 2008*, Artprice, 2009, p7

²⁰ *Art Market Trends 2009*, Artprice, 2010, p9

The Artist’s Resale Right was introduced into the UK in February 2006. If the aforementioned assertion was to prove correct, it would stand to reason that the rate of growth in the UK market would be less than in these competing markets.

However, as the table below illustrates, the UK market outgrew both the US and the Swiss markets substantially during 2007-2008, at a rate of 10.8% growth compared to -18.8% and -13% respectively. In fact, taking a long view, during 1998-2008 the UK market recorded substantially stronger growth than these two competing markets.

Table 2

Change in Art Market Turnover: Selected Countries 1998-2008²¹

	1998-2001	2002-2006	2007-2008	1998-2008
UK	1.6%	81.0%	10.8%	52.4%
US	7.0%	105.4%	-18.8%	14.9%
Switzerland	21.0%	100.9%	-13.0%	-3.1%

That the UK implementation of the Artist’s Resale Right did not cause sales to be diverted away from the UK is supported by the study conducted by the IP Institute in 2008. Graddy, Horowitz and Szymanski state: “It appears that living UK artists have gained in market share in most countries, both by value and by volume. As this gain appears to be across the board, both in countries where ARR is applicable and in countries where it is not applicable, it is unlikely that this change is correlated with the introduction of ARR. It does not appear as if ARR has negatively affected sales in the UK by owners of artworks by living ARR eligible artists; owners of art by living UK artists have not noticeably moved to other locations.”²²

There are other costs which would influence where a work sells that are potentially far higher than the Artist’s Resale Right. For example, works of art imported into the UK from outside of the EU are subject to VAT at a flat rate of 5%. This is avoidable if the work is being imported into the UK on a temporary basis. But if the work of art remains in the EU, the VAT is not recoverable, irrespective of the buyer’s VAT registration. Therefore, it is extremely unlikely that a UK art dealer wishing to sell a work of art, would pay the costs associated with shipping it to a non-EU market in order to avoid paying the modest resale royalty, if it were likely that a buyer looking to bring it back into the EU would then be burdened with VAT of 5%.

By way of example, a work of art selling for the equivalent of €100,000 in a non-EU country and then imported back into the EU would be burdened with import VAT of €5000, compared to a resale royalty of €3,500 had the work been sold within the EU. This is before taking into account the cost of shipping, insuring and the transporting the work for transport to the non-EU country.

UK Imports and Exports

The British Art Market Federation (BAMF) reported in June 2010 that the UK imported a substantial £2.2 billion in works of art in 2009, largely from other major global art markets around the world such as the US (54%) and Switzerland (29%).²³ In fact, 92% of imports in 2009 were from countries outside of the EU. This figure would indicate that the UK has not lost its attractiveness as a global player in the art market.

²¹ *The International Art Market 2007-2009: Trends in the art trade during global recession*, prepared by Dr Clare McAndrew, 2010, p24

²² Graddy, Katy and Noah Horowitz and Stefan Szymanski, *A study into the effects on the UK art market of the introduction of the artist’s resale right*, IP Institute, January 2008, p16

²³ *The British Art Market, A winning global entrepôt*, Arts Economics, 2010, p7

Works of art will be sold where they are best placed to achieve the highest price and it could not be said that the Artist's Resale Right has caused sellers or buyers to go elsewhere.

Table 3

UK Art Market: Imports /Exports 2005-2008²⁴

Note: The figures for 2009 are included in the text above, however as they are in Sterling we chose not to include them in the table in order to avoid distorting the comparison.

	Value of UK art market (million €)	UK imports (million €)	UK exports (million €)	UK trade surplus (million €)
2005	8,000	2,900	5,600	2,700
2006	11,700	3,500	5,400	1,900
2007	14,400	4,100	4,600	500
2008	14,300	3,000	3,400	400

Increasing Art Prices

The UK art market enjoys higher average art prices than other EU member states. In 2009, average prices in the UK were 4.5 times of those in the EU.²⁵ Critics of the Artist's Resale Right claimed that its introduction would drive down the prices achieved by works of art, however, the average auction hammer price grew in 2006 and 2007, following the introduction of the Right in the UK. Prices dropped in 2008 in the wake of the global recession yet the average auction hammer price achieved in the UK was substantially higher than in the US in 2008 and 2009.

Table 4

Average Auction Prices for Fine Art in the UK and US, 2005-2009²⁶

	2005	2006	2007	2008	2009
UK	€25,772	€33,135	€9,990	€6,450	€2,153
US	€35,505	€7,826	€4,683	€1,550	€2,485

The examples on page 8 illustrate how art prices have remained buoyant, increasing substantially in value during the period since the introduction of the Artist's Resale Right.

²⁴ *The International Art Market 2007-2009: Trends in the art trade during global recession* prepared by Dr Clare McAndrew, 2010, pp 44 & 47

²⁵ *The British Art Market, A winning global entrepôt*, Arts Economics, 2010, p9

²⁶ *The International Art Market 2007-2009: Trends in the art trade during global recession*, prepared by Dr Clare McAndrew (2010), p81

Table 5

The Increasing Value of Art²⁷

Concrete Cabin (1994)

Peter Doig

18/05/2000	Phillips, New York	USD \$140,000 (€156,537)
27/02/2008	Sotheby's London	£920,000 (€1,220,472)

Grasshopper (1990)

Peter Doig

25/06/2003	Sotheby's London	£200,000 (€289,200)
12/10/2007	Sotheby's London	£400,000 (€575,000)

Reclining Figure of J.Y.M (1985)

Frank Auerbach

21/10/2003	Sotheby's London	£30,000 (€43,119)
22/07/2007	Sotheby's London	£270,000 (€401,652)

Danza, danza all'erta fratellino (1980)

Mimmo Paladino

23/06/2006	Christie's, London	£6,000 (€8,735)
2007	Meeting Art, Vercelli	€0,000

The Rise of New Markets

The emergence of China as a key player in the global art market highlights one of the biggest transformations in the global art market over the last five years and reflects the country's strong economic growth across many markets. In a 2009 study published by The European Fine Art Foundation, the growth of the Chinese market is explored: "The Chinese economy has been growing at an average rate of 9.9% per year since its free market reforms in 1978, and per capita income has grown at an average annual rate of more than 8% over the last three decades. With an expanding base of wealthy collectors (the country had a total of 415,000 HNWI's [high net worth individuals] in 2007), China has overtaken the older economies of Germany and France to take the position as the world's third largest art market in 2007."²⁸

Furthermore, not only has the domestic Chinese market grown, the international market in Chinese art has also grown as Chinese collectors seek to repatriate Chinese works.²⁹

It is one of a number of emerging markets, along with Russia, India and the Middle East. However, China has become the most important of these markets in terms of both size and value of the art market within China and for Chinese art globally.³⁰

²⁷ Sales figures taken from www.artprice.com. Conversion rates to Euros are calculated based on the rate of the day the sale took place.

²⁸ *Globalisation and the art market*, prepared by Dr Clare McAndrew, 2009, p34

²⁹ *The International Art Market 2007-2009, Trends in the Art Trade during Global Recession*, prepared by Dr Clare McAndrew, (2010) p75

³⁰ *Ibid*, p3

Q2

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

“...at auction, the difference between what a seller gets and what a buyer pays is about 30% – and that doesn’t seem to deter people.”

Martin Summers, art dealer

(quoted from “Tax changes alarm UK art market”, *The Art Newspaper*, March 2011)

Rise in Auction Premiums

Auction houses have been charging premiums to buyers at auction since the 1970s. They have steadily increased from 10% to today’s much higher rates. The strong performance of the art market despite the introduction of a buyer’s premium demonstrates its ability to withstand the imposition of hefty charges on top of the hammer price, so much greater than the modest amount of the resale royalty.

Larger auction houses now charge tiered premiums, where different rates are applied to different portions of the price. In 2005, buyer’s premiums were around 20% for the first portion of the hammer price, dropping to 12% as the hammer price increased. By 2010 auction houses had introduced a third premium rate at a higher 25% level.

Christie’s and Sotheby’s buyer’s premiums for their London sale rooms:

Up to GBP 25,000 25.0%	Above GBP 25,000 - GBP 50,000 20.0%	Above GBP 500,000 12.0%
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The table below compares the impact of buyer’s premium with the potential impact of the Artist’s Resale Right, on sales of works by deceased artists.

Table 6

Comparison of buyer’s premium and Artist’s Resale Right royalties³¹

	Hammer price	Sale price	Buyer’s Premium	Potential Artist’s Resale Right due
Alberto Giacometti <i>L’homme qui marche I</i> (1960) (Walking Man I) Sotheby’s, London February 2010	£58 million	£65 million	£7 million (12% of hammer price)	£10,952/ €12,500 (0.02% of hammer price)
Pablo Picasso <i>Portrait d’Angel</i> Fernández de Soto Christie’s, London June 2010	£31 million	£34.7 million	£3.7 million (12% of hammer price)	£10,286/ €12,500 (0.03% of hammer price)
Henry Moore <i>Mother and Child</i> Christie’s, London June 2010	£170,000	£205,250	£35,250 (21% of hammer price)	£5,413/ €6,577 (3% of hammer price)
William Scott RA <i>Together</i> Christies, London May 2010	£18,000	£22,500	£4,500 (25% of hammer price)	£720/ €845 (4% of hammer price)

Alberto Giacometti’s *Walking Man I* (1960) sold at auction in February 2010 for a record-breaking £58 million. The buyer’s premium payable on this artwork was £7 million. If the UK Government had fully implemented Artist’s Resale Right from 1 January 2010, the resale royalty payable would have been €12,500. This represents 0.16% of the buyer’s premium and 0.02% of the hammer price.

³¹ Sales figures taken from www.artprice.com. Conversion rates to Euros are calculated based on the rate on the day the sale took place.

Q3

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 the 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?

It is clear that the recent rise and fall of the UK art market is not in any way due to the introduction of the Artist's Resale Right in 2006 and it is highly unlikely that the full implementation of the Artist's Resale Right to include families and beneficiaries will have any impact on the UK art market.

On average the royalties collected each year by DACS equate to less than 0.04% of the value of the entire UK art market, and 0.09% of the modern and contemporary art market. When the Right is fully implemented from 1 January 2012 to include families and beneficiaries of deceased artists, the Right will only equate to 0.15% of the entire UK art market and less than 0.4% (see page 14, Table 7) of the modern and contemporary art market.

Table 7

Note: ARR royalties collected by DACS in 2010 equated to €2.8 million, however there are currently no published figures on the value of the UK art market in 2010 available for comparison.

The impact of Artist's Resale Right in the UK, 2005-2009³²

	Global art market value (million €)	UK share of global market	Value of UK art market (million €)	ARR royalties collected by DACS (million €)	ARR as a % of art market value	ARR as a % of modern & contemporary art market value
2005	28,800	28%	8,000			
2006	43,300	27%	11,700	1.70	0.01%	0.04%
2007	48,000	30%	14,400	5.10	0.04%	0.09%
2008	42,200	34%	14,300	5.20	0.04%	0.09%
2009	31,300	29%	9,100	3.60	0.04%	0.10%

Some critics of the Artist's Resale Right accept that the Right does not have a material impact on the auction houses who have established systems to manage their liability arising from the Right, and in any case, pass the cost of the royalty on, most frequently to the buyer of the work of art. Yet there is a perception that art dealers are unfairly burdened by this Right, due to the nature of their business and the decision taken by many dealers to absorb the cost of the royalty into their overheads.

However, our figures indicate that the burden borne by art dealers remains tiny. Arts Economics estimated the dealer sector of the UK art market to be worth €6.2 billion, or 68% of the total UK art market, in 2009.³³ DACS' figures indicate that royalties paid by art galleries and dealers in 2009 accounted for just 10% of the total resale royalties paid, at €38,181.³⁴ Therefore, in 2009 the resale royalties paid by UK art dealers (and collected by DACS) represented 0.0054% of the value of this trade.

It is clear from these figures that such a modest, capped royalty has not, and will not, damage the UK art market, yet the royalties generated by the Artist's Resale Right have proven to be significant for artists, for whom income from royalties are increasingly important as alternative sources of funding decrease.

³² These figures reflect that the Artist's Resale Right was implemented on 14 February 2006. We estimate DACS' ARR collections to represent 90% of the all UK resale royalties arising.

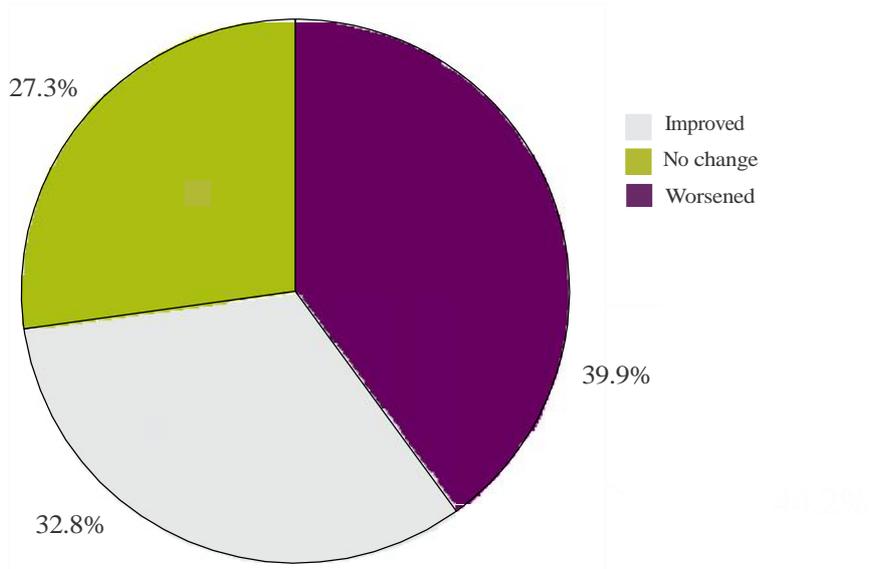
³³ *The British Art Market: A winning global entrepôt*, by Arts Economics, (2010) page 7

³⁴ See Appendix 2 for details of DACS' Artist's Resale Right collections 2006-2010

In the DACS Artists' Rights Survey, 40% of artists who say they have received Artist's Resale Right royalties felt that the market in their art had worsened over the last five years.³⁵ However, none named Artist's Resale Right as the reason for this change in the market: 27% named the global recession; 60% named the changing market in their work, due to an increasing supply of works in the market.³⁶

Figure 1

As a visual artist, or the guardian/beneficiary of an artist's estate, how have you seen the market in your work change between 2005-2010?

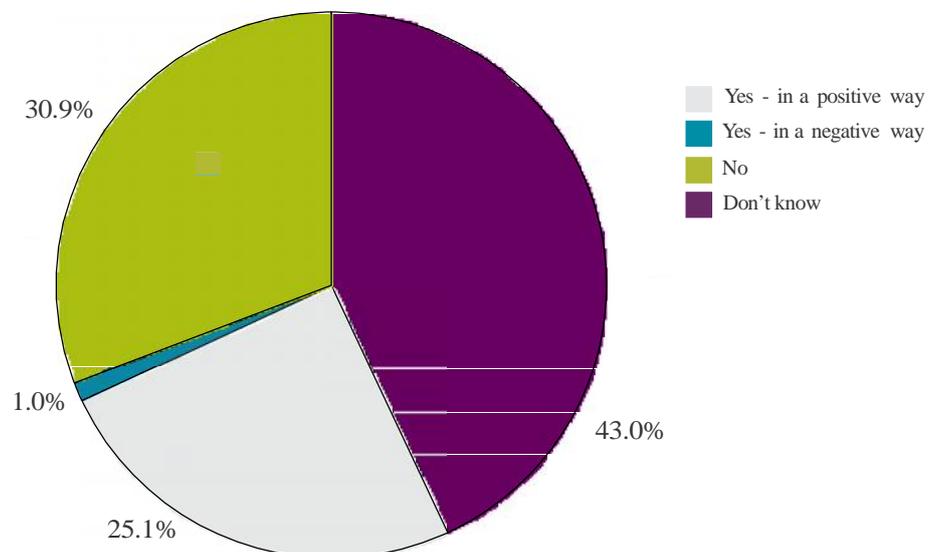


The survey indicated that artists feel the resale right has had very little impact on the market in their art works, either positively or negatively. Only 1.3% of respondents who had received resale royalties felt the Right had negatively impacted on the volume of sales of their work, and 5.3% identified a negative impact on the prices achieved by their works.

Overall, 99% of Artist's Resale Right recipients did not feel the Right had negatively impacted on the market in their work.

Figure 2

In your opinion, has the Artist's Resale Right affected the market in your work?



³⁵ DACS' Artists' Rights Survey, February 2011, see www.dacs.org.uk for more information

³⁶ The responses to these questions were filtered to show only responses from artists who had received resale royalties. For more information see DACS Artists' Rights Survey (February 2011) at www.dacs.org.uk

Loss of Earnings

It should be recognised that the UK Government's decision to delay until 2012 the full implementation of the Artist's Resale Right for families and beneficiaries of deceased artists has resulted in a significant loss of earnings for these estates, which play a key role in preserving our country's cultural heritage.

A market analysis conducted by DACS of the most significant auctions of the two biggest auction houses in the UK (Sotheby's and Christies') showed that out of an overall sales value of more than £460 million, over £5 million of resale royalties which could have arisen for artists' estates were lost in 2010 alone. Looking at the same auction houses for the years 2008, 2009, and 2010, more than £9.1 million royalties for estates were lost due to the delay in implementation of the Right for families and beneficiaries of deceased artists in that period (overall sales value £1.7 billion).

Q4 & Q5

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

It would be helpful if you could further support your answers to Q1-Q5 above with as much evidence as possible.

“The austerity imposed by the crisis has been relegated to a distant memory. Collectors are back in the market, not just as observers but as active participants. Over the last three years, revenue from the Contemporary art sales in London has been rising: Christie’s and Sotheby’s evening sales generated £22.3m in February 2009, £79.5m in February 2010 and £83.2m in February 2011.”

*‘Contemporary Art 2011: A New Lease of Life!’
Artprice, February 2011*

Despite the substantial fluctuations over recent years, the UK art market continues to attract international buyers and sellers, supporting numerous galleries and auction houses, employing industry experts, and engaging ancillary support services. It is clear that the introduction of the Artist’s Resale Right has not had any negative impact on this.

However, the continuing success of the UK art market is ultimately down to the continuing creativity of its visual artists, and direct financial investment in visual artists has been decreasing significantly in recent years.

Visual artists, whose median salary is between £15,723 and £10,000 compared with the UK national median wage of £21,320, often rely on a portfolio of earnings from different sources which are coming under increasing pressure.³⁷ The grants made by Arts Council England (the UK’s largest arts funding body) to individuals for visual arts related activities have been cut by 41% during 2007-2009 and are set to diminish further.³⁸

DACS’ total royalty distributions (£34.5 million over five years, including copyright royalties) to artists represents almost twice as much as the investment made by Arts Council England to individuals for visual arts related activities over a similar period. While the Artist’s Resale Right represents a tiny percentage of the value of the UK art market, at 0.04%, the £11.4 million of resale royalties generated by the Artist’s Resale Right have proven to be significant for artists. Their status as ‘unrestricted’ funds means that they are not tied to a particular activity and can be used to support an artist’s practice by paying for studio rent or purchase of equipment and materials.

It is the ongoing ability of visual artists to create that will ultimately ensure the growth and survival of the art market as it is their works that constitute the backbone of this industry. The Artist’s Resale Right contributes to sustaining the continuous supply of original artworks to the market.

Artist’s Resale Right for Families and Beneficiaries

The 2008 study commissioned by the UK Government and conducted by the IP Institute into the effect of the Artist’s Resale Right on the UK market concluded that the full implementation of the Right to include artists’ families and beneficiaries would increase the size of royalty payments about fourfold.³⁹

Some critics of the Artist’s Resale Right in the UK claim that the full implementation of the Right will cause substantial damage to the art trade. However, it is clear that even when the Right is fully implemented, it remains a very small amount in relation to the value of the UK art market, equating to 0.15% of the entire UK art market and less than 0.4% of the modern and contemporary art market.

³⁷ Kretschmer, Martin, Lionel Bently et al, *Copyright contracts and earnings of visual creators: A survey of 5,800 British designers, fine artists, illustrators and photographers*, Bournemouth: CIPPM, 2011

³⁸ *Briefing Note: Visual Arts*, Arts Council England, February 2010, p7

³⁹ Graddy, Katy, Noah Horowitz and Stefan Szymanski, A study into the effects on the UK art market of the introduction of the artist’s resale right, IP Institute, January 2008, p2

Table 8

The Impact of the Artist’s Resale Right 2005-2009 and projected impact after 2012

	Value of UK art market (million €)	Value of modern & contemporary art market (million €)	ARR royalties collected by DACS (million €)	Estimated ARR collected (living & deceased)	Estimated ARR as a % of art market value (living & deceased)	Estimated ARR as a % of modern & contemporary art market value (living & deceased)
2005	8,000	3,200				
2006	11,700	4,680	1.70	6.8	0.06	0.15
2007	14,400	5,760	5.10	20.4	0.14	0.35
2008	14,300	5,720	5.20	20.8	0.15	0.36
2009	9,100	3,640	3.60	14.4	0.16	0.40

Far from presenting a risk to the future of the UK art market, the full implementation of the Right will provide desperately needed funding for artists’ families and beneficiaries, who inherit the burden of managing the artist’s estate. Beneficiaries are often required to store, preserve and restore original works. They may be expected to maintain an archive, supply reproductions and provide biographical information. Estates are frequently relied upon to contribute to the assessment of provenance, identification of fakes and be expert in every aspect of the artist’s life and work.

CASE STUDY

2 The estate of Alan Lowndes

Alan Lowndes (1921-1978), was a British painter who began his career in the late 1940s. At first, his paintings sold for very low prices, usually less than £10. He began to achieve success in the late 1950s and early 1960s. By the time of his death in 1978 his paintings were selling for around £400-£500.

Following his death, Alan’s widow Valerie Lowndes had to sell works from Alan’s collection, in order to continue to support the family. The works were sold at auction, for modest prices of around £500. Since that time, works by Alan Lowndes have significantly increased in value. In 2008 *Painter and Critics* (1963) sold at Sotheby’s in London for a hammer price of £29,000 (€6,989).

Valerie says the only financial benefit she has received from Alan’s work since his death amounted to less than £100. The activities of the estate have gone otherwise unsupported and have included organising exhibitions of Alan’s work, providing expertise on Alan’s life and work, authenticating work, providing access to archival material, assisting in the publication of a book on Alan’s work. All activities which have increased Alan Lowndes profile, and ultimately the prices his works have achieved when sold.

Valerie says: *“I now have only a handful of small paintings left in my possession, which I hope not to have to sell, but at the age of 82 I am facing old age with few financial assets to pay for any help and care I may need. The receipt of a few hundred pounds now and again would be of enormous benefit to me and my family and I very much hope these Artist’s Resale Rights go through.”*

Q6

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 the Artist's Resale Right is borne predominantly by artists, who pay a charge to the collecting society acting on their behalf. DACS makes a 15% charge on resale royalties collected for artists in order to cover the costs of operating our service.

Artists who mandate DACS for Artist's Resale Right receive their resale royalties within 30 days of DACS' receipt of the royalties. They are also entitled to access DACS' copyright advice service, a free telephone-based service.

DACS strives to provide services to art market professionals to help minimise the administrative burden. These include:

- Online calculator linked to the European Central Bank which generates a precise royalty calculation based on the daily €£ exchange rate
- Online searchable database which indicates which artists are eligible for the Right
- Pre-sale check service – assisting art market professionals in determining if a royalty may arise prior to the sale
- Local rate telephone helpline
- Downloadable publications explaining how the Right works
- Seminars for art market professionals

Assessments of the administrative burdens on the art trade have varied. In a survey of art market professionals in late 2007, 60% of art market professionals said their own administration of the resale right took less than five minutes and cost them less than £10 per quarter.⁴⁰

Graddy, Horowitz and Szymanski state in their 2008 report into the Artist's Resale Right that, "so long as the art market in the UK is not prejudiced by ARR, the cost of administration does not appear burdensome relative to the benefit to the artists."⁴¹ The study showed that 50% of art market professionals identified the cost as less than £10 per transaction, while 25% said they did not know what the cost of administration was.

Once the Right is fully implemented for artists' families and beneficiaries from 1 January 2012, it is anticipated that the volume of sales, and the number of artists and estates enjoying the Right, will increase fourfold. However it seems reasonable to conclude that the administration costs carried by art market professionals will not increase by a large proportion since the art trade dealing with the bulk of the sales (such as Sotheby's and Christie's and other large auction houses) already have systems in place to manage the Right. The full implementation of the Right does not require new systems and processes, rather the extension of existing ones.

The derogation within the Directive which provided for the staggered implementation of the Right was intended to allow the relevant markets time to adapt to the Right. It can be assumed therefore, that in the 10 years since the Directive was approved, that art market professionals have had time to adjust their systems and processes to accommodate the Right. Graddy, Horowitz and Szymanski felt that the administrative cost would remain much smaller than the benefit received. In their view, "...these costs are unlikely to grow significantly over time, unlike the value of traded art."⁴²

It is the artists who pay most substantially for the administration of the Right through the charges paid to DACS (and other collecting societies). DACS in turn has sought to ensure the smooth functioning of the Right, working to achieve a high level of compliance, and educating art market professionals about the Right. Ahead of full implementation in 2012, DACS is continuing to invest in IT and business systems which make collection and distribution easy and cost-effective, seeking to expand our services to art market professionals, artists and estates.

⁴⁰ DACS commissioned Maven Research Ltd to survey artists and art market professionals in order to assess the impact of the Artist's Resale Right. 335 art market professionals and 151 artists participated in the survey. The results were published in 'The Artist's Resale Right in the UK: Submission to the post-implementation review conducted by the UK Intellectual Property Office by the Design and Artists Copyright Society, February 2008

⁴¹ Graddy, Katy, Noah Horowitz and Stefan Szymanski, *A study into the effects on the UK art market of the introduction of the artist's resale right*, IP Institute, January 2008, p36

⁴² *Ibid*, p36

Q7

How many artists have benefitted 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?

DACS has paid resale royalties to nearly 2000 different artists and estates since the Right was introduced in the UK in February 2006. In 2010 alone, 160 artists and beneficiaries received resale royalties for the first time.

Until 1 January 2012, only living artists benefit from the Artist's Resale Right in the UK. Those estates who have received resale royalties from DACS did so as a result of sales of art work in other countries which already apply the Right to artists' families and beneficiaries. This money was collected by collecting societies in those countries and passed to DACS for distribution.

On average 69% of the artists receiving royalties from DACS were from the UK, 27% were artists from the EU and 5% were artists from non-EU countries, or 'third countries'.

It is estimated that the number of eligible artists will increase fourfold following the full implementation of the Right on 1 January 2012, however, the number of beneficiaries of the Right will increase even more as each estate has, on average, three beneficiaries.

Table 9

Number of Artists and Estates receiving Resale Royalties from DACS, by region (2006-2010)⁴³

	Total no. of artists paid and estates	UK artists and estates	% UK artists and estates	EU artists and estates	% EU artists and estates	Non-EU artists and estates	% Non-EU artists and estates
2006	414	355	86%	56	14%	3	1%
2007	879	676	77%	174	20%	29	3%
2008	1045	661	63%	311	30%	73	7%
2009	835	476	57%	292	35%	67	8%
2010	868	520	60%	304	35%	44	5%

Table 10

Number of Artists and Estates receiving Resale Royalties from DACS (2006-2010)⁴⁴

	Total no. of artists and estates paid	Total royalties paid £	No. of living artists paid	Royalties paid to living artists (£)	No. of estates paid	Royalties paid to estates
2006	414	986,830	412	984,049	2	2,780
2007	879	2,841,826	875	2,830,338	4	11,488
2008	1045	3,108,028	1039	3,097,366	6	10,662
2009	835	2,154,976	830	2,149,056	5	5,920
2010	868	2,286,605	855	2,244,896	13	41,710

⁴³ Figures are taken from DACS' database based on Artist's Resale Right distributions made during 2006-2010.

⁴⁴ Ibid

Q8

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

Undistributed funds arising from the Artist's Resale Right make up less than 3% of what DACS has collected since the Right was implemented in the UK. This percentage fluctuates at different stages of the cycle of collecting and paying resale royalties.

Much of this is made up of money for foreign artists whom we can not pay through a sister society (and for whom we must therefore search); money for deceased UK artists from European countries; and money held awaiting resolution of administrative issues, for example, fulfilling our obligations around withholding tax.

By way of example, the following table provides a snapshot of the percentage of DACS' total collections held in trust as at February 2011:

Table 11

Artist's Resale Right Royalties held in Trust by DACS, as at February 2011

Royalties held for whom DACS has a point of contact and is waiting for a response	1.0%
Royalties held awaiting resolution of administrative issues	0.7%
Royalties held for artists for whom DACS is searching	0.2%
Royalties held for estates of deceased artists for whom DACS is searching	0.4%
Issues resolved - royalties awaiting distribution	0.4%
Total royalties held in trust	2.7%

The money is held in trust and a comprehensive due diligence process undertaken to find the artist/beneficiary. The statute of limitations on these funds runs out after six years. DACS does not wish to retain these funds and feels strongly that any royalties remaining undistributed after this time should go to artists to incentivise further creativity. Discussions are underway with artists and art professionals to determine how this can best be achieved.

Q9

What is the role of the resale right in fostering artistic creativity?

The introduction of Artist's Resale Right in the UK in 2006 has resulted in a significant increase in revenues to visual artists, amounting to £11.4 million over the past five years.

Copyright royalties contribute to the financial sustainability of thousands of artists, photographers, designers and illustrators. Whilst the sums may appear modest, they are disproportionately significant for visual artists who rely on a portfolio of earnings from different sources and whose median salary is between £15,723 and £10,000 compared with the UK national median wage of £21,320.⁴⁵

Although royalty earnings often represent small sums individually for artists, their status as 'unrestricted funds' means that they are not tied to a particular activity and can be used to support an artist's practice, paying for studio rent or purchase of equipment and materials. 56% of respondents to the recent DACS Artists' Rights Survey in 2011 said their royalties were spent on purchasing equipment and materials, and 18% used royalties to fund professional development. Furthermore, many artists value the recognition and validation of their creativity conferred by royalty payments as much as the financial remuneration they represent.⁴⁶

Many of the artists consulted by DACS acknowledge the importance of the royalties they gain from the Artist's Resale Right. For many, the challenge posed by raising a family and paying basic living costs is in constant conflict with finding the time in which to create, and finding income to support the purchase of essential materials and other necessities, ranging from finding a suitable workshop to funding new work.

"Those £200 cheques are more valuable than any £1000 cheques that come from elsewhere because they provide the rewarding knowledge that the artist is appreciated on the secondary market."

MacKenzie Thorpe's studio

"I have been delighted and very grateful to receive resale royalties. This is a marvellous thing to be happening for artists."

Mary Fedden OBE RA

Even a high profile painter such as William Crozier, whose work is exhibited internationally in public collections such as European Commission's in Brussels to Melbourne's National Gallery of Australia, says that money from the Artist's Resale Right is almost entirely reinvested in providing better quality materials and framing for his work which, he adds, acts as a "win-win" for the gallery which benefits from this enhanced marketability.

Quite apart from the financial benefit of royalty payments, artists appreciate the recognition their royalties represent. 68% of artists said their royalties to be a 'very significant' or 'quite significant' incentive for them. Many artists tell DACS that they appreciate what the royalty represents as much as the financial reward.⁴⁷

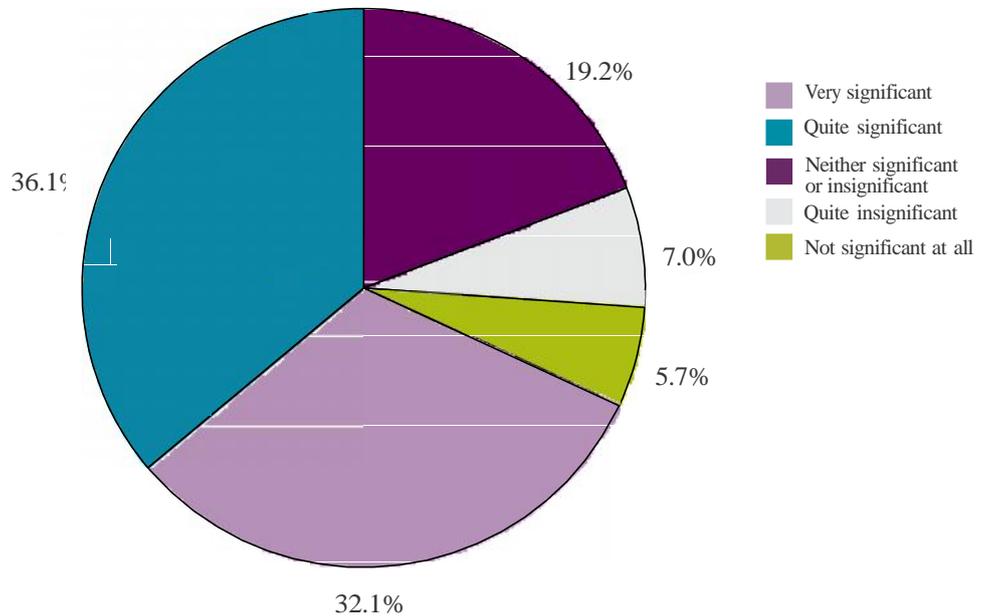
⁴⁵ "Visual artists have precarious careers, with typical earnings well below the UK national median wage of £21,320. In 2009/10, the typical photographer earned £15,000 (median), the illustrator earned £15,723 while the typical fine artist earns only £10,000" (median). Source: Kretschmer, Martin, Lionel Bently et al, *Copyright contracts and earnings of visual creators: A survey of 5,800 British designers, fine artists, illustrators and photographers*, Bournemouth: CIPPM, 2011

⁴⁶ DACS Artists' Rights Survey, February 2011, p3. See www.dacs.org.uk for more information.

⁴⁷ Ibid

Figure 3

How significant an incentive are Artist's Resale Right royalties for you?



The support from loved ones, and the way in which this sustains them during the extremely difficult early years of an artistic career, is a comment DACS hears regularly from artists. They are keen, above all else, that they should be able to show their gratitude by bequeathing their work to this often unacknowledged support network. As Philip Disley, a Liverpool-based illustrator put it, “my work is my security and the only way I can generate income for my family, now and in the future...the knowledge that what I have artistically created can perhaps provide in time to come for my family is important to my well-being.” Combined with the worry of incurring post-mortem burdens on loved ones by requiring them to manage their estate, and the prospect that their work will continue to make profit for others after their deaths, it is this desire for peace of mind which drives artists’ support for the resale right.

CASE STUDY

2 Charles Jamieson

Charles is a painter, sculptor and photographer, a former President of the Paisley Art Institute and chairman of The Aspect Prize. He works in Ayrshire. Over the course of his career he has had to take on numerous other jobs to support his work as an artist.

Charles says: “It was not until my late forties that my paintings started to sell in numbers that allowed me to live by painting alone. Each of my paintings cost me a lot of money. My large paintings cost £600 each to create and frame. When a painting is sold in a gallery I then face a 50% sales commission as well as 17.5% VAT. At the end of the day I receive 32.5% of the selling price of my work from which I have to pay all my expenses. Framing costs last year were over £10,000.

“That the visual artist should retain the copyright to his or her work is vital and that they should be able to hand on the Resale Right to their family or person of their choosing seems entirely justifiable in the face of the rights that other artistic areas enjoy.”

Artist’s Resale Right for families and beneficiaries

The decision by the UK Government in 2008 to delay the full implementation of the Artist’s Resale Right from 2006 to 2012 has prevented the families and beneficiaries of deceased artists from enjoying this important Right.

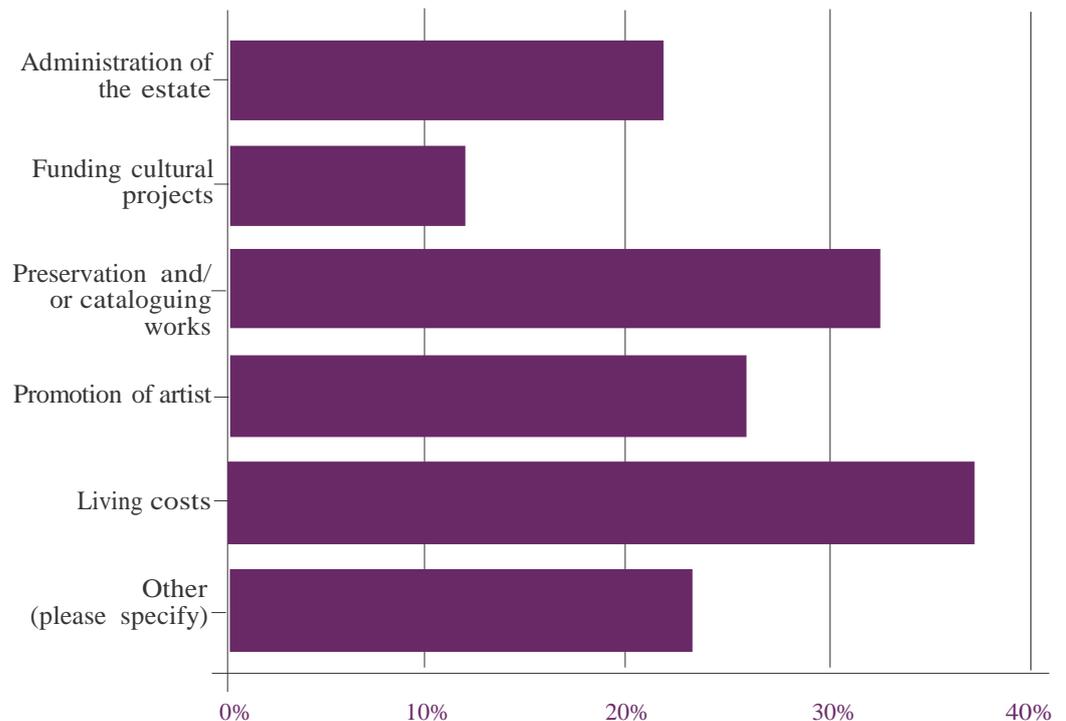
The impact of this can be calculated in the loss of earnings experienced by artists’ estates. A market analysis conducted by DACS of the most significant auctions of the two biggest auction houses in the UK (Sotheby’s and Christie’s) showed that out of an overall sales value of more than £460 million, over £5 million in resale royalties which could have arisen for artists’ estates were lost in 2010 alone. Looking at the same auction houses for the years 2008, 2009, and 2010, more than £9.1 million royalties for estates were lost due to the delay in implementation of the right for the families and beneficiaries of deceased artists in that period (overall sales value £1.7 billion).

Inheriting an artist’s legacy typically brings with it a burden. Beneficiaries are often required to store, preserve and restore original works. They may be expected to maintain an archive, supply reproductions and provide biographical information. Estates are frequently relied upon to contribute to the assessment of provenance, identification of fakes and be expert in every aspect of the artist’s life and work.

Artists’ estates contribute significantly to the creation and maintenance of the market for sales of works by the deceased artist. Beneficiaries responding to DACS’ survey indicated that aside from covering every day costs of living, royalties were spent on preservation and cataloguing (32%), promotion of the artist (25%) and administration of the estate (22%).⁴⁸

Figure 4

If you are the guardian or beneficiary of an artist’s estate:
how is income from copyright and/or Artist’s Resale Right used?



⁴⁸ DACS Artists’ Rights Survey (February 2011). See www.dacs.org.uk for more information.

Artists' estates are central in the production of the catalogue raisonné, which is a monograph giving a comprehensive catalogue of works by an artist, including provenance for every individual work. They are regarded as the prime source of information about an artist's work and are typically expensive to produce for a limited market.

This crucial work is relied upon by scholars, museums, art dealers, collectors, and the art world generally. It comes at a cost, which resale royalties will help to defray. The publication of many catalogues raisonnés relies on artists' estates to provide information, expertise and financial support.

Campos and Barbosa (2008) have explored the impact a catalogue raisonné has on the value of a work when it reaches auction: *“One striking result is that the reputation of the author and the provenance of the work turns out to be crucially important determinants of the “hammer price” of a painting. We also find that the price of a painting tends to increase if it was included in an art exhibition, included in the catalogue raisonné, reproduced in an influential art book or if it originates from a public institution (a gallery or museum).”*

Their research suggests the average annual return over the period 1995-2002 for a painting that appeared in a catalogue raisonné was 8.96%, while the same figure for the “non-catalogue raisonné” painting was 5.87%.⁴⁹ This is a 3% increase in the value of a work of art, which can be attributed to the work of an artists' estate. Resale royalties then represent a fair reward for the important work carried out by artists' estates.

CASE STUDY

3 The William Scott Foundation

Mr Robert Scott, jointly with his brother James, runs the William Scott Foundation, named after their artist father who lived from 1913 to 1989. The Foundation undertakes most of the activities that give rise to costs, such as cataloguing, preservation, exhibitions, transport and insurance, and in addition has to engage in dealing with fakes and assisting art students with their research.

The running costs of the Foundation is around £150,000 and rising, but this does not include printing and production and other costs borne directly by the family. The Foundation's income does not even begin to approach that sum, so the Scott brothers are obliged to sell the paintings that it owns, which in the end means that the Foundation will have to close. Robert Scott is vocal on the significant difference that the Artist's Resale Right would make to the estate.

If artists' families and beneficiaries had been entitled to enjoy the Artist's Resale Right from when it was first introduced for living artists in 2006, on the basis of auction sales alone, the William Scott Foundation would have received more than £160,000 in royalties. This sum would have had a significant impact on its financial position.

⁴⁹ Barbosa, Renata Leite and Nauro F Campos, *Paintings and Numbers: An Econometric Investigation of Sales Rates, Prices and Returns in Latin American Art Auctions*, 2008, p24

Appendix 1 About DACS

Established by artists for artists, DACS, (the Design and Artists Copyright Society) is a not-for-profit visual arts rights management organisation representing over 60,000 creative individuals including artists, photographers and illustrators from the UK and abroad.

Part of a global network of visual arts collecting societies, DACS is committed to maximising revenues for visual artists so that they can continue to create and innovate. In 2010 DACS paid royalties of £7.1 million to visual artists.

We are a membership organisation, a company limited by guarantee and a collecting society as defined under UK law.

DACS provides three rights management services for artists and their beneficiaries:

Collective rights management (Payback)

Negotiating on behalf of visual artists, DACS secures a share of collective licensing revenue which we distribute to thousands of artists each year. These royalties come from a range of collective licensing schemes, which include photocopying books and magazines and the recording of TV programmes by schools, colleges and universities.

Copyright licensing

We manage copyright on behalf of individual artists by acting as agent and selling licences to a wide range of customers. Examples of activities we license in this way include book publishing, advertising and merchandising.

Artist's Resale Right

We collect royalties arising from art works resold by art market professionals on behalf of our members, and all those artists who are not represented by another collecting society under a compulsory collective scheme.

Our charges to artists are made by retaining a percentage of the royalties we collect. This charge varies depending on the service. In 2011 our charges are:

Service	DACS Charge
Payback	21%
Copyright Licensing	25%
Artist's Resale Right	15%

In addition to these services, DACS provides copyright information for visual artists via our website and actively campaigns on behalf of visual artists and their right to be recognised and rewarded for their work.

We belong to a number of national and international bodies, including:

- British Copyright Council
- International Federation of Reproduction Rights Organisations (IFRRO)
- International Confederation of Societies of Authors and Composers (CISAC)
- European Visual Artists (EVA)
- Alliance Against IP Theft
- Creative Coalition Campaign

DACS is governed by a Board of Directors that includes artists, lawyers and other professionals with an interest in artists and their intellectual property. DACS also convenes a Creators' Council – a dynamic forum of visual artists who act as advisors to DACS, providing insight into the current work and practice of visual artists as well as acting as a sounding board for new ideas.

Appendix 2

Artist's Resale Right royalties collected by DACS, 2006-2010

2006	Total sales €		Total royalties €		No. of sales	
	Auction houses	Dealers	Auction houses	Dealers	Auction houses	Dealers
Up to 50K	11,977,946	5,186,171	479,117	207,446	1,586	591
50k-200k	10,502,131	3,168,714	372,563	112,561	115	35
200k-350k	8,148,770	1,628,061	220,987	38,780	31	5
350k-500k	4,640,137	1,243,520	91,950	24,967	11	3
500k+	18,949,052	2,026,051	145,400	27,565	14	3
SUB TOTAL	54,218,036	13,252,517	1,310,017	411,319	1,757	637
	80%	20%	76%	24%	73%	27%
TOTAL	€67,470,553		€1,721,336		2,394	
2007	Total sales €		Total royalties €		No. of sales	
	Auction houses	Dealers	Auction houses	Dealers	Auction houses	Dealers
Up to 50K	31,008,698	11,521,640	1,240,347	460,827	3,502	1408
50k-200k	38,317,947	7,722,035	1,349,038	273,161	399	83
200k-350k	20,226,831	5,785,981	553,268	152,359	78	21
350k-500k	17,469,961	1,185,251	349,849	24,676	42	3
500k+	82,634,777	10,505,752	566,808	108,229	56	11
SUB TOTAL	189,658,214	36,720,659	4,059,310	1,019,252	4,077	1526
	84%	16%	80%	20%	73%	27%
TOTAL	€226,378,873		€5,078,562		5,603	
2008	Total sales €		Total royalties €		No. of sales	
	Auction houses	Dealers	Auction houses	Dealers	Auction houses	Dealers
Up to 50K	29,054,813	8,302,382	1,162,192	332,095	3,164	821
50k-200k	36,838,641	7,682,096	1,296,659	268,462	383	76
200k-350k	19,718,300	3,571,529	543,683	98,715	77	14
350k-500k	17,735,875	4,891,014	357,429	93,205	43	11
500k+	95,351,785	30,985,491	779,149	294,879	78	30
SUB TOTAL	198,699,414	55,432,512	4,139,112	1,087,356	3,745	952
	78%	22%	79%	21%	80%	20%
TOTAL	€254,131,926		€5,226,468		4,697	
2009	Total sales €		Total royalties €		No. of sales	
	Auction houses	Dealers	Auction houses	Dealers	Auction houses	Dealers
Up to 50K	29,901,804	4,391,449	1,196,072	175,658	3,020	493
50k-200k	30,351,189	2,204,858	1,072,535	77,645	324	23
200k-350k	12,929,326	1,274,889	354,293	35,248	50	5
350k-500k	12,040,400	0	241,452	0	29	0
500k+	40,953,687	5,796,125	354,648	49,630	35	5
SUB TOTAL	126,176,406	13,667,321	3,219,000	338,181	3,458	526
	90%	10%	90%	10%	87%	13%
TOTAL	€139,843,727		€3,557,181		3,984	
2010	Total sales €		Total royalties €		No. of sales	
	Auction houses	Dealers	Auction houses	Dealers	Auction houses	Dealers
Up to 50K	18,287,593	5,190,945	731,503	207,637	2,217	614
50k-200k	19,219,149	2,281,176	675,074	81,935	197	27
200k-350k	16,042,449	1,269,571	416,924	35,195	57	5
350k-500k	13,641,803	1,235,614	261,959	24,928	31	3
500k+	36,655,102	6,500,408	314,171	50,262	31	5
SUB TOTAL	103,846,096	16,477,714	2,399,631	399,957	2,533	654
	86%	14%	86%	14%	79%	21%
TOTAL	€120,323,810		€2,799,588		3,187	

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