

Executive Summary

2016 marks the 10th Anniversary of the Artist's Resale Right (ARR) in the UK – one of the most important pieces of legislation introduced in modern times supporting the livelihoods of visual artists.

The Artist's Resale Right successfully balances the interests of artists with the interests of the art trade and recognises the on-going stake an artist has in the economic value of their work. ARR is not only an important mechanism supporting artists and their estates but is a significant driver of the UK's thriving creative industries' economy.

The Artist's Resale Right provides a modest royalty for artists and artists' estates whenever their work is resold by a dealer, gallery or auctioneer for €1,000 or more. It was introduced in the UK through The Artist's Resale Right Regulation on 13 February 2006, coming into force on 14 February. ARR was developed on the basis of *droit de suite* that was introduced in France in the 1920s followed by the Berne Convention for Protection of Literary and Artistic Works in 1948, which was signed by 168 countries worldwide, and formally introduced at EU level with the European Resale Right Directive 2001/84/EC. It was fully implemented in the UK in 2012 to include deceased artists (artists' estates), whose works are still in copyright 70 years after their death.

ARR enables artists to have a share in the increasing value of their work and allows artists' estates to continue to care for an artist's legacy.

The Artist's Resale Right has mechanisms in place to protect the interests of the art trade; royalty rates are cumulative on a sliding scale moving from 4% on works sold at €50,000 or less, down to 0.25% for works that exceed sale prices of €500,000, and with a cap of €12,500 on the total royalty paid on individual works sold for over €2 million. There is no evidence that these modest royalties negatively impact the art trade nor drive sales away from the UK. In fact, comparing the percentage of ARR royalties collected by DACS against post-war and contemporary and modern art auction sales in the UK in 2014 was only 0.64%.

To date, DACS has distributed over £46.9 million to more than 3,900 artists and artists' estates. In 2015 alone, DACS distributed more than £10 million to over 1,500 artists and estates.

This paper provides a retrospective snapshot of the last ten years, celebrating with the visual arts sector the powerful impact ARR has made to artists and estates, while looking ahead at some of the future challenges to be faced in a more globalised and digital art market. The paper sets out the picture of ARR based on the evidence and data collected by DACS since the regulation was introduced in the UK.

“How incredible it is to think that we have been enjoying the Artist’s Resale Right here in the UK for a decade. It’s made a massive impact on the lives of working artists and with the extension of ARR, also to heirs and beneficiaries of the deceased. The Artist’s Resale Right gives financial recognition to the artist for their contribution to a wider market so we must not take them for granted. ARR - and its extension to artists’ estates - was hard won and faces constant threat. We must celebrate its existence as widely as possible.”

Stuart Semple

Ten Years of the Artist's Resale Right

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“As both a practising artist myself and as artistic executor to an artist’s estate, I believe that it is right for artists and their heirs to receive a modest benefit from the resale of their work, especially if its value increases. ARR is a fair and justified right that enables artists to take a small percentage of the profits made by commercial institutions from their originality, their courage, their commitment and the contribution they make to the cultural life of the society they live in.

In my own situation I use ARR to fund the running of the Kyffin Williams Estate and I am currently working on a new book to mark the centenary of Sir Kyffin’s birth in 2018. Without ARR it would be impossible for me to devote the time to the picture research, photography, design, editing and planning that go into the publication of an artist’s monograph.

I am certain that in its first ten years ARR has already been beneficial to the visual arts in the UK at many different levels and the role that DACS has played in its implementation should be recognised and applauded.”

Nicholas Sinclair, Estate of Sir Kyffin Williams KBE, RA

Introduction from Gilane Tawadros, Chief Executive

Over the last 20 years, London and the UK have played a prominent role in the phenomenal growth of contemporary and modern art sales; new blue chip commercial galleries and art fairs are springing up onto the art scene, and millions of tourists are citing our museums and galleries as motivation for visiting the UK each year.

However, for many visual artists the capacity to earn from their work is diminished with additional pressures due to funding streams drying up. Over the last three years 71% of artists exhibiting in publicly funded galleries in the UK received no fee for their work and 57% of artists generate less than a quarter of their income through their art.¹ It can be very challenging for many to sustain their practices and careers.

With our strong cultural heritage and the UK as a global leader in creative talent, it is vital that we ensure there is a robust financial environment that fairly remunerates creators and allows them to share in the increasing value of their work.

The Artist's Resale Right serves to level the playing field between artists and other creators of copyright works like writers and composers who obtain royalties from successive exploitation of their works.

The Artist's Resale Right is important for an artist's income as it helps them to reinvest back into their practice, and support living expenses. For estates, it provides invaluable support towards managing an artist's legacy through meeting costs that accumulate through conservation and authentication.

DACS campaigned for this right on behalf of visual artists and was instrumental in supporting the introduction of the Artist's Resale Right Regulation into the UK. DACS plays a crucial role in supporting and sustaining artistic practice and livelihoods by collecting, distributing and managing artists' royalties and rights. 10 years of ARR is not just a celebration for visual artists and estates but for the UK as a global art market powerhouse.

¹ *Cultural times – The first global map of cultural and creative industries*, prepared by EY for CISAC, December 2015. http://www.worldcreative.org/wp-content/uploads/2015/12/EYCulturalTimes2015_Download.pdf.

The Artist's Resale Right at a glance: facts and figures



What is ARR? ARR provides a royalty for artists and artists' estates whenever their work is resold by an auctioneer, dealer or gallery for €1,000 or more.

£46.9m

ARR royalties distributed since 2006

£10m ARR royalties distributed in 2015

21 New artists receiving ARR royalties each month in 2015

84 UK recipients in top 100 highest ARR earners in 2015

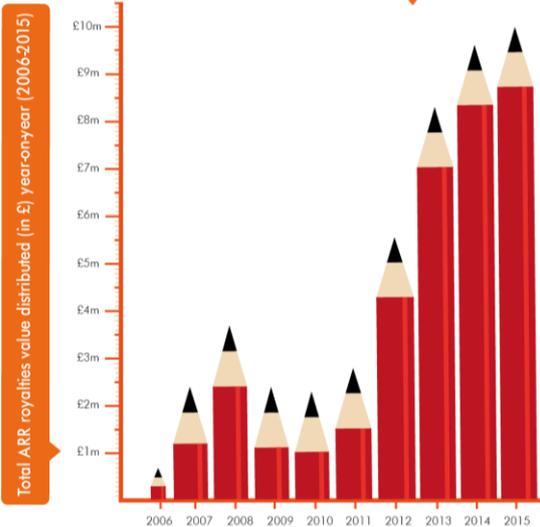
81% Of artist recipients used the income to pay for living expenses

£272 Median monthly ARR royalty distribution in 2015

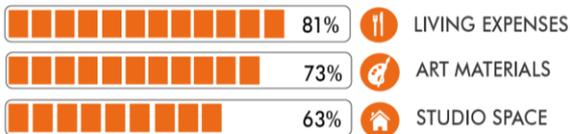
3,965 Artists and estates who have benefited from ARR since 2006

70/30 Living artists vs. estates

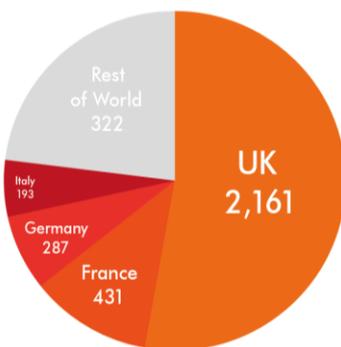
ARR royalties by year



Use of ARR Income by Artists



ARR royalties are a much needed income that helps artists to sustain their practice.



Total number of UK vs. international artists or estates receiving ARR (2006 - 2016):

3,965

ARR benefits emerging as well as established artists.

56%

Of total ARR royalties in 2015 are £500 or less

² Infographics designed by Shaunna Nannery 2016.

ARR and the growth of the UK art market Case Study

Despite fears that the introduction of ARR would negatively impact the UK art market and divert sales to non-ARR markets, there has been no evidence to date to support this.

In 2006 when ARR came into play in the UK, The European Fine Art Federation (TEFAF) published a report that valued the UK art market at over £8.5 billion.³ Although the global art market felt the impact of the recession – contracting 41% in 2009 from its peak in 2007, by 2010 the global art market was in recovery and rose by 51% to €43 billion.⁴

In 2011, the European Commission's report on ARR concluded that "no clear patterns can be established to link the loss of the EU's share in the global market for modern and contemporary art with the harmonisation of provisions relating to the application of the resale right in the EU on 1 January 2006."⁵

Looking at the recent figures in TEFAF's latest report, the global art market in 2014 has reached its highest ever-recorded level – a total value of €51 billion worldwide and a 7% year-on-year increase from the 2007 pre-recession level.⁶

This growth trend was also evident in the UK which grew 17% in 2014, increased its own market share by 2% and was valued at €11.4 billion (approximately £9 billion and higher than its value in 2006 when ARR was introduced). In context, the ARR royalties distributed by DACS represent just 0.1% of the total market value in 2014.

Auction sales are also on the rise. According to the report, public auction sales accounted for 48% of the overall market in 2014 with total sales exceeding the peak in the market in 2007 and have recovered value by 88% since their low point in 2009.

³ *The TEFAF Art Market Report*, prepared by Dr Clare McAndrew, December 2007, Included in Submission to the post-implementation review conducted by the UK IPO, DACS, February 2008.

⁴ *The Global Art Market in 2010, Crisis and Recovery*, TEFAF, prepared by Dr Clare McAndrew, Art Economics, 2011.

⁵ Report from the Commission to the European Parliament, The Council and The European Economic and Social Committee, Report on the Implementation and Effect of the Resale Right Directive (2001/84/EC), December 2011. http://ec.europa.eu/internal_market/copyright/docs/resale/report_en.pdf

⁶ *The TEFAF Art Market Report 2015*, prepared by Dr Clare McAndrew, Art Economics, March 2015.

Post-war and contemporary art sales at auctions, which make up 48% of all global fine art sales followed by modern art at 28%, have grown to record levels as well. In 2014 post-war and contemporary sales saw an all-time high of €5.9 billion globally, which has sharply risen since its post-crash low of €1.42 billion in 2009.⁷

These two sectors are predominately responsible for ARR royalties with modern art covering artists born between 1875 and 1910 and post-war and contemporary for artists born after 1910.

In the UK post-war and contemporary art sales represent €1.1 billion and modern art sales €753 million – both increasing on the previous year's figures.⁸ Compared to ARR royalties DACS collected in 2014, this represents just 0.64% of the post-war and contemporary and modern art sales in the UK.

The royalties collected and distributed for ARR are only a minor fraction of a strong contemporary and modern art market. Furthermore, a survey of art dealers at the London Art Fair revealed that their biggest concerns are business rates and rents; nonetheless, 85% of those surveyed believed that the British modern and contemporary art market in 2016 would remain strong or fare better.⁹

Lastly, visual arts as part of the wider UK creative industries is immensely valuable to the UK economy. For every £1 of Gross Value Added (GVA) by the arts and culture industry, an additional £1.43 of GVA is generated in the wider UK economy.¹⁰ Overall, visual arts contribute US \$3 billion GVA to the UK economy each year and employs more than 37,000 people.¹¹

⁷ *The TEFAF Art Market Report 2015*, prepared by Dr Clare McAndrew, Art Economics March 2015. Featured in Artlyst, <http://www.artlyst.com/articles/tefaf-art-market-report-reveals-contemporary-art-domination-in-2015>.

⁸ *The TEFAF Art Market Report 2015*, prepared by Dr Clare McAndrew, Art Economics, March 2015.

⁹ More than a third of dealers in London Art Fair survey say rising rents pose biggest threat to UK market. *The Art Newspaper*, 19 Jan 2016, <http://theartnewspaper.com/news/more-than-a-third-of-dealers-in-london-art-fair-survey-say-rising-rents-pose-biggest-threat-to-uk-ma/>.

¹⁰ Parliamentary Question Answered by Minister Ed Vaisey MP, 22 October 2015 <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2015-10-16/12250/>.

¹¹ *Cultural times – The first global map of cultural and creative industries*, prepared by EY for CISAC, December 2015. http://www.worldcreative.org/wp-content/uploads/2015/12/EY_CulturalTimes2015_Download.pdf.

“Whenever something like this starts, people say ‘it’s going to end the art world, it’s going to be terrible’ but it never happens. The art world just carries on and gets bigger and bigger. It’s important for artists to benefit from the sale of their work. The thing is that auction houses make so much money on a single sale. Obviously that’s not pure profit but they make incredible amounts of money – much more than virtually any artist, much more than any museum has to spend on art so I think it’s good that they put something back to the people who made it. A lot of people do very well out of the art market and obviously the artists aren’t always the ones doing that.”

Jeremy Deller

ARR supporting emerging and existing UK artists Case Study

The Artist's Resale Right supports artists across the career spectrum – both emerging artists as well as established artists and estates.

During the review of the ARR threshold level in 2014, DACS established that between 2011 and 2013 on average 43% of all artists receiving ARR royalties from DACS had sold works in the price category of €1,000 to €3,000, which indicates that a substantial part of royalties is being generated by artists whose works are selling in this lower price bracket. It is fair to assume that a lot of works in this category are by less-established and emerging artists. Furthermore, the data also shows that more than 50% of artists selling work in this price bracket are unique to this bracket, meaning that they only sell works in that price range.

Another way of establishing the split between established and emerging artists is to look at the numbers of new artists being paid every month because established artists will often receive royalties more regularly. On average, DACS has paid 21 new artists each month in 2015.

Looking at figures from 2015, 56% of artists and estates received less than £500 in total ARR royalties, indicating these are going to more emerging artists for works at a lower value and with fewer works currently in circulation on the secondary market.

For artists the income generated can provide valuable resource to continue their artistic practice. From a survey conducted by DACS in 2014, 81% of artists who received ARR royalties used the income to pay for living expenses, 73% on art materials and 63% on studio space. Whereas for estates, 32% used it for cataloguing work, 25% for promoting the artist and 22% for general administration of the estate. This demonstrates that the money is much needed income as part of a wider portfolio of income sources that helps artists and estates to sustain their practice and legacy.

ARR safeguarding cultural heritage Case Study

Works of art require essential maintenance, such as storing, preserving and restoring, and this is often left to an artist's beneficiary after their death. This work is crucial to enable museums and galleries to loan and exhibit the works as part of their programmes. ARR royalties provide important income to artists' estates to enable them to carry out this work, thereby safeguarding the UK's cultural heritage and providing a lasting legacy that attracts more than 50 million visits to UK galleries and museums each year, of which 7 million visits are by overseas tourists.¹²

ARR in a global context is also useful as a mechanism to ensure that the primary producers of artworks and those they entrust with the complex maintenance of their legacies are both remunerated and informed when transactions of value occur on the secondary market. This has numerous benefits such as offering some insight into the legitimacy of works sold, the traffic of consigned works and reinvesting in the production cycle of visual art.

The globalisation of the art market in the last decade has seen increasingly competitive and professionalised market practices and in particular a more sophisticated understanding amongst UK galleries of the importance of professional regulation. Key galleries are starting to understand that their IP as galleries or brand value complements that of the artists they represent. The synergy between artist and gallery is also extended to a global network of authorised galleries who sell consigned works on behalf of artists. Often these galleries share information in order to affect sales to maintain the profile and commercial value of artists.

"For me, the reason why Artist's Resale Right is something I really value is because it puts me back in contact with pieces of work. It's like a tracking system and that's really useful to see how my work is moving in the market place... and obviously the money helps as well."

Gavin Turk

¹² *Cultural times – The first global map of cultural and creative industries*, prepared by EY for CISAC, December 2015. http://www.worldcreative.org/wp-content/uploads/2015/12/EY_CulturalTimes2015_Download.pdf.

One role of ARR has been to give artists confidence and overview of complex transactions once their works move onto the secondary market. The artist can understand which collectors keep works and build collections and which treat works like financial assets to exchange and trade. This insight is made visible by DACS in reports it makes to its members detailing all declared sales in the secondary market, mostly through auction houses but also galleries or dealers who operate in this domain.

The issue of provenance is also key to the value of works as who collects or collected a work adds to its cache and retail value. Also, of course, the provenance helps to assure a buyer if the work is authorised and authentic. In the contemporary art market considerable value is based in this process of authentication and provenance.

“The royalties which are collected by DACS are vital as it helps to run the artist estate so that the work continues to be alive in the world for future generations to enjoy.”

Beverley Heath-Hoyland, Estate of John Hoyland

“It’s a brilliant service. I like the fact that [they] provide me with a little statement so that I can keep track of the royalties I get. That’s so useful because, as an artist, unless you spend your life googling things, you wouldn’t know what sells on the secondary market at all.”

Chantal Joffe

Future challenges of ARR

Whilst ARR has been successfully implemented in the UK to date, balancing the interests of the art trade and those of artists and estates, there are still some challenges that lie ahead with new trends emerging in a more globalised and digital art market.

Recommendation: The UK Government should engage with relevant stakeholders and to consider an action plan to address the challenges artists are facing in maintaining and safeguarding their rights.

The compliance challenge

Whilst the very great majority of UK art market professionals are compliant in paying ARR, there are some whom may not be declaring sales, and are therefore evading paying artists and artists' estates the royalties that they are due. This is not in the interests of artists, and the majority of galleries, auction houses and art dealers who comply with ARR, putting them at a disadvantage to the minority who are not complying with their legal obligations.

DACS has undertaken a compliance campaign to recover ARR royalties in backdated sales – a campaign that has already collected over £160,000 in royalties since the beginning of 2015.

Recommendation: DACS will continue to work with artists and art market professionals to raise awareness of ARR and on the requirements to comply. A power of referral to an independent ombudsman should be created for collecting societies in respect of non-compliant art market professionals.

The digital challenge

World-famous auction houses are entering into the online art market, which has grown at a phenomenal rate, reaching \$2.64 billion in 2014 up from \$1.57 billion in 2013.¹³ There is a risk that with greater online operations potentially in jurisdictions where ARR is not recognised, UK artists and estates could start to lose out.

Whilst ARR is adopted throughout the EU and across 81 countries worldwide, it has not yet been implemented in places such as Switzerland, the USA and China, therefore providing scope for an online auction house to choose to form the contract in one of these jurisdictions where payment of royalties would not be required by law.

There is a lack of clarity over what factors are required for the law to apply, and whether location of the goods or one of the parties can give rise to ARR liability. The UK Government should seek to close the gaps in this international market with regulatory reforms. Big companies need to take responsibility for their legal liabilities and should not be allowed to exploit loopholes to evade payment of royalties.

There is a high risk here not only for copyright and ARR royalties but also for tax payments that could be both detrimental to the UK's digital economy – and indeed the UK's economy overall.

Recommendation: Art market professionals must not evade paying ARR royalties by moving their online auction activities into jurisdictions where ARR does not apply and the UK Government must ensure the European Commission understands the gravity of this situation.

¹³ *Hiscox Online Art Trade Report 2015*, p.6 Executive Summary, April 2015. <https://www.hiscox.de/wp-content/uploads/2015/04/Hiscox-Online-Art-Trade-Report-2015.pdf>.

The international challenge

As the art market becomes more globalised both online and offline there is a growing need for an international recognition of ARR.

Reciprocity and the balance of trade

The UK can benefit from a healthy balance of trade but only when there is a working reciprocity between two countries. This means ARR royalties would be collected and distributed to British artists for works sold in reciprocal countries via sister societies and the same would be done for their national artists for works sold in the UK.

Reciprocity is established where the legislation of a country includes the protection for artists from the EEA and their successors in title, where ARR royalties are being collected and distributed in that country and where ARR is being distributed from that country to an artist in the EEA.

When ARR was first established in the UK, Schedule 2 of the ARR Regulation set out a list of countries which, at the time of first implementation of the Directive, were thought to provide for equal ARR protection in their laws and whose nationals should therefore benefit from ARR for sales of their works in the UK.

However, when the regulation was amended in 2012, Schedule 2 was removed and as such art market professionals were no longer compelled to pay royalties to non-EEA artists, even when there has been a reciprocal agreement in place. This risks ARR royalties coming back in from non-EEA countries to British artists, creating a disruption in the balance of trade.

International treaty

As mentioned above, currently 81 countries already recognise the right and significant global art market countries like China, Switzerland and the US have taken steps towards introducing ARR legislation at their respective national levels.

Furthermore, at the recent World Intellectual Property Organisation Standing Committee on Copyright and Related Rights there have been moves to secure visual arts resale rights on the agenda for international consideration, making moves towards an international treaty a viable option in the future. This follows on from an academic study by Professor Sam Ricketson that outlines the framework for an international treaty and argues that global adoption could offset disparities across countries that currently do not recognise the resale right.¹⁴

Recommendation: The UK Government should encourage reciprocity of ARR in other countries and work to secure an international treaty on ARR.

"An international treaty for the Artist's Resale Right would be a huge global step in the right direction, as it will enable artists all over the world to benefit from resale royalties, wherever the sale takes place. I think this is incredibly important, as so many sales take place in countries which don't recognise the Right, such as the US or China. This unfairly disadvantages artists based in these countries, as well as artists whose work sells in these countries. It is fair that all artists can benefit from resale royalties, particularly when these types of rights already exist for other categories of authors. For the artist it can help bolster their financial circumstances and essentially ensure art can be made for the future of a vibrant culture."

Gordon Cheung¹⁵

¹⁴ Proposed international treaty on droit de suite/ resale royalty right for visual artists, Professor Sam Ricketson, Melbourne Law School, June 2015; presented at WIPO and hosted by CISAC, GESAC and EVA <http://www.cisac.org/Newsroom/Articles/New-Academic-Study-Proposes-a-Framework-for-a-New-Treaty-on-the-Visual-Artist-s-Resale-Right>.

¹⁵ Quote provided by DACS to The Art Newspaper, <http://theartnewspaper.com/market/art-market-news/will-artist-royalty-rights-go-global/>, September 2015.

Conclusion

The Artist's Resale Right has been an important development for the UK art trade over the last 10 years. ARR provides a valuable source of income for artists and estates helping them to reinvest income back into their practices and sharing in the increasing value of their works, which creates the cycle of new work to be introduced into the art market that has seen growth in sales in post-war and contemporary and modern art. ARR also safeguards and sustains the UK's world-renowned cultural heritage and helps the art market increase confidence around provenance.

The European Commission will be reviewing the Artist's Resale Right in the coming months and the UK has a strong base of evidence to contribute to the review while raising some of the future challenges that need to be addressed today as the art market becomes more global and online.

We call on all artists, estates, art market professionals, art collectors, art enthusiasts and the UK Government to continue to support ARR for the benefit of the UK visual arts sector and to support efforts to secure an international treaty for resale rights.

About DACS

Established by artists for artists, DACS is a not-for-profit visual artists' rights management organisation. Passionate about transforming the financial landscape for visual artists through innovative new products and services, we act as the trusted broker for 90,000 artists worldwide.

Founded over 30 years ago, DACS is a flagship organisation that campaigns for artists' rights, championing their sustained and vital contribution to the creative economy. We collect and distribute royalties to visual artists and their estates through Payback, Dutch Public Lending Right, Artist's Resale Right, Copyright Licensing and Artimage.

Since we were founded in 1984, we have paid over £75 million in royalties to artists and their estates – a significant source of income supporting artists' livelihoods, their practice and legacy. In 2014, we paid £15 million in royalties to artists and estates.

For more information, visit dacs.org.uk.

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