



Artist's resale right

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Artist's resale right, or *droit de suite*, was introduced in January 2006 as a result of an EU Directive. In prescribed situations, it provides an artist with a right to receive a royalty based on the price obtained for the resale of an original work of art, subsequent to the first transfer by the artist. The [Artist's Resale Right \(Amendment\) Regulations 2009](#) delayed until January 2012 the application of the 2006 Regulations to the estates of deceased artists in the UK. This note concludes with some evidence of the impact that artist's resale right has had on the UK art market.

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1 Overview

[Directive 2001/84/EC](#) of the European Parliament and of the Council on the resale right for the benefit of the author of an original work of art was adopted on 27 September 2001 and published in the Official Journal of the European Communities on 13 October 2001: L272, Volume 44 (page 32). This right was first introduced in France in 1920 (for auction sales only) – which is why it is often referred to by the French term “*droit de suite*” – and has been adopted in various forms in some other EU Member States.¹ Other countries with substantial art markets, notably the USA and Switzerland, have no such right. Early opposition by the UK Government to the proposals is illustrated by the following DTI press release of 11 November 1997:

A report on the damage which may be done to the British art market by a proposal for an EC Directive was welcomed today by DTI Minister of State Ian McCartney.

The report - "The British Art Market 1997; a study of the Value of the Art and Antique Market in Britain, and the Implication of EU Harmonisation of Import VAT and Artists' Resale Rights" -which was prepared for the British Art Market Federation by Market Tracking International Limited, was sent both to Mr McCartney and to the European Commission.

Mr McCartney said:

"The Government regards the proposal for a Directive to harmonise artists' resale right as an unfortunate example of a single market measure for which a good case has not been made, and which will do considerable damage to British business and bring little, if any, benefit to the majority of British artists. The study is a helpful contribution to the debate now taking place in the European Union about the effect of the Commission's proposal on the competitiveness of the Community's art markets, in particular on its largest and most important international market - the United Kingdom."

The Directive that subsequently emerged provides an artist with a right to receive a royalty based on the price obtained for any resale of an original work of art, subsequent to the first transfer by the artist. The right does not apply, however, to resales between individuals acting in their private capacity, without the participation of an art market professional or to resales by persons acting in their private capacity to museums which are not for profit and are open to the public. As long as the work remains in copyright, the same right extends to a

¹ There is a full list of countries on the website of the [Design and Artists Copyright Society](#)

deceased artist's heirs. Copyright in works of art lasts for 70 years after the death of the artist.

The Directive contains a derogation which allows those Member States which did not have any resale right within their laws at the time the Directive came into force the option of phasing in its application. Under Article 8(2) of the Directive these Member States may choose to apply the right only to works by *living artists* until 1st January 2010. The UK, Austria, Malta, Ireland and the Netherlands took advantage of the derogation.²

The threshold or minimum sale price above which the right *must* apply is €3,000. The royalties are set at the following rates:

- a) 4% for the portion of the sale price up to €50,000
- b) 3% for the portion of the sale price from €50,000.01 to €200,000
- c) 1% for the portion of the sale price from €200,000.01 to €350,000
- d) 0.5% for the portion of the sale price from exceeding €350,000 to €500,000
- e) 0.25% for the portion of the sale price exceeding €500,000

The total amount of royalty payable is limited to €12,500. All sale prices are net of tax.

The then UK Patent Office held a [consultation](#) in 2005, to gauge views on the new right because of the significant impact it was likely to have on the professional art trade and living artists. A total of 140 [responses](#) were received from a wide variety of sources. Under the artist's resale right in the UK:

A royalty payment will be made to living UK and European artists on works which are sold at a value of €1,000 or more with the help of a professional.

The royalty will be calculated as a percentage of the sale price, with a tapering scale starting at 4% for works valued to €50,000 and decreasing to 0.25% for the proportion of sale above €500,000.

The maximum payment on any sale is fixed at €12,500.

The UK Government intends to use the derogation which allows the UK to not extend the rights to deceased artists until 2010 with the possibility of a further extension to 2012 which was negotiated by the UK at the time the Directive was agreed.

All royalties will also be collected on behalf of artists by a collecting society to reduce the burden on business

The minimum sale threshold of €1,000 is less than the €3,000 that would be permissible under the terms of the relevant Directive, but it is in line with a recommendation by a previous Culture, Media and Sport Committee (see the next section). Nevertheless, this lowering of the threshold has been controversial, leading to charges of gold-plated transposition of the Directive:

² The UK has extended this derogation to 2012. See 4.1 below

Mr. David Heathcoat-Amory (Wells) (Con): The Prime Minister will recall that the Government rightly voted against the artists resale right directive, which will drive, art, business and jobs out of the United Kingdom, but that it was imposed by majority voting. Is he aware that the Department for Trade and Industry is now embellishing and gold-plating the implementing regulations, in defiance of what he said about that danger? As the regulations will be debated tomorrow in Committee, will he bring the DTI—the Secretary of State is sitting on the Front Bench with him—into line with his own promise to end damaging over-regulation, or were those just more empty words?

The Prime Minister [Tony Blair]: No, I do not agree. In fact, there is a strongly contested point which he assumes as a matter of fact is about gold-plating: it is not. It is about the nature of the directive itself. For the reasons that the Minister has given, the directive is right. As for qualified majority voting, I think that I am right in saying that that particular version was introduced under the Single European Act, which was part of the legacy of the previous Conservative Government. If I were the right hon. Gentleman, I would pay more attention to working out with whom the Conservative MEPs will sit in the months to come.³

The right came into force for living artists on 1 January 2006. For those entitled to the royalty following artist's death, the right will come into force not later than 1 January 2012. Artists will have a right to information, to enable them to collect the royalty, for up to three years following the resale.

2 The Select Committee's view

The Culture Media and Sport Committee considered the then imminent implementation in its [2005 report](#) on *The Market for Art*. They said:

40. One, controversial, initiative to improve artists' incomes is the forthcoming introduction throughout the European Union of a harmonised droit de suite or artists' resale right. Droit de suite is a right given to the creator of an original work of art (painting, sculpture, etc) so that each time the work is resold the creator gets a percentage of the price. This means, for example, that a painter who starts off as unknown and sells paintings for a few pounds can benefit from any subsequent fame achieved. It also means that, if a work falls in value, the subsequent seller's loss is compounded.

41. Though this right has not yet been introduced in the UK, the position will change as a result of the adoption, on 27 September 2001, of European Parliament and Council Directive 2001/84/EC on the resale right for the benefit of the author of an original work of art. The right will provide entitlement to an artist and, for 70 years, his or her successors in title whenever an original work is resold with the involvement of an art market professional (i.e. an auctioneer or dealer). This right was first introduced in France in 1920 (to auction sales only) and has been adopted in various forms in some other EU Member States. Provision is made for the right in the main international copyright convention (the Berne Convention, administered by the World Intellectual Property Organization) - though this has not been adopted by some countries outside the EU (notably Switzerland and the USA, except California).

42. The UK Government and the British art market were strongly opposed to the directive, which was adopted under qualified majority voting. Supporters of the measure point to it as being an income generator for artists, and just recognition of

³ HC Deb 1 February 2006 c 314

their creativity; they add that it might also have less tangible benefits in signalling the value a society attaches to art. Opponents argue that applying resale rights would simply displace the art market to New York or Geneva, hitting profits and leading to job cuts in the UK. Experience on the Continent indicates that the benefits are uneven, with disproportionate gains accruing to the heirs of deceased artists.

43. For lower value sales, which are less likely to be displaced overseas, the cost of applying the right may at some point prove disproportionate to the benefit to artists. Studies have shown that typically 10% to 25% of the amount collected in royalties could be retained by collecting societies to cover administration costs.[35] In the UK the latter would be a matter for the Design and Artists' Copyright Society (DACS).

44. Droit de suite is a fait accompli. Whatever the arguments and the likely distribution of benefits, the UK has to implement the Directive by 1 January 2006. However, as a country where a version of the resale right does not already exist, the UK can delay bringing it into force—but only in relation to the estates/heirs of deceased artists—until 1 January 2010 (possibly extensible to 1 January 2012). This concession is designed to give the market, auction houses in particular, more time to adjust.

45. The negative impact of droit de suite could be avoided, or at least minimised, if, during this period of grace, countries such as the USA and Switzerland could be persuaded to implement similar measures of their own. The Government should renew its efforts to achieve universal adoption of droit de suite, through all available international channels.

46. Implementation of the droit de suite Directive is the responsibility of the Patent Office and the Department of Trade and Industry. A consultation document has been published, accompanied by a draft Statutory Instrument. The latter derives its definition of qualifying art works from section 4 of the Copyright, Designs and Patents Act 1988, but with architectural and computer-generated works specifically excluded. Though some new media works may thus be left out, the definition in the draft Statutory Instrument appears broadly consistent with the Directive's definition of original works of art as being "works of graphic or plastic art such as pictures, collages, paintings, drawings, engravings, prints, lithographs, sculptures, tapestries, ceramics, glassware and photographs, provided they are made by the artist himself or are copies considered to be original works of art."

47. We received conflicting evidence on the likely effect of droit de suite on the UK art market, and on the costs and administrative burdens associated with its introduction. These have been insufficiently clarified by the impact assessment accompanying the draft Statutory Instrument. We recommend that the Government closely monitors the impact droit de suite has on the market. The Government should publish its conclusions in time to inform the first review of the Directive's impact which, according to its own provisions, must take place by 1 January 2009.

The Select Committee made the following [recommendations](#) – given in bold type, with the Government's responses printed below:

(8) The Government should renew its efforts to achieve universal adoption of droit de suite, through all available international channels. (Paragraph 45)

The DTI, which leads on droit de suite for the Government, agrees with the Select Committee's views that the universal adoption of droit de suite would reduce any adverse impact of the right on the UK Art Market. The UK has pressed for this to be made a priority for the EU and will continue to seek to exert pressure on the relevant

parties with a view to having article 14 of the Berne Convention made mandatory and the right applied internationally.

(9) We recommend that the Government closely monitors the impact droit de suite has on the market. The Government should publish its conclusions in time to inform the first review of the Directive's impact which, according to its own provisions, must take place by 1 January 2009. (Paragraph 47)

The Government accepts this recommendation and will review the impact of the Directive in the UK. A study of the UK market will be commissioned and used as a baseline for future measurements. This study will then be updated periodically to identify and track any changes which have occurred following the introduction of droit de suite. The Government will aim to publish these findings before the review of the Directive, currently scheduled for 2009.

(10) We recommend a system of compulsory collective administration for artists' resale right. This is the preferred model throughout the European Union. It is relatively efficient and better secures compliance, seeing that money reaches the artist. (Paragraph 52)

The Government welcomes the Committee's careful consideration of this issue. Our recent consultation on the details of the implementation of the Directive has led to 147 responses from interested parties. These responses will need to be carefully considered, together with the recommendation of the Committee before a final decision can be reached.

(11) We are not intrinsically opposed to the introduction of the artists' resale right into UK law, though we do believe it should not benefit solely the richest artists. We recommend that the Government lowers the threshold at which the resale right applies from 3,000 to 1,000 euros. (Paragraph 55)

The Government welcomes the Committee's careful consideration of this issue. Responses to the recent consultation will need to be carefully considered and the views of the Committee will help to inform the Government's assessment.

(12) We recommend that the Government apply a royalty rate of 5% to the price band up to 50,000 euros. (Paragraph 57)

Although this issue was not specifically raised in the recent consultation, the option of raising the rate on the lowest price band has been explored. There are many advantages and disadvantages to adopting this option and a number of respondents to the consultation have expressed an opinion on this issue. The Government will need to consider all views received before a decision is reached and welcomes the Committee's contribution to the debate.⁴

Although the UK was obliged to introduce the new right, there continued to be criticism, e.g. from the artist David Hockney, who was reported as saying that it would smother art sales in "red tape" and would put dealers off acquiring the work of up-and-coming artists.⁵

3 Parliamentary proceedings

The regulations needed to implement the Directive, *The Artist's Resale Right Regulations 2006*,⁶ were subject to the affirmative procedure and had therefore to be approved by both Houses of Parliament before they could be brought into force. They were laid before

⁴ Cm 6643 July 2005

⁵ "Hockney's angry old men", *Independent on Sunday*, 22 January 2006

⁶ SI 2006/346

Parliament on 15 December 2005, together with an [explanatory memorandum](#). The regulations were debated and approved in the House of Lords on 24 January 2006.⁷ During a corresponding debate in the Seventh Standing Committee on Delegated Legislation on 2 February 2006, the then Minister for Industry and the Regions (Alun Michael) said:

The UK has adopted all options to minimise the risk of sales being diverted from the UK. We have adopted the lower royalty rate of 4 per cent. on the first band of the sales price and are making full use of our derogation to defer the application of the right to works by deceased artists. The implementing regulations do not go beyond the directive, which is why any allegation of gold-plating is inaccurate and mischievous. The Government have exercised options within the directive to ensure that the implementation is the most appropriate for the UK, balancing the needs of artists, while protecting the art market.

We are required to set a threshold of between zero and €3,000. Setting the threshold at €1,000 ensures that as many living UK artists as possible can benefit from the resale right, with minimum cost to the art market. Our decision to do so follows extensive consultation, during which it became clear that such an approach would benefit a substantial number of poorer UK artists and that the impact on business administration costs would not be excessive. The €1,000 threshold was in fact recommended by the Select Committee on Culture, Media and Sport, following its inquiry into the market for art, which was published in March 2005.

Prior to laying there was a Westminster Hall debate on artist's resale right. The Minister's concluding speech gives a summary view of the Government's position at the time:

The Parliamentary Under-Secretary of State for Trade and Industry (Barry Gardiner): [...] The UK has a thriving and prosperous art market that makes a major contribution to the economy. In 2001, the UK art and antiques market was worth around £4.4 billion, split roughly 50:50 between auctioneers and dealers. With 25 per cent. of the world market total, the UK market is second only in size to the US and employs 28,000 full-time and 9,000 part-time staff. The Government are determined that it should continue to flourish.

Of course, there would be no art market without the creativity of artists, and the Government recognise the contribution that they make to the UK's cultural identity. Art, in all its forms, improves and enriches our daily lives. Visual art is an increasingly significant part of everything we do; it spans a huge range of activity from painting to photography. Art is one of the creative activities that, according to economic estimates produced in August last year, accounted for a significant 8 per cent. of the UK's gross domestic product in 2002.

As my hon. Friend the Member for Rhondda said, the majority of member states have indicated that they will adopt a threshold below €3,000—indeed €1,000 for many. However, other member states do not generally have as successful an art market as we do, which is why we need to consider the issue carefully before reaching a decision.

In implementing the directive on artists' resale rights, we must strike an appropriate balance between artists and those selling their work. We aim to introduce a workable scheme that will benefit artists without damaging the strong position of the UK art market. We are particularly concerned that the framework should minimise any risk

⁷ HL Deb 24 January 2006 cc1143-74

that sales might be diverted to countries such as Switzerland and the USA where the right does not exist.

When negotiating the directive, the Government secured a significant number of concessions to reduce the risk of damage to the UK market. The first key concession is the imposition of a cap of €12,500 on the total royalty payable on any transaction. The original proposal contained no cap.

The second concession is the derogation under which the UK is entitled to delay the application of the resale right to works by deceased artists until 2010—that date can be extended to 2012. We intend to make full use of that derogation to allow the art market time to adjust to the introduction of the resale right. The UK will apply resale royalties only to the works of living artists from 2006. From 2010, resale royalties will have to be paid on sales of eligible works by deceased artists. The UK may, at this time, make a case to the Commission for the derogation to be extended to 2012.

The final key concession is an obligation on the European Commission to enter negotiations to make compulsory the relevant article of the Berne convention—an important international convention that sets out the worldwide copyright framework. Such a change would require countries such as the USA and Switzerland to introduce the resale right. To date, such attempts have not succeeded: both countries have said that they do not intend to introduce the right at this time, and the World Intellectual Property Organisation does not consider it a priority. We will continue to press for the international adoption of a resale right, but without any great hope of that happening in the near future.

The concessions dictated by the final form of the directive are crucial. However, other matters about which we have heard today are also critical to the impact of the directive in the UK. To make certain that we maximise the value to artists without undermining the art market, it will be necessary to make the right decisions on two matters on which the directive permits us some flexibility. Today's debate has allowed us to explore those issues in some detail and has given me an opportunity to set out some of the relevant factors that the Government are carefully considering.

The first important decision concerns the collective management of resale royalties. The directive allows member states to provide for collective management of resale royalties and to make such management compulsory. The arguments for collective management are threefold: it will secure greater compliance, it is generally considered to be relatively secure and it is more efficient, particularly through the lowering of administrative costs. Evidence submitted before and during consultation indicates that costs will be significantly reduced if the right is collectively managed. The main argument against compulsory collective management is that it removes the artist's choice to administer the right independently. Independent collection may be preferable for some artists who have strong links with particular galleries that sell their works. Compulsory collective management of rights does not generally apply in UK copyright law. We would therefore also need to be sure that such a requirement for artists' resale rights would not set an unwelcome precedent in any other area.

The second crucial decision is whether the UK should adopt a threshold of €3,000 or lower for the payment of royalties. Setting the threshold lower would considerably increase the number of artists who would benefit from the introduction of resale right. A recent study found that 37 per cent. of artists earn less than £5,000 per year, which means that almost 50 per cent. of all artists and visual creators fail to earn a reasonable living from their art. That percentage is significantly higher among certain groups, for example painters and sculptors. That is part of the background to the

decision made in 2003 by the Arts Council of England to give more priority to assisting individuals. That new policy showed a marked shift away from the Arts Council's earlier policy of awarding grant funding to arts institutions.

The position of some artists at the lower end of the income scale is still not secure. That is why many artists are watching very closely to see what decision we make on the threshold. Our decision could make a real difference to their incomes and livelihoods. However, we must be sure that the decision on the threshold does not increase the number of sales at risk of diversion to overseas markets. We have had some very helpful information from stakeholders to help us to determine whether sales of artworks below the €3,000 threshold might be diverted to other countries. Indeed, the consensus is that the lower threshold of €1,000 will not significantly damage the art market by driving sales abroad. We believe that the costs of relocating a sale overseas will generally outweigh any royalty payable under artists' resale rights.

It may be helpful if I give an example. A work of art sold for €1,000—approximately £700—will generate a royalty for the artist of about £28 if the resale right is at a rate of 4 per cent. That figure will generally be far less than the cost of packing, shipping and insuring the work in order to sell it in another country. We must consider the fact that royalty payments on works selling for less than €3,000 would be very small. The £28 on a €1,000 sale may not make an enormous difference to an artist. Against that we must weigh the administrative burden placed on dealers and auctioneers to process the payments. The administration cost to businesses may be significant compared with the benefit to the individual artist. In particular, we must consider the impact on smaller dealers and auction houses.

We have recently received up-to-date information on the number of artists who would benefit and the costs of administration. Those figures are being analysed to assess the balance between the costs and the benefits that have been so ably presented to us by my hon. Friend the Member for Rhondda and the hon. Member for East Devon. Both decisions are being made in the light of the helpful responses to the Government's public consultation exercise on draft implementing regulations, which was undertaken earlier this year.

The formal consultation process has been supplemented by a number of informative discussions with the art trade and those representing artists. Today's debate has been a useful additional opportunity to hear some of the views that we know must inform our decisions. We expect the draft regulation setting out our proposed framework for artists' resale rights in the UK to be laid before Parliament in the very near future. As this is an entirely new concept in the UK, and resale right has never before been applied to a market as large as the UK, we will monitor its impact following introduction. We will commission further research to compare with that undertaken before the right is in place. That will provide us with information to feed into the commission's review of the directive, which is scheduled to take place in 2009.⁸

4 Post implementation

Following implementation of artist's resale right in the UK, two issues have come to the fore. The first is what will happen when the current derogation expires. The second issue is what effect *droit de suite* has had on the art market and on artists' incomes since it was introduced.

⁸ [HC Deb 8 November 2005 cc60-63WA](#)

4.1 Extending the derogation

A parliamentary question in March 2008 clarified the legal position in relation to the derogation for the works of deceased artists:

Lord Luke asked Her Majesty's Government:

Whether they will continue to extend the derogation from the European Union directive on artists' resale rights, which limits the impact of the right to the work of living artists. [HL2175]

The Parliamentary Under-Secretary of State, Department for Innovation, Universities and Skills (Baroness Morgan of Drefelin): The current directive provides an option for the UK to extend the derogation from 2010 to 2012. Exercising this option would require the UK to make a formal request to the European Commission before 1 January 2009 and this issue is currently under consideration.⁹

On 30 June 2008, the UK Intellectual Property Office launched a consultation¹⁰ aimed at gauging views on whether the derogation for deceased artists should be extended until 1 January 2012. The alternative was to allow the derogation to lapse and for works by deceased artists to be eligible for resale right. The consultation closed on 22 September 2008. Its starting premise is given in the consultation document's executive summary:

1.4 Based on the evidence currently available, the consultation recommends that the option to seek an extension of the derogation is taken. However, the UK-IPO is seeking views and evidence on whether this position is correct.

1.5 If the Government decides it is necessary to extend the derogation it has to make a reasoned case to the European Commission by the 31st December 2008. Following this the UK Regulations will be need to be amended.

A [summary of responses](#) is available on the IPO website. Following the consultation, the UK Government notified the European Commission that it intended to maintain its existing derogation from resale right for the works of deceased artists for a further two years.¹¹ The [Artist's Resale Right \(Amendment\) Regulations 2009](#)¹² delayed until 1 January 2012 the application of the *Artist's Resale Right Regulations 2006* to the estates of deceased artists in the UK. Resale right will be payable on sales of works by deceased artists in accordance with the requirements of the 2006 regulations where the contract date for the sale is on or after 1 January 2012.

4.2 Impact of artist's resale right

Two years after implementation (for living artists), the body representing 52,000 artists and their heirs offered a positive assessment of artist's resale right:

The Design and Artists Copyright Society, which has collected over £4.2m in resale royalties for more than 1,000 artists since February 2006, said it was highly sceptical

⁹ HL Deb 6 March 2008 c187WA

¹⁰ Intellectual Property Office, *Resale right: the derogation for deceased artists, June 2008*

¹¹ Intellectual Property Office press notice, *UK seeks two year extension of artist's resale right, 19 December 2008*

¹² SI 2009/2792

about the arguments against extending the scope of the levy. "We don't see there is a case to stop it from being introduced . . . The art market is looking a little invincible."¹³

Conversely, *The Times* reported on the pessimistic outlook of the British Art Market Federation:

Blockbuster London auctions and thousands of jobs in the British art world are at risk because of a tax on art imposed against the Government's wishes by the European Union.

According to an independent report out next week, one third of British art dealers are planning to transfer business overseas because of the *droit de suite* or artists' resale right (ARR) that gives living artists up to 4 per cent of the sale each time their work is sold.

Previously, artists received a share of the first sale of their work but nothing from subsequent sales.

The directive was agreed despite government opposition and implemented in the UK in 2006. From 2012 it is due to expand to include the work of any artist who has been dead for less than 70 years, meaning that it would apply to the likes of Francis Bacon, Matisse and Picasso, all of whose works have surged in value in the past five years.

Auctioneers and dealers believe that this will have a devastating impact on the UK art market, which employs about 100,000 people including porters, restorers and specialists as well as auctioneers and antiques dealers.

Anthony Browne, the chairman of the British Art Market Federation, told *The Times*: "Thousands of job opportunities will leech away because of people moving abroad if the Government does not do something to modify the threat."

The most visible damage will be in the flagship London auction houses, with both Christie's and Sotheby's likely to relocate important business to their New York outposts, where there is no equivalent charge, Mr Browne added.

"If you have a collection of ten pictures to sell worth Euro 2 million each then it's going to cost Euro 125,000 more to sell them here than in New York. It's not a level playing field - we would be handing a large part of our art market to our rivals on a plate."

Glittering occasions such as next Wednesday night's Contemporary Art Auction at Sotheby's, forecast to raise more than Pounds 72 million, would become a thing of the past. When the top end of the UK market shrinks, the effect "percolates down" to the mass market, Mr Browne added.

The report, which was commissioned by the Antiques Trade Gazette explains: "The major auctions in London attract international collectors, dealers and curators who, while in London, visit smaller galleries that represent less established artists. For many younger artists this international exposure is critical to their future careers.

"Thirty per cent of the dealers interviewed indicated that they would seek, or have already sought, opportunities in market locations exempt from the levy."

¹³ "London fears fall from arts pedestal", *Financial Times*, 23 February 2008, p4

The UK accounts for 27 per cent of the Euro 43.3billion global art and antiques market, second only to the United States' 46 per cent share.

Mr Browne believes that this will be unsustainable if the levy is expanded. "Art is mobile and buyers and sellers can go anywhere they like. That's why we are getting increasingly concerned. Contemporary art is the most buoyant part of the sector and expanding the levy would sweep in all of the big names of 20th century painting.

"It would magnify the impact on the number of sales this directive hits by five times. There is a real danger that the big sales will go elsewhere."

A government report into the impact of the ARR is expected to be published later this spring.¹⁴

The independent study sponsored by the Antiques Trade Gazette is entitled *The impact of artist resale rights on the art market in the United Kingdom*; it was researched by Toby Froschauer and dated January 2008. Its [summary](#) is reproduced below:

THIS STUDY EXAMINES the first 18 months (from February 2006 to August 2007) of the operation of the Artist's Resale Right in the UK. Data has been assembled from galleries, dealers and auction houses about the costs and specific problems associated with administering the new levy; the amount of royalties paid and the number of artists who have benefited and to what extent.

Never before has the Artist's Resale Right been introduced into a market as large as Britain's, which accounts on its own for over half of the EU's entire art market.

This study reveals that there are serious problems which will need to be addressed if the new royalty is to function efficiently. It further demonstrates that the claims made by the supporters of ARR before its introduction exaggerated the scale of the benefits that it would provide for artists and that the costs of collection were substantially underestimated.

□ **The study reveals a number of practical difficulties:**

- Neither the art market nor apparently the collecting societies responsible for distributing the royalty have the means of determining with certainty which artists are entitled to receive payments
- This uncertainty creates needless additional costs, by obliging the art market to carry out its own research in order to try to ensure that the correct royalty is deducted at the time of sale.
- This fundamental difficulty could be remedied by introducing a requirement that artists should register their names on a central database if they wished to exercise their right to receive ARR payments. Alternatively, the collecting societies should indemnify the art market if losses are suffered as a result of the errors the collecting societies make in failing to identify qualifying artists.

□ **The costs to the art market resulting from the introduction of ARR were substantially underestimated:**

- Although there were predictions that it would cost dealers and auctioneers as little as 40p per transaction to process payments, by identifying the processes that are needed in order to collect the royalty, the study reveals that the real cost per transaction is between £23.30 and £53.60.
- In addition, there have been other, unanticipated costs resulting from the lack of reliable information about qualifying artists.
- Costs were such that the amount paid to many artists was outweighed by the expense of collection and distribution. 112 artists qualified for less than £40 and 316 artists (29% of all those who benefited) received less than £100.

□ **The claims made before ARR's introduction exaggerated the number of artists who would benefit:**

- Before its introduction, claims had been made that tens of thousands of artists would receive payments (The European Commission estimated that as many as 250,000 artists across the EU would benefit).

¹⁴ "Fear of great art movement abroad as EU tax brought in", *Times*, 23 February 2008

- In the first 18 months, in the second largest art market in the world, only 1,104 artists benefited, of which only 568 were British.

- **The distribution of royalty payments confirms that ARR mainly benefits a small number of well-established artists and that it is not the redistributive force in favour of poorer artists that its champions claim.**

- The top 20 artists received 40% of the total collected, and the top 10% of artists shared out 80%

- **Far from providing benefits to younger, emerging artists there are signs from the study that ARR is working against their interests**

- Many younger artists depend on galleries to nurture their reputations and to promote their work by supporting it in the resale market. To do this gallery owners take on the commercial risk and considerable expense associated with promoting an unknown artist. The study reveals that many galleries are now less willing to do this as a result of the complications of processing ARR payments and the impact of royalty payments on low margin sales. Instead they are opting for selling the work of the less risky, well-established artists.

- **The proposed extension of ARR to the work of deceased artists, due to come about in 2012, will greatly increase the number of sales liable to the levy and, with this, the associated administrative complications and costs.**

It would seem essential that the considerable problems associated with its introduction should be addressed and solved before any further changes are contemplated. It is also doubtful that the decision to charge the royalty on low value sales has produced the predicted benefits.

Since the introduction of ARR in the UK there has been an unprecedented boom in the global market for contemporary art. This has enabled the UK to maintain its competitive position until now, in spite of the levy, although the US contemporary art market has fared even better. The extension of the royalty to the work of deceased artists will greatly increase the risk that the UK will be bypassed in the valuable market for 20th century art. It should be noted that the UK's main rivals in the global art market have not so far introduced ARR, so the risk that sales will be diverted away from the UK will increase, particularly if the unusually strong market were to weaken.

January 2008 saw the publication of an [83-page report](#) commissioned by the UK Intellectual Property Office. Its executive summary sets a relatively positive tone:

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

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

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

Our major findings are as follows:

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

Article 11 of Directive 2001/84/EC states that the Commission shall submit a report not later than 1 January 2009 on the implementation and the effect of this Directive. Commission ministers now say that they will simply note the effects once all member states have extended resale rights to the estates of dead artists. Since the end of the derogation is expected to bring greater impacts on the art market than have hitherto been seen, this delay has drawn criticism from, among others, the British Art Market Federation.¹⁵

¹⁵ [“EU to delay impact report on artist’s resale right”, *Antique Trades Gazette*, 21 June 2010](#)