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Office

# Intellectual Property Office (IPO) response to consultation in preparation of a Commission report on the implementation and effect of the Resale Right Directive (2001/84/EC)



## **Intellectual Property Office (IPO) response to consultation in preparation of a Commission report on the implementation and effect of the Resale Right Directive (2001/84/EC)**

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

- a) With respect to trade in the works of:
  - i. living artists; and
  - ii. deceased artists
- b) By sector:
  - i. auction houses;
  - ii. art market galleries and dealers
- c) By price range (up to €50,000; €50,001 - €200,000; €200,001 - €350,000; €350,001 - €500,000; and above €500,000)

*Artist's Resale Right Regulations 2006 were introduced into the UK via statutory instrument 2006 No. 346<sup>1</sup>. The Intellectual Property Office (IPO) commissioned a study on the effect of the introduction of Artist's Resale Right (ARR) on the UK art market (the Szymanski Report<sup>2</sup>) which was published in January 2008. The study included an analysis of a database of global art sales by auction houses and also draws on other reports, information provided by artists, dealers, major auction houses and collecting societies. Much of this response is taken from that report which covers the period from 2003-2007.*

*The IPO has also liaised with interested parties to gather views and evidence in order to inform this response. Figures used from other sources are referenced. In the UK, ARR currently applies to sales of qualifying works by living artists. According to the Szymanski report, the median payment in 2007 was £256 (based on auction house data) of which 80% should have gone to the top 100 artists<sup>3</sup>. Artists in the €1,000 to €3,000 category receive an average of £128 per work compared to an average of £13,410 for works over €200,000<sup>4</sup>. Out of 123 artists who received ARR payments, 84% believed it was beneficial<sup>5</sup>. Prior to 2006 artists in the UK received no royalties on any resale of their works.*

*Nearly half of artists had sold works in the lowest band (€1,000-3,000), one third in the second highest (€3,000-50,000) and one sixth in the third band (€50,000-€200,000)<sup>6</sup>. ARR in the UK does not apply to sales below €1,000. Artists who had received ARR payments were generally represented by more galleries (half of artists being represented by four or more galleries)<sup>7</sup>.*

*The introduction of resale right in 2006 came at a time of strong growth for the UK market. During this period (and until 2009) the UK market grew as fast, or faster than markets without resale right, such as the US. Prices of contemporary art grew*

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<sup>1</sup> See <http://www.legislation.gov.uk/ukxi/2006/346/contents/made>

<sup>2</sup> See <http://www.ipso.gov.uk/study-droitdesuite.pdf>

<sup>3</sup> Szymanski, page 2

<sup>4</sup> Szymanski, page 13, table 6

<sup>5</sup> Szymanski, page 72, question 9

<sup>6</sup> Szymanski, page 26, last paragraph

<sup>7</sup> Szymanski, page 26, penultimate paragraph

*strongly in the UK between 2002 and 2008 (only falling significantly when global economic conditions worsened).*

*The UK took advantage of a derogation in the Directive which meant that on introduction ARR was not applied to the works of deceased artists. This was originally due to expire in January of 2010 but has now been extended a further 2 years. No further extensions are permitted within the Directive. ARR will apply to deceased artists as well as living artists from 2 January 2012 although the percentage of ARR to be paid on each work will remain unchanged. 62% of artists believe that the extension of ARR to deceased artists would be extremely beneficial to the recipient<sup>8</sup>.*

*Most of the evidence available is based on auction house data. About £2.5 million of ARR is collected annually and approx £1.5 million goes to British artists. The major auction houses believe ARR is a burden; they estimate it costs around £1 million to set up and they also claim that the requirement to calculate ARR in euros has led to difficulties<sup>9</sup>. According to the Szymanski report, half of respondents believed the costs to be about £10 per transaction, but larger auction houses estimate it to be between £13 and £27. Based on £10 per transaction the administration costs are around £50,000 per year<sup>10</sup>. The art market also state that difficulties have also arisen establishing the nationality of artists<sup>11</sup>, they suggest that this may become even more difficult when the Directive applies to deceased artists as well as living artists.*

*The majority of dealers believe the introduction of ARR has adversely affected London's share of the global art market and 42% perceived a negative impact on their own business. However, 55% state that it hasn't affected their business at all<sup>12</sup>. Over 40% believe that the extension of ARR to deceased artists in 2012 would not affect their business directly, or any business they conduct in London<sup>13</sup>. Many dealers have come out and said that the administration of ARR is a burden. One wholesaler noted that a single work could generate multiple ARR payments – first when the work was bought at auction, second when it was sold to a gallery and third when it was sold to the public<sup>14</sup>. This is a view shared by many in the UK art market.*

*Many smaller galleries claim that the introduction of ARR has adversely affected their business and they cannot afford the associated costs. A few have asked for the £1000 threshold to be increased<sup>15</sup>.*

*It is suggested that the Commission refer to the submissions of the UK collecting societies DACS and ACS for the most up to date figures, however, the Szymanski report does indicate the value of the art market, and number of qualifying works, before and after the introduction of ARR:*

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<sup>8</sup> Szymanski, page 27

<sup>9</sup> Szymanski, page 2

<sup>10</sup> Szymanski, page 36, second paragraph

<sup>11</sup> Szymanski, page 36, first paragraph

<sup>12</sup> Szymanski, page 24

<sup>13</sup> Szymanski, page 58

<sup>14</sup> Szymanski, page 64, question 53

<sup>15</sup> Szymanski, pages 60-66

*1 March 2003 to 29 February 2004 – 22,613 sales worth £471 million<sup>16</sup>  
15 February 2006 to 31 July 2007 – 43,968 sales worth £1,789 million<sup>17</sup>*

*2003-2004 – 7.6% of sales were eligible for ARR (5.1% of total value)  
2006-2007 – 10.8% of sales were eligible for ARR (9.1% of total value)<sup>18</sup>  
2012 onwards – eligible works estimated to increase fourfold when derogation ends*

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

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

*Please see the answer to question 1 above which covers many of the relevant developments. It is understood that the submission by DACS will include further data on these points, and the Commission is therefore referred to that response.*

3. What role, if any, has the resale right played in the development of the art market in your country?

What effect has it had on trade in the internal market?

What effect has it had in terms of the competitiveness of the art market in your country vis-à-vis other relevant markets that do not apply the resale right?

*This question is better addressed by the organisations dealing with art sales and ARR on a day to day basis and the Commission is referred to their submissions.*

*Auction houses and many dealers believed that the British art market would suffer greatly with the initial introduction of ARR, and likewise with the extension of the right to cover works by deceased artists. The market are concerned that works may be shipped to countries that do not have ARR to avoid payments. The Szymanski report states that it is not possible to say with any clarity whether this would happen, but there was no evidence to suggest a shift in trade as a result of the introduction of ARR for living artists at the time of writing the report. The IPO is not aware of any evidence of diversion, or the lack of it, at this time.*

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

*In the decade leading up to 2008/2009, the UK art market experienced strong growth and despite the corrections that then occurred during the global economic crisis, a report<sup>19</sup> published by the British Art Market Federation (BAMF) describes the market*

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<sup>16</sup> Szymanski, page 9

<sup>17</sup> Szymanski, page 8

<sup>18</sup> Szymanski, page 11, last paragraph

<sup>19</sup> 'The British Art Market, A winning global entrepôt', by Arts Economics (2010)

*as being in good health with average prices higher than elsewhere in Europe and substantial imports from other markets. The industry does however regard the extension of resale right to works by deceased artists to be a grave threat to the competitiveness of the UK market, and to the competitiveness of Europe in general especially when compared with the US and the growing market in China.*

*For further details on this point, it is recommended that the Commission refer to the submissions from members of the UK art market.*

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

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

*Market data for each year over the period 2005-2007:*

- *Art market turnover – according to the Hislop Art Sales Index there were 43,968 sales by British auction houses from 15 February 2006 to 31 July 2007 amounting to £1,789 million<sup>20</sup>. For comparison, in the period from 1 March 2003 to 29 February 2004, prior to the introduction of ARR, there were 22,613 sales amounting to £471 million – an average of £21,000 per work<sup>21</sup>*
- *Value of sales by auction – the 43,968 works auctioned between 15 February 2006 and 31 July 2007 sold at an average of £41,000 each. However, a truer picture can be obtained by excluding the 1.9% of works which sold at a very high price which accounted for 58% of total sales. With the high value works removed, the average is around £18,000 per work<sup>22</sup>.*

*For the period from 15 February 2006 to 31 July 2007, 4,758 sales (around 11%) with a total value of £162 million were eligible for ARR payments<sup>23</sup>. It is estimated that just over £3 million of ARR would have been payable during this period. However, 47% of eligible sales accounted for just 2% of the total volume of ARR<sup>24</sup>.*

*The number of ARR eligible items increased from 7.6% in 2003-2004 to 10.8% in 2006-2007. As a percentage by value, this is an increase from 5.1% to 9.1%<sup>25</sup>. It is estimated that this figure will rise fourfold when the derogation on payments to deceased artists ends.*

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<sup>20</sup> Szymanski, page 8

<sup>21</sup> Szymanski, page 9

<sup>22</sup> Szymanski, page 8, last paragraph

<sup>23</sup> Szymanski, page 10, last table

<sup>24</sup> Szymanski, page 11

<sup>25</sup> Szymanski, page 11, last paragraph

- *Value of sales by dealers and galleries – 51% of artists regard galleries as their main channel for sales. Over one third of artists were represented in four or more galleries, and another third cited none or one. 50% of artists who had received ARR payments were represented by four or more galleries, compared to 22% of those who had not yet received any payments<sup>26</sup>.*
- *Volume of auction sales by price range from 15 February 2006 to 31 July 2007<sup>27</sup>:*
  - *up to €50,000 = 37,885*
  - *€50,001 - €200,000 = 4,046*
  - *€200,001 - €350,000 = 858*
  - *€350,001 - €500,000 = 338*
  - *above €500,000) = 841*
- *Imports of works of art – section 3.3 of the Szymanski report contains an assessment of the number and value of works subject to ARR that entered the UK<sup>28</sup>.*
- *Exports of works of art – section 3.3 of the Szymanski report also contains an assessment of the number and value of works subject to ARR that were sent out of the UK for sale.*

*As an illustrative example, one auction house provided four examples of artworks valued at £200,000 which could be shipped to Europe or the US for between £1,075 and £2,310, and four items valued at £50,000 which could be shipped for between £335 and £972. The equivalent ARR payments at 3% of the sale price would be £2000 and £1500 respectively – roughly equal to shipping costs<sup>29</sup>.*

*More up to date figures for UK art market turnover are available from a variety of sources including [www.artprice.com](http://www.artprice.com), the Hislop art index and publications from the art market including 'The British Art Market, A winning global entrepôt', by Arts Economics (2010).*

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

*The Szymanski report estimated costs in 2007 of £1 million to set up the initial framework for ARR payments and £50,000 annual running costs for the application*

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<sup>26</sup> Szymanski, page 26

<sup>27</sup> Szymanski, page 8, last table

<sup>28</sup> Szymanski, pages 15 and 16

<sup>29</sup> Szymanski, page 38

*of the right to living artists. 50% of respondents to a survey carried out at that time placed the costs as around £10 per transaction.<sup>30</sup> The IPO do not have figures for the cost to dealers and auction houses of administering the payment of royalties to deceased artists, but the UK market have voiced concerns that the administration costs will increase when the right is so extended.*

*As the responsibility for distributing payments lies with the collecting societies, the majority of the administrative cost lies with them (and is deducted from royalties paid).*

*For more complete and more up to date figures, it is suggested that the Commission refer to the submissions by DACS and ACS who are responsible for administering ARR payments in the UK.*

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

*Based on the figures supplied by the Design and Artists Collecting Society (DACS) and the Artists Collecting Society (ACS) the IPO presents these approximated figures below:*

- During the existence of resale right in the UK, almost 2,000 Living artists have received royalties totalling around £ 12M<sup>31</sup>*
- A total of around £100,000 in royalties has been distributed to the estates of deceased artists<sup>32</sup> over the same period.*

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

*This question is best answered by the Design and Artists Collecting Society (DACS) who are the only collecting society in the UK who collects ARR for artists without a specific mandate. As ACS only collect royalties for artists who are known to be in their membership, they state that this does not leave them with any non-distributed funds.*

*However, the UK implementation requires that undistributed royalties are held for a period of 6 years before they may be used for other purposes, so as yet no monies collected in the UK fall into this category.*

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

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<sup>30</sup> Szymanski page 36

<sup>31</sup> Figures contributed by DACS and ACS

<sup>32</sup> Based on figures supplied by DACS and ACS.

*DACS have publicly stated that they believe resale right provides a valuable revenue stream to artists at various points in their career, and acts as an incentive for further creation.*

*For more detailed explanation of this point, it is recommended that the Commission refer to the submission by DACS.*

*It is also suggested that the Commission should be aware of two further studies in this area, one by Toby Froschauer<sup>33</sup> and most recently one by the European Fine Art Foundation<sup>34</sup>. While neither of these reports are fully accessible online, it is suggested the Commission may wish to approach their sponsoring organisations for details (contact information may be found via the footnote references).*

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<sup>33</sup> The impact of Artist Resale Rights on the art market in the United Kingdom by Toby Froschauer, <http://www.antiquetrade gazette.com/news/6591.aspx>

<sup>34</sup> The Global Art Market in 2010: Crisis and Recovery by Dr Clare McAndrew. <http://www.tefaf.com/DesktopDefault.aspx?tabid=78>