



House of Commons
Culture, Media and Sport
Committee

The Market for Art

Sixth Report of Session 2004–05

Report, together with formal minutes, oral and written evidence

*Ordered by The House of Commons
to be printed 23 March 2005*

The Culture, Media and Sport Committee

The Culture, Media and Sport Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Culture, Media and Sport and its associated public bodies.

Current membership

Sir Gerald Kaufman MP (*Labour, Manchester Gorton*) (*Chairman*)
Mr Chris Bryant MP (*Labour, Rhondda*)
Mr Frank Doran MP (*Labour, Aberdeen Central*)
Michael Fabricant MP (*Conservative, Lichfield*)
Mr Adrian Flook MP (*Conservative, Taunton*)
Mr Nick Hawkins MP (*Conservative, Surrey Heath*)
Alan Keen MP (*Labour, Feltham and Heston*)
Rosemary McKenna MP (*Labour, Cumbernauld and Kilsyth*)
Ms Debra Shipley MP (*Labour, Stourbridge*)
John Thurso MP (*Liberal Democrat, Caithness, Sutherland and Easter Ross*)
Derek Wyatt MP (*Labour, Sittingbourne and Sheppey*)

Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at

http://www.parliament.uk/parliamentary_committees/culture__media_and_sport.cfm

Committee staff

The current staff of the Committee are Fergus Reid (Clerk), Ian Cameron (Second Clerk), Grahame Danby (Inquiry Manager), Anita Fuki (Committee Assistant) and Louise Thomas (Secretary), with support from Jonathan Coe (Office Support) and Luke Robinson (Media Officer).

Contacts

All correspondence should be addressed to the Clerk of the Culture, Media and Sport Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 6188; fax 020 7219 2031; the Committee's email address is cmscom@parliament.uk

Contents

Report	<i>Page</i>
Summary	3
1 Introduction	5
2 The UK art market	6
3 Artists' income	10
4 Artists' resale right	13
5 The public sector	17
Conclusions and recommendations	20
Formal Minutes	22
Witnesses	24
List of written evidence	24
List of unprinted written evidence	25
Reports from the Committee since 2001	26

Summary

Our predecessors, then the National Heritage Committee, took the art market as the subject of its first inquiry in 1992, with an emphasis on exports. The state of the visual arts is a useful proxy for the health of our cultural life and it is therefore fitting that they once again form the subject of our inquiry.

The present inquiry has focused on the inter-relationship of artist and art market, and the encouragement of new and innovative work. Developments in the wider sector and relevant legislation have necessarily been examined. Both central and local government can play influential roles in meeting many of the important objectives identified to us: from educating the artists of tomorrow to the provision of studio space and advice on professional development for the artists of today.

Government and the Arts Councils, industry and artists, should all work together to establish best practice guidelines to secure contracts that are fair to artists and art market professionals alike.

A particular focus of industry concerns has been the forthcoming transposition of EU legislation, introducing royalty payments when work is resold. The implications of this artists' resale right, or *droit de suite*, have thus featured significantly in both the oral and written evidence, and in discussions we held with the French Government.

We believe that *droit de suite* should be implemented in a way that provides a significant number of artists with an additional source of income, while signalling the value society attaches to intellectual property and creativity; and that this should be possible without adversely affecting the UK's vibrant art market.

Above all, the Department for Culture, Media and Sport must signal and promote the arts throughout Government. The arts can help meet cultural objectives, both nationally and internationally; and this would be better achieved were they to have an effective champion in Government.

1 Introduction

1. The UK art market is remarkable for its diversity and scale, with visual works of stunning variety being sold in the smallest retail outlets and the largest galleries and auction houses. At a time when visual artists and art market professionals are re-evaluating their complex interrelationships, and with consultation underway on the introduction of a resale royalty for artistic works (*droit de suite*), we decided to conduct an inquiry into the art market. The inquiry's terms of reference, announced on 18 January 2005, had as a particular focus, ways of supporting and encouraging living artists and the production of new work.

2. We were also interested in establishing what scope exists to promote best practice in the conduct of financial relationships between artists and art market professionals. Views were, in addition, also sought on the future operation and likely impact of European Directive 2001/84/EC on artists' resale right. In the general context of government support for the art market, we received submissions, and took oral evidence, covering a wide range of subjects and concerns: from educating the artists of tomorrow, to the provision of studio space, to the impact of fiscal measures on art.

3. An oral evidence session was held on 8 March when we took evidence from artists, bodies representing artists and art market professionals, the public sector and the Government. Rebecca Salter and Professor Gerard Hemsworth (Goldsmiths College) gave evidence on their experience as artists and on the challenges facing emerging artists, particularly in relation to their dealings with art market professionals. Susan Jones, a former artist and now Director of Programmes at a-n The Artists Information Company, told us of the need for greater consultation with artists and for the promulgation of industry best practice. Evidence from the Visual Arts and Galleries Association (Hilary Gresty) and Arts Council England (Marjorie Allthorpe-Guyton) provided a public sector perspective on support mechanisms for artists and ways of promoting art and prompting the market.

4. The British Art Market Federation was represented by Anthony Browne, with Sir Tom Lighton of Waddington Galleries providing information from the perspective of the Society of London Art Dealers. Both were concerned that the introduction of artists' resale right would have a seriously adverse affect on the market, an opinion disputed by Joanna Cave of the Design and Artists Copyright Society. Dr Iain Robertson (City University and Sotheby's Institute of Art) referred to the international competitiveness of the UK art market, attributing this in part to the lack of regulation.

5. We also took oral evidence from the Department for Culture, Media and Sport (DCMS) and the Department of Trade and Industry (DTI). Lord Sainsbury of Turville (Parliamentary Under-Secretary of State, DTI) gave evidence on the ongoing government consultation on the implementation of artists' resale right. The Minister for the Arts, Rt Hon Estelle Morris MP, provided the Committee with an overview of government policy, including such matters as encouraging art in schools and enabling new artists in their careers.

6. On 28 February and 1 March, the Committee visited Paris to gain an international perspective from a wide range of professionals in what is, after the UK, the most important art market in the European Union. We benefited from comprehensive briefings from Sir

John Holmes, HM Ambassador to France, Paul de Quincey, Director, British Council France and Dr Claire Glossop, Head of Arts, British Council France. Dr Glossop highlighted some of the key differences between funding for the arts in the UK and France, including the relatively important role played by French local government. She also discussed the professional development of artists and the size of the domestic art markets in both countries. We visited the Palais de Tokyo where we met the Chief Curator, Akiko Miki, and the Director, Nicolas Bourriaud; here we viewed an exhibition by the British artist Liam Gillick and discussed the role of galleries as public spaces.

7. We also visited the National Museum of Modern Art, Pompidou Centre, where the Director General, Bruno Maquart, explained policy on acquisitions and the ongoing French programme of artistic decentralisation. The latter was well illustrated by the Centre's plans to open a regional branch in Metz in 2007. At the National Centre for Fine Art (CNAP)¹ we met the Director, Chantal Cusin-Berche, and discussed professional development issues with Denis Roche, Head of the Department for Support to Creativity. Co-located with CNAP is the *Fonds national d'art contemporain* (FNAC); here, Claude Allemand-Cosneau explained the historical development of the French state's purchasing policy for contemporary art, before providing the Committee with a brief tour of the storage facilities for the collection.

8. We also held informal discussions with art market professionals, representatives of the public sector and government officials and visited the new Ministry of Culture Building where Claudie Georges-François explained the conjunction of art and architecture symbolised and embodied by the development itself. Subsequent meetings with the Minister for Culture and Communications, Renaud Donnedieu de Vabres, and officials (Alain Derey and Serge Kancel) focused on the long French experience of *droit de suite* (discussed further below) and on common interests in relation to the status and rights of artists. We are grateful to all our hosts and interlocutors.

9. We recommend that the UK takes the important opportunity afforded by its forthcoming presidency of the European Union to promote international co-operation in cultural development.

2 The UK art market

10. With a global share of 26%, the UK has by far the largest art and antiques market in Europe and is second only to the USA in the world. In 2001, the DCMS published a *Creative Industries Mapping Document*, largely derived from work undertaken by Market Tracking International (MTI). A value of £3,467 million was placed on the UK market. This figure represents the turnover of UK art and antiques businesses in 1999, and is almost evenly split between dealers and auction houses. The analogous figure for France was £2,115 million, making it the only European country whose market is within comparable parameters. While France has the greatest number of art and antiques businesses in Europe, the UK (which comes second) has the highest number of employees.

1 Centre national des arts plastiques

11. Citing a more recent (2001) study by the European Fine Art Foundation,² the Government's written evidence³ gave an overview of the UK art market. The markets for art and antiques taken together were worth around £4.2 billion, split roughly 50–50 between auctioneers and dealers, and amounting to 25% of the global market. In the UK there were 9,500 art dealers and 750 auction houses. The market employed 28,000 full time and 9,000 part time staff. Gross wages and salaries are difficult to estimate because there is insufficient industry data available.

12. In addition to the art market professionals working in commercial galleries and auction houses, art is also sold by artists privately and by other businesses. In written evidence, the art market strategist Sarah Thelwall observed that this retail sector was showing significant growth both in London and beyond, specialising in art for domestic use.⁴

13. Estimates of the number of actual artists vary significantly, which is unsurprising given difficulties of definition, both of what constitutes an artist and of the circumstances of employment. According to the Labour Force Survey, there were approximately 148,700 visual artists in the UK in 2000, a figure which includes commercial artists and graphic designers. These were divided roughly equally between employed and self-employed.⁵ Other research, cited in written evidence from a–n The Artists Information Company, quotes a figure of between 60,000 and 90,000 for the number of visual artists in the UK. Nearly half of these (48%) were categorised as self-employed. The Visual Arts and Galleries Association estimates that some 45,000 professional artists work in the UK.

14. The two international auction houses, Sotheby's and Christie's, have a significant presence in the UK (Christie's is headquartered in London) and dominate the European auction market. The UK market is the most important for both houses in Europe. Christie's sales in Europe realised £726 million in 1999, of which £561 million was made in London auctions. Christie's worldwide sales for 1999 were £1,518 million.

15. The Art Sales Index (ASI) details annual sales of fine art in a selection of international auction houses. While the database grows each year, the figures remain far from exhaustive. They do, however, give an accurate indication of activity within individual auction houses.

16. Table 1 details the auction houses with the ten largest turnovers during the 2003/04 season and makes clear the importance of the UK market to the international houses of Sotheby's and Christie's, both of which have their largest European presence in the UK.

2 *The European Art Market in 2002 – A survey*, European Fine Art Foundation

3 Ev 43

4 Ev 70–2

5 Ev 12

Table 1: Fine art auction sales by auction house: 2003/04 season

ten largest turnovers

Auction House	Lots sold	Value of sales (£000s)
Sotheby's, New York	6,014	441,245
Christie's, Rockefeller NY	4,878	285,526
Sotheby's, London	4,921	276,508
Christie's, London	3,613	200,683
Phillips, New York	1,099	24,929
Bonhams, New Bond Street	2,024	20,484
Christie's, Hong Kong	654	18,839
Christie's, Paris	868	15,420
Christie's, Kensington	5,414	15,313
Sotheby's, Amsterdam	1,813	14,888

Source: ASI, Hislop's Arts Sales Index 2005, online statistics:

http://www.art-sales-index.com/pages/Products/asi36_auct.html

17. Table 2 presents ASI-recorded auction sales during the 2003/04 season, broken down by country. On this measure, the UK is easily the second largest world market behind the US. UK turnover of £550.6 million represented 29.4% of the world total and 59.4% of the EU total. In terms of volume, the UK is the world leader. During the 2003/04 season, 22.3% of world fine art auction sales were made in the UK, compared with 19.7% in the US.

Table 2: Fine art auction sales by country: 2003/04 season

ten largest turnovers

	Turnover (£000s)	Proportion of season	Percentage change from previous season	Lots sold	Proportion of season	Percentage change from previous season	Average price (£)	Percentage change from previous season
USA	821,452	43.8%	30.1%	30,398	19.7%	41.5%	27,023	-8.1%
UK	550,608	29.4%	27.0%	34,302	22.3%	11.7%	16,052	13.7%
France	123,086	6.6%	-10.6%	19,009	12.3%	6.0%	6,475	-15.6%
Italy	68,122	3.6%	39.4%	8,690	5.6%	19.1%	7,839	17.0%
Germany	50,166	2.7%	23.9%	11,295	7.3%	19.8%	4,441	3.5%
Switzerland	31,017	1.7%	28.2%	4,583	3.0%	5.4%	6,768	21.6%
Australia	28,699	1.5%	6.3%	4,689	3.0%	5.2%	6,120	1.0%
Hong Kong	28,351	1.5%	139.4%	950	0.6%	85.2%	29,843	29.3%
Netherlands	27,161	1.4%	9.4%	4,877	3.2%	13.0%	5,569	-3.1%
Sweden	21,474	1.1%	9.5%	4,036	2.6%	-0.2%	5,321	9.7%
Rest of world	123,696	6.6%	:	31,220	20.3%	:	3,962	:
Total	1,873,832	100.0%	24.6%	154,049	100.0%	16.1%	12,164	7.4%

Source: ASI, Hislop's Arts Sales Index 2005, online statistics:

<http://www.art-sales-index.com/pages/Products/asi36-stats.html>

18. Market Tracking International (MTI) estimated that the economic benefit to the UK Treasury of art and antiques in 1998 was at least £426 million: £130 million from income taxes levied on employees, £193 million from corporation taxes on profits and £104 million from VAT.

19. The UK dominates EU exports of pictures; in 1999 total value was £629 million. The UK imported £655.2 million of pictures from outside the EU. These figures provide one example of the importance of the international market to the UK. Overall, it accounts for

around 50% of industry revenues.⁶ In terms of both imports and exports, the USA is the British art market's most significant trading partner.⁷

20. While the above data provide some indication of the economic importance of the art market, it should be recognised that there is relatively little accurate and timely information available, both in relation to the UK and the wider world. Studies that have been undertaken tend to vary in their results due to differences in the definition of art and the scope of their surveys. Written evidence from the Visual Arts and Galleries Association referred to the lack of data available on the economic contribution of artists, one difficulty arising from the coarseness of the “art and antiques” category on which many statistics are based. The Minister for the Arts, Estelle Morris, told us of the importance she attached to working with the Arts Council to get a database and accurate information about the value of the creative industries, including art.⁸ She also referred to the importance of new work by the Regional Development Agencies in collecting information about the state and impact of all the creative industries in their regions.⁹

21. We recommend that the Government commissions research aimed at providing an accurate assessment of the primary, secondary and retail art markets. Only by such research can government support for the visual arts be rooted in evidence and be of a scale that is proportionate to the economic and wider societal benefits brought by art.

22. The public sector can, and does, intervene to stimulate the market directly. One example is the *Own Art* initiative launched by Arts Council England in November 2004. This is a national interest-free loan scheme (up to £2,000) aimed at making it more affordable for individuals to buy high quality, original contemporary art. By developing the market for contemporary visual arts, particularly outside London, *Own Art* aims to tap into the potential for wider individual ownership and appreciation of art. DCMS funding for *Own Art* in 2005–06 is £250,000.¹⁰ Some 250 galleries across England participate in the scheme, which also operates north of the border under the auspices of the Scottish Arts Council. A similar scheme, but aimed at providing resources for the conservation of art, was mooted by the Institute of Conservation in written evidence to this inquiry.¹¹

23. Overseas, the British Council plays a pre-eminent role in promoting British art, encouraging sales directly into the museum network and increasing awareness among dealers, art fairs and practitioners. We were greatly impressed by the work the British Council is carrying out in France.

6 Ev 43

7 Ev 26

8 Q 65

9 Q 66

10 Ev 48

11 Ev 63–4

3 Artists' income

24. For artists to sell their art, it needs exposure. Traditionally, the specialist gallery has fulfilled this role, augmented by displays in other venues such as restaurants and cafes and, more recently, on the internet. Online sales seem set to grow in importance, though they only represented 0.3% of the total international art and antiques market in 1999. Fostering growth in online sales remains both a challenge and an opportunity. We were told by Sir Tom Lighton, former chairman of the Society of London Art Dealers and Managing Director of Waddington Galleries: "However good digital photography is, there is no substitute for seeing the actual object; and you also want to see the object in the context of an exhibition."¹² More generally, the exposure, income and career prospects of artists ultimately depend on a healthy art market, including significant auction sales which attract major museum curators to London.¹³ Sir Tom drew attention to the desirability of public subsidy for "young dealers" to exhibit artists' work at overseas fairs.¹⁴

25. Written evidence from the company Eta, a development agency based in South East England, included a proposal that public funding opportunities should be broadened to take more account of art itself, allowing artists, including those in mid-career, time for reflection. Eta also pointed to the detrimental affect on regional artists, arising from the art market's concentration in London.

26. So far as income and employment status are concerned, Arts Council England believes that visual artists should be entitled to claim dual status, in the same way as performers can. Dual status allows a worker to be identified as an employee for National Insurance, and as self-employed for tax. By doing so, they are able to use tax and social security benefits, making bearable the inevitable periods of unemployment.

27. Arts Council England identifies a clear need for the recognition by the welfare system of artist as a profession (as distinguished from someone making art for personal enjoyment). The Department for Work and Pensions and the Inland Revenue need to understand better the pattern of an artist's working life.

28. A symbiotic relationship exists between galleries and artists, each dependent on the other.¹⁵ We received evidence of instances where such relationships have been uneven and at times troublesome. The artist Rebecca Salter submitted written evidence to the Committee highlighting weaknesses in the system of consignment of artists' work to galleries.

29. Once work is consigned, the artist retains legal ownership but relinquishes physical possession. Rebecca Salter notes that, with no right to inspect the gallery's books or records, the artist's position is vulnerable; it is impossible to know if the work has been sold, to whom and how much for. Her written submission goes on to list specific consequences of this, including: the artist not being informed about work sold; consigned work being rented out or re-consigned without the artist's knowledge; works owned by artists being seized by bailiffs when galleries go out of business; and consigned work being lost. Without

12 Q 49

13 Q 58

14 Q 37

15 *Artists & Galleries: A Profitable Relationship*, Fine Art Trade Guild & Society of London Art Dealers, 1996

signed paperwork, such as a client invoice, the artist has difficulty in proving ownership of work, and in being paid in a timely and appropriate manner. VAT adds another complication, potentially affecting the division of costs between artist and gallery.¹⁶ In oral evidence to the Committee, Ms Salter suggested that a code of conduct “would be a tremendous help for young artists, particularly when they are starting out.”¹⁷ Another artist, Laura Hunter, wrote to us calling for, among other things, greater transparency in the commercial gallery system over details of sales.¹⁸

30. Providing the artist with information on client invoices, within the constraints of the Data Protection Act 1998, would be one useful and appropriate feature of any code or system of best practice for galleries. Sir Tom Lighton commented that the artists he worked with already received a great deal of information: “... I am totally in favour of as much as possible being put in writing. Certainly that is the practice we follow.”¹⁹ Gerard Hemsworth, Professor of Fine Art at Goldsmiths College, University of London, told us that “by and large, young artists are smart enough to get their paper work in order with dealers”, some of whom might be starting out too.²⁰

31. Written evidence from Pyramide Europe, a European Economic Interest Group, refers to the inequalities and inadequacies of the current situation, with the art market as such representing only one source of income for artists. Pyramide Europe points out that commissions rather than direct sales make up the bulk of the actual market and it is here where the major problems for artists occur; they are “often forced into signing completely unfair and unreasonable contracts for these commissions on a no sign no work basis.”²¹

32. The Society of London Art Dealers submitted written evidence to us, describing how responsible art market professionals already operate. Because of the wide variety of agreement between artists and dealers, and the great differences in their detail and content, when the Society looked at this issue over a year ago they decided not to try to draft model agreements, or a code of conduct, but instead to produce a checklist of the points which dealers should keep in mind in drawing up agreements.²² The Society’s evidence argued against greater regulation or external monitoring, adding: “if there is one single thing which the Committee could do to help encourage the development of artists and new art, it would be to try to reduce the bureaucratic burden on art market professionals.”²³ We believe it is entirely feasible to draw up best practice guidelines or codes of practice which do not impose unnecessary administrative burdens on art dealers, but which will be of material benefit to all parties concerned. **We recommend that the DCMS actively pursues the development of best practice guidelines for the art market.**

33. Written evidence from the British Art Market Federation (BAMF) pointed out that the UK art market was particularly dependent on cross-border trade, “and in this respect is the only global competitor to the US.”²⁴ Citing data from auction houses, which are primarily

16 Ev 1–2

17 Q 11

18 Ev 63

19 Q 36

20 Q 11

21 Ev 65

22 Ev 28

23 Ev 29

24 Ev 26

involved in the important secondary market, BAMF noted that Britain's skill in attracting the higher value sales of art was responsible for its prominent position in the international marketplace. Dr Iain Robertson alerted the Committee to the dangers of over-regulation of the art market, given the international context in which it operates.²⁵

34. Lord Sainsbury told us that a review of auction house regulation was not a current priority, but undertook to look into it.²⁶ **Auction houses represent an important sector of the art market in the UK. However, some of the relevant legislation dates back to 1845. We believe a review is overdue.**

35. In the context of artist-dealer relationships we believe codes of practice are the best way forward. As a means of encouraging best practice in professional relationships with artists, Arts Council England (ACE) and the Scottish Arts Council favour for inclusion in the *Own Art* loan scheme those galleries and outlets that adhere to an associated code of practice. One element of this code is that a fair commission is paid to artists, and paid promptly once a loan is agreed and the sale processed. Furthermore, the galleries and outlets should have a direct relationship, and contract of sale, with the artist. One of the criteria ACE uses for assessing galleries is that, when agreeing to exhibit an artist's work, they must produce a written agency agreement signed by the gallery and the artist.

36. **We recommend that Arts Council England promotes the widespread adoption by galleries, and other outlets, of practices modelled either on the Own Art scheme rules, or on alternatives offering similar protection for both artist and art market professional.**

37. a-n The Artists Information Company has also published a *Code of Practice for the Visual Arts* and recommended endorsement by Government and DCMS-supported agencies of this Code, and adoption of its associated guidance in the form of contracts and recommended remuneration scales based on the professional costs and career stage of artists. Compliance should, according to a-n, be monitored as a condition of best practice in agreements with funding agencies.²⁷

38. We anticipate that the promulgation of a codified and transparent system of best practice would be welcomed by the overwhelming majority of artists and art market outlets alike, serving as a useful signal of respectability. **We recommend that the Government establish a forum of interested individuals, including artists, dealers and auction houses, to work towards identifying key areas of agreed best practice in contractual relationships between artists and art market professionals. Compliance with the code of practice that emerges should be a prerequisite for the receipt of public funds.**

39. Attention should be given to providing new artists with business skills and professional development information. Colleges and universities are increasingly providing professional practice courses.²⁸ Every year 15,000 artists gain access to professional development opportunities through the Artists Professional Development Network, a consortium of cultural enterprise, information and training agencies including: a-n Artists Information Company; Artquest, London; Cultural Enterprise Office, Glasgow; Suffolk County

25 Q 38

26 Q 71

27 Ev 3

28 Q 11

Council.²⁹ The Fine Art Trade Guild and the Society of London Art Dealers have published guidance, primarily for artists, in a booklet entitled, *Artists and Galleries: A Profitable Relationship*, which was published in 1996 and is in the process of being updated. All of these developments are welcome, but the information and guidance could be disseminated in a more accessible and convenient way. Some websites have been set up which serve as portals to provide access to professional development information and, in the case of Culture Online,³⁰ to art itself. **We recommend the further development of an online portal offering business advice to artists, supporting networking opportunities, and providing access to the arts more generally.**

4 Artists' resale right

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 resold³¹ 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.³²

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)³³ – 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 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.³⁴

29 Ev 3

30 <http://www.cultureonline.gov.uk/>

31 The right applies to any sale after the first transfer, for example an initial sale, of the art work.

32 QQ 59–60

33 Berne Convention for the Protection of Literary and Artistic Works (Article 14ter)

34 Q 30

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).³⁶

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.³⁷

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.³⁸ Though some new media works may thus be left out,³⁹ 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."⁴⁰

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.⁴¹ **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.**

48. The British Art Market Federation's submission to the Committee focused on *droit de suite*, reflecting major concerns over what its Chairman, Anthony Browne, called a "huge experiment with the future of the market."⁴² The BAMF evidence acknowledged the concessions won by the UK Government and its allies. The most important is the already-

35 *Implementing Droit de Suite (artists' resale right) in England*, Arts Council of England, March 2002

36 Q 52

37 Q 82

38 Section 4 of the 1988 Act does not explicitly refer to computer-generated artistic work, but nor does it exclude it.

39 Q 44

40 Article 2(1)

41 Q 62

42 Q 57

mentioned derogation to permit those member states not already operating the right to apply it only to the work of living artists, until 2012 at the latest. Thereafter it will also apply to the heirs of dead artists which account for over 80% of relevant art auction sales. Such sales include many of the 20th Century masters that, the BAMF pointed out, London must continue to attract for sale to maintain its position in the international market.

49. A second concession is a maximum levy per transaction of 12,500 euros; this prevents the levy from increasing when sales exceed 2 million euros. This is intended to limit the loss of the UK's share of the mobile top end of the art market. Thirdly, there will be a starting threshold of 3,000 euros below which sales will not be liable to the levy. During negotiations on the directive, the UK Government argued for a starting point of 10,000 euros on the grounds that sales below that figure were unlikely to be diverted from one member state to the other (so no internal market justification existed).

50. The BAMF submission went on to express concern that applying the resale right to low value transactions will create a considerable burden and cost, particularly to many smaller businesses. The initial compliance cost assessment put the administrative cost at £30 to £40 per sale. We believe that, with modern technology, and within existing arrangements, it should be possible to reduce administrative costs substantially. The BAMF evidence named several prominent artists who are opposed to *droit de suite*, one of whom, Anthony Green, submitted separate evidence to us.⁴³

51. On the other hand, the Design and Artists Copyright Society believes that the “buoyant British art market, which is the strongest in Europe, has nothing to fear.”⁴⁴ The Society's written evidence welcomed the extra income stream that *droit de suite* will generate for artists, rebutted the market diversion arguments, and suggested that administrative costs can be minimised by implementing collective management of the resale right.⁴⁵ On collective management at least, there appeared to be a measure of consensus in the evidence we heard.⁴⁶

52. 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.

53. We are attracted to the principle that artists should receive adequate remuneration and recognition for their work. Both BECTU and the Design and Artists Copyright Society have argued that applying the resale right to lower value art works could be administered economically. Together with the British Copyright Council, they have advocated taking the option permitted by the Directive of lowering the minimum threshold to which the right applies from the stipulated 3,000 euros. All three bodies recommend 1,000 euros as being a reasonable price at which resale royalty should begin to apply. The Chief Executive of DACS, Joanna Cave, told us: “We are suggesting lowering the threshold to 1,000 euros which will benefit a much broader range of artists, and will also deliver the objective that the Commission has highlighted in encouraging younger artists, or those at the beginning of their career, where their values have not achieved high levels. If the UK opts for a

43 Ev 63, but see Ev 63 also for a written submission from an artist (Laura A Hunter) in favour of *droit de suite*.

44 Ev 35

45 Ev 31–5; Q 33

46 Q 50, Q 52, Q 68

thousand euros it will still have the highest threshold out of all the Member States.”⁴⁷ Member States with some form of the resale right in place have lower rates partly for historical reasons; the UK’s main EU competitors, France and Germany, having notably low rates of, respectively, 15 and 50 euros.⁴⁸

54. The British Art Market Federation has expressed concerns that even a threshold of 3,000 euros will impose a significant burden on small businesses. Lord Sainsbury told us the Government were inclined not to lower the threshold “because we think at that point the administrative costs become an absurdly high proportion of the actual payments which will go to artists.”⁴⁹ More generally, Simon Stokes, a solicitor with a background in art and copyright, wrote to us arguing that the UK should not seek to “gold plate” the *droit de suite* Directive, but to take advantage of concessions hard-won by the UK Government and implement it in a fashion that causes least damage to the market.⁵⁰ We believe the application of a measured amount of “gold plating” can bring about material benefits to artists, without compromising the competitiveness of the market.

55. 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.

56. As DACS notes in its written evidence, the *droit de suite* Directive includes for the first time a specific attempt to encourage young, newly emerging artists by providing a higher royalty rate for less expensive works. At the other end of the graduated scale,⁵¹ the amount of royalty from a single resale is capped at 12,500 euros (£9,000). The highest rate of royalty is 4%, at the lowest value range (3,000 euros to 50,000 euros). Member States can elect to increase the royalty rate at this level only, to 5%. Below 3,000 euros any royalty can be applied so long as it is not lower than 4%. A modest increase in the royalty rate for the lowest resale price band would, we believe, have important symbolic value, provide a measure of assistance to a substantial number of artists; all at relatively little additional cost to the market.

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

58. Just as the art market adapted to the introduction of the buyer’s premium in auction sales, it should be able to do so in connection with the smaller *droit de suite* royalty.⁵² The buyer’s premium in the major auction houses is now charged at 20% compared to our proposed 5% for *droit de suite* royalties.⁵³ Nevertheless, the Government should give consideration to compensating measures, such as a reduction in the rate of VAT applied to art sales (currently 17.5%),⁵⁴ particularly in view of a possible future increase (from 5% to

47 Q 42

48 Ev 33

49 Q 76

50 Ev 67–9

51 European Parliament and Council Directive 2001/84/EC, Article 4

52 Q 53

53 above 50,000 euros, the *droit de suite* rate starts to diminish

54 Ev 14, para 29

17.5%)⁵⁵ in the VAT on imports of artistic works.⁵⁶ No-one benefits, least of all the Treasury, from an emasculated art market.

5 The public sector

59. The art market can be considered a confluence of commercial galleries and dealers, individual artists, and the public gallery sector. Written evidence from the Visual Arts and Galleries Association⁵⁷ identified a number of direct ways in which the public sector supports artists and contributes more widely to the market:

- Through the public display and exhibition of new and contemporary work in temporary exhibitions, permanent collections and temporary projects and events
- Direct support for the production of new work through exhibition fees, residencies, fellowships, commissions and the purchase of work for public collections
- Provision of a potential sales outlet for artists who are not represented by commercial galleries
- Employment of artists as artist-educators, lecturers, writers, technicians and curators

60. In addition, the public sector provides indirect support through wider education (for example informing private collecting), and by participating in the process by which artists' reputations are established; a process known as endorsement.⁵⁸

61. The Contemporary Art Society is a charity that buys works from living artists for its member museums. In a written submission, the Society called for the re-establishment and widening of the Special Collections Scheme which has already made important purchases for public collections, and which could help develop audiences in the regions.⁵⁹ Marjorie Allthorpe-Guyton, Director of Visual Arts, Arts Council England, described the Contemporary Art Society as a "major lever to grow a wider commercial market beyond London."⁶⁰ There is a clearly identifiable need to develop regional as well as national art galleries, and the *Goodison Review*,⁶¹ commissioned by the Chief Secretary to the Treasury, makes a number of practical recommendations in this context. Among the Goodison recommendations that chime with those put to us by the National Art Collections Fund,⁶² and the Contemporary Art Society, is one for a system of tax reliefs to encourage donations of art to public collections. **We recommend an extension of the Gift Aid arrangements, so that donations of significant art works to public collections can be offset against income tax.**

55 Case C-305/03 Opinion of Advocate General Kokott delivered on 24 February 2005, European Court of Justice

56 Q 46

57 Ev 6-11

58 *Market Matters: The dynamics of the contemporary art market*, Louisa Buck, Arts Council England, 2004

59 Ev 60-1

60 Q 28

61 *Securing the Best for our Museums: Private Giving and Government Support*, Nicholas Goodison, January 2004

62 Ev 64-5

62. More generally, we raised implementation of Sir Nicholas Goodison's recommendations with the Minister for the Arts. She told us: "The Goodison recommendations clearly fell into two parts. One was the responsibility of the DCMS and the other was directly the responsibility of the Treasury. We have delivered all the targets from the DCMS and the rest is for the Treasury."⁶³ **We note that the DCMS has implemented the Goodison recommendations in so far as they apply to the Department. We look to the Treasury to follow suit. Where it does not do so, justification, if any, for the corresponding decisions should be published.**

63. In its written submission, the Department for Culture, Media and Sport described a range of measures aimed at supporting the art market. With an eye to the future, one particular commitment lies in enhancing access opportunities for young people, enabling them to progress from:

- first access to art;
- to opportunities to deepen their interest or develop their talent;
- to support for the most talented; and
- to making a living in the arts.

64. The Creative Partnerships programme has supported 964 visual arts-based projects so far, bringing schools and artists together. A useful development would be to combine Creative Partnerships with extended schools,⁶⁴ to provide much-needed artists' space and bring added benefits to the wider community. **We urge the Government to build on Creative Partnerships and actively to encourage the provision of artists' space in extended schools.**

65. Creative Partnerships are only one of many ways in which encouragement can be given to potential and practising artists. A wider public engagement with art can be brought about by local authorities assigning greater priority to the role of culture in education development planning.⁶⁵ Improved infrastructure for the arts, for example in relation to studio space, should be a more common component of planning obligations, also known as section 106 agreements.⁶⁶ Regional Development Agencies and Cultural Consortiums have a particular responsibility to co-operate in bringing about a cultural "renaissance in the regions"⁶⁷ (to borrow the title of an influential report by the Regional Museums Task Force).⁶⁸

66. In general, the Government should redouble its efforts to encourage a wider public appreciation of the arts, both as a worthwhile goal in its own right, and as a means of broadening the base of producers and purchasers of art. The Minister for the Arts rightly referred to the contribution made by the introduction of free entry to art galleries and museums.⁶⁹ Capital investment in new gallery spaces, such as Tate Modern, has enabled

63 Q 84

64 Q 72

65 Q 28

66 Q 9

67 Q 79

68 Renaissance in the Regions: A New Vision for England's Museums, October 2001

69 Q 78

many more people to experience contemporary art. Written evidence from the Government⁷⁰ listed examples of programmes, from commissions to competitions, run by National Galleries to promote greater awareness and interest in contemporary art. In doing so, the evidence noted that a significant element of the Tate's annual acquisition budget is dedicated to purchasing work by contemporary artists. However, we note with concern that the purchasing power of the Tate's budget has declined markedly over the last 20 years, with all the implications that has for the integrity of collection.

67. In a telling contribution during the oral evidence session, the Minister for the Arts identified an overarching need to change the culture throughout government: "Last week I went to see the new Home Office. I think that is the first government building that has been built in central London for a long time, and that has had artists working with the architects when the building was designed and built not as a bolt-on extra but almost accepting that you do not build a building unless you look at what art can contribute. We are further along the road than we were but I do not think we have changed the culture yet."⁷¹

68. As the national arts development agency, Arts Council England exercises a role in the art market designed to create conditions within which artists can produce work and develop their careers.⁷² It funds both national and regional artists' development agencies. Funding streams such as Grants for the Arts provide support for artists and the production of new work: in 2000–2004 £6m was allocated to 852 grants to individual visual artists for animation, graphic design, new media to fine art, photography, crafts and live arts.

69. Arts Council England has concerns over the likely impact of the Spending Review 2004 on long-term strategies for the arts. Its written evidence referred to the constraining effect of "cash standstill" in ACE's grant-in-aid. Furthermore, until ACE is reconfirmed as a lottery distributor, firm commitments on investment in studio spaces cannot be given.

70. We share the views of Arts Council England in relation to the "transforming power of the arts" and endorse its aims of placing arts "at the heart of our national life." Together with its counterparts in Scotland, Wales and Northern Ireland, Arts Council England has achieved much with limited resources – sometimes controversial, always challenging. **We strongly support the four Arts Councils having continued status as distributors of National Lottery funds.**

71. By their very nature, the visual arts illustrate and embody much of the creativity that drives a modern society, and enables it to thrive. **The Department for Culture, Media and Sport must view the active promotion and sponsorship of the arts as one of its primary roles. This is particularly important in view of the large number of government departments with some claim to responsibility for different locations in the world of art. Regrettably, in Government, the Department seldom punches, if it punches at all, at a weight commensurate with the centrality of the arts to our national life.**

72. **It is time for Government to commit itself to a flourishing arts scene. And nowhere will such a commitment be more visible than in the visual arts.**

70 Ev 42–52

71 Q 80

72 Ev 11–9

Conclusions and recommendations

1. We recommend that the UK takes the important opportunity afforded by its forthcoming presidency of the European Union to promote international co-operation in cultural development. (Paragraph 9)
2. We recommend that the Government commissions research aimed at providing an accurate assessment of the primary, secondary and retail art markets. Only by such research can government support for the visual arts be rooted in evidence and be of a scale that is proportionate to the economic and wider societal benefits brought by art. (Paragraph 21)
3. We recommend that the DCMS actively pursues the development of best practice guidelines for the art market. (Paragraph 32)
4. Auction houses represent an important sector of the art market in the UK. However, some of the relevant legislation dates back to 1845. We believe a review is overdue. (Paragraph 34)
5. We recommend that Arts Council England promotes the widespread adoption by galleries, and other outlets, of practices modelled either on the Own Art scheme rules, or on alternatives offering similar protection for both artist and art market professional. (Paragraph 36)
6. We recommend that the Government establish a forum of interested individuals, including artists, dealers and auction houses, to work towards identifying key areas of agreed best practice in contractual relationships between artists and art market professionals. Compliance with the code of practice that emerges should be a prerequisite for the receipt of public funds. (Paragraph 38)
7. We recommend the further development of an online portal offering business advice to artists, supporting networking opportunities, and providing access to the arts more generally. (Paragraph 39)
8. The Government should renew its efforts to achieve universal adoption of *droit de suite*, through all available international channels. (Paragraph 45)
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)
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)
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)

12. We recommend that the Government apply a royalty rate of 5% to the price band up to 50,000 euros. (Paragraph 57)
13. We recommend an extension of the Gift Aid arrangements, so that donations of significant art works to public collections can be offset against income tax. (Paragraph 61)
14. We note that the DCMS has implemented the Goodison recommendations in so far as they apply to the Department. We look to the Treasury to follow suit. Where it does not do so, justification, if any, for the corresponding decisions should be published. (Paragraph 62)
15. We urge the Government to build on Creative Partnerships and actively to encourage the provision of artists' space in extended schools. (Paragraph 64)
16. We strongly support the four Arts Councils having continued status as distributors of National Lottery funds. (Paragraph 70)
17. The Department for Culture, Media and Sport must view the active promotion and sponsorship of the arts as one of its primary roles. This is particularly important in view of the large number of government departments with some claim to responsibility for different locations in the world of art. Regrettably, in Government, the Department seldom punches, if it punches at all, at a weight commensurate with the centrality of the arts to our national life. (Paragraph 71)
18. It is time for Government to commit itself to a flourishing arts scene. And nowhere will such a commitment be more visible than in the visual arts. (Paragraph 72)

Formal Minutes

Wednesday 23 March 2005

Members present:

Mr Chris Bryant
Mr Frank Doran
Michael Fabricant
Alan Keen

Rosemary McKenna
John Thurso
Derek Wyatt

In the absence of the Chairman, Alan Keen was called to the Chair.

The Committee deliberated.

Draft Report (*The Market for Art*), proposed by Alan Keen, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 8 read and agreed to.

Paragraph 9 read, amended and agreed to.

Paragraphs 10 to 31 read and agreed to.

Paragraph 32 read, amended and agreed to.

Paragraphs 33 to 44 read and agreed to.

Paragraph 45 read, amended and agreed to.

Paragraphs 46 to 49 read and agreed to.

Paragraph 50 read, amended and agreed to.

Paragraphs 51 to 54 read and agreed to.

Paragraph 55 read, amended and agreed to.

Paragraphs 56 and 57 read and agreed to.

Paragraph 58 read, amended and agreed to.

Paragraphs 59 to 72 read and agreed to.

Summary read, amended and agreed to.

Resolved, That the Report, as amended, be the Sixth Report of the Committee to the House.

Ordered, That Alan Keen do make the Report to the House.

Ordered, That the provisions of Standing Order No. 134 (Select Committees (reports)) be applied to the Report.

Several papers were ordered to be appended to the Minutes of Evidence.

Ordered, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.

[Adjourned till Tuesday 5 April at 10.30 am

Witnesses

Tuesday 8 March 2005

Ms Rebecca Salter, Artist, **Professor Gerard Hemsworth**, Professor of Fine Art, University of London, **Ms Susan Jones**, Director of Programmes, a-n The Artists Information Company, **Ms Hilary Gresty**, Visual Arts and Galleries Association, **Ms Marjorie Allthorpe-Guyton**, Director of Visual Arts, Arts Council England Ev 19

Mr Anthony Browne, Chairman, British Art Market Federation, **Sir Tom Lighton**, Managing Director of Waddington Galleries and former Chairman of The Society of London Art Dealers, **Dr Iain Robertson**, Lecturer in Cultural Policy and Management, City University, and Head of Art Business, Sotheby's Institute, **Ms Joanna Cave**, Chief Executive, Design and Artists Copyright Society Ev 35

Rt Hon Estelle Morris, a Member of the House, Minister for the Arts, **Mr Nigel Pittman**, Head of DCMS Museums and Cultural Property Division, DCMS, **Lord Sainsbury of Turville**, a Member of the House of Lords, Parliamentary Under-Secretary of State, DTI Ev 52

List of written evidence

1	Rebecca Salter	Ev 1
2	a-n The Artists Information Company	Ev 2, 4
3	The Visual Arts and Galleries Association	Ev 6
4	Arts Council England	Ev 11
5	British Art Market Federation	Ev 26
6	Society of London Art Dealers	Ev 28
7	Design and Artists Copyright Society	Ev 31
8	DCMS	Ev 42
9	BECTU	Ev 58
10	British Copyright Council	Ev 59
11	Contemporary Arts Society	Ev 60
12	ETA	Ev 61
13	Fosterart	Ev 62
14	Anthony Green	Ev 63
15	Laura Hunter	Ev 63
16	The Institute for Conservation	Ev 63
17	National Art Collections Fund	Ev 64
18	Pyramide Europe	Ev 65
19	Scottish Arts Council	Ev 66
20	Simon Stokes	Ev 67
21	Sarah Thelwall	Ev 70

List of unprinted written evidence

Papers have also been received from the following and have been reported to the House. To save printing costs they have not been printed and copies have been placed in the House of Commons library where they may be inspected by Members. Other copies are available to the public for inspection and requests should be addressed to the Parliamentary Archives, Record Office, House of Lords, London SW1A 0PW. (Tel 020 7219 3074). Hours of inspection are from 9.30am to 5.00pm.

Arts Council England

Design and Artists Copyright Society

Fosterart

Reports from the Committee since 2001

Session 2004–05

First Report	A public BBC	HC 82
Second Report	Work of the Committee in 2004	HC 253
Third Report	Public Libraries	HC 81
Fourth Report	Maritime Heritage and Historic Ships	HC 296
Fifth Report	Theatre	HC 254

Session 2003–04

First Report	Cultural Objects: developments since 2000	HC 59
First Special Report	Privacy and media intrusion, replies to the Committee's Fifth Report, 2002–03	HC 213
Second Report	DCMS Annual Report: work of the Department in 2002–03	HC 74
Third Report	Broadcasting in transition	HC 380
Fourth Report	Work of the Committee in 2003	HC 404
Fifth Report	Reform of the National Lottery	HC 196
Second Special Report	Broadcasting in transition: replies to the Committee's Third Report, 2003–04	HC 585
Sixth Report	Arts development: dance	HC 587
Seventh Report	Drugs and role models in sport: making and setting examples	HC 499

Session 2002–03

First Report	National Museums and Galleries: funding and free admission	HC 85
Second Report	The work of the Committee in 2002	HC 148
Third Report	A London Olympic bid for 2012	HC 268
Fourth Report	The structure and strategy for supporting tourism	HC 65
Fifth Report	Privacy and media intrusion	HC 458
Sixth Report	The British film industry	HC 667

Session 2001–02

First Report	Unpicking the Lock: the World Athletics Championships in the UK	HC 264
Second Report	Testing the waters: the sport of swimming	HC 418
Third Report	Arts development	HC 489
Fourth Report	Communications	HC 539
Fifth Report	Revisiting the Manchester 2002 Commonwealth Games	HC 842
Sixth Report	Wembley National Stadium Project: Into Injury time	HC 843
Seventh Report	The Government's proposals for gambling: nothing to lose?	HC 827

Oral evidence

Taken before the Culture, Media and Sport Committee on Tuesday 8 March 2005

Members present:

Sir Gerald Kaufman, in the Chair

Chris Bryant
Mr Frank Doran
Mr Adrian Flook
Mr Nick Hawkins

Alan Keen
Rosemary McKenna
Derek Wyatt

Memorandum submitted by Rebecca Salter

CONSIGNMENT OF WORK TO A GALLERY BY THE ARTIST

1. *Weaknesses of current system:*

For proof of consignment to be legally binding it should be signed by both parties and in my experience this is very difficult to achieve. Once work is consigned the artist retains legal ownership but relinquishes physical possession. With no right to inspect the gallery's books/records, the artist's position is vulnerable. It is impossible to know IF the work has sold, to whom and how much for.

Any of the following can/do occur:

(1a) The work is sold but the artist is not informed therefore has no idea payment is due. Payment times can range from months to years. In the meantime the money is essentially free working capital for the gallery.

(1b) Work on consignment is rented out sometimes without the knowledge of the artist who presumes the work is being offered for sale in the gallery. A proportion of the rental fee is not necessarily paid to the artist.

(1c) Work consigned to the gallery can be re-consigned (again without the artist's knowledge) to another gallery—possibly abroad. The first gallery remains liable but if the second gallery defaults on a sale/does not return the work, the artist has to try and enforce that liability without access to the relevant paperwork.

(1d) If the gallery goes out of business, bailiffs can seize work consigned by artists. Without signed paperwork it is hard to prove ownership.

(1e) Work can be "lost" by the gallery and this is frequently presented as a loss the artist has to bear as part of the business though they have no responsibility for the loss.

(1f) Galleries can "give" work away on the grounds that the gift will improve the artist's profile.

2. *Pricing and Payment*

Galleries generally work on a 50/50 split (sometimes 60/40). Again with no access to information the following can/do happen:

(2a) With no requirement to disclose the client invoice to the artist, the gallery can sell for a higher price than that declared to the artist. The artist has no right to know the details of the purchaser so cannot keep track of their work.

(2b) With no idea of if/when a work has sold, payment terms are meaningless.

(2c) Galleries frequently offer discounts of 10% and sometimes more without the prior agreement of the artist. The goodwill engendered accrues primarily to the gallery but the discount is also taken from the artist's 50%. Without seeing the invoice, there is no way of knowing if the discount was actually given.

(2d) The addition of VAT further complicates the pricing structure. Galleries can sign up for the VAT margin Scheme (Section 13) and if the artist is not VAT registered it applies only to the gallery commission. Some galleries opt to apply VAT to the full price even if the artist is not VAT registered. Again, without seeing the invoice there is no way of knowing if the full VAT was actually paid. As the gallery is effectively an agent, my understanding is that it only applies to their commission (unless the artist is also VAT registered)

3. *Transparency and Accountability*

The fundamental weakness is that the artist retains ownership but loses physical possession with no guarantee of payment before the gallery also gives up physical possession. The artist can end up with neither painting nor payment.

A degree of transparency and accountability needs to be brought to the business, perhaps based along Fair Trade lines. Galleries could be required to follow certain procedural standards with regard to disclosure of paperwork and prompt payment and only those which conformed would be eligible for public purchase. The Arts Council scheme (Own Art) could act as a model.

4. *Making a Living as an Artist*

Part-time employment to subsidise art work.

The severe cuts in part-time art college teaching dating back to the 1980s have had a marked effect. There are few regular contracts and expenses are not paid. Payment is based on the five hours contact time of a typical day's teaching and travel is not paid. The majority of artists are London-based and a day's teaching outside London involves the artist paying a peak rail fare to get there. A 12 hour day pays very little when expenses have been deducted. If London artists do not travel to regional colleges, the variety of professional expertise offered to those students is diminished.

March 2005

Memorandum submitted by a-n The Artists Information Company

1. BACKGROUND

1.1 a-n The Artists Information Company (a not for profit company limited by guarantee) has a 25 year track-record of research and publishing around artists' practice. Through our publications, events and research our mission is to: "stimulate and support contemporary visual arts practice and affirm the value of artists in society". We reach over 425 artists and arts professionals daily through www.a-n.co.uk and 32,000 monthly through a-n Magazine. We are recognised as the representative body for visual artists and a trusted mediator between artists and employers.

1.2 Artists are the company's largest stakeholders, contributing over £340K annually in subscription income. Additional stakeholders are advertisers from whom we raise £300,000 annually who include: commissioners and employers working in the built environment, community cohesion, international exchange, education, healthcare, and the rural economy. For each pound we receive in grant-aid from Arts Council England we raise £4 from and for the benefit of the sector.

1.3 a-n The Artists Information Company publications and research of specific interest to this inquiry are:

- The Code of Practice to the Visual Arts, published 2003.
- Establishing a charge rate for a working artist, published 2004.
- Good practice in paying artists, published 2005.
- The artists' contracts toolkit, published 2004.
- Compass—a tool for professional practice in HE, published 2003.
- Networking Artists' Networks—Strategic approaches to artists' co-ordination and collective action, research and pilot programmes 02—04.
- APD Development Strategy 2004.

2. FACTS ABOUT LIVING ARTISTS

Our research shows that artists are:

- 2.1 Estimated at 60,000–90,000 visual artists in the UK.
- 2.2 Connected—78% recognise networking as a core element in their practice.
- 2.3 Informed—86% of artists accessing www.a-n.co.uk.
- 2.4 Professional—48% of artists are self-employed and 37% have an MA.
- 2.5 Proactive—32% of artists show their work internationally.
- 2.6 41% are more concerned with "CV development" ie critical endorsement from their peers rather than purely selling work.
- 2.7 Between 16–25% of artists are participating in continuing professional development through local and regional arts & cultural agencies.

2.8 The majority of professional artists make their living through a combination of selling their specialist skills and sales of their art and craft works.

2.9 Average new graduate debt £15–22K.

3. ENVIRONMENT

3.1 The Environment within which artists work can be broadly defined as being driven by three distinct approaches: the public sector approach, the private/ commercial sector approach and the artist-led/ self-managing approach.

3.2 The career paths of artists navigate across the public, commercial and self-managed sectors throughout their working lives.

Analysis of artists' jobs and opportunities since 1989:

- £7 million value of jobs and opportunities advertised openly through a-n in 2004 an increase of £3.4 million in a decade.
- Commissions made up 15% of the volume of opportunities and 40% of the value. The average value of a commission—usually stated in terms of overall budget rather than artist's fee—was £19,615, compared with £6,325 in 1999 and £4,204 in 1989. Specific examples range from South & East Belfast Health and Social Services Trust's healthcare commissions of £1–£25,000 in value, a £30,000 budget for a sculpture in Chepstow High Street and £300,000 for three major commissions organised by the Combined Universities in Cornwall for new HE buildings.
- 15% are commissions—average £19,615, mainly “public art”.
- 10% awards.
- 38% are exhibition based—average under £200 (£504 in 1989).
- 9% are residencies—average £4,700, mainly community service.

Presentation and Development of art work

3.3 Estimated 2,500 UK public and commercial galleries.

3.4 Over half of all artists (30,000—45,000) are part of active networks of peers developing and presenting their practice, this work is crucial in supporting the quality and innovation in artists' skills and services; initiatives such as Networking Artists' Networks have been piloting ways of enhancing the artistic development of artists at all career stages active in self-managed networks throughout the UK.

3.5 15,000 artists access continuous professional development opportunities through the APD a year (www.apd-network.info). APD is a consortium of over 30 key cultural enterprise, information and training agencies including a-n Artists Information Company, Artquest, London, Cultural Enterprise Office, Glasgow, Suffolk County Council.

3.6 Funding for the support of artists is as diverse as the work that artists undertake, the Arts Council England Grants for Artists forms only part of a much wider support network for the work of living artists with significant new input responding to changing artists' practices from eg the Jerwood Foundation, Esmee Fairbairn Foundation and NESTA.

What scope exists to promote best practice in the conduct of financial relationships between artists and art market professionals?

Recommendations

1. Recognition by government of the self-employed status of professional artists including action to ensure that these individuals gain access to resources to participate in to continuous professional development.

2. Endorsement by government and DCMS supported agencies of the Code of Practice for the Visual Arts and adoption of its associated guidance in the form of Contracts and recommended remuneration scales based on the professional costs and career stage of artists. To be monitored as a condition of best practice in funding agreements.

3. Expansion of arts and cultural industries schemes that make grants to individual artists, managed by specialist visual arts organisations and artists' networks (rather than through the Arts Council) with criteria for acceptance based on peer review and track-record, ensuring that artists gain better access to time to undertake the research that keeps their work of high-quality, for the benefit of communities and clients.

4. Acknowledge that any changes in legislation should recognise of the role of artists in defining their working environment by involving artists directly in the development of future policy and initiatives through consultation with artist networks and specialist agencies who work with artists.

5. Government backing of a new scheme to encourage a stakeholder pension scheme especially for professional visual artists, through creating an endowment with funds from implementation of Artists' Resale Rights.

6. Suitable national support the Networking artists' networks initiative from a-n that strategically supports artists' own networks and creative clusters that recognises that artist networking is part of a wider trend which makes a substantial contribution to local and regional cultural strategies and create interfaces between UK, European and international artists' organisations.

7. Government endorsement of national umbrella bodies including Creative People and the Artists' Professional Development network that strategically support professional development initiatives and share and encourage good practice in its delivery.

8. Within the current review of Non-domestic rates, to ensure that small artists' ventures such as studios, galleries and crafts retail outlets are not "priced out" of cities, where they make a vital contribution to vibrancy and local and regional identity.

February 2005

Supplementary Memorandum submitted by a-n The Artists Information Company

1. a-n The Artists Information Company is pleased to have an opportunity to present our intimate knowledge of artists' working practices, gained over a 25-year period, to this inquiry.

2. We are in effect the professional body for visual artists, representing the practices and interests of thousands of artists across the UK. These encompass fine artists, applied artists, photographers, new media and performance or time-based artists, at all stages of development and public recognition, and including current art and design students and their tutors. An estimated 32,000 artists and arts professionals¹ read a-n Magazine a month. We advertise over £7 million of opportunities and work for artists annually.

3. We are also recognised as a trusted mediator between artists and employers. We provide seminars, briefings and publications with guidance for public sector employers including The Code of Practice for the VisualArts², Good practice in paying artists³ and Good exhibition practice (forthcoming).

4. Through our publications and events, we expose and analyse the diversity of what contemporary visual artists make and do, ranging from paintings and art objects for sale, works made to commission for public and private settings, community and educational workshops and residencies that engage with social inclusion and regeneration agendas, and artists' consultancy and expert services for cultural and business development.

5. As Conrad Atkinson commented⁴: "Not all of us make corporate art, not all of us think art should shock the English middle classes, not all of us are more interested in our own blood than the blood of those dying in [other parts of the world]. Perhaps art can't really make a difference but it can highlight alternative ways of seeing and living."

6. "We don't know if art, which nowadays is so quickly appropriated by advertising and entertainment can change things, but we never know when we might need it, where it is going to come from next, what it might look like."

7. This inquiry is addressing how best to support living artists in the production of new work. History shows that a large, vibrant visual arts sector is a prerequisite for artistic quality and for "cultural capital"⁵ to emerge, from which immediate and longer-term benefits for the profession and society ensue. We are thus proposing some solutions as a framework designed to impact on the many, not the few, and that understands the diversity of approaches, products and creative services that make up the profession of "visual artist" nowadays.

8. Our suggestions are designed to support newcomers as they join our profession burdened by student debt, as well as artists who find themselves—for whatever reason—at a point of transition in their professional lives. They also respect the contribution that artists make in a lifetime, by suggesting an approach to creating an artists' pension scheme.

9. The recommendations we have made, on behalf of many artists who consider themselves to be professional and of value to society, suggest tangible ways to assist artists whether:

1. Makers of unique works of value to be sold.
2. Animateurs encouraging others in creative expression.

¹ Subscribers and retail sales, based on two readers per copy.

² The Code of Practice for the Visual Arts—with versions for artists and arts organisations commissioned by Arts Council England from a-n The Artists Information Company published 2003 is freely available on www.a-n.co.uk

³ Part of the "Fees and payments" portfolio of material grant-aided by Arts Council England, published on www.a-n.co.uk and in print.

⁴ a-n Magazine December 2002.

⁵ "Cultural capital"—the product that arises when a strong sense of artistic vision, ambitious approaches to creation and presentation of work and the willingness to be experimental are combined with a passion for self-development and creative success, Roles and reasons, Susan Jones, 1997.

3. Public servants making work to commission.
4. Economic units—micro businesses.
5. Social workers—empowering others.
6. Educators.
7. Self-determining creators—setting up their own gallery, studio, etc.
8. Visionaries with “social conscience”⁶.

10. Or, as is more likely to be the case, a combination of these. The majority of artists nowadays operate in a “mixed economy” in which sales of artwork sit alongside sales of skills and services to various clients, and fees and grants for research and consultancy. Although public exhibitions are vital to an artist’s standing in the artworld and provide routes to the commercial galleries, artists’ income from them in terms of public exhibition fees has diminished over the years.⁷

GOOD PRACTICE—VALUING ARTISTS

11. Our own research⁸ shows that compared with other professions with similar levels of skills and training, artists are on the whole a poorly-paid and misunderstood profession. The joint advocacy campaign being undertaken with Arts Council England aims to redress this. It provides strategic and practical advice to artists and arts employers. This relates remuneration levels to artists to that of teachers and to the skills and abilities required by artists to undertake residencies and public commissions. It also articulates the specific costs of self-employment within the calculation of suitable rates of pay.

12. The Code of Practice for the Visual Arts provides a user-friendly framework for artists and employers. It is supported by practical advice in the form of interactive, legally-sound Visual Arts Contracts that enable artists to learn about contractual processes and better negotiate agreement terms, and Fees and Payments guidance that links payments to artists with similar professions seeks to improve professional arrangements. These tools are intended to make a difference, both to the quality of artists’ lives and the quality of the art experience for others.

13. DCMS could play a pivotal and highly-influential role in advocating for wider adoption by local government, healthcare trusts and other public and grant-distributing agencies of the Code of Practice for the Visual Arts and its associated legal and financial guidance, for the benefit of working artists now and in the future. Promotion by DCMS of the requirement that measurement of good practice should include evidence of valuing artists financially and demonstrably supporting their professional development would also be welcomed.

14. As self-employment is a characteristic of the profession⁹, we are seeking recognition of, and tangible incentives for, artists to participate in and afford to undertake Continuing Professional Development (including research and development) comparable to that expected of other professionals. This would enable artists to maintain quality and innovation in their practice and provide “evidence” of their professionalism and adherence to the Code of Practice, to commissioners of public or commercial projects¹⁰.

CULTURE IN ITS OWN TERMS

15. Tessa Jowell¹¹ has cited the advantage of valuing and supporting artists in their own terms. It could be argued that there are two modes of engaging with culture:

- as a tool—a top-down instrumental process where outputs are determined by those in control of resourcing.
- as a process—shifting power and trusting artists to take responsibility and control over their projects and professional development.

16. This bottom-up realisation of possibility and potential is where art is at its most transformative and where we believe support should cluster.

⁶ The Business of being an artist City University London 1995.

⁷ Artwork—artists’ jobs and opportunities 1989–2004, www.a-n.co.uk, 2004.

⁸ Artists’ fees and payments, University of Newcastle, 2004.

⁹ Artists’ fees and payments, University of Newcastle, 2004 suggests that visual artists are around three times as likely as the working population in general to be self-employed. Surveys since 1991 locate self-employment amongst artists as between 42–48%.

¹⁰ Work by CDP expert Lee Corner has, amongst other things, considered a CPD “kitemark” that artists could include on CVs, applications and proposals, to impact on payment levels.

¹¹ Too often politicians have been forced to debate culture in terms only of its instrumental benefits to other agendas . . . we have avoided the more difficult approach of investigating, questioning and celebrating what culture actually does in and of itself . . . not as a piece of top-down social engineering, but a bottom-up realisation of possibility and potential, Government & the Value of Culture, May 2004.

17. Social networks are capable of enhancing professional, personal and community well-being¹². In the environment for artists, they provide an essential ingredient by reducing isolation and providing points for professionals to exchange information, knowledge and skills. Some 78% of artists¹³ would welcome more support and encouragement for networking in this respect. This offers a challenge to existing support structures that grant-aid a very small percentage of individual artists. But by investing in the grassroots of artists' networks and learning to understand their patterns and impacts, the potential for organisation and decision-making emerges, suggesting possible new forms of coordination, collective action and public benefit.

18. Our UK wide action-research into Networking artists' networks recognises the importance of creating "confidential conversations" and peer review amongst artists, in support of risk taking and experiment, towards heightened artistic development and creative "edge". Such artist-led initiatives are "value for money" because they create "cultural capital" and economic benefit in a location, as funds to artists are largely spent locally.¹⁴

19. Such programmes offer valuable insights into new approaches to measuring the impact of artists and their activities, that extend traditional economic imperatives.

This includes evaluation of the impact a project had on the artist themselves, the broad social and environmental context and on the cultural identity of a place, in the short and longer term.

LIFESTYLE APPROACH

20. By being primarily concerned with self-development, self-sufficiency and creative independence, artists may be described as having a lifestyle approach¹⁵. This approach is significant to government and society because creative individuals who don't see the economic model as the only measure of success offer society opportunities to see or live differently.¹⁶

21. It could be argued that supporting what artists are rather than the specifics of their products and services is where public sponsorship most effectively sits. It is also important that public (and private) patrons don't seek to exploit a relationship with an artist whom they view as "not businesslike". DOMS endorsement would ensure that "fair dealing", and its monitoring as regards professional arrangements with artists, is measured as a requirement of public funding.

22. Whilst government is concerned overall with the "pensions gap", we recommend that consideration is given to supporting initiatives aimed specifically at visual artists—where incomes are lower—with money from opportunities such as implementation in the UK of *droit de suite* a potential pump-primer.

VALUING SPECIALISM

23. In the spirit of the newly defined Arts Council's ambition for "a new grown-up relationship with arts organisations; one that is based on trust, not dependency . . ." ¹⁷ we propose greater tangible support for the artist-led approach' that embraces emerging and challenging practice and contributes to the development of a more equitable relationship between artists and those with a stake in their work.

Memorandum submitted by The Visual Arts and Galleries Association

INTRODUCTION

1. The Visual Arts and Galleries Association (VAGA) welcomes the opportunity to respond to the inquiry in the Art Market. At a time when contemporary visual art is enjoying unprecedented levels of public interest it is important that the cultural and economic contribution it makes to UK society is reassessed.

2. VAGA is a professional membership body working to further the exhibition, interpretation and development of modern and contemporary visual art for the benefit of the public. The Association acts as an advocate on behalf of its members to secure a healthy visual arts sector fit to meet the needs of audiences,

¹² A profoundly disruptive shift has occurred in our societies, making networks the most important organisational form of our time and reshaping the activities of families, governments and businesses, Network logic, Demos, 2004.

¹³ Cited in Networking Networks, a-n The Artists' Information Company, 2002 and Strengthening the infrastructure for visual artists, Arts Council England, 2002.

¹⁴ Measuring the experience: the scope and value of artist-led organisations, Susan Jones, 1996. See also The economics of artists' labour markets, Ruth Towse, Arts Council of England, 1996.

¹⁵ Artists run their practice less as a business and more as a statement about who they are and what they value: creating meaningful work that parallels all that is important in their lives. Running a one-person business, Whitmyer, Raspberry and Phillips, 1989.

¹⁶ See New Economic Foundation's well-being manifesto, 2005.

¹⁷ Peter Hewitt, 2003.

creative practitioners and the wider public agenda. The current focus is to build on the principles explored in the essay: *The Right to Art: making aspirations reality* commissioned from Demos in 2004 in order to broaden public engagement with, enjoyment of and participation in visual culture.¹⁸

3. The Association's membership is made up of over 400 organisations and individual visual arts professionals from across the visual arts and museum sectors.

VAGA members:

- promote innovation, creativity and knowledge through the work and ideas of contemporary visual artists;
- seek to remove intellectual, social and physical barriers to the enjoyment and understanding of the visual arts;
- work to develop the potential for education, lifelong learning and personal development in and through the visual arts; and
- aim to broaden audiences and improve the quality of their experiences.

4. The public gallery and the commercial gallery sectors share a complex set of relationships which stimulate the economy for artists through the production, distribution and interpretation of works of art; this statement identifies the UK art market as a confluence of commercial galleries and dealers, individual artists. and the public gallery sector. VAGA is principally concerned with public funded activity that promotes and supports contemporary art.

5. The public gallery sector for the purposes of this submission is seen as comprising:

- national museums and galleries;
- regional galleries, museums and largely under local authority governance but now also as independent trusts;
- the independent gallery network of exhibition venues primarily funded through the arts funding system eg Ikon Gallery, Birmingham, Serpentine Gallery London;
- exhibition galleries and collections attached to Higher Education institutions; and
- independent commissioning agencies producing short-term events and one off high profile projects, often in non art settings.¹⁹

6. For the most up to date research on the UK Art Market see Art Matters²⁰, published by Arts Council England.

AREAS COVERED IN THIS STATEMENT

7. This statement explores the role the public gallery sector plays in the UK and international market for works of art by living artists and the support they offer contemporary artists primarily through exhibitions, permanent collections and education programmes. It also looks at the relationship between the public and commercial sectors and refers to the lack of data available on the economic contribution of the artist.

8. For the purposes of this statement we are not concerned with the role that public galleries play in the market for historic art or the secondary market for contemporary works. Likewise artist run projects and public art commissioning agencies, both of which make a substantial contribution to the economy and support of artists, are not discussed in this paper.

THE CURRENT ROLE OF THE PUBLIC GALLERY SECTOR IN SUPPORTING ARTISTS

9. There are an estimated 45,000 professional UK artists, who can be seen as both:

- Creating objects in different media that enter the public domain as commissions, purchases for collections, loans for display in temporary exhibitions and are distributed via traditional and new media.

¹⁸ <http://www.demos.co.uk/catalogue/righttoartreport>

¹⁹ Arts Council England is currently undertaking a review of the infrastructure for the presentation of the contemporary visual arts in England, this will give a more accurate picture of the make up of the sector. VAGA also commissioned research on the gallery infrastructure in Scotland in 2004, Hamilton, Christine and Susan Galloway, *Briefing for the Visual Arts and Galleries Association (Scotland)*, February 2004., Centre for Cultural Policy Research University Glasgow, <http://www.culturalpolicy.arts.gla.ac.uk/site—resources/frame—set.htm>.

²⁰ Buck, L *Market Matters*. London: Arts Council England, 2004; Morris Hargreaves, McIntyre. *Tastebuds*. 2005. London, Arts Council England, report www.artscouncil.org.uk/newaudiences; McAndrew, C. and Kusin & Company. *The European Art Market in 2002* (report); TEFAF. *The European Art Market. 2000* (report); Coffey, S *Visual Invisible—A Strategic Review of the Visual Art Market in Ireland: Recommendations for a developmental approach*. 1999. Dublin, ISBN 095179836-7. According to ASI data the UK art market (£1.043bn) is the largest in Europe (£2.488bn) and second only to USA (£3.979bn) on a global basis

- Providing services, ie the skills and resources that artists provide through residences, teaching, administration, urban and rural planning, public art, design, curating exhibitions, working in broader community settings such as health, education etc. There is no reliable data for these services but they are likely to contribute as much to the economy as the making and selling of art.²¹

10. The public gallery sector supports artists and makes an important contribution to the UK art market in a number of direct ways:

- Through the public display and exhibition of new and contemporary work in temporary exhibitions, permanent collections and temporary projects and events.
- Direct support for the production of new work through exhibition fees, residencies, fellowships, commissions and the purchase of work for public collections.
- Provision of a potential sales outlet for artists who are not represented by commercial galleries.
- Employment of artists as artist-educators, lecturers, writers, technicians and curators etc.

11. Indirect support includes:

- Provision of formal and informal education and learning opportunities for a variety of groups schools, HE/FE students, artists, patrons, dealers, academics, the general public and potential collectors.
- Maintenance of publicly accessible catalogues and archives.
- Collector development through education, patron and exhibition programmes.
- Participation in the “Subscription” process where by an artist’s reputation is established²².

PUBLIC DISPLAY AND EXHIBITION

12. Public Galleries provide a nationally distributed network of permanent collections, exhibition spaces, exhibition programmes and temporary events and projects. This reaches a wider and more diverse and regular audience than the largely metropolitan focussed commercial gallery sector. Public sector galleries may also tour exhibitions both within the UK and internationally.

13. Exhibitions fall into different categories according to the status and career stage of the artist and the policy of the exhibiting gallery. For lesser know artists or those without dealer representation they build up knowledge, credibility and support for the artist and increase the public understanding of new work.

14. Exhibitions of well-established artists add to their international reputation and standing. A “museum show” with a substantial catalogue contributes to an artist’s status and the public knowledge of their work and therefore to its potential value.

15. Retrospective shows of either single artists or thematic and contextual exhibitions drawing on a range of artists and objects may rely on loans from commercial galleries or agents. Given that there are no agreed codes of practice between the public and private sectors agreements concerning loans, sales, transport, reproduction rights and other presentation costs can be difficult. The development of a strong professional trade association for the private sector would provide the context within which to establish agreed parameters.

SUPPORT FOR ARTISTS

16. The most direct contribution to the UK market is through: sales, commissioning new work, residencies and fellowships and purchases for collections.

17. Some sales do occur as a result either directly or indirectly of public gallery exhibitions. There is no industry standard for the percentage of a sale that each of the public gallery, artist or commercial representative will take as commission but will be written into each contract with the public gallery.

18. For those artists without commercial representation the ability to make sales through an exhibition at a public gallery is particularly important, however few public sector curators have the time, networks or expertise to promote sales.

19. Public galleries may commission new works for exhibitions and temporary projects. This will include a fee, material costs, project management and the developmental support and ideas of gallery staff. The ownership of works resulting from commissions will vary according to specific circumstances but in all cases there is a payment and possibly support in kind to the artist that is thus a contribution to the art market. Title to goods need not be transferred (nor is it always desirable or possible) for this to occur. Commissions may also be made for permanent collections.

²¹ Those artists who on leaving art school enter the broader range of Creative Industries provide further services.

²² Sagot-Duvauroux, D “*Hiatus: L’Art Et Le Fonctionnement Du Marche.*” Editions de Felin, 1993. 117-36

20. VAGA is of the opinion that it would be to the benefit of all parties to establish clearer guidelines and standards for sales made from public sector exhibitions and for investment to be made in training and supporting public sector curators in sales negotiations and collector development.

21. During residencies the artist is closely associated with the gallery during the development and production of the work. The contribution that the gallery makes to the artist can be substantial through access to intellectual and physical resources, places and people. Antony Gormley, for example made use of both large studios provided by Baltic, the curatorial support of the gallery and access to local participants in the production of *Domain Field*.

22. Exhibitions, commissions and residencies can provide both professional development and financial support for artists. A good relationship with a dealer will provide similar support but on an ongoing basis. Given the variable career paths of artists²³ a variety of longer term mechanisms for career development and support need to be developed either through the public sector or jointly with the public and private sectors to help enable sustainable careers for artists.²⁴

COLLECTIONS

23. Permanent collections of contemporary work are central to the public sector's direct support and patronage of artists and contribution to the art market. They also enable individuals to make informed choices about their own purchases. Whereas in the 19th century public collections evolved through the gifts and bequests of wealthy private collectors, it is now public collections which inform and stimulate private collecting.²⁴

24. Purchase budgets and the ability for public collections to acquire new work and fill gaps in collections of 20th century art have not kept pace with the public interest in contemporary art, visitor expectations or indeed the increasingly evident contribution that visual culture makes to society through encouraging creativity and critical thought.

25. The risk that has to be taken in acquiring new and often controversial work is a key factor effecting public collections. Work bought at an early stage of an artist's career will be less expensive and provide valuable support for emerging artists. However, decisions about what to acquire must largely be based on individual curatorial judgement and the willingness of funders to take risks. This can lead to opportunities being lost and works only being considered for acquisition once they have escalated in value. It is proposed that the idea of holding collections or other mechanisms structured to mediate risk and to provide income for artists through a loans or rental should be explored.

26. For some artists the type of work they produce is unlikely to be immediately attractive to the private collector for reasons of size, material or display needs and it is therefore important that these works are purchased and documented by public collections.

27. The Contemporary Art Society is the main source of independent funding dedicated to contemporary collecting. It has recently led two time limited lottery funded schemes in England and Scotland, which have enabled participating museums to purchase contemporary work and have provided research and travel funds for staff. ACE and the Scottish Arts Council should be encouraged to invest again in similar programmes dedicated to contemporary art.

28. Public collections should not have to be reliant on grants from private charities or Lottery funding and more government grant-in-aid is needed to enable public institutions to acquire contemporary art and create collections for the future.

29. VAGA supports the concept of a dispersed national collection whereby works in public collections are understood as belonging to everyone and the locations of all works are mapped and made available to the public via a searchable database. Such mapping would enhance public access and knowledge, be invaluable within education and learning and also support curators and private collectors in making decisions regarding purchases.

30. VAGA recommends that the Select Committee consider a specific inquiry into public collections. This would provide better understanding of their public value and provide the opportunity to explore tax incentives and other means of encouraging private collecting and giving. The extension of Gift Aid, for example, would allow donors to set gifts of works of art to the nation against income tax and help to enrich national and regional collections at little additional public cost.

²³ Allen, K and Shaw, P *Strengthening the infrastructure for visual artists*. 2003. ACE Report; O'Brien, J and Feist, A *Employment in the arts and cultural industries: an analysis*. 1997. Arts Council of England; Shaw, P, Allen, K, and Gaudoin, D *A visual artists advice and information service for London*. 2000. Rawson, D and Wheatley, A *Artists Professional Development Scheme Review 2000*. . Report; Summerton, J *Artists as Work 1999: A Study of the Patterns and Conditions of Work in the Southern Arts Region*. 1999; Shaw, P, Allen, K, and Gaudoin, D *A visual artists advice and information service for London*. 2000 London Arts Board.

²⁴ For more information contemporary collecting see VAGA's response to the Museum Association Inquiry into Collecting,, <http://www.vaga.co.uk/index.php?main—section=16&textentryid=162>

PERIPHERAL BENEFITS TO ARTISTS

31. Peripheral benefits can include production of catalogues/press materials and talks/education programmes. Catalogues may range in scale from full colour glossy researched publications to photocopied black and white handouts available free to visitors. In all cases this production of archive materials is important in its contribution to the debate about the artist and their work enhancing their reputations and marketability. Such documentation is particularly important site specific work and live art.

OTHER FINANCIAL SUPPORT

32. It is becoming increasingly common for public galleries to produce limited editions (eg Tate The Serpentine, Camden Arts Centre, Whitechapel and MIMA Middlesbrough.) These provide significant levels of revenue for the galleries and benefit artists through direct financial return and the development of new audiences. Smaller public galleries may also run open invitation selling shows often coinciding with key trading periods eg Christmas and are a means of revenue generation for artist and gallery alike. ACE is about to commission research in to income generation by public sector galleries which may identify further models of gallery generated financial support for artists.

EDUCATION, LEARNING AND OUTREACH PROGRAMMES

33. Education, learning and outreach programming is central to the ethos and activity of public sector galleries and provides a wide variety of support for artists. They also inform potential collectors and the general public. Museums also increasingly use artists to interpret non- art collections.

34. Many of these programmes address the government's social inclusion, health and lifelong learning agendas. At present there is no comprehensive data as to the size of the support offered to artists via education and outreach programmes across public sector galleries and museums, or of the economic and social value of the service they provide.

35. Public gallery exhibitions and accompanying educational programmes are a common route in to an artists work for a collector. This provides, in the absence of commercial representation, the endorsement and understanding of an artists work that new collectors seek. Whilst research on the origins of an individual collectors motivations has not been carried out, VAGA believes that the public sector provides a key entry point into the art world for budding collectors. It is considerably more likely that new entrants come via the free access to public galleries, the reduced threshold barriers and education programmes than enter the sector directly via commercial galleries.

36. Such interaction with public galleries by collectors also serves to educate collectors about the ethos of public galleries, the public benefits of patronage and the variety of opportunities to support artists beyond the direct purchase of works. The Tate Patrons of New Art are an example of a specific group developed through and in support of a public gallery. The Contemporary Art Society also run programmes and visits for potential collectors and therefore also potential donors to public collections.

37. Gallery education programmes also provide networking and education opportunities for other artists and thereby add to their opportunities for professional development.

38. School and informal, ex curricula education programmes for children and young people working in and through the visual arts encourage creativity with a potentially long term impact upon flow of talent into Creative Industries, the connection to HEI programmes and upon visual literacy levels within the UK population as a whole.

CATALOGUES AND ARCHIVES

39. In addition to the education programme, public gallery catalogues and archives are of benefit to artists and the UK art market in providing comprehensive and up to date sources of information on individual artists. Archives also provide safe repositories for fragile and ephemeral items of interest to future collectors.

THE ECONOMIC ROLE OF THE ARTIST AND THE CREATIVE INDUSTRIES

40. At present there is inadequate data concerning artists' contribution to the economy. In the DCMS mapping of Creative Industries the UK art market is classified under the heading of "Art and Antiques".²⁵ This makes provision neither for the difference between the market for work by living artists as a commercial sector nor the market for artists services supplied to Public Galleries, to other Creative Industries and the broader public sector such as regeneration projects, work in the health settings etc

²⁵ DCMS. Cultural Industries Mapping Document. 2001. London, DCMS.

41. In addition VAGA and others are of the opinion that artists are a critical skills feed into other Creative Industries. Some data²⁶ does exist to demonstrate the flow of artists and their skills into the Creative Industries. However a more focused piece of research that demonstrates not only the supply of a workforce to the Creative Industries and broader public sector but also examines the appropriateness of the skills that are provided by HEI's in readiness for employment would be of great use and would be supported by the European perspective²⁷.

42. VAGA is working with ACE on the feasibility of an artists' research unit the remit of which will include access to existing research on the status, role and economic conditions for practicing artists and to commission new research in this area. The pilot for this research body will be launched later in 2005.

February 2005

Memorandum submitted by Arts Council England

1. Arts Council England welcomes the Select Committee inquiry into the market for art. As the national arts development agency, responsible for developing and implementing arts policy and funding on behalf of the Department for Culture, Media and Sport, and making strategic use of both National Lottery and Treasury grant-in-aid funding, we advocate for the transforming power of the arts and aim to place the arts at the heart of our national life.

2. The art market is a complex environment, but one that benefits from the positive effects of direct and proportional intervention. Since its inception, Arts Council England has been engaged with the market to the benefit of artists and audiences. We put the artist at the centre of our activities and overall we make a significant contribution to the growth of the economy for artists. We have been working on a national and regional level and we intend to continue these efforts.

3. This consultation response will centre on the contemporary art market, which includes the broad range of contemporary visual arts practices: painting, sculpture, crafts, photography, new media art, artists' film and video, live art and work which crosses over design and architecture. We have conducted a significant level of research into the market, and copies of key reports are enclosed for the Committee's interest.

OVERVIEW

4. The art market is a broad ecology that includes the processes by which works of art are commissioned, researched, produced, promoted, presented, bought and sold and how creativity is converted into commercial value. This therefore includes public galleries and private collections that have a significant impact on the value of art and directly effect how available it is to wider audiences. The commercial market is not restricted to the first sale of a work of art. The secondary market is included where a work of art is sold for a second or subsequent time, primarily through an auction house, for commercial agents, dealers, private collectors and galleries.

5. There are many different players in the market, each with their own unique relationship with the artist. Galleries and collections, both public and private, auction houses, dealers, agents, art fairs, public and private commissioning agents and collectors, art schools and open studios all have an impact on how an artist achieves peer recognition and professional success.

6. Visual art is a significant contributor to the UK economy and the art market is currently undergoing a period of unprecedented expansion, to the extent that London is the largest market in Europe and second largest in the world after New York. The total sales for the United Kingdom in 1998 were £3,287 million or €4,765.1 million, representing over 60% of the European Union art trade²⁸. Two Arts Council England reports provide further detail. *Taste Buds*²⁹ estimated that the value of sales through contemporary commercial galleries and open studios in England was worth £354.5 million in 2003, while *Market Matters*³⁰ stated that the international sales of London based commercial galleries and agents are likely to at least double this figure. Further analysis of market sales suggests that the total market for original craft is £883 million.³¹ Our submission will provide more detail about the work of Arts Council England to develop the economy for artists and the market for contemporary art, such as Own Art, the new scheme to enable the public in England to purchase art.

²⁶ Harvey, L. and Blackwell, A. *Destinations and Reflections: Careers of British Art, Craft and Design Graduates*. Birmingham: Centre for Research into Quality, 1999. ACE. *From Learning to Earning: Connecting art, craft and design in higher education with the creative industries: a review of regional issues*. Stephen Burroughs. 2002. London, Arts Council England, Report.

²⁷ *In from the Margins*. 1997. Council of Europe Publishing, Report.

²⁸ Market Tracking International Company Limited (MTIC) (2000) *The European Art Market 2000*, London: The European Fine Art Foundation (TEFAF).

²⁹ Morris, Hargreaves and McIntyre (2004), *Taste buds: how to cultivate the art market: executive summary*. London: Arts Council England.

³⁰ Louisa Buck (2004), *Market Matters: The Dynamics of the Contemporary Art Market*, Arts Council England.

³¹ Morris, Hargreaves and McIntyre (2005), *Making it to Market: Developing the Market for Contemporary Fine Craft*, Arts Council England—to be published.

7. There is a longstanding relationship between the public and commercial sectors within the art market. The roles of publicly funded and privately owned galleries have changed as public galleries need to raise more income through commercial activities and private galleries expand their public presence and engage with wider audiences. Arts Council England supports a variety of revenue streams in the wider market place for art. Our regularly funded galleries and organisations generate income through associated services such as catering, corporate facilities, retail units and cinema spaces that contribute to the overall economic health of the art market. Our investment directly supports sales of catalogues for single and touring exhibitions, sales of prints and original limited editions, especially in photography. We are investing in professional development with specific focus on commercial franchises, catering services and corporate hires, and marketing.

8. Artists have to negotiate complex relationships to showcase their art, in order to facilitate sales and acquire commissions. Many artists work outside the gallery system providing services and projects that put them outside the traditional art market. One examples of this is our Creative Partnerships scheme (see below), which provides employment for visual artists and crafts makers.

9. Artists need to achieve a level of critical appraisal for their work to achieve a market value. Because of the inter-related aspects of the market, each part has a role to play in this validation process. Networks of art world professionals, including academics, curators, dealers, critics, artists and buyers, provide advocacy and endorsement for artists' work through exhibition, critical appraisal and private and public commissions and purchase.

10. There are no definitive numbers of artists living in England. However, the Labour Force Survey estimates that, in 2000, there were approximately 148,700 visual artists, including commercial artists and graphic designers, in the UK³². Of these, 52.4% were categorised as employed and 47.5% as self-employed. A much smaller proportion of this total figure is professional fine artists.

11. It is difficult to quantify earnings for visual artists because data is often based only on employees and does not include self-employed people. However, the New Earnings Survey shows that average gross weekly earnings for visual artists in 2000 was £401 and for glass and ceramics makers £329³³. With the exception of information officers (average gross weekly wage of £377) these were the lowest average earnings for cultural occupations. Research in 2004 by Newcastle University, commissioned by a-n The Artists Information Company and Arts Council England, has highlighted that many artists' earnings are substantially lower than people in comparable professions such as teachers, who have similar skills and levels of education.

12. The Labour Force Survey data does not properly reflect the working life of an artist. Artists have to spend a significant proportion of time on research and development, which is rarely paid for, and they are therefore receiving no income for long stretches of time. As a result, an artist's career is often characterised by multiple job holding, involving short-term contracts and under-employment. This does have benefits because many artists will use these periods of time to undertake teaching, outreach and educational work. Through this work artists are able to pass on their skills and experience to new and emerging artists. Without this input back into the sector, new entrants would not benefit from their experience and guidance. The significant reduction in part-time teaching opportunities in the Higher Education sector represents a serious loss of income for many artists and of valued mentoring for young artists.

SPONSORSHIP OF THE ART MARKET

13. The role of Arts Council England in the art market is to create conditions within which artists can produce work and develop their careers. We support the infrastructure of venues and publications for the representation and distribution of artists' work to widen audiences. We support a portfolio of magazines and publications that underpin critical peer review and support the market through review and advertising. Arts Council England has always been closely associated with the commercial sector through its former role as a direct provider of exhibitions and continues through its funded organisations to have productive relationships with many of the most important dealers and artists agents both in the UK and abroad. This involvement ensures increased representation of UK artists abroad and on the international art circuit. This in turn results in increased sales, commissions and profiling of the UK art scene and the growth of the art economy.

14. Arts Council England fully acknowledges the financial position of many artists and has taken steps to improve their economic status. In addition to the research into artists' earnings and career paths³⁴, we are implementing a national framework plan for visual artists. This includes prioritising artists' workspaces in our Arts Lottery Capital Programme and increasing revenue support to artist run spaces and to national and regional artists' agencies, which give professional development advice and information. We recognise the close links between the public and commercial sectors and have identified problems that need addressing. How the market operates has a direct impact on how our policies will function and how our investment in artists will be used. We therefore have a direct interest in the commercial sector.

³² Davies, R. and Lindley, R. (2003) *Artists in figures: a statistical portrait of cultural occupations*. London: Arts Council England.

³³ Davies, R and Lindley, R (2003) *Artists in figures: a statistical portrait of cultural occupations*. London: Arts Council England.

³⁴ Galloway, Lindley, Davies & Scheilbl, *A Balancing Act: artists' labour markets and the tax and benefit systems*, Arts Council England, 2002.

15. The economy for the presentation and distribution of work by visual artists is the focus of a major sectoral review we are undertaking this year. This will map the venues and organisations that commission and exhibit contemporary art. The review will examine employment issues, international relationships and crossover with the heritage and private sectors, including the commercial galleries and agents. This will inform all our policies for the visual arts sector and the development of a national strategy for the contemporary visual arts. As with the review for theatre, this will underpin our role in the sector.

16. The Arts Council England Collection of modern and contemporary British art directly supports the market. This collection began with the foundation of the Arts Council of Great Britain in 1946. Since then, over 7,000 works have been acquired from artists and commercial galleries and the collection is now the largest national loan collection of modern and contemporary art in the world, and the largest loan collection of British contemporary art. It is highly regarded for its quality and range. The collection, managed and toured by the Hayward Gallery, has an annual budget of £150,000 and concentrates on younger emerging artists, although it does occasionally acquire an “outstanding work by a mature artist”. The collection is lent to over 100 venues including regional galleries and museums, libraries and hospitals and to exhibitions in the UK and abroad.

17. Touring is an important aspect of art reaching people. Grants for national touring have increased significantly, and far more work of better quality has been able to reach more people in this country and abroad. Over £6 million was allocated in 2000 to 2004, for over 200 touring visual arts exhibitions and projects. Of 88 visual arts organisations in our survey of regularly funded organisations, 39 (44%) carried out touring in 2001–02³⁵. For example, in 2002–03 the Hayward Gallery lent 33 works from the Arts Council Collection to the British Council’s major European touring exhibition *Blast to Frieze* and loans were made in 2004 to a major exhibition of British sculpture in Tehran.

18. The Hayward Gallery is core funded by the Arts Council and is the largest touring provider in the UK directly bringing contemporary art to the widest possible audiences and collaborating with regional museums and galleries. The Hayward Gallery tours 30 shows annually reaching audiences of 2 million and every five years organises the most important regional showcase for new British art. The next show will open at the Baltic in September 2005. The Hayward Gallery also toured the exhibition of “At Home with Art”—a scheme where ordinary household objects were designed by artists, manufactured and sold through Homebase stores throughout the UK. Our New Audiences Programme funded this initiative.

19. However, as the Committee will be aware from our recent evidence to its theatre inquiry Arts Council England has some concerns about the likely impact of the Spending Review 2004 on our long-term strategies for the arts. Cash standstill in our grant-in-aid affects all of the arts, including visual arts and crafts, and creates real constraints on our ability to support artists. The implementation of our strategy for visual arts will be dependent on our financial capability to implement, and sustain, real change.

20. We need to sustain the work we have done over the last 10 years nurturing a more sympathetic environment for artists in which they can improve earnings, gain easier access to quality work spaces, receive greater opportunities to show their work, to travel and improve their business and critical skills through a range of peer review and advisory services. While we have undertaken a significant number of initiatives in these areas, we are only at the beginning of the process.

21. In addition, as outlined below, National Lottery capital funding has had a real impact on the ability of artists to work through investment in studio spaces, and we would want to ensure that it could continue to provide real support where it is needed. However, until we are reconfirmed as a lottery distributor, we are unable to give any firm commitments. In addition, the decline in lottery funds is likely to undermine potential opportunities for development.

WAYS OF SUPPORTING AND ENCOURAGING LIVING ARTISTS AND THE PRODUCTION OF NEW WORK

Arts Council England support for living artists and new work

22. Arts Council England support for living artists and the production of new work are important priorities. Our Grants for the Arts funding 2000–04 has allocated £6 million to 852 grants to individual visual artists for animation, graphic design, new media to fine art, photography, crafts and live arts. This represented 50% of the grants made under this funding stream.³⁶ The overall spend on visual arts organisations through grants for the arts was £14.1 million. Visual arts spend was £19.9 million of a total spend of £51 million. In addition, 73 of our regularly funded organisations commissioned 854 works from 1,217 individual visual artists in 2002–03³⁷.

23. Arts Council England estimates that the total expenditure for art commissions for its first Capital Programme was nearly £70 million by the time of completion of most projects in 2004. In 1999, an impact study found that 90% of respondents felt that their project was a success.³⁸ Over 90% of those whose projects

³⁵ Joy, Skinner and Crookenden (2004), *A Statistical Survey of Regularly and Fixed Term Funded Organisations 2001–02*, Arts Council England.

³⁶ Jackson, A and Devlin, G, *Grants for the arts main evaluation*, Arts Council England 2004.

³⁷ Joy, A et al; *A statistical survey of regularly funded organisations 2002–03*; Arts Council England—to be published.

³⁸ Jackson, *Evaluation of public art projects funded under the lottery*, Arts Council England 1999.

were at or nearing completion said that the commissioning process had resulted in value for money. Over 95% of projects said that the art is accessible to a general audience. The same study has figures to account for audiences for public art of between 5.1 million and 6.6 million people in an average week at the time of the survey.

24. Over £2 million was allocated to visual artists development initiatives in 2004–05.³⁹ This compares with £450,000 in 1999. These figures demonstrate major increases in commissioning and artists development activity through the main strands of Arts Council England funds in recent years. The returns on this investment are now being seen countrywide, with improving and new relationships between artists, local authority planners, developers and other regeneration agencies. Best practice in commission management has also resulted through exemplar organisations such as Artangel, IXIA (the lead national public art body), Locus Plus and Modus Operandi.

Art fairs

25. Arts Council England has also supported art fairs. The Hayward Gallery showed the Arts Council Collection at the early London Art Fairs to support young galleries and to encourage new buyers for contemporary art. We also funded regional museum curators to attend. Arts fairs are not just about selling art, but provide a major opportunity for showcasing work, professional networking and for collectors to meet each other. Sales have increased every year. For example, the annual London art fair in Islington made £12 million worth of sales in 2003. The new international Frieze Art Fair had unprecedented media coverage, 42,000 visitors—a 50% increase on the first year's figures and £26 million sales. Arts Council England funded Frieze magazine, which incubated this major new Fair and supported 10 new commissions by artists and education and debates for viewers and collectors to the Fair.

Contemporary visual art outside London

26. The annual art fair organised by the Contemporary Art Society (CAS) called ARTFutures, features work by recent graduates. CAS is a private charity founded in 1910 and part-funded by Arts Council England. It raises and uses funds to purchase and give works of art to 90 museum collections across the UK.

27. In 1997, CAS secured a major Arts Council lottery award of £2.5 million to develop the contemporary art collections of 15 regional museums and galleries across England. The Special Collections Scheme was initiated as a result and some 500 works of contemporary art and craft have since been purchased by the member collections. Also, as a result, curators travelled to see work and built their professional networks and expertise. This scheme was phased over three years and came to completion in 2004, and despite our efforts and that of CAS, future funding for the scheme has not been secured.

28. Arts Council England supports CAS and Engage, the gallery education agency, as part of our strategy to grow audience opportunities for contemporary art in the regions. This must be matched by ensuring museums and galleries outside London have the opportunity to acquire and showcase contemporary art. At present, the public acquisition capabilities of our museums and galleries and the professional development of staff are severely limited by their budgets. Arts Council England is investigating the possibility of seed funding for commercial galleries in the regions, but the private sector needs strong regional public collections to develop public confidence and engagement with the work of living artists. It is essential for public collections to grow in a steady and considered manner in order to create a healthy environment for artists and audiences in the regions.

29. The introduction of income tax relief on gifts to public institutions during a person's lifetime such as the Gift Aid In Kind scheme proposed by the National Arts Collection Fund, would assist both the market and artists. Similar systems exist in the USA, Australia, Canada and the Republic of Ireland. The UK is the only country to levy full 17.5% VAT on sales of work by living artists, which places all British contemporary art dealers who operate in the international context at a disadvantage.

Agencies

30. The work of CAS, Engage and the Visual Art and Galleries Association, which is a lobbying body for the museums and galleries infrastructure, is complemented by national and regional artists agencies providing professional development advice and information, which are also funded the Arts Council. Details of these agencies are available in the appendix.

Developing public interest in contemporary art

31. Engaging a greater number of people in art is an important priority for Arts Council England. Evidence suggests that there is a significant public market for art and through further financial intervention the arts can reach more people. Growth and confidence are important for the sector if it is to embrace its artistic potential and engage a wider audience. There are already 4.9 million existing owners of art, with a

³⁹ Internal managed funds analysis, Arts Council England, February 2005.

further 5.9 million people identified as potential buyers of original work. The Making it to Market report, soon to be published, also suggests that 11.3 million people, or 28% of the population of England, are interested in buying original craft. Of that total market, 7 million (60%) have already bought original crafts and the remaining 4.3 million aspire to do so. In 2003, 6% of adults in England bought an original work of art, while 11% bought an original piece of handmade craft. In addition, between 2001 and 2003, the proportion of adults visiting galleries increased from 19% to 22%. This is a significant untapped market, and Arts Council England has been working to encourage those potential buyers to buy.

32. Own Art: To enable more people to enter the art market, Arts Council England launched “Own Art” in November 2004. This initiative was preceded by a pilot scheme in 2003, in partnership with HFC Bank, which replaced eight separate regional arts purchase schemes. The aim of Own Art is to strengthen the visual arts economy by making it more affordable for the public to buy original contemporary art and craft, through point of sale interest free loans. It is also an important method by which the market can be opened up to a wider range of people by demystifying the process of buying art. Anecdotal evidence suggests that the public can be reluctant to buy original works of art because they are concerned about issues of taste and whether they are sufficiently “high-brow” to appreciate it. Own Art aims to make the public more comfortable about buying art, and to regard it in the same light as making other significant purchases.

33. The Own Art scheme is currently available through regional 250 galleries and outlets, the majority of which are small and often linked to subsidised galleries or local authorities. Galleries selected for the scheme sell contemporary work by living artists and are not at the expensive end of art market. To date, membership of the scheme has been focused on the regions where the commercial infrastructure is not well developed and where a loan will go further. The scheme is to be expanded during 2005 to increase the number of outlets, including selected art colleges in London.

Contemporary art in schools

34. Creative Partnerships is another initiative to engage new audiences. Creative Partnerships provide children across England with the opportunity to develop creativity in learning and to take part in cultural activities of the highest quality. Creative Partnerships works in schools in areas of high deprivation to foster sustainable partnerships between schools and the widest possible range of cultural and creative professionals and organisations. Through this work, many children who have not had the opportunity to access art before do so for the first time in a supported way. Importantly, Creative Partnerships are introducing children to contemporary art at a time when research suggests that existing opportunities for access are limited.

35. In 2004, Arts Council England in association with the Tate, commissioned research by the National Foundation for Educational Research, which published “School Art: what’s in it?”. This research raises fundamental questions about the art curriculum and whether contemporary art should be a more prominent feature of school art. The introduction of art to children at a young age can broaden their horizons, and with encouragement, ensures that they continue to enjoy art as they grow up.

Studio Spaces

36. Studio spaces are vital because artists need somewhere affordable and sustainable to work. The provision of artists’ workspace is a priority of the Arts Capital Programme. To date, we have invested approximately £69 million⁴⁰ through capital funds, but there remains much to do. The infrastructure, while undoubtedly stronger than 10 years ago, remains fragile. Many artists have difficulties in finding and affording workspaces with any degree of permanence or reliability. Artists have helped inner city regeneration but ultimately, like in Hoxton, their presence has increased property prices and forced them out. We are also assessing the likely impact of the Charities Bill, which may affect artists’ studios’ charitable status through its definition of studio space as office space.

37. Above all, greater investment and stronger partnerships will be needed to nurture the nascent studios infrastructure. More artists and makers’ workspaces or creative micro-businesses need to be able to secure their futures through acquiring freehold or long term leases; improved access for Black Minority Ethnic and disabled artists is required; viable creative finance schemes should be made available and more support for artists workspaces to host international artists. An independent, national body to represent visual artists studios would give a consistent lobbying voice to the sector.

38. Open studios, where artists group together to show their work, have become a cultural attraction. In thirty-two events across England in 2001, 3,000 artists attracted 250,000 visitors and made over £1.5 million in sales. Despite such impressive statistics, the scale, value and potential of open studios are generally under appreciated. Open studios events are a celebration of creativity amongst the artistic grass roots. They bring many more artists to a larger and wider public at a time when art and creativity are assuming a new importance within the economy. A study in 2002 commissioned by Arts Council England, Yorkshire, analysed 32 open studios events. It found that:

- Events had raised artists’ profiles and broadened and increased popular interest in art.

⁴⁰ Based on all capital awards to visual arts projects over past 10 years to artists studios/workspaces.

- Levels of artists' professionalism had gone up.
- Events wanted to be part of the bigger regeneration picture. They recognised the potential to further develop audiences and activities.
- They were eager to learn from, and do things together with, other events and partners.
- Open studios were seen as a strong brand.
- Their informal nature helped to convert browsers into buyers and bring less confident artists into action.

Based on research commissioned through ACME⁴¹, we are developing a national studios action plan to strengthen studio infrastructure.

Regeneration

39. Co-operative arrangements, as seen in Leeds and Hackney, where several artists have come together to hire a work space, have enabled the effective delivery of services, skills support and business development advice. One example is Deptford, in Lewisham, South East London. High levels of deprivation meant it was difficult to see what the area could offer, but with Goldsmiths College and many artists' studios in the neighbourhood, it is a culturally rich area. In 1998 Deptford X was created and became one of London's key grass roots led visual art events. In 2002, 314 artists took part, filling over 50,000 square feet of exhibition space with a wide variety of art. Audiences for this event have grown from 4,000 to more than 7,000 in 2004. Public art commissions, such as a banner project on the exterior of Lewisham College, made it visible to passing audiences. The increased profile for this event has helped sales for participating artists. These changes are similar to experiences in Hoxton (above) and it is likely that over time, increased property prices arising from regeneration of the area could force artists out.

Tax and social security

40. Arts Council England has conducted research into artists' working lives and a number of significant issues have been highlighted that we are investigating further. There is a need for increased flexibility both in reporting income and employment status. Visual artists should be entitled to claim dual status, in the same way performers can. Dual status allows a worker to be identified as an employee for National Insurance, and as self-employed for tax. By doing so, they are able to use tax and social security benefits make the inevitable periods of unemployment bearable. Artists do not expect the state to support them, but are not helped by the tax and social security system. A more appropriate framework, which recognised the pattern of artists' working lives, would support artists when necessary and allow them the freedom to work without becoming reliant on state aid.

41. Other related recommendations for change include improvements in the understanding within the Department for Work and Pensions and the Inland Revenue of the pattern of an artists working life. Currently there is a great deal of inconsistency in the application of procedures between tax and benefit offices, which could be significantly improved if applied in a more coherent and sympathetic way. To aid this, it would be helpful if "artist" were a recognised profession in the welfare system. A useful model is the approach taken by the Australian Tax Office, which has produced clear guidelines in relation to income tax entitlement. After an extensive lobby by artists' organisations the office now distinguishes between professional artists and those who are simply making art for their own enjoyment.

42. Currently the social welfare system does not recognise "artist" as an employment category, as a result the social and economic diversity of entrants into the arts sector is being limited. Younger artists report that they are unable to gain work experience relevant to their chosen career and claim benefits as they develop the necessary skills. By recognising artists as an employment category and in particular by extending the New Deal (see below) to cover all artists, the Government can make an important step to broadening the range of people that can develop their careers in the arts. There is a therefore a clear need for the recognition by the welfare system of artist as a profession.

43. One of the great strengths of the New Deal is that it is flexible to the changing nature of the labour market and caters to the needs of the individual. Musicians, who are already part of the New Deal, are able to demonstrate the benefits of the scheme. For example, like most artists, the majority of working musicians are self-employed and under the New Deal for Musicians, individuals can get the chance to test whether they could earn a living as a musician while they stay on New Deal. All artists would benefit from this flexibility and specialised focus.

⁴¹ ACME Studios is undertaking the first comprehensive survey of studio groups and organisations in England. Their findings will be published in May 2005.

International Fellowship Programme

44. International opportunities have a critical impact on artists' professional success. Arts Council England has developed an International Artists Fellowships programme to award fellowships to high achieving artists for performance and practice-based research within different cultural contexts. The programme has so far provided 175 fellowships in 30 countries within 72 different host institutes. 83 of these fellowships were visual artists including those specialising in architecture, craft, new media, photography, moving image and live art. An external evaluation of the pilot phase revealed clear benefits: it encourages artistic exploration and professional development; creates strategic relationships with key international institutions and enriches discourse internationally and within the UK art forms. Artists are clear themselves that their careers changed as a result of this opportunity. We are developing a network of hosts across the UK to receive international artists. The programme is a leading initiative, supporting artists' international exchange of ideas, skills and sales.

Higher Education and Professional Development

45. Our International Programme has developed strong partnerships with Higher Education institutions in the UK and abroad, which provide hosts in research environments allowing artists to develop their work. Higher education institutions are an important part of the market economy. They are expanding provision for postgraduate professional development. For example, Next Moves, a partnership with Crafts Council and Arts Council England links young craft graduates with art colleges. Through the scheme, graduates gain two years' access to resources and mentoring. Artists' Access to Art Schools is an Arts Council initiated and funded scheme to enable thirty artists every year to make use of facilities in university art departments and schools.

46. Open degree shows give opportunities for students to showcase their work and gain peer review and provide access for agents and collectors. They can have a real impact on future developments in the art market. Arts Council England has an established and active relationship with the Higher Education sector, which we are developing especially with regards to the current sectoral review where we are in partnership with the Council for Higher Education in Arts and Design looking at the experience of Black Minority Ethnic students in art education.

SCOPE TO PROMOTE BEST PRACTICE IN THE CONDUCT OF FINANCIAL RELATIONSHIPS BETWEEN ARTISTS AND ART MARKET PROFESSIONALS

47. Arts Council England undertook a comprehensive investigation of the art market in England, Taste Buds, which has provided a foundation for information about the financial constraints placed on artists. The research demonstrated that many artists do not have a clear view of the art market; they do not understand the interdependencies between public and private sectors and nearly 60% acknowledged they needed training in marketing. It is therefore imperative that artists are fully empowered in their relationships with art market professionals to ensure that they are able to defend their interests.

48. To help achieve this, we will be jointly promoting with a-n The Artists Information Company, a toolkit for calculating professional fees for artists to applicants to all Arts Council funds. Guidance from a-n suggests that artists with upwards of 10 years experience should be aiming to earn an annual salary of £34,299 or more. This means negotiating a day rate of £250 to £279 a day. An artist with five years experience should aim to earn £28,194 per annum, a day rate of between £216 and £244. A newly qualified artist should aim for £21,090 per annum, a daily rate of £176 to £204. In addition, we make artists aware of the role of the Design and Artists Copyright Society (DACS), the collecting society for fine and commercial artists and photographers. More artists are benefiting from their Payback Scheme, which distributes a share of collective licensing revenue for secondary uses of their artistic works. In 2003, DACS paid £550,000 to artists, of which 37% of publication rights was paid to fine artists.

49. Arts Council England was involved with the drafting of the Code of Practice for the Visual Arts. The National Artists Association originally produced the Code with Arts Council England funding in 1999. There are two parts to the code, one for artists and one for organisations looking at principles of good practice. The Code is now produced and updated annually by a-n The Artists Information Company and will be a valuable tool for ensuring information about *Droit de Suite* (see below) is clearly disseminated to artists and the art market through its readership. The Code is based on the daily experience of artists, commissioners, curators and others with whom artists work, setting out the principles that underpin good practice, with regularly updated case studies.

50. Currently, written contracts between artist and dealers are rare, with around 40–50% commission against sales. This has its origins in the nature of the market and how it operates. Much of the artwork exhibited in galleries is not owned by the gallery. Instead it is on consignment from the artist to their dealer, and the artist is paid when the dealer is paid. In return, the dealer is expected to bear the costs of running the gallery and attending art fairs on the artist's behalf. An agreed code of practice would help rationalise this in the interests of both artists and dealers and galleries.

51. We are developing firmer partnerships with cultural industry bodies to help artists improve their business skills. Arts Council regional offices are developing links with recently established Creative & Cultural Skills, the Sector Skills Council for Advertising, Crafts, Cultural Heritage, Design, Music, Performing, Literary and Visual arts and Publishing. The Arts Council initiated and now supports CreativePeople, a virtual network of organisations supplying training and professional development information, advice and guidance to existing and aspiring artists and craft makers. Our regions are establishing specific remits to facilitate this. For instance at Arts Council England, West Midlands, a Creative Industries and Workforce Development Officer directs support in the shape of training and development for artists with skills and products that are deemed economically viable.

52. Artist Professional Development (APD) Network, funded by Arts Council England as part of Creative People programme, is a small but increasingly influential resource for artists. The APD Network initiated by a-n in July 2001, is a UK-wide intelligence and exchange forum for organisations that are proactively developing information, advisory, training and professional development services for visual and applied artists. Members range from artist-led organisations to cultural industries bodies and higher education institutions.

53. Our sectoral review mapping will provide a national database of galleries, agents, art fairs, and outlets in England that promote and sell contemporary visual art.

54. One change that would make it easier to provide guidance to the sector would be the creation of a trade association for commercial galleries. Arts Council England has recently commissioned a feasibility study to identify barriers and the potential for creating such a body. This study, at its initial stage, is due to be completed in March 2005. We consider that a trade association of this kind would benefit the sector immensely, by providing a voice to negotiate and establish its overall needs, engage with other parts of the market and lobby for change and funding to develop new markets, especially at international art fairs. Arts Council England is committed to providing resources for the establishment of a trade association, should it prove feasible, but intends this to be time-limited support to establish its independence.

55. It is anticipated that this trade association will provide an independent voice for the market to support, and perhaps challenge, Arts Council England, but more importantly provide a consistent overview of the market.

FUTURE OPERATION AND LIKELY IMPACT OF EUROPEAN DIRECTIVE 2001/84/EC ON ARTISTS' RESALE RIGHT (*Droit de Suite*)

56. *Droit de Suite* or resale rights, will enable visual artists to receive a percentage of the revenue from the resale of their works in the art market. This Directive must be implemented in the United Kingdom from 1 January 2006 for living artists and extended to heirs and the estates of the deceased by 1 January 2012. The Directive allows for the introduction of royalties on the basis of a sliding scale starting at 4% for works of art over €3,000 to 0.25% on works worth over €500,000. The rights can be transferred to heirs for up to 70 years after the artist's death. The rationale behind *Droit de Suite* is that artists should participate in the increasing value of their art. Currently visual artists in the UK are only protected by copyright.

57. Arts Council England has been concerned with the impact of *Droit de Suite* since 1994 and in preparation for the implementation of the Directive, Arts Council England commissioned two researchers to look into best practice models. They reviewed existing models for the collection and distribution of rights, both domestic and European, and assessed the likely mechanisms needed to fully implement the Directive.⁴²

58. Recommendations focused on making sure that the legislation and procedures for implementing *Droit de Suite* should be as simple as possible. This is necessary to avoid disruption and confusion amongst art buyers, sellers and producers. It recommended that one institution in the form of a collecting society, should carry out the collection and distribution of rights arising from *Droit de Suite*, to ensure as efficient a system as possible. This collecting society should have legal rights to examine documents relating to sales and there should be an ongoing evaluation and review of the system.

59. One advantage of the implementation of the Directive is that it will address concerns that its current inconsistent application across member states is creating trade distortions that, together with the varying ways it is administered, is putting unfair pressure on some member states.

60. However, the research did highlight a number of drawbacks to the Directive. It is likely to benefit established artists and estates rather than new and emerging artists, because the Directive applies to the secondary market and thus to works of art which have previously been sold. It may discourage new artistic production. It will place a burden on dealers, who along with auction houses are likely to pass on the cost of administering the Directive to the buyer.

61. The research suggested that supporting a social fund for artists through a levy on re-sales, as in Germany, would be one way in which emerging artists could directly benefit. In Germany, after deducting administrative expenses the collecting society makes two further deductions. The first is used for a social security bond scheme designed to provide support for "artists in need". These tend to be elderly artists, who do not have a pension or artists suffering acute problems or crises. The second deduction funds a scheme to

⁴² McAndrew & Dallas-Conte, Implementing *Droit de Suite*, Arts Council England, 2002.

foster and support contemporary fine arts through promotions, competitions and exhibitions. However, we understand that it is likely that this model may not be possible under *Droit de Suite* and we would like to see this investigated further as a separate option.

62. A critical issue to resolve is the inclusion of artists' film and video or "moving image" work. This medium is now commonplace in sales transactions and exhibitions in both the private and public visual arts sectors. Many artists are in danger of missing out on the resale payment if this medium is not clearly included in the application of the right in the UK. The Arts Council will raise this as a central issue in its response to the forthcoming consultation process run by the Patent Office.

APPENDIX

A-N THE ARTISTS INFORMATION COMPANY

a-n The Artists Information Company reaches over 17,000 artists monthly. It is the leading voice for artists in England, publishing a highly regarded monthly magazine and critical professional advice and information on the business of being an artist. It provides essential toolkits and models on: contacts and fees; artists' professional development; toolkits on setting up studios and a national code of practice aimed at both artists and employers.

<http://www.a-n.co.uk/cgi-bin/db2www.exe/home.d2w/input>

VISUAL ASSOCIATIONS

Visual Associations promotes the talent of over 4,000 contemporary United Kingdom artists and makers through 16,000 images of their work. Through a website it champions the work of these artists and stimulates opportunities for the creation, presentation and purchase of their work.

www.visualassociations.org/

IXIA

IXIA is the national body for the development of public art practice. It initiates research, stimulates critical debate and promotes professional working relationships between artists and other professions engaged in the delivery and development of the public realm.

<http://www.ixia-info.com/>

ARTQUEST

Artquest offers advice and information to professional visual artists and craftspeople in London through a website, email and telephone help line, advice sessions, events and initiatives. With a grant from Arts Council England, Artquest is currently testing a national legal advisory service for visual artists.

<http://www.artquest.org.uk/>

February 2005

Witnesses: Ms Rebecca Salter, Artist, Professor Gerard Hemsworth, Professor of Fine Art, University of London, Ms Susan Jones, Director of Programmes, a-n The Artists Information Company, Ms Hilary Gresty, Visual Arts and Galleries Association, Ms Marjorie Allthorpe-Guyton, Director of Visual Arts, Arts Council England, examined

Chairman: Good morning. Thank you very much for coming to see us today. By either a curious symmetry or circularity, the very first inquiry over which I presided in 1992, the old National Heritage Committee, was on the art market, and here we are again. I am very pleased, quite apart from the distinguished witnesses that we have, to see such a good attendance in the public area as well. This is a very important subject. Derek.

Q1 Derek Wyatt: I do not mind how you answer. You do not have to answer each question, but if some of you feel you want to answer, please feel free to do so. Can I ask you where you all stand on

droit de suite, please? Does anyone have any view?

Ms Salter: As yet undecided, although I did find the submission from DACS quite persuasive, I have to say, particularly the experience of Sweden where they felt it almost became a loyalty, almost like a fair trademark, that artists were getting a percentage of the sales.

Q2 Derek Wyatt: Do you have feeling about how low you should go? For instance, I understand in France it is 30 euros, in Germany it is 50 euros?

Ms Salter: Yes. I suspect that would come down to administrative costs. I am not an expert, I am an artist, but—

8 March 2005 Ms Rebecca Salter, Professor Gerard Hemsworth, Ms Susan Jones, Ms Hilary Gresty and Ms Marjorie Allthorpe-Guyton

Q3 Derek Wyatt: We do not make a difference in libraries between authors. We do not say they can have 8% or 5%; they have the same. Should Europe have the same system or should Britain just have a free system? In other words, should we be the lowest? It should not be set. Do you understand what I am saying? No-one has a view?

Ms Gresty: I think that we would feel that there are other ways of supporting, if you like, the emerging and less established artists and perhaps that also needs to be looked at.

Q4 Derek Wyatt: Tell us what that should be? This is what the whole investigation is supposed to cover. What do you suggest?

Ms Allthorpe-Guyton: Perhaps I should give an Arts Council view. As you are aware, we have been aware of this problem since 1994. We produced a major report on implementing *droit de suite* in 2002, where we have, I think, scoped the major issues. In principle the idea that artists should benefit from resale of their work is a good one, but there are major difficulties in the directive, not least the definition of practice because contemporary art covers such a wide range of media. Computer generated work is not eligible, and that is going to pose a difficulty; moving image work is not eligible and a lot of artists make film, video, limited editions which form a major part of works that are sold on the international market, and the Directive, of course, includes a lot of three-dimensional work—furniture, jewellery, crafts—and artists make work in batch production. The idea and the notion of defining what is authored and what is original and what is not is going to be quite difficult for the Directive in terms of clarifying some of those major issues. In terms of the threshold, I think that the issue will have to be looked at in terms of administrative cost and, finally, benefit to artists. Certainly at the time that we did the report of the 11 countries where it is in force, only eight actually really enforced the directive, and in France, if my information is currently correct, it is only enforced in auction sales, not in all sales. All of those issues, of course, will be ironed out, I am sure, through the consultation process and through discussion with the body that will in the end be decided to implement the Directive in terms of the collection of the right; so I think it is a question of balancing administrative cost against benefit to the widest number of artists. As my colleague has said, there are many, many ways that artists can be helped other than through resale right. Two million euros, I think, is collected in France, which actually is very little in terms of the numbers of artists involved. We have a lot of things to consider in terms of shaping how the Directive will be managed and implemented.

Q5 Derek Wyatt: You are a little elusive about what we need to do more. What do we need to do more to help young talent develop? What is it that we need to do? What would you recommend that we write in our report?

Ms Jones: Can I suggest that a number of motives need to be put into place that support not only the young artists, or new artists, but artists at a particular stage of transition in their career, or their life or their work. One of the things I think I am aware of is the fact that we need to listen far more to the artists themselves about the things that are important to them, and we need to recognise the kind of mixed economy, this scope of what an artist does nowadays, which ranges from making objects that may sell to a commercial market or, indeed, to a domestic market. They also provide a huge range of services and community activity which enriches our life, our education, our health service, social systems altogether and therefore we must look at the entirety of those things and try and segment things that will help a lot of artists rather than a few of them.

Ms Gresty: Another thing I would say to back that up is that at the moment we have very inadequate statistics on what artists do. There is no way of actually quantifying their contribution to the economy through these services that they provide. The Arts Council have some, my colleagues from The Artists Information Company have some, but it is not built in to top down statistics from DTI or the Audit Office. In addition, as within the creative industries, arts and antiques is the only category we have. We do not have a category for contemporary practising artists and the income that is generated through their sales, so I think a root and branch review of some of the ways in which artists actually contribute in quite a substantial way to the economy is needed.

Q6 Derek Wyatt: You mean The Arts Council has never done that?

Ms Allthorpe-Guyton: Analysing the impact that artists have—

Q7 Derek Wyatt: It sounds like a sort of Ofsted that you want?

Ms Allthorpe-Guyton: We do a great deal of work in that respect. We have currently entered into a partnership with the Arts and Humanities Research Board to look at the impact in terms of the role that artists, not just visual artists but all artists, have in a number of spheres in the public realm. This year we are taking forward a major review of the way that people see and access contemporary visual arts, which has to be taken in the broader context because visual artists work not only in the contemporary gallery but also in the museum, the heritage sector, in the wider public realm, and we are in relation to that piece of work looking at very strong examples where artists have had a major influence on a health care environment or in the education field, and we are producing a series of exemplars or illustrations to demonstrate the role that they have had. I think there is a problem, and I think our sponsoring body, the DCMS, fully acknowledges this, with analysing the qualitative impact of arts activity. It is more a question of what we call longitudinal studies. It is very difficult to get

8 March 2005 Ms Rebecca Salter, Professor Gerard Hemsworth, Ms Susan Jones, Ms Hilary Gresty and Ms Marjorie Allthorpe-Guyton

hard outcomes because they are soft. A child can see in a relationship with an artist in a school, for example, how their lives can be changed through working with artists, through making their own art, but that effect might not really manifest itself until they are having their own children. These things are lifetime experiences, gathering hard data is quite difficult, and so we are looking at soft outcomes and how they can be demonstrated in a clearer way as well, but in terms of support for artists, as I think the evidence that we provided demonstrates, artists need a number of things. First of all, they need to be aware while they are still in education of what the business of being a professional artist means and what they need to equip themselves with to become artists if that is the route they wish to take. The other is work space. We have done a great deal to use part of our lottery money to help artists have better work space. We have spent about 70 million to date in order to allow artists to buy their freeholds or to manage their own buildings in which to work, because the provision of work space that is affordable is very important. We have seen in London, particularly where artists were really responsible for regenerating huge swathes of Wapping, Hoxton, they are squeezed out because inevitably, as soon as property is developed, artists have to move to the margins, and that is being repeated throughout the country. It is not just London we are talking about, it is city centre regeneration countrywide. We want to look at ways that local authorities can help artists through preferential rents and rates on low-cost buildings in which to work. That is one issue, and I think there are a whole raft of issues, particularly to do with tax and benefits, which need to be revisited in a way which would be helpful to young artists in their working lives.

Q8 Derek Wyatt: In the Department for Education there is a will to create schools that are not quite open 24 hours a day but 18 hours a day and will have a different management set up at four o'clock when the school closes, and I have one in my community. What I have noticed is that once they are fingered to be one of these, healthy living standards suddenly appear, GP's surgeries appear, lots of things appear. What I have noticed is that everything else except art and music seems to be involved in these schools that are going to open 18 hours a day. I am struggling to understand why the community is last in this hierarchy where they are wanting to develop on site community needs. Art and music should be there, why is it not there?

Ms Jones: I would posit the view, as I mentioned earlier, that there is not enough actually listening and talking to artists. We have spent quite a considerable time since 2002 doing that very thing in order to establish the things that would really make a difference to artists, and we did that by asking artists themselves what their practice was like and what it was going to be like in five or 10 years' time; and we looked at things that would really make a difference whereby artists can talk to

other artists about their work and find out whether it is any good, for example, find out which galleries might be suitable to show it, find out where the studios are, where the affordability is, share studios, share knowledge and experience. The issue that you have just raised about schools and their usage is an interesting one. When I was a school age child in my village the school was not only quiet after school hours, it also had a whole block that was not used at all, and we looked at the notion of using that for artists' studios for a particular period of time. Of course the infrastructure did not allow that to happen for various reasons, and so we have to look at ways, if you like, by which artists can infiltrate into other areas where they can use provision that might otherwise not be available to them: because however many studio buildings we might build, only 17% or so of the artist population at the moment is in those spaces.

Q9 Derek Wyatt: Last week Sir Peter Hall said that he had been successful in Kingston upon Thames of persuading the local authority of using a section 106 which created Kingston Theatre. Is there any success anywhere in Britain using a section 106 in planning that has created an artists studio, or an arts centre or anything that is of mixed use?

Ms Allthorpe-Guyton: The 106 has frequently been used to provide just that throughout the country.

Q10 Derek Wyatt: Can you give us an example of where so we can look at it?

Ms Allthorpe-Guyton: I cannot bring that immediately to mind, but we can give you that information.

Q11 Chris Bryant: Moving on to slightly different issues, some of the people who have written in have talked about fair dealing. It is one of the concepts of copyright, obviously, that is quite important. Do you think artists get a fair deal from their dealers?

Ms Salter: I suppose my interest is in this particular area, because I am very aware as an artist and as a teacher that certainly art schools are turning out huge numbers of artists every year, and, in my view, a lot of them are ill-prepared for the market they are going to meet. Although there is a professional practice module now, it does not seem to be delivered in the same way in all art schools and so the level of knowledge cannot be guaranteed when they graduate. There is what I can only call a quaint but slightly alarming naivety. A lot of students when you ask them, "What will you be doing in a year's time?" come up with a model of making a living which functioned when I was an art student but which barely works now. The model is, "I would like to teach a couple of days a week, do my own work in the studio and sell my work in a gallery." The model of teaching a couple of days a week in an art school has almost completely disappeared. That almost disappeared in the '80s. This leaves an artist trying to work out how to make a living, how to support a studio, how to

8 March 2005 Ms Rebecca Salter, Professor Gerard Hemsworth, Ms Susan Jones, Ms Hilary Gresty and Ms Marjorie Allthorpe-Guyton

approach a gallery, and my narrow concern is when a student or a young artist does find a gallery to work with it is the power relationship between the dealer and the artists. Once the artist becomes very famous, then the power relationship to some extent evens out, but young artists, “There are plenty more where you came from”, are incredibly vulnerable and the practices within a lot of galleries are not transparent. The vulnerability for the artist is that you retain legal ownership of your work but you relinquish physical possession to the gallery, and you may or may not either get your work back or get paid. I feel that a code of practice, a code of conduct, which could govern that to some extent would be a tremendous help for young artists, particularly when they are starting out.

Professor Hemsworth: That is not quite my experience. I think when artists are graduating they tend to have one thing in mind, and that is how their practice as an artist is going to be made visible. The business of being an artist tends to be very much in the background. I think that artists graduating now tend to be quite smart. They are aware. Colleges and universities tend to work in two ways in terms of professional practice. There are courses. In universities where they have a lot of part-time teaching, professional practice may well be embedded in the programme. When artists graduate there is not a direct relationship in terms of what galleries they go to. They could go with an emerging dealer who was very much on the same level as they are, or they may be spotted by somebody who is very established. That is a decision that they have to make. It is not the same for everyone. I think that, by and large, young artists are smart enough to get their paper work in order with dealers. There are very few dealers where it is just a shop, so they do build-up a relationship with that artist, and there is a dependency for both artist and dealer. I am not saying that people have not been stung over the years, but that is quite a good learning curve.

Q12 Chris Bryant: You do not necessarily want to go on that learning curve, do you? Of itself it is not a good thing?

Professor Hemsworth: I think it only happens once.

Ms Salter: I do not know.

Q13 Chris Bryant: The evidence that we were given by some French people involved in the market was that they felt there were a lot of dodgy deals done by dealerships which put the artist at a great disadvantage in terms of consignment, and, because the *droit de suite* at the moment does not apply to dealerships in France, only to auction houses, they felt that bringing in *droit de suite* for the dealers as well would tidy up the relationship so that, for instance, when an artist consigns their work to a dealer they would be told when the art work had been sold?

Professor Hemsworth: I think there was a difficulty here and it has to do with dealer management. For example, one thing a dealer has to absolutely make

sure is that if a client comes back to them and says that they have changed their mind they have to be able to return the money, otherwise they are going to lose their client. Sometimes there is a period of time, and I am talking here about young and up and coming dealers, there is often a period of time when that money is floating, they do not know, they are not sure they have made a sale. It looks like they have made a sale. They may inform their artist, but quite often they do not inform the artist because it may not go through. I think that most artists are very clear with their dealers, they have an arrangement with a percentage and they are generally kept informed.

Q14 Chris Bryant: I think Hilary wants to come in?

Ms Gresty: I was just going to reinforce to some extent what Professor Hemsworth has been saying, that a good dealer will often have a very long-term and nurturing relationship with an artist, so it is a relationship, and although codes of practice will help to establish parameters, they have to be sufficiently light touch for those relationships. A dealer very often will invest a lot of their own time and money, which is why young artists often do not have established relationships with dealers because they are too much of a risk, and that is to some extent where the public sector has a role to play in supporting younger artists. Yes, as Gerard has said, this relationship may very often be with an emerging dealer who has perhaps come out of art school himself or herself and is setting up as a dealer and so they are working very much as a partnership. We must not forget this very important contribution that dealers make as well as the financial transactions.

Ms Salter: I think also it would be helpful if there were some kind of guidelines, because at the moment, generally speaking, there is a 50:50 split between the artist and the dealer. Certainly when I first started working people who were in the art world, for example, as art consultants but did not have the overheads of premises, would take a smaller percentage because they could then work in partnership with dealers, but I have noticed recently they are now wanting 50%, which means that when they work with dealers that money has to come from somewhere and that puts again the artist's 50% under pressure. I think, as you say, a light touch code of conduct or code of practice would help to clarify some of those divisions.

Chairman: I am going to have to move on. Frank Doran.

Q15 Mr Doran: The debate is fascinating, because it seems to me, when I read some of the submissions, particularly Rebecca Salter's, I saw an oppressed minority. I am a lawyer and a trade unionist and we are used to oppressed minorities, but listening to and looking at other papers and submissions it seems to me that no matter what side of the spectrum you are on—oppressed artists or dealers trying their best—there is uncertainty. How do we deal with the uncertainty?

8 March 2005 Ms Rebecca Salter, Professor Gerard Hemsworth, Ms Susan Jones, Ms Hilary Gresty
and Ms Marjorie Allthorpe-Guyton

Ms Allthorpe-Guyton: We are looking particularly with a mind to emerging dealers and, as Professor Hemsworth has said, some of them have been artists themselves and have decided to represent their peers and are becoming dealers and entering the market. They find it very difficult to work internationally because of the cost involved, certainly to represent artists at international trade fairs, which is the major infrastructure for the market, so we are looking at the feasibility of a trade association for contemporary agents and dealers, which, of course, would enable not only representation, perhaps to the DTI, for help to work internationally, but also to look at issues like protocols. I have to say though that—

Q16 Mr Doran: Everyone who trades in the market, and art is a market, in every other market they have contracts. You have a contract when you get on a bus and buy a bus ticket. Why cannot artists have a contract?

Ms Allthorpe-Guyton: Some artists do have contracts.

Q17 Mr Doran: Why is it not the norm?

Ms Allthorpe-Guyton: Certainly in other spheres of business an awful lot is still done on agreements and trust, certainly in some areas of business, due diligence and whatever, consultancies, a lot of work is done without contracts but it is on trust and agreement and verbal assurances. This still works. Being a dealer is a very complex business.

Q18 Mr Doran: I understand that.

Ms Allthorpe-Guyton: But artists also have to represent themselves and they have to argue. If they want 50%, they must ensure they get 50% whether the dealer sells it for more or not—they must argue their position—and that is what we hoped to try and help artists to do through supporting agencies that can give artists advice.

Q19 Mr Doran: How do you bring into the relationship transparency and accountability if you do not have some legal basis to the relationship?

Ms Allthorpe-Guyton: I think that is something that would need much closer discussion with the market and with the agencies, because they have to operate in an international environment where transparency is an issue, but the market is smoke and mirrors. It often has been the case, and I think there will be a challenge to that in terms of intervening in this country, when it is not an international protocol.

Q20 Mr Doran: The vast majority of people who are artists and selling their artworks in this country are not operating in the international market. You have to reach a certain level before you get to a point where that is an issue for you?

Ms Allthorpe-Guyton: Yes. That is the second point I wanted to make and one that we were at pains to draw out, I think, in our submission. Many artists are not interested in the traditional market.

They are working in the public realm in many different ways, particularly in terms of communities, local authorities commissioning their work, and they are not only commissioning their work but they are commissioning their services. They are working in schools, and there they work for daily rates—they are paid fees—and we are just as interested in how they are supported with good contracts in that contractual relationship as we are with the traditional market.

Q21 Mr Doran: I understand that, but it still does not deal with the basic point I am making. Of all the professional relationships that we have in the UK, why is it that artists do not have proper structures?

Ms Jones: I think there are two reasons for that. We are dealing with a huge size of market here, and we are dealing with a sector of people who have a lot of different aspirations for their work. Obviously some artists will look towards selling work through the conventional markets and others will look at it in a different way. My colleagues here have talked about the fact that you have also got a huge number of people going through fine art courses now. There is a huge ballooning of numbers of people going into that field, and there was a 71% increase in artists over a 10 year period as a result of that; so the size of the market and therefore the competitiveness amongst the artists in it does contribute to perhaps what might need to be called a lack of good practice, in the sense that artists are scraping and pushing to get an opportunity. We know, just by looking at our own records, that about £7 million worth of work is advertised a year for artists. That is by no means all the work that is available, but we also know that 38% of that is based around exhibitions, but there is very little level of reward for it at all. The artists are having to subsidise and think of how to make their work visible by hook or by crook, and the new artists who are joining the profession are doing that with the student debt that they bring with them. For the artists later on in their careers, they are also doing that looking at what they are going to live on when they get to pensionable age. In a sense the size of the market has a great skewing effect upon it. What we are trying to suggest is that there are some very basic planks that can really make a difference to a lot of artists, and although we cannot force the private sector to adopt good practice in terms of transparency, we can in the public sector and the Arts Council and colleagues here who are in a position, if you like, to encourage the employers of artists to endorse good practice through using a code of practice, through accepting the rates of pay that we have outlined as being more suitable levels of reward for those public service areas. It will take time for those things to filter through, and we always have to be aware of the fact that things sometimes go backwards a little bit before they go forwards simply because of this big balloon of people who join the profession every May.

8 March 2005 Ms Rebecca Salter, Professor Gerard Hemsworth, Ms Susan Jones, Ms Hilary Gresty
and Ms Marjorie Allthorpe-Guyton

Q22 Mr Doran: It sounds as though artists need a good trade union.

Ms Jones: I would say they have it with us.

Q23 Mr Doran: I gave you the opportunity! Article 9 of the Directive on *droit de suite* has an interesting provision, that is that art market professionals must disclose any information necessary to enable payment of royalties if a request is made within three years of a sale taking place. I am not sure how that will operate in practice, but it strikes me that is a possible building block to get more certainty into the market? I would be interested in hearing your views.

Ms Salter: The Arts Council, I believe, have had a scheme called Own Art, which I think is operating outside London at the moment, but I believe that for the galleries that sign up for that there are certain guidelines as to the relationship between the artist and the gallery. It is a very, very complicated business. You cannot legislate for this, but all I would hope is that we could introduce a little bit of transparency, as you say.

Mr Doran: Do others feel that Article 9 is a potential building block for more information and more clarity? No? Okay.

Q24 Alan Keen: I was astonished to read amongst our research papers that artists are not necessarily even given access to the invoice that the gallery sends on to somewhere. No other part of the economy would put up with that. How on earth is that allowed to happen?

Ms Salter: I spoke to the gallery I show with in New York and he was quite surprised, because I do not know about other experiences in America and it would be interesting to find out, but he implied that it was standard practice to send the artist a copy of the invoice. One of the other problems is that if you do not have a copy of the invoice also you lose track of where your work has gone because it has been sold and you have no idea who has bought it, which means that in 20 years' time, if somebody did want to put together an exhibition, it is very hard to find where the work has gone. I spoke to a gallery in Germany. They again seemed to think it was fairly normal, standard practice to tell the artist who bought the work and how much for. I do not know, is the answer. That would be a major step forward, some transference of—

Q25 Alan Keen: A basic step.

Professor Hemsworth: Can I add to that, if I may? I think when an artist works with a private dealer they make a deal. Some people make better deals than others. Some people tend to be very precise about how payment should be made, and so forth. For example, it is common practice for dealers to give certain organisations discount and it is fairly common practice for that discount to be shared between the dealer and the artist. I know a lot of artists—certainly myself—where if the dealer gives a discount that comes out of their cut. I have to

make that quite clear before I enter into engagement with them, because they see it as common practice.

Ms Salter: I think it would be helpful if those practices were clarified, because younger artists may not be in a position to actually ask that, because they are very aware that there are thousands more where they came from, and if you are feeling vulnerable and it is your first opportunity, your first exhibition, it is terribly hard to stand up to that kind of pressure.

Q26 Alan Keen: I probably know more about football than I do art, although I think football and my watercolours are probably of the same low standard! In the football business we do not like football agents, but it sounds to me as though artists could do with agents. Is it not part of the system?

Ms Salter: In many ways a gallery is an artist's agent. They represent your career.

Q27 Alan Keen: Except in a way they are selling on the paintings at a profit and they do not show you the invoices. They are not really representing the artists, they are representing themselves. At least football agents, even though nobody in the game likes them, are working for the footballer themselves.

Ms Salter: If an agent was introduced again in a sort of relationship between an artist and a gallery, that 50% then has to be cut another way, and galleries have expenses—they have to maintain premises, put on exhibitions, go to art fairs—and so that 50% is quite fair for the work the gallery does in representing the artist and so it would be hard to know how an agent would fit in.

Q28 Alan Keen: It is the transparency, is it not? I hope you do not mind if I come to the broad issue. We have just been doing an inquiry into the theatre, and one thing that bothered me was anyone who has been to school has been an artist at one point. My grandchild gave me two works of art on Saturday, and I said, "Thanks for the paintings", and he quickly corrected me by saying, "It is crayons." But where do the artists go? Where do the people who come to art school go to? Some do not make it as professionals, do they? Where are the 60 million artists who were at school? How can we encourage them? Before you answer, can I say I was very pleased to hear somebody from Wales, when we were doing the theatre inquiry, saying that the Welsh Assembly are encouraging local authorities to form arts councils, for performing arts as well as visual arts, to get that connection with the public and to encourage them to get involved in this and to link the different amateur bodies together. I am sorry to get away from the art market for the moment, but we do want the public to understand how fulfilling it is to produce their own art. What can we do to do that? Can you give me a quick answer? How can we encourage those people?

8 March 2005 Ms Rebecca Salter, Professor Gerard Hemsworth, Ms Susan Jones, Ms Hilary Gresty and Ms Marjorie Allthorpe-Guyton

Ms Salter: This is again a very basic example. I work in a studio in North London and every two years we have open studios and we very often have an education day, which has been very popular, but there are schools in the borough that have terrible problems and staffing problems. It ends up that the schools that need to come most cannot afford to rent a bus or cannot afford the other teachers to come, so we always get the schools from the better parts of the boroughs, and those children probably have parents who take them to art galleries anyway. The children who we would want to come to our open studios are the children from the part of the borough who would never see an art gallery. They are the ones we need. Whether there is a way of working more closely with schools—it is probably money—I do not know.

Ms Allthorpe-Guyton: Can I contribute to that? This is, I think, where Creative Partnerships, which is a very large Government funded project, is having an extraordinary impact with bringing artists into schools, which was always an initiative that was taking place but not on the scale which it is currently, particularly in areas of deprivation, where, as Rebecca Salter said, children are not normally going to go to an art gallery. As you say, 45,000 artists, which is very much a notional figure, because we are not sure of the precise number of professional fine artists, do many things. If they choose not to carry on being artists, then they are extremely influential in the media, they go into other creative industries, they also as artists do find other ways of practising; particularly in the museum and heritage sector, they are doing a great deal with animating the museum for school children in educational work and becoming kind of mediators really. An art school education is not simply to create the next generation of artists; it is a liberal education. It is like doing classics or even mathematics. You do not go on being a mathematician normally for the rest of your life, but you do have an enormous contribution to make through what you learn. What it does give you, having been involved very closely with art schools, is a very critical mind and a sense of self determination and motivation. You have to work alone as well as within teams, and it gives you a great deal of self-reliance, which is a great transferable quality, in whichever field you want to work, to contribute.

Ms Gresty: I would like to position it a little bit from the side of the public sector. We have a tremendous network of public sector galleries throughout the country, not least large local authority funded museums and galleries that are beginning to get a little bit of central government support through the Renaissance in the Regions programmes, but nothing like enough to do the job that they can do. They are not a statutory responsibility. The relationship that they are building with schools is phenomenal, but if we look

at it from the other end, do all local authorities, all county councils have culture as part of their education development plans? Are schools being given a policy framework that enables them to then take up and expand the opportunities that are offered by a vast range of the public sector museums and galleries? I think that I can certainly supply you with a lot of examples. The National Society for Gallery Education has a burgeoning membership all working with schools in a very professional and sophisticated manner, and so I think we need to look that infrastructure.

Ms Allthorpe-Guyton: I would add to that the importance of public collections. I believe you have had an insight into France where there are 22 FRACs, as they are called, which are regional collections of contemporary art. That is a major way of supporting artists, but also growing the market, because unless you have a decentralised market, to some extent, with a greater regional spread of commercial galleries, you will not be able to support the artist properly. In order to grow the market you need strong public collections, and our regional local authority museums are not placed at the moment to do that. They do not have the acquisition funding and they do not have staff skills. We have tried to help that with the Contemporary Art Society, which has had a major impact with the help of lottery money to help grow local collections of contemporary art, this is a major lever to grow a wider commercial market beyond London.

Q29 Alan Keen: Susan was just about to give an answer?

Ms Jones: I am a testament to somebody who used to be an artist who is doing something very useful instead, which is helping to run an arts business which makes 80% of its income. The reason it does that is that we employ artists all the way through our operation, so it is a little bit of an antidote to the lack of part-time, well paid work elsewhere, and in a sense just to posit this as a view: if local authorities and art institutions actually thought a little bit more about dividing some of those full-time jobs into part-time well paid jobs with professional development opportunities, because, after all, artists get very few formal professional development opportunities as a self-employed sector and we in the employed sector benefit from that every day. I think there are many ways in which we can recognise that artists make a very positive contribution to society: they are problem solvers; they are creative thinkers; they are project managers; they find resources when they otherwise are not available. Even if they do not make art any more, I still think that education equips you for the world today, and as Chris Smith said, we need people with good ideas in all walks of life.

Chairman: Thank you very much indeed. We are most grateful to you.

Memorandum submitted by the British Art Market Federation

DIRECTIVE 2001/84/EC ON THE RE SALE RIGHT FOR THE BENEFIT OF THE AUTHOR OF AN ORIGINAL WORK OF ART

INTRODUCTION: THE BRITISH ART MARKET

The British art market is made up of 10,217 businesses, which provide employment for 37,063.⁴³ The British Art Market Federation represents all the major elements of this sector, from the larger auction houses, employing several hundred full and part-time employees, to a plethora of small and medium sized businesses.

The TEFAF survey reported that the British art market achieved sales totalling £4.2 billion in 2001, giving it a global market share of 25.3%. The UK accounts for over half of the entire EU art and antiques market which as a whole generated expenditure of €1.7 billion on ancillary services, such as conservation, restoration, specialist shipping and packing, and insurance and security. The UK art market is particularly dependent on cross-border trade and in this respect is the only global competitor to the US. In 2003, antiques and fine art to the value of £1,437 million were imported to the UK from outside the European Union. Exports totalled £2,155 million. In terms of both imports and exports, the US is the British art market's major customer: imports from the US totalled £862.8 million. Exports totalled £1,379 million.⁴⁴

1. THE SECTOR OF THE ART MARKET SPECIFICALLY AFFECTED BY THE RE SALE RIGHT DIRECTIVE

The Artists' Resale Right (or *droit de suite*) will apply initially to the resales of the work of living artists. Later it will extend to sales of the work of artists who died within 70 years of the date of resale. Together these account for 32% of the total value of the international fine art market and 23% of all auction lots sold.⁴⁵ The UK's market share of resales at auction for the four and a half year period covered by the Kusun study was 23.5% (US 53.8%). The UK's nearest rival in the EU, France, accounted for 5.8%. The UK's share of higher valued sales is significantly larger than any other market place in Europe. Its global share of sales in the €500,000 to €2 million was 32.9%. Within the EU, only France, with a 6.2% share, exceeded 1%.

This is reflected in the average price of individual auction transactions: in the first six months of 2004, the most recent period analysed, the worldwide average price was £55,870. The average price in the UK was €78,064, exceeded only by the US at €102,043. These contrast with an average of €16,549 in the six member states that already levy the Resale Right.

It is Britain's skill in attracting the higher value sales which accounts for its prominent position in the international marketplace.

2. BACKGROUND TO DIRECTIVE 2001/84/EC ON THE RE SALE RIGHT FOR THE BENEFIT OF THE AUTHOR OF AN ORIGINAL WORK OF ART

The Artists' Resale Right Directive was proposed by the European Commission in 1996 (COM (96) 97 Final) as a "single market" measure, subject therefore to qualified majority voting under Article 100a of the EC Treaty.

The European Commission considered that the harmonisation of the Artists' Resale Right was essential to eliminate distortions to the EU art market and to promote creativity by ensuring the equal treatment of artists in all member states.

The Resale Right had earlier been the subject of discussion in the UK. The Whitford Committee, an independent committee established in 1977 to review copyright law, decided not to recommend its introduction, concluding that it was "not practical either from the point of view of administration or as a source of income to individual artists and their heirs".

This remained the position in the UK at the time of the European Commission's initiative and the British Government therefore vigorously opposed the Directive. So much so, that attempts to reach agreement under the German and Finnish Presidencies in 1999 met with failure, because of the concerted opposition of the UK, Ireland, Austria, the Netherlands and Luxembourg, and support from allies sympathetic to their concerns. In May 2000 a compromise agreement was finally reached in the Internal Market Council, but a number of key amendments designed to protect the international competitiveness of Britain's art market were then reversed by the European Parliament in its second reading. Following conciliation between the Council and the European Parliament, a majority agreement was reached on the Directive in September 2001 (2001/84/EC). The United Kingdom voted against.

⁴³ Source: Kusun & Company (2002), reproduced in *the European Art Market in 2002*, published by The European Fine Art Foundation (TEFAF).

⁴⁴ Source: UK overseas trade statistics, analysed by The Antiques Trade Gazette.

⁴⁵ Source: *The Modern and Contemporary Art Market*, a study conducted by Kusun & Company for The European Fine Art Foundation, "Kusun Survey".

3. AMENDMENTS TO THE DIRECTIVE SECURED BY THE BRITISH GOVERNMENT

A number of significant amendments to the Directive were won by the UK and its allies. These are essential in order to reduce the cost and administrative burden connected with operating the levy and to limit the loss of business to market competitors outside Europe. The principal concessions gained were:

(a) *A delay in implementation until 2006 and a derogation to permit those member states not already operating the right to apply it only to the work of living artists, until 2012 at the latest*

This is a most significant concession for the British art market, since it is clear that the main impact of the resale right levy falls on the market for the works of deceased artists (the resale right extends to 70 years after the artist's death and is payable to his heirs). The Kusun survey found that if the resale right had been collected on all eligible auction sales throughout, the EU in 2003, the heirs of dead artists would have received 81% of the proceeds. In the UK in 2003, the total value of auction sales for the work of artists who had died within 70 years was €228,782,518 and for living artists it was €48,172,424 (an 83%/17% split). The extension of the right to the heirs of dead artists will include work of many of the masters of 20th Century painting, which London must continue to attract for sale if it is to maintain its position in the international art market

(b) *A maximum levy per transaction of €12,500*

The levy is calculated by applying reducing percentages to the sale price, the lowest slice being subject to 4%, the highest (over €500,000), 0.25%. The effect of capping the levy at €12,500 prevents the levy from increasing when sales exceed €2 million. The maximum levy is intended to limit the loss of the UK's share in the mobile and price sensitive top end of the art market

(c) *A starting threshold of €3,000 below which sales would not be liable to the levy*

During the negotiations the British Government argued in favour of a starting point of €10,000, on the grounds that sales below that figure were unlikely to be diverted from one member state to another. In the first Council agreement a figure of €4,000 was agreed upon, but this was reduced to €3,000 as a result of conciliation between the Parliament and Council.

Quite apart from there being no internal market justification for applying the levy to low value transactions, doing so would also create a considerable burden and cost, particularly upon the many smaller businesses that BAMF represents. The DTI's Small firms litmus test in the initial compliance cost assessment (7050/96) put the administrative cost at £30 to £40 per sale and concluded that the total administrative cost to the market would be £0.25 million or higher. Such costs cannot be deducted from the levy payable to the beneficiary. BAMF remains concerned that even a threshold of €3,000 will impose a significant administrative burden on small businesses.

4. POTENTIAL BENEFICIARIES OF THE RESELLER RIGHT

Although the EU Directive was promulgated in order to remove a distortion to the EU internal art market much attention has been paid to the Resale Right's benefits for artists. Support for the concept of *droit de suite* often derives from images of artists struggling to make a living while the art market profits from their work. The Resale Right is looked upon as a way of ensuring that artists participate in the profits from the resale of their work. (In fact the levy does not apply only to profits, but is charged on the entire price each time an object is resold, whether at a profit or a loss). The European Commission went as far as claiming that 250,000 artists would benefit from a pan-European system of *droit de suite* (However the Kusun survey showed that the work of only 3,876 living artists were sold at auction for over €3,000 in 47 countries from January 2000 to June 2004).

The experience of countries already levying the Resale Right confirms that only a limited number of artists can expect to receive anything at all:

- In Germany in 1998, of 7,454 artists who had transferred their Resale Right claims to collecting agencies, only 274 gained anything at all and they received an average of only DM 1,861.
- In France, which has operated *Droit de Suite* since the 1920s only 2,000 artists benefited during the period 1993–1995, and, of these, 1,950 were paid an average of only Ffr 3,000.

Artists are divided on the merits of the resale right, many fearing that it will not be in their best interest (for a discussion of the potential disadvantages for artists, see Professor Ginsburgh's commentary on the Kusun survey).

A number of prominent artists, including Karel Appel, Craigie Aithchison, Georg Basilitz, Anthony Caro, Anthony Green, Gotthard Graubner, David Hockney, Philip King, Markus Lupertz, Emma Sargeant and Glynn Williams publicly opposed the *Droit de Suite* Directive during its second reading in the European Parliament ("Artists against *Droit de Suite*").

CONCLUSION

BAMF is in little doubt that the introduction of the levy here in 2006 will result in the diversion of contemporary art sales to other markets. As Professor Ginsburg acknowledges:

“The decision to proceed with the introduction of *droit de suite*, independently of many countries outside the EU, represents a clear risk that art sales will be diverted from the European Union.”

Following representations by the European Commission, the US has indicated that it has no intention of introducing the Resale Right. With Switzerland also having no plans to follow suit, it is now clear that the UK will be at a disadvantage in the highly competitive business of attracting sales of the most valuable examples of contemporary painting. If the levy is extended to the work of, artists who have died, as the directive specifies should happen from 2012, the impact will be very severe indeed.

The result will be the reduction of employment in the British art market as sales are diverted elsewhere. A study, based on the directive in its original form, carried out by the Department of Trade and Industry in 1999, calculated that the fall in sales might lead to the loss of between 5,000 and 8,000 jobs, based on lost earnings of £57 million per annum. Any jobs lost by the UK will not be recreated somewhere else in the European Union, but will be exported to the US or Switzerland.

The evidence strongly points to the fact that the very modest advantages that the Resale Right might procure for a minority of artists are considerably outweighed by the damage that its introduction will do to what is, at the moment, by far the most successful art market in Europe.

February 2005

Memorandum submitted by the Society of London Art Dealers

The Society of London Art Dealers is the principal British Trade Association for dealers in pictures and sculpture and all forms of the visual arts. It has been in existence since 1932 and currently has 109 members. Its purpose is to promote and protect the good name and interests of the art trade and to enhance public confidence in responsible fine art dealing. All members of the Society are vetted by its Executive Committee and sign an undertaking to adhere to strict codes of conduct. The great majority of the Society's members are in London, since that is where the trade is concentrated. But the Society took a decision in 2003 to open its doors to suitable dealers from anywhere in the UK.

Some of the Society's members deal exclusively in one or two categories of art, others cover a wider field. Taken as a whole, the Society covers virtually the whole range of art, from old masters to cutting edge contemporary. Currently 64 of its members deal wholly or in part in contemporary art.

In talking of contemporary art it is important to distinguish between the primary market, in which dealers either buy direct from artists or take new works on consignment and the secondary market in which they resell works which have already been sold at least once. Most SLAD members who deal in contemporary art deal in both these markets and the two markets are closely linked and support each other. Few dealers could survive if they dealt only in the primary market. New artists naturally depend on the primary market but a thriving secondary market is also vitally important for both artists and dealers. Auction houses as a rule are involved only in the secondary market.

For most SLAD members dealing in contemporary art, and certainly all who deal in the primary market, relations with artists are of great importance. Many of these relationships last over many years, and dealers take a great deal of trouble to nurture artists: dealers can indeed take much of the credit for launching many artists on successful careers. Most SLAD members dealing in contemporary art have a large number of contemporary artists on their books, but most are also on the look out for new talent.

Agreements between dealers and artists can vary enormously. Some are exclusive, others not. Some may last for a limited period, or even a single exhibition. Others may last for a year, a period of years or even a lifetime. Some may be very general and take up no more than a few paragraphs.

Others can be extremely detailed and run to many pages. In other cases artists and dealers may maintain successful relations over many years purely on the basis of the word of mouth agreements with nothing written down. Subjects which agreements are likely to cover include gallery exhibitions, participation in fairs, marketing, development of relations with museums, advertising and public relations and of course financial arrangements, who will cover which costs, how and how much the gallery will receive in commission and arrangements for price setting and discounts and the obligations of each side to the other.

Because of the wide variety of types of agreement between artists and dealers, and the huge differences in their detail and content, when the Society looked at this issue about 18 months ago we decided not to try to draft model agreements, or a code of conduct, but instead to produce a checklist of the points which dealers should keep in mind in drawing up agreements. A copy of this checklist is attached. We also produced, in 1996, in cooperation with the Fine Art Trade Guild, a booklet entitled “Artists & Galleries—a Profitable Relationship” designed to explain, primarily to artists, how they could best go about establishing relationships with dealers. A copy of this booklet is also attached. It is however now rather dated and does not take proper account of recent developments such as increased use of computers, digital photography and the internet. We are currently engaged with the Fine Art Trade Guild in producing an updated version, which will be published later this year.

Given the huge range of types of agreement between artists and dealers and desirability of continuing flexibility in this area, the Society of London Art Dealers believes that it would be unhelpful to try to introduce increased regulation or a code of conduct. Any code of conduct would be likely to be either so general as to be anodyne and meaningless or else risk undermining the flexibility and freedom of manoeuvre which both sides want and which has served them so well. Artists are individuals in the fullest sense of that word and do not want restrictive agreements that tie them down excessively. Most dealer firms are also very small, with the majority of SLAD members employing less than four staff. As explained above, we have already been active in doing what we can to help artists to understand better the business side of their affairs. Neither party wants or needs greater regulation or external monitoring. Dealers are already suffering from the amount of time they have to spend on bureaucracy and form filling, import VAT, export licence applications, money laundering regulations etc not to mention the impending new regulations on *Droit de Suite* which are casting a pall over the entire industry (see below). All of these distract dealers from the time they should be spending on more constructive matters such as encouraging new artists. Indeed, if there is one single thing which the Committee could do to help encourage the development of artists and new art, it would be to try to reduce the bureaucratic burden on art market professionals.

The Society of London Art Dealers is very concerned about the impending introduction of *Droit de Suite* on the work of living artists with effect from 1 January 2005. It believes that this risks doing severe damage to the entire British art market and that it will be of little, if any, benefit to the artists whom it is designed to help, many of whom have signalled their opposition to *Droit de Suite*. It also believes that those who have canvassed its introduction have failed to understand its full implications. But the case against *Droit de Suite* is being set out in full in separate evidence by the British Art Market Federation, of which the Society is a member and which it fully supports.

ARTIST/GALLERY AGREEMENTS

Checklist for SLAD members

Agreements between galleries and artists vary considerably, thus it is not practicable to draw up a model contract for use by SLAD members. However it is useful to ensure that any necessary discussions are put in writing. The following is a checklist of points to consider covering.

Exclusivity

- Set out the basis on which it is agreed to represent and/or work with an artist, eg as exclusive agent or on an ad hoc basis.
- Detail the territory involved, eg the UK, Europe and/or rest of the World.
- Detail whether agreement relates to all artwork leaving the studio or only those artworks with which gallery is dealing directly.
- Point out whether the agreement covers future sales and commissions, and if so, the conditions relating to those.

Duration of Agreement

- Length of agreement and notice of termination necessary from either side.

Warranties and Copyright

- Artist needs to warrant that he is the owner of the work, that it is his original work, and that he is and will remain the exclusive owner of the whole copyright of the work; and the works do not violate the rights of any third party (including without limitation, the rights and subject of the work) in particular with regard to laws relating to trademark, copyright, privacy, publicity and defamation within the UK, USA or elsewhere.
- Artist should indemnify gallery against any damage or costs incurred in respect of any claim where there has been a breach of any representations of warranties in the agreement.
- Gallery should point out that editorial policies prevent a guarantee of photographic credits or return of photographs.

Details of how gallery will represent/or work for the Artist in respect of

- exhibition/s;
- sales;
- amount of promotion and advertising;
- involvement in art fairs;
- amount of liaison with curators, museums and public institutions;
- positioning of work into important collections;
- how it will raise artist's profile; and
- licensing of all rights in the images.

ARTIST/GALLERY AGREEMENT (2)

Consignment and Commission Details

- Length of consignment.
- Agreement of prices.
- Details of discounts, amounts of discounts, and whether shared with artist. It is useful to state a maximum discount that can be offered without having to refer to artist.
- Amount of commission, and whether VAT will be charged on that commission.
- Whether or not commission payable on all sales through the gallery; all sales from the artist's studio; from other exhibitions; and from contacts relating to gallery promotion etc.
- Amount of commission taken by gallery when work sold via a third party, ie another gallery, consultant etc.

Costs

- Point out who will pay for design, printing, mailing of private view cards/exhibition announcements, advertising and other promotional costs.
- If a catalogue is agreed upon, who will pay costs of photography, design, production and printing?
- Who will install exhibition/s and pay installation costs, and hire and/or purchase of any necessary equipment for exhibition purposes?
- Point out who is responsible for, and who will pay for, shipping of works to gallery and return of any works to the artist.
- Who pays for fabrication, printing, mounting and framing of artist's works?
- If gallery has incurred costs, will it expect these to be reimbursed on return of works to the artist?
- Who pays for photography of works for archival, exhibition, promotional, advertising or any other purposes?
- Details regarding storage and payment of storage bills.
- Details of insurance, and who assumes liability for works lost, stolen or damaged.

Artists' Responsibilities

- To update gallery with all new information regarding clients, interest in work/s or exhibition/s.
- To provide the gallery with updated biography, statements and articles relating to his/her work.
- To provide gallery with photographs, colour slides and/or colour transparencies for promotional and sales purposes.
- To keep gallery informed of any interest that is not directly affiliated to the gallery.
- To deliver the work of art in good condition and be responsible for any repair that may be necessary, as a result of any deterioration while in the gallery's care.

Exhibition/s

- If an exhibition is agreed upon, the gallery should point out that it will collaborate in the curating and mounting of the exhibition.
- Artist must adhere to timetable given by gallery.
- Detail responsibilities regarding installation of the exhibition.
- Details regarding production of a catalogue.

ARTIST/GALLERY AGREEMENT (3)

- Artist must notify gallery promptly if work requires any special environmental controls or security arrangements.
- If artist is in default of any of his obligations or cancels the exhibition or does not comply in all respects with the timetable, then the gallery can terminate the agreement and can claim all expenses incurred in putting on the exhibition.
- Agreement of prices.
- Preparation of invoice in respect of each sale.
- Gallery shall have no obligation to exhibit the artist's work at the gallery or elsewhere.

Accounting

- In respect of each sale, gallery should send an invoice setting out title of work, date of sale, sale price, amount due to gallery and to the artist, and details of VAT.
- Amounts payable to artist should be settled within 30 days of receipt of full payment by the gallery.
- Details of any advances to artist in advance of future sales.
- If any such advances are made, gallery can hold a lien in respect of all work belonging to artist up to the amount of that loan and will exercise the lien in default of payment.
- Gallery may deduct any such advance from monies due to artist in respect of sale.
- Details of advances towards fabrication, production, printing, and/or framing costs and how gallery expects to be reimbursed.
- Artist must confirm whether registered for VAT or not.
- Gallery may charge VAT only on gallery commission if artist is not VAT registered.

Death

- Heirs to remain responsible in event of death of artist.

Jurisdiction

- Governed by laws of England.

February 2005

Memorandum submitted by the Design and Artists Copyright Society (DACS)

DACS welcomes the opportunity to contribute to this inquiry. Our expertise and interest lies in the area of artists' rights, which we believe go right to heart of two of four questions posed by the Committee:

Ways the Department can further support and encourage living artists?

What is the likely impact of the Artist's Resale Right and its operation?

1. BACKGROUND

It is generally acknowledged that creativity, in all its forms, improves our lives individually and enriches our society as a whole. Today, the presence of visual art in our day-to-day lives has increased significantly. Visual art now spans a huge range of activity, from painting to photography to installation and an increasing number of visual creators have developed new working practices across these disciplines. From the high profile Young British Artists movement of the 1990s, the phenomenally successful launch of Tate Modern in 2000 and the impact of major collectors such as Charles Saatchi, it would seem that art has achieved a new popularity. This trend has been reflected economically, with the creative industries accounting for 8% of the UK's gross domestic product in 2002⁴⁶, a significant percentage.

The impact on the individual artist is more complex. There are some examples of stellar success, both in terms of profile and wealth, consider for example Tracey Emin, David Hockney, David Bailey. However, many artists find it hard to survive in an increasingly changing and highly competitive environment. Almost 50% of all artists and visual creators fail to earn a living from their art⁴⁷, a percentage that rises significantly amongst certain groups, such as painters and sculptors. Those practitioners who depend upon commissioned work, such as illustrators, have experienced a slump in demand in recent years. Photographers face new threats to their professional practice through the power of global image suppliers such as Getty and Corbis. In 2003, the Arts Council of England recognised these trends and prioritised the need to focus on assisting individuals⁴⁸, in a marked shift away from awarding grant funding to arts institutions, in order "to stimulate the economy for artists".

Against this background, the intellectual property rights to which creators are legally entitled have never had such an important part to play in the life of an artist. By generating revenue, rights provide a means of survival, encouraging creative endeavour and innovation and empowering artists to control how their work is disseminated and communicated so that our society continues to respect the value of creativity and support the role of the creator.

⁴⁶ Creative Industries Economic Estimates Statistical Bulletin August 2004, DCMS.

⁴⁷ The Artists Information Company, summary of 1990 census.

⁴⁸ Ambitions for the Arts 2003–06 www.artscouncil.org.uk

2. DESIGN AND ARTISTS COPYRIGHT SOCIETY

DACS has been established for 21 years and has realised some significant achievements for artists and visual creators over this time. Today, DACS represents 52,000 artists and their heirs, comprising 36,000 fine artists in addition to 16,000 photographers, illustrators, craftspeople, cartoonists, architects, animators and designers, including some of the biggest names in contemporary visual arts as well as many emerging and unknown artists.

The Copyright Designs and Patents Act 1988 (as amended) provides the legal framework of our activities. We provide a range of licensing services for copyright consumers seeking to use a work of art. Rights can be licensed individually (single right, one artist) or collectively (several rights, many artists) depending on the intended use. We have strong relationships with many different consumers of copyright including those involved in the art market in the UK, such as Sotheby's and Christies.

DACS is the only organisation representing artists' rights on a not-for-profit basis in the UK. We are well established, and belong to a network of visual copyright societies in 30 countries. DACS is a membership-based organisation⁴⁹ distributing 75% of all licensing revenue back to visual creators. In 2004, we generated over £3.5 million in licensing revenue for artists. We charge commission to cover our administration costs at a rate of 25%. Our commission rates are reviewed annually by our board of directors (which includes several artist members) and are published widely.

3. SUPPORT AND ENCOURAGEMENT FOR LIVING ARTISTS

In simple terms, copyright provides an income stream for artists. Moreover, by licensing their copyright and making their work publicly available, artists can also benefit from wider awareness and appreciation of their work than they might otherwise achieve through their studio activity and exhibitions.

However, the field of copyright has become a good deal more complex since DACS was first established and this presents some daunting issues for artists. The impact of the digital environment on creative output continues to be profound and far-reaching, most especially for visual creators whose work can be copied and disseminated with relative ease, and in some cases, pirated or passed off as original. Furthermore, artists, in common with other creators, are under increasing pressure to license their rights cheaply, or even to give them away for free.

The weak bargaining position of the artist is further exacerbated by the relative lack of education or training on the subject of intellectual property. DACS bears witness to this daily, when artists contact us to seek advice over a copyright problem which could often have been prevented with more awareness. The emergence in recent years of the professional practice module on arts courses within the further and higher education sectors provides a welcome opportunity to address this, but is yet to be standardised, with some institutions teaching copyright education whilst others omit the subject completely.

DACS has attempted to address this through the publication of 29 copyright factsheets which are freely available via our website. In addition, we are shortly due to launch a free copyright advice service for our members. However, the situation could be further improved through the provision of education resource materials for course tutors to encourage them to educate their students on the subject of copyright so that all budding artists become aware of the value of their rights and the important part they can play in their career.

An exciting new opportunity to provide support and encouragement for artists is provided by the forthcoming implementation in the UK of the Artist's Resale Right (also known as *droit de suite*) which is due to take place on 1 January, 2006. This right (which is in fact a related right, rather than a copyright) has the potential to provide a valuable source of income for artists—essential if artists are to continue to produce new work. The Artist's Resale Right entitles artists to a percentage share of the price every time their work is resold by a gallery, dealer or auction house and thus gives them a share in its commercial success and increasing value. This law places artists on a level playing field with writers and composers who have for a long time received royalties from on-going sales of their work.

4. WHAT IS THE LIKELY IMPACT OF ARTIST'S REALE RIGHT AND ITS OPERATION?

The Artist's Resale Right⁵⁰ Directive is part of the European Commission's harmonisation programme that aims to align the copyright laws of Member States in order to provide equality for artists and to prevent distortions of the market place within the European Economic Area.

The Artist's Resale Right has its origins in France when a new *droit de suite* law was passed in 1920. Following the death of the great French painter, Jean François Millet, the value of his paintings rose dramatically with a painting changing hands for 1 million francs which he had previously sold during his lifetime for 1,200 francs, whilst his family was left destitute. The French law of *droit de suite* that followed was an attempt to redress this inequity by providing artists with an on-going stake in the commercial value of work. Furthermore, the French law extended this right to the heirs of an artist who may be left without means of support after the death of a spouse and/or parent whilst art collectors and dealers made vast profits.

⁴⁹ See also DACS Members' Charter (appendices).

⁵⁰ European Directive 2001/84/EC.

Whilst these principles are still at the core of the harmonised legislation, the new Directive also includes for the first time a specific attempt to encourage young, newly emerging and less well-known artists by providing a higher royalty rate for artists whose works are worth less (and accordingly, a lower rate for artists whose works are worth more). Furthermore, the Directive makes it clear the right is inalienable and cannot be waived by the artist in recognition of the fact that the artist might otherwise be pressured to give up his right. It is important to note that the Directive balances this provision and minimises the economic impact on the art market by capping the amount of royalty an artist may receive from one resale to €12,500 (£9,000).

The Directive was harmonised in 2001 and must be implemented by all Member States by 1 January, 2006. The Department of Trade and Industry is about to launch a public consultation inviting views as to how best the Directive is implemented.

4.1 Options within the legislation

The Directive contains several derogations which furnish individual Member States with options regarding their chosen approach to implementation. Some of these options are available to all Member States, including those that already have a form of *droit de suite* legislation within their law, whilst others are restricted to those Member States introducing the Artist's Resale Right for the first time (UK, Eire, Netherlands, Austria). Since all the derogations have the potential to influence the level of financial return artists will receive from the royalty, great care needs to be given to their individual consideration.

For the purpose of this submission, we have limited our comments to those options which we consider to be relevant to the scope of this inquiry.

- Minimum resale value of the work to which the right applies (Article 3).

This threshold is currently set at a level of €3,000. Member States can choose to lower this.

For this new legislation to support and encourage as many artists as possible, the threshold needs to be lower. The figures contained within the Government's impact study⁵¹ show that if the threshold was lowered to €1,000, 92% more UK artists would benefit than if the threshold remained at €3,000.

It is widely acknowledged, even by art market professionals themselves, that a lower threshold would not damage the market by driving sales abroad, since the costs of exporting an art work overseas will always outweigh the royalty. For example, a work worth €1,000 (approximately £600) would generate a royalty for the artist of £25, far less than the cost of packing, shipping and insuring the work.

Furthermore, the higher threshold potentially disenfranchises certain groups of visual creators whose work does not usually command such high prices as fine art, such as photographers, print makers and craftsmakers.

At €1,000, the threshold in the UK would still be considerably higher than in Germany, where it is €50 and in France, where it is €15.

- Rates of royalty paid (Article 4).

The highest royalty rate is 4% at the lowest value range £1,800–£30,000 (€3,000–€50,000). Member States can elect to increase the royalty rate at this level only, to 5%.

The royalties that the majority of artists will earn will be very modest. This option provides an opportunity to increase the income for artists whose work has not yet gained huge commercial recognition without material impact on the art market. For an artwork selling at £1,800 (€3,000) a 5% rate would generate a royalty of £90 (€150) compared to £72 (€120) at the 4% royalty rate.

- Collective management of royalties (Article 6)

Member States may determine how the royalty is collected and can opt to make the collective management of the right compulsory.

In simple terms, rights are generally administered individually or collectively. Individual rights management is useful for single uses of a few works which may require the artist to be consulted extensively, such as the use of an artistic work within an advertising campaign. Collective schemes are useful when the rights of many artists may be involved which makes individual consultation impracticable, such as the photocopying of artistic works from pages of books and magazines. In such circumstances, an organisation like DACS will administer the scheme on behalf of a constituency (in our case, artist) and negotiate appropriate terms on its behalf. DACS has extensive experience of both types of administration.

The main advantage of collective management is that it produces economies of scale and a much reduced administrative burden for all concerned by eliminating the need to deal with royalties and artists individually. In the example of the Artist's Resale Right the art market professional would be able to remit all the royalties due to all artists to DACS. The task of distributing these royalty payments would then fall to us, rather than to the individual auction house or art gallery.

⁵¹ Study of the Potential Impact of *Droit de Suite* on the United Kingdom Art Market 2006/2012 by Gerard Leeuwenburgh.

Collective management can be subject to criticism on the subject of pricing. Since a collective scheme is usually agreed in exchange for a lump sum payment, artists can be denied the right to individually set the price for the use of their rights. On the other side, consumers of collective licences can feel concerned about their ability to control the pricing in a commercial negotiation. The Artist's Resale Right Directive eliminates such problems for both parties by dictating the royalty rates. Therefore, the collective management of the Artist's Resale Right poses no pricing disadvantage to either the artist or the art market professional.

In the UK, the administration of rights is usually dealt with under a voluntary regime. However, there are a number of examples where statutory provisions have been made⁵² on the basis that these deliver some of the advantages described above.

It is the view of DACS that the compulsory collective management of the Artist's Resale Right is appropriate since it delivers advantages without compromising either the artist or the art market professional. Most importantly, by making a collective approach compulsory, the risk of non-compliance with the legislation will be significantly reduced.

4.2 Programme for implementation

The Directive provides those Member States introducing the Right for the first time the option of delaying its application to the beneficiaries of deceased artists until 2010, with a further possibility of extending this delay to 2012.

The Artist's Resale Right follows copyright law in that it applies for the life of the artist plus 70 years after his or her death. In the spirit of its origins to support the heirs of deceased artists, the Right should be fully introduced in 2006, in order to benefit as many artists and their beneficiaries as possible.

5. IMPACT OF THE ARTIST'S RESELL RIGHT ON THE UK ART MARKET

It is well known that the UK art market campaigned against the introduction of the Artist's Resale Right on the basis that it would damage their business. We believe that such claims are unfounded.

Will the Artist's Resale Right result in loss of sales?

It is claimed by the art market that the Artist's Resale Right will drive sales of art works abroad to countries where the right doesn't yet apply (USA, Switzerland). However, it is our view that art will always be sold where it's likely to obtain the best price. A recent illustration of this occurred in December 2004, when an American art collector decided to sell his collection of modern art through an auction house in Cologne. Though he could have chosen any country in the world to host this important sale including his own native USA, where resale right does not exist—he opted for Germany, where resale royalty legislation has operated since 1961. The collection achieved high prices, including a world record price for a work by Kurt Schwitters.

Another important fact that undermines the notion of sales losses are the other associated costs which will be more influential when deciding where to buy or sell an art work. The cost of exporting works of art overseas is invariably higher than the artist's royalty. For example, Damien Hirst's formaldehyde shark was recently sold for £7million by Charles Saatchi, who originally paid £50,000 for the sculpture in 1991. If this resale occurred after the legislation is in place, Damien Hirst would earn the maximum royalty of £9,000. We obtained two estimates for packing, insuring and shipping the work to New York, both of which were higher than the cost of the royalty.

Other associated costs which have an impact include:

- Rates of commission charged to sellers and buyers by art market professionals; major auction houses typically charge up to 20%.
- VAT on imports of art works is higher than the artist's royalty, currently 5% in the UK.
- Rates of foreign currency exchange are likely to be a bigger consideration than the royalty.

How has the amount of royalty that an artist can earn been limited to avoid damaging the art market?

The royalty only affects certain sales:

- The royalty will only apply to original works of art protected by copyright, which is about 40% of UK sales.
- The amount of royalty an artist can earn has been capped at €12,500 (£9,000).
- The royalty will only affect works being re-sold by art market professionals; it won't affect first sales, or sales between private individuals.

⁵² Off-air Recording Scheme CDPA s35 1988, Cable and Satellite Directive 93/83/EEC.

- Private sales to public museums will be exempt from the royalty.
- Works purchased by art galleries directly from the artist may be exempt from the royalty if the work is resold for not more than €10,000 and within three years.

Has the Artist's Resale Right had a negative impact on markets in other countries?

The British art market can take comfort from other countries which already have the Right:

- France was the first country to introduce a royalty for artists in 1920 and continues to have the second strongest art market in Europe.
- After Germany introduced the artist's royalty in 1961 some art market professionals established offices in Ireland in order to avoid the royalty. However, this practice was abandoned after only a few years and the German art market continues to be strong today.
- The artist's royalty was introduced in Sweden in 1996, despite huge protests from the local art market which argued that their business would be permanently damaged. In fact, the Swedish market in modern art has grown in strength since 1996. Furthermore, works which generate a royalty for artists are identified in sales catalogues and have come to represent something like a quality mark for buyers.

Can the royalty be administered successfully on a not-for-profit basis?

- In other countries the royalty has been successfully administered for many years by artists' societies operating on a not-for-profit basis.
- DACS has 21 years experience of successfully collecting and distributing copyright revenues of all kinds to artists, all on a not-for-profit basis.
- We have a good relationship with the British art market and will be building on this in order to create a system of collection which will work for them and deliver the intended benefit to the artist.

6. CONCLUSION

It is our belief, supported by our direct experience, that the rights of artists can make the difference between their ability to survive and to thrive. A sophisticated society that values creativity and wishes to encourage its expression should respect the rights of the creator. The Artist's Resale Right will offer UK artists the same economic opportunities as their equivalents on the Continent. There is no doubt that the Right will result in a new overhead which will need to be absorbed by art market but the impact of this has been carefully controlled within the framework of the legislation so as not to cause material damage. The Artist's Resale Right will put artists on a level playing field with songwriters and authors who have for a long time received royalties from sales of their work, a reality which has not harmed their respective music and publishing industries. Though at times controversial, the Artist's Resale Right legislation is coming to the UK and the question that needs to be answered by all stakeholders is not whether it should be implemented, but how.

The income that artists will receive from this new Right, though modest, will help to support artists and stimulate fresh creativity. Our buoyant British art market, which is the strongest in Europe, has nothing to fear.

February 2005

Witnesses: **Mr Anthony Browne**, Chairman, British Art Market Federation, **Sir Tom Lighton**, former Chairman of the Society of London Art Dealers and Managing Director of Waddington Galleries, The Society of London Art Dealers, **Dr Iain Robertson**, Lecturer in Cultural Policy and Management, City University and Head of Art Business, Sotheby's Institute, and **Ms Joanna Cave**, Chief Executive, Design and Artists Copyright Society, examined.

Chairman: Good morning. Thank you very much for coming to this inquiry. If I may say so I am particularly grateful to Dr Robertson, who I understand has come at very short notice. We very much appreciate that. I will ask Mr Flook to open the questioning.

Q30 Mr Flook: You may have been as surprised as I was that when the artists and representatives who

are sitting where you are now were asked about *droit de suite* they neither had a view individually nor collectively about it. I know, Mr Browne, you have been quite a keen critic of it. As far as I can work out, the costs of implementing it, particularly at the lower end, seem quite prohibitive. Do you want to comment on that a bit further?

Mr Browne: Thank you very much, Mr Flook. Yes, I suppose my views are fairly well-known on the

8 March 2005 Mr Anthony Browne, Sir Tom Lighton, Dr Iain Robertson and Ms Joanna Cave

subject of *droit de suite* generally. I would have said that I was not particularly surprised by the reaction earlier on, because *droit de suite*, on first examination, does appear to be a benign, philanthropic and appealing idea, and I have to say when I first encountered it that is rather how I reacted to it; but, having studied it and having studied particularly how it works in countries which already apply the right, it does seem to me to overwhelmingly benefit the people that it is not really aimed in the first place to benefit, and I also was not particularly surprised because we are very aware of the fact that artists' opinions are very much divided on this issue as well. Many artists are fundamentally opposed to it for a number of reasons. I think probably the best place to look to see how it actually works in practice is Germany, where it has existed for a number of years and where it is said to be operated in the most efficient and effective manner. The statistics there demonstrate absolutely that only a handful of artists gain anything at all. I think in 1998 274 artists gained out of nearly 7,500 artists who were registered with a collecting agency, but heirs 206 artists shared out seven times as much as was paid to living artists. I would say that if the starting point of your inquiry is how best we can help young artists, and so on, I would suggest that *droit de suite* is about the last idea we can come up with because it just does not do that. In my view it was an idea which was very much at home in the 1920s when it was first started, but it really fits ill in the context of the twenty-first century in a different economic, social and market environment.

Q31 Mr Flook: From a dealer's perspective, more broadly, how do you and your competitors or colleagues, wish to describe them? How do they see it as well?

Sir Tom Lighton: What we feel is that what the artist needs is essentially a vibrant and flourishing market, both at home and internationally. I think it is well documented that we feel there is a big risk in this that a substantial portion, certainly at the higher end of the market, will to move centres where *droit de suite* does not exist—America and Switzerland—where there seems little evidence of them being interested in introducing it. That may not seem important to the young emerging artists, but what they need is the exposure to international museum curators, international dealers, international collectors, who visit London two or three times a year for major auctions, major art fairs. If those auctions are greatly diminished, they simply will not come in such numbers, they will not go up to Hoxton or other parts of London looking at the young artists visiting their studios. Any artist, whether they are emerging, very prosperous, whatever, needs a totally efficient and vibrant market.

Q32 Mr Flook: Taking your logic through, as they already have it in France, does that mean that international art buyers go to the Hoxton equivalent of Paris because they do not go to Paris because they do not have *droit de suite*?

Sir Tom Lighton: I cannot answer that precisely because I do not know, but if you look at the percentage of the art market in Europe that France has, I think it has been a declining trend over the last two or three decades at the expense certainly of this country and others.

Q33 Mr Flook: Do you expect the system—a question also directed as much to Ms Cave—to be up and running on the basis, as far as I can see it, for those who are living artists this will come into place from 1 January 2006 and the Government have yet to put out a consultation document. Could you respond quickly from your perspective when it is out? It has just come out. It is amazing what influence this Committee has on the Government! Do you think that you will be able to respond to that document which you may or may not have seen?

Ms Cave: We have seen it and, yes, absolutely we will be making a response. Can I come back to the question you asked about costs? The costs of collecting this royalty are not prohibitive. All 11 Member States where the right exists at the moment, in those Member States where it is collected it is collected without exception on the compulsory collective model on a not for profit basis. I have to slightly contradict my good friend Mr Browne, on my right here, because the example he gave in Germany is not quite right. Last year (2004) there were 9,500 sales that attracted the royalty, and the amounts that were collected ranged from a few euros to several thousand. The threshold for qualifying resales in Germany is currently 50 euros. If I may comment on the question you asked about France, the right has existed in France since 1921, in Germany since 1960. Neither of those markets has been adversely affected by its existence at all.

Mr Browne: May I come back on that, because that will not do. There was report to the Assemblée Nationale by a member of, Député Douyère which categorically stated that *droit de suite* was responsible for the fact that France did not have a large enough market share. Indeed, the French Government commissioned Arthur Andersen to conduct a study which came to precisely the same conclusion. As far as my statistics on Germany are concerned, perhaps it was parliamentary privilege, but they were given out in the Bundestag by the CDU culture minister. I would hope they are fairly reliable.

Q34 Mr Flook: And admittedly they did relate to 1998?

Mr Browne: There may have been a huge leap or maybe there were reforms made to make sure that more people benefited.

Q35 Alan Keen: Tell me, presumably you did not get to be a knight of the realm for not showing invoices to artists?

Sir Tom Lighton: I am afraid I did nothing to deserve being Sir Tom.

8 March 2005 Mr Anthony Browne, Sir Tom Lighton, Dr Iain Robertson and Ms Joanna Cave

Q36 Alan Keen: Can you tell me a bit about galleries that do not show. Is the practice widespread? How does it occur? Is it that artists are so desperate that they will accept any practice if the gallery will help them?

Sir Tom Lighton: No. I think there is a fundamental myth that there is an artist on one side of the fence and a dealer on the other side, which is truthfully not the case. To work successfully in a relationship they have to be aiming for the same goals, which is successful and progressive development of the artist's career. We have many artists in the particular firm I work for that we have represented for 30 years or more. Some of them have very detailed written contracts which are quite regularly updated if they have points they want to incorporate or we have points we want to incorporate. We have very clear sort of commission structures, the division of the percentage. I have listened to what Rebecca Salter said and obviously I sympathise with some of her comments, but I do not think it is widespread, from my experience anyway. As regards this issue of showing the invoices to the artist, there are obvious reasons that you would not show the sales invoice for client confidentiality—it has the name and address of the client—but I think there is much greater transparency. We give our artists a great deal of information. They know within the hour if a work has been sold. They get regular accounts. I think it is also important to remember that the artists are not employees of the gallery. You mentioned the football analogy, but they are free. All the artists that we deal with are free to ring us today or tomorrow and say, "Actually we have decided after 30 years we would like to move to another gallery." They are free to do that and I think it is a healthy thing that they are. It would be very sad for us if they did, but they do not all want to be committed to long-term contracts, they do not want to work exclusively with one gallery even, they like a certain degree of flexibility, but I am totally in favour of as much as possible being put in writing. Certainly that is the practice we follow.

Q37 Alan Keen: I am a great fan of my fellow Teesider Mackenzie Thorpe. I can do the same paintings as he does, but why am I not as famous or presumably as well off as Mackenzie? It is a serious question. How do artists get recognised and flourish in the way that someone like Mackenzie Thorpe has done, because it will help us understand the market?

Sir Tom Lighton: I would slightly go back to your football analogy. When artists are at art school a lot of the dealers will go round and visit the degree shows, visit studios, and so on. Very often the artists are signed up by some of the smaller emerging galleries, and, when they have had a couple of successful shows, or, if you like, scored a few goals, obviously some of the bigger galleries, like in football the bigger clubs, tend to sit up and take notice. Obviously it is great for us if we can see the next Wayne Rooney when he is still at art college, but we get a lot of applications directly from artists—we probably ourselves get about five to 10 a week, I would think—and most of the galleries

receive a huge number. I think there are other ways that emerging artists could be helped, and they are not all necessarily young. A lot of major artists have not really emerged until their 40s and 50s. To pick up on one point that was mentioned earlier, I think any form of subsidy for exhibiting these artists' work at overseas fairs that the Government was able to offer would be a major asset. It is very expensive, and particularly for the younger galleries it is a very substantial cost. It is extremely important for these artists to try and get exposure internationally. Any form of help that could be given there collectively to support a group of young dealers exhibiting in an art fair in Chicago or in Basle would be wonderful. There are lots of positive measures, I think.

Q38 Alan Keen: What would you like us to put in the report to help?

Dr Robertson: We are dealing here with a market which is completely unregulated, and that actually is quite a good thing. It is probably one of the last markets in which you can find opportunities to make extraordinary profits which are then fed back into the system. To some extent, if you overload it with too much regulation—the French example being a very good one—the market declines dramatically. The French market is now down to 9% of the total global art market, from some 25% 30 years ago. Britain has a 25% share of the global art market, second only to New York and the American market. That is something which is extremely delicately balanced at the moment. If we lose some of our competitive advantage the market could just go overnight. I know this is something Anthony Browne believes and I certainly believe very strongly that there are so many options for dealers and galleries to move if the climate changes dramatically that we could be left with talking over the crumbs if we are not careful. The artists' community which we so cherish in Hoxton and elsewhere is only really the cream on top of the cake. If we do not keep the main industry in London and the UK generally then I think we are in danger of losing an enormous income earner and revenue earner for the UK. A certain amount of regulation is fine—but countries like Belgium and France have actually lost their market through over-assiduous application of certain laws and regulations. The only reason France is now picking up is because it has managed to smash the Commission Reserve Monopoly so Sotheby's and Christie's can now trade there. The French market is actually showing signs of returning to its former strength. That is my view.

Ms Cave: On the question of artists' ability to flourish, obviously a lot of artists depend upon their ability to sell originals or obtain commissions, and dealers play a very important part in that which we would certainly acknowledge. The other point I would like to make is that income artists can derive from their intellectual property rights, copyrights and, in this particular case, the resale right are incredibly important and (however modest those incomes are) do help them to survive in between exhibitions or during periods when they are going through an unfashionable or less productive stage in

8 March 2005 Mr Anthony Browne, Sir Tom Lighton, Dr Iain Robertson and Ms Joanna Cave

their careers. I would like to draw your attention to the significance of rights and income they provide for artists as another way that helps them to flourish.

Mr Browne: I did want to make one point about the market diversion. Picking up on what Dr Robertson was saying, one of the characteristics about the market in London and the UK is its international outreach. In other words it is an entrepot market for sellers throughout the world—things come in here, they are sold and they go out again—and that is why the transaction cost and a level playing field internationally, are so incredibly important. I did an off-the-cuff analysis of some very major auctions last month in the contemporary art field and I looked at the Christies' auction (and the non-EU imports are symbolised because of the VAT situation) and 50% of what was sold came in from outside the European Union; so that is crucial and that is very immediately at risk if you impose a charge here which is absent in New York, because these things are starting out in Japan and it does not really make any difference to the seller where it goes.

Q39 Derek Wyatt: Can I ask you about the resale rights. Would you assume that your organisation would run the scheme? Is that an unreasonable assumption?

Ms Cave: We already represent 52,000 artists who signed up for us to collect the resale right for them in the event that it is introduced into this country; so we feel we represent a significant number of artists; added to which, we are the only copyright and collecting society that works on a not-for-profit basis in the UK. Yes, we would see ourselves as playing a significant part. Obviously if in the future other such societies were to establish themselves, there would be nothing to prevent them also participating, but at the moment there is only us.

Q40 Derek Wyatt: I made a mistake, I think France is 15 euros?

Ms Cave: Yes.

Q41 Derek Wyatt: But Germany is 50?

Ms Cave: Correct.

Q42 Derek Wyatt: Where would you like the British rule to draw a line?

Ms Cave: As you know Member States have the option to reduce the threshold from the offered maximum of 3,000 euros. We feel that is prohibitively high—high because it will exclude a huge number of different types of artists, such as photographers, crafts makers and illustrators whose works just do not command the same sorts of prices that paintings and sculpture sell for. We are suggesting lowering the threshold to 1,000 euros which will benefit a much broader range of artists, and will also deliver the objective that the Commission has highlighted in encouraging younger artists, or those at the beginning of their career, where their values have not achieved high levels. If the UK opts for a thousand euros it will still have the highest threshold out of all the Member States.

Q43 Derek Wyatt: What is the purpose of Germany and France being so low?

Ms Cave: They have had the right for much longer. France has had it since 1921 and Germany has had it since 1960. I would imagine the thresholds have remained the same for a much longer period of time. They are obviously keen to maintain that because it will have an adverse effect on their artists if they increase it; and they already perceive that the changes in the Directive will reduce income for their artists anyway. I think they are very keen to keep their thresholds.

Q44 Derek Wyatt: There was a comment in the evidence from the Arts Council, just previous to you, saying there were issues over digital art and 3D art. Could that be incorporated; could we amend it, given it is now up for consultation?

Ms Cave: I am at risk of speaking for the Government here, which I should not really do, but the draft statutory instrument has borrowed the definition of a qualifying artistic work from the Copyright Designs and Patents Act 1988 and, unfortunately, that piece of legislation does not include video art. I should say, however, that videos are protected as original film works under that Act. Artists who make installations, for example, and film them do qualify for royalty income as directors and producers of a film; but the Arts Council are quite right to say that that is rather anomalous and does not fit with modern practice; but I think the point needs to be addressed through that piece of legislation, rather than this Directive which has borrowed the definition in full from existing UK law.

Q45 Derek Wyatt: Dr Robertson, I commend you on your work on the British Council, and I am bound to say that as chairman of the all-party group—I think the British Council is one of our great unsung heroes overseas. It was mentioned just now that we really need help to get artists actually overseas, in the sense of selling their work. Do you see that the British Council could do something like that?

Dr Robertson: It has done quite a lot actually—Henry Moore being the great example.

Q46 Derek Wyatt: I was thinking of younger artists.

Dr Robertson: It continues to do sterling work on behalf of a number of artists. I think it is doing more than most national overseas cultural promotion organisations such as the Goethe Institute and Institute Francais. As to doing more—this depends on how we define contemporary art. At present we are talking about a very, very narrow definition of contemporary art here. There is art which is made which bears no relationship to the art which is supported by the Arts and British Councils actually—which does not get any airing at all. We should be addressing a slightly larger definition of the term “contemporary”; by which I mean extremely well-painted landscapes, extremely well-painted figurative paintings and that whole tradition, which seems to have died. To that end, the

8 March 2005 Mr Anthony Browne, Sir Tom Lighton, Dr Iain Robertson and Ms Joanna Cave

British Council could start finding overseas exhibitions or creating overseas shows for a much greater community of artists rather than just relying on two stars—which mirrors the star system in the art market. You will get an artist, like Antony Gormley, who will get numerous appearances overseas and only two or three individuals benefit—his dealer, the intermediary Antony Gormley and owners of Antony Gormley's work. I think they could be a little more pluralistic in their shows. Otherwise I think they are doing a relatively good job. Could I add one other point to what has been mentioned before: if the *droit de suite* tax comes into effect, and there is a hike on the level of EU import tax for art entering the EU from outside, the Eurozone will be dangerously uncompetitive; could we not reduce the VAT at a national level on works of art sold from its current levels which are 17.5%? That would at least ameliorate some of the damage which has been done by the other taxes.

Q47 Derek Wyatt: I have noted that on e-Bay there is quite a large section of auction art. You said that if we deregulate too much the Sotheby's and Christies will fly away; but will the net not become even more important?

Dr Robertson: You cannot sell art on the net—Sotheby's completely failed in its attempt to do just that.

Q48 Derek Wyatt: That might be Sotheby's culture rather than e-Bay's?

Sir Tom Lighton: I think in six years we have only made two sales directly as a result of the Internet.

Q49 Derek Wyatt: What a challenge!

Sir Tom Lighton: It is a challenge. However good digital photography is, there is no substitute for seeing the actual object; and you also want to see the object in the context of an exhibition.

Ms Cave: Can I say just for clarity that the resale royalty would not apply in your example, because it does not apply to transactions between private individuals.

Q50 Mr Doran: There is a bit of squabbling about the virtues or otherwise *droit de suite*, but the fact of the matter is that we have to implement it. How do we do it cheaply, without massive bureaucracy, and making sure that more money gets to artists?

Ms Cave: I think the answer to that is drawing down the option for compulsory collective administration; that delivers benefits to both sides. For the art market professionals they will be able to remit all royalties and all information to one place and not have to deal with lots and lots of individuals. Do bear in mind, because this is international legislation, if collective administration does not occur and all transactions have to be dealt with individually that will also include all international beneficiaries. It will be a myriad number of possible relationships that each individual art trader would have to maintain. We would advocate compulsory collective administration delivering great benefits to the art market. It also delivers great benefits for the

artists, because it guarantees that all royalties that are due would be paid. Not having compulsory collective administration would leave the artists to have to find out that their work had re-sold and we think that is going to be extremely difficult for the vast majority. If one of your constituents in Aberdeen, for example, had a piece of art change hands in a London gallery or auction room I do not know how they would know that that had happened, unless they are one of the rare few that does have an agent that is keeping an eye. In the main, they have no idea. There is only a three-year period in which an artist is entitled under the law to obtain information about a resale, and the chances are they would miss the fact that a resale had occurred and they would not get their royalty.

Q51 Mr Doran: What do the others around the table feel about that?

Mr Browne: You are right, it is a formidable problem and never before has this right applied to a market the size of the United Kingdom from scratch. We do view that with some concern, particularly as the consultation process, to which you referred, started only recently and, therefore, it is clear we will not get a precise view of the legislation until probably the summer and it will be a big problem. Lowering the threshold below 3,000 euros—in other words, extending the scope of this Directive—would simply exacerbate what is already going to be a major problem. I think it is worth saying that there were two prongs in the Government's sterling opposition to the Directive: one was the worry that it would displace the market; but the second, which is a crucial point, is its impact on small and medium enterprises. What I think concerns our Federation is that the smaller auction houses and the smaller dealers we represent who would be conducting a large number of transactions at the lower level—would simply have this administrative cost imposed on them, which has been put (at various studies commissioned by the DTI) at between £30–£40 per transaction. In terms of potential benefits for the artists that Joanna refers to, balanced against the enormous administrative costs and the added administrative costs, it would simply make the whole situation far more complicated.

Q52 Mr Doran: So we need something centralised?

Mr Browne: We see some advantages and some disadvantages in this. Clearly the more artists that do a one-stop shop through the design and copyright side of it the easier it becomes to make it work. Whether or not it should be compulsory I think is more an issue for artists—as to whether they want to be forced to use a monopoly collector. That is more an issue for artists than for ourselves. We see some advantages in dealing with an agency that represents as many artists as possible, but whether it should be compulsory or not, I do not think we have yet formed a view on.

Ms Cave: Could I just pick up on that point. Compulsory collective administration would not give them a monopoly, because the draft legislation

8 March 2005 Mr Anthony Browne, Sir Tom Lighton, Dr Iain Robertson and Ms Joanna Cave

makes it clear that if more than one collecting agency existed they could co-exist and both collect. There would be no issue of monopoly in that arrangement.

Mr Browne: The advantage, it seems to me, is in having one.

Ms Cave: There is only one at the moment.

Q53 Mr Doran: I am interested in all the comments about the impact this extra cost is likely to have. I have taken an interest in auctions and am conscious that in the 1970s, for example, Christie's and Sotheby's introduced the buyers' premium which then was 10%—we survived that. The buyers' premium is now 20% at Sotheby's and Christie's and we have survived that. We are talking about a relatively small sum of money because of the thresholds and because of the limits on individual payments. Are you not being a little hysterical?

Mr Browne: I do not think so. Our Federation represents large numbers of auction houses—some being the ones you have referred to, the international ones, and others much, much smaller—and they have different terms of sale. I am certainly not privy to their profit and loss accounts or what their financial status is. The inescapable fact is that this will be a charge that will apply on transactions here which will not apply (at least for the foreseeable future) on transactions in New York and Switzerland which are our principal international competitors. The implication of what you say is, of course is that it is open to a dealer acting as an agent, or an auction house, to absorb the charge, the *droit de suite* levy, from within his margin, to alter his margin or to do whatever he chooses. It is equally open to him to pass that charge on to the seller, buyer or whoever. I cannot predict what people will do, and no doubt they will take a commercial and financially competitive view on this. The plain fact is we are not being hysterical because—unlike, for example, VAT, where import VAT is refunded on an object which goes abroad, so if it comes in from outside and it then goes out it has a neutral effect—this is an absolute disadvantage for the market here by comparison with its overseas competitors. Whether it makes people here less profitable or it makes it more expensive for the seller, the charge exists here and that is the point I am trying to make.

Ms Cave: No mention has been made of the huge consideration that we feel the Commission gave to this issue when they harmonised the Directive by imposing a cap on the amount of royalties that an artist can earn. That is unprecedented in rights' legislation; no other creator has to live with a cap on their royalty earnings. Steps were specifically taken to protect the art market to make sure the impact was not material, and in full consideration of concerns about loss of sales. Do bear in mind, in the Member States where it exists at the moment there is no such cap so this will represent a massive, massive change. To illustrate the point: Damien Hirst's formaldehyde shark sculpture sold recently for £7 million in this country; had the right existed in this new form when that resale took place Damien Hirst would have earned only a maximum of 12,500 euros, about £9,000; had that sale taken place in

Germany last week where there is no cap he would have earned £350,000. The imposition of the cap has made a huge, huge difference to how this royalty is going to work. On its own that is going to neutralise the concerns.

Q54 Mr Doran: It is in line with the principle *droit de suite* which was to help struggling artists. I do not think anybody could describe Damien Hirst as a "struggling artist"!

Ms Cave: That might be true, although of course he does not get anything out of Charles Saatchi's huge profits on the £7 million sale.

Q55 Mr Doran: Can I ask one other question, and it interests me because I have collected art all my life: what is the value of contemporary art? The reason for asking the question is, I went to an auction recently and bought two very nice contemporary paintings by an artist whom I know and who exhibits regularly in Aberdeen but there was not one jot of interest. The gallery price on them was about £700 for the pair and I got them for £20.

Mr Browne: It sounds like you got a bargain!

Q56 Mr Doran: I am pleased with the bargain—I love the paintings—but what is the value of contemporary art?

Dr Robertson: The perceived value of the willingness of somebody to pay.

Mr Browne: Could I pick up on something Joanna Cave said in terms of this.

Q57 Mr Doran: The fact you are avoiding the question tells me—

Mr Browne: No, I am not really avoiding it!

Sir Tom Lighton: I cannot answer your specific question but it does sound like you did extremely well.

Mr Browne: Chairman, may I pick up on one point. I noticed in the evidence that the Design and Artists Copyright Society produced—and this came out in the question of the diversion of sale—yes, the Government's huge political effort is very, very important and, goodness me, we are grateful for that because it will undoubtedly help in the short-term to minimise the damage that this thing will do; but it really is no good now trying to argue (as it seems DACS is trying to do) that really this does not divert the market because clearly the Commission thought it did, otherwise it would not have introduced this Directive on internal market rules. The Directive, I would remind you all, was introduced in order to remove a distortion to the internal market. Either it distorts the market or it does not. The Commission, although some people may not agree with it, recognises the threat to the international competitiveness of our art market, and in recital seven of the Directive, it specifically makes reference to the need to open negotiations with the Americans and Swiss. If these negotiations fail then I fear that we really are heading (and we may be known for exaggeration from time to time) for a disaster, because when this applies to the 80% of the part of the market which it applies to, when it applies to the

8 March 2005 Mr Anthony Browne, Sir Tom Lighton, Dr Iain Robertson and Ms Joanna Cave

work of deceased artists, Matisse, Picasso and so on, I really fear it will be impossible for us to attract major works by these artists into London unless we can use the breathing space that the Government has got in terms of the derogation, to try and see whether either international negotiations are successful; but if they are not, then I think we should think again. Otherwise we are going ahead knowingly sacrificing something which we are very good at in this country for no very obvious gain. Paradoxically not even the artists (nor their heirs in this case) are going to gain in those circumstances, because if their works are sold in New York or Switzerland they are not going to gain anything either. It is a lose-lose situation for us: we will lose market jobs in the art market; and I do not see that the handful of heirs who gain from this would gain very much either. I am grateful to you for examining this issue again and I hope you will come back to it again, because I do believe that this should not just be allowed to rest. We all say, "Well, the Government did a very, very good job", which it did; having to cope with qualified majority voting under internal market rules, it managed to exact some very serious concessions and they are very important to the market; but we really cannot let it rest here. It is a huge experiment with the future of the market.

Ms Cave: Can I just say, first of all, it is our belief that art sells where it is likely to achieve the best price, and there are many considerations that go into the decision about where to place a sale. As I have just explained, the cap on royalty earnings will mean that no more than £9,000 approximately can be paid out on any one resale. In the research we have done, that always works out at less than the costs of exporting, insuring and packing a piece of work to send it somewhere else. I think also our market in the UK can take comfort from what has happened in other countries, where there has not been this big hysterical rush of art works from Germany, France, Denmark and Sweden to other places. There is a very good example which illustrates that. There was a very important American collection of modern art which contained a large number of 20th Century German works owned by an American collector, and when he was deciding where in the world he wanted to sell this collection he chose Cologne in Germany. Germany has the resale right, it is uncapped, and it exists with a threshold of 50 euros at a rate of 5% across the board. He is an American who could have elected to sell that collection in the States where there is no resale royalty but he chose to send the works to Cologne. The reason he did that (and this took place in December 2004) is that he was advised, "That is where you'd achieve the best prices", and indeed he did. There was a Kurt Schwitters from that sale which achieved a world record price

Chris Bryant: I think I am in favour of the *droit de suite* and, in fact, I am more so now after Mr Browne's last contribution, and it is partly because whenever I have met a dealer or a collector they always seem wealthy and whenever I have met an artist they seem poor. It seems to be part of rectifying that imbalance in life, or perhaps that is a little bit old Labour of me.

Chairman: I have bitten my tongue!

Q58 Chris Bryant: You are not biting your tongue well enough, Chairman! The hyperbolic comments we have had today about diversion seem to be undermined by the comments we have just had. Let me just come to one specific point. Mr Browne, you said that in the last round of contemporary art sales 50% of it had obviously come from outside the country because of the VAT listing. Apart from Sotheby's, Christies and Bonhams, does it matter at all whether those are sold in this country or elsewhere?

Mr Browne: It matters to the auction houses.

Sir Tom Lighton: A lot of what this inquiry is about, as I understand it, is about how we help the young emerging artists; it is not purely about *droit de suite*; that is an important element of it and I think it firmly links to it. As I said earlier, if there are no auction sales of any significance in London there are a lot of young artists of great talent who are showing in smaller galleries up the East End of London, not just in the West End, and a lot of major museum curators come in for the auctions and they go and visit those. You may not believe it, but they do. They would lose that exposure to those people, and they can be very significant in their career. The other thing I would say is, my view on *droit de suite* is obviously quite well known but I think most artists are probably much, much more concerned with achieving the maximum number of first sales, quite rightly. Whatever the merits or otherwise of *droit de suite* their principal income is going to come from the primary market. What they need is a very healthy primary market. If they have a successful relationship with their particular dealer or gallery that is what they are both trying to achieve.

Q59 Chris Bryant: Indeed it would be fair to say, would it not, that for many living artists it is not all that frequent to see many works of art coming up at auction?

Sir Tom Lighton: The other thing you need to remember is, if you bought a painting for £10,000 and in a few years' time you resold it and it only sold for £6,000, you still have to pay the *droit de suite*.

Q60 Chris Bryant: That is the element that seems unfair. You might be paying *droit de suite* on something where you have lost money?

Sir Tom Lighton: We have had the Damien Hirst shark example, but that is not the universal pattern of the art market.

Mr Browne: I am sorry my advocacy has failed in your case. I do think it is important that one looks at the facts and the way it works. I think what Tom has said is absolutely right. One of the paradoxes is that in the first reading of the European Article the Directive was amended to apply the right just to the profit, which I think has some logic, I agree with you, but this was reversed by the European Commission on the grounds that it would make it unworkable. It seems to me that to make this system fair it has to be unworkable or vice versa. I think that is one of its principal failings. Even if I was not in the art market

8 March 2005 Mr Anthony Browne, Sir Tom Lighton, Dr Iain Robertson and Ms Joanna Cave

I would be opposed to it as a principle because it does not achieve what it sets out to achieve. I believe it is a completely outdated concept and it is not the best way of helping artists; all the evidence suggests that.

Q61 Chris Bryant: But it is going to happen now, is it not?

Mr Browne: That is right, and we have got to make it work.

Q62 Chris Bryant: You have seen the document that the Government has come up with which has a draft statutory instrument in it. If it comes to the House it will only get a debate of an hour and a half from the Committee somewhere. Now is the moment to say publicly what amendments you think are necessary to make it work.

Mr Browne: This thing came out in February. I represent possibly even more varied constituents than you do in some ways. I have to consult amongst a large number of people on the precise details of this. One of the things that surprised me most in the consultative document was the paucity of the impact assessment that is attached to it. The Department of Trade and Industry did an impact assessment in 1996 which was lodged in the House of Commons' Library and the Prime Minister asked the DTI to commission a further inquiry from Market Tracking International, which again was published in 1999 and since then there has also been a more recent study in 2003. I am surprised that the most recent study has not been published with the consultative document and that more reference is not made to the impact. When you read the impact assessment and the consultative document you wonder why on earth the Government got so heavily engaged in this because it simply does not bring out all the very telling economic statistics which do back up the case about market diversion.

Dr Robertson: The one thing we have been missing here is helping the intermediary because the intermediary is the person who creates livelihood for the artist. I know it is not part of the document you are proposing putting forward, but there must be a way of actually increasing the opportunities for mastering the primary market to show their work and thereby make a living rather than focusing exclusively on this very small commission or fee they might get from the latest sales of their work. When work goes into the secondary market margins are extremely thin and I do not quite see why so much

focus and attention has been placed on this very, very unhelpful tax. Let us look at some legislation which helps intermediaries.

Q63 Chris Bryant: Maybe you should write to us with some suggestions of what this should include. Mr Browne, you mentioned the £30 to £40 transaction cost. When you buy a work of art at auction a computerised system works out what the premium was, what the VAT was, what the insurance was, all of that. I do not see why it would be all that difficult simply to add another process which says "And the royalty right is such and such". I cannot see how that could possibly cost £30 to £40 a go.

Mr Browne: This was as a result of various surveys that have been done. We do not know precisely because a good deal depends on the legislation, but those have been the figures that have appeared in the impact assessments within various surveys done by the Department of Trade and Industry. It is based on the fact that you will have to be aware of what lots in an auction are liable to this charge and what are not. In a way it is analogous to the costs on a business of managing VAT and so on. There is a cost to the industry of doing this. This is not a cost that the industry is allowed to deduct from the levy itself. The collecting agencies are allowed to deduct 25% of what they get in before they pay it out. The charge on smaller businesses is a cost that they will simply have to bear. I suppose they could pass it on one way or another, but it increases the cost of doing business. If the terms are extended to bring the value level down, I feel that the effect of that will be either to impose an additional administrative cost and complication on the smaller business or, if they are not prepared to do it, there is nothing to stop them saying they simply will not sell those things because it is too expensive to do so. One has to look at the cost benefit. If you take 400 euros at 4% or 500 euros at 5%, whichever it is to be—Sorry, I am wrong, it is 50 euros.

Chairman: We really need to move on to our next set of witnesses.

Q64 Chris Bryant: You have just got the maths wrong by a factor of ten.

Mr Browne: If it costs £34 to collect then you are talking about a rather uneconomical way of going about trying to help artists.

Chairman: We are badly overrunning and we are keeping the Minister waiting. Thank you very much indeed. I hope you feel that you have had the opportunity to put your case.

Memorandum submitted by the Department for Culture, Media and Sport

I. INTRODUCTION

The Department welcomes the Select Committee's interest in the United Kingdom's art market, living artists⁵³ and the production of new work and can offer the following information about the Government's involvement in this area.

⁵³ We have taken the term artists to mean visual artists.

The Department for Culture, Media and Sport has no formal role in sponsoring the art trade. The Department does, however, undertake an informal role as champion on particular issues that affect the UK's art market. This includes, for example, representations to the European Commission about the financial values at which cultural objects require an export licence under European Union. Other individual issues, relating to the art trade, are taken up by Departments with the relevant policy lead.

II. AN OVERVIEW OF THE ART MARKET IN THE UK⁵⁴

UK Market Size: The most recent study of the art market, undertaken in 2001 by the European Fine Art Foundation (a body supported by the British Art Market Federation), indicated that the UK art and antiques market was then worth around £4.2 billion, split roughly 50–50 between auctioneers and dealers. This represented 25% of the global market, with the UK second only in size to the US. In the UK there were 9,500 art dealers and 750 auction houses.

Employment: The same study found that the market employed 28,000 full time and 9,000 part time staff.

International Critical Acclaim: The UK art market receives considerable press coverage at home and overseas, and its activities generate significant public interest.

Growing the Sector: In a flexible global marketplace, in which vendors have considerable freedom to choose the which country in which to sell goods, the UK must remain competitive in terms of price in order to attract works of art to Britain for sale elsewhere.

The UK market is currently in a strong position in this respect. The international market accounts for around 50% of industry revenues and is therefore vital to the future prosperity of the industry.

The industry believes that the principal issues which will help determine its position in that market in the future concern the EU harmonisation measures (eg *droit de suite*, see Question 5) and is lobbying strongly against any measures which could adversely affect its international competitiveness.

1. WHAT ARE THE MOST SIGNIFICANT INITIATIVES UNDERTAKEN BY THE DCMS TO ENCOURAGE THE DEVELOPMENT OF NEW ARTISTS AND INNOVATIVE ART?

DCMS funding for the Arts is channelled through the Arts Council England, which operates at arm's length from Government. All organisational and funding decisions are taken free from Ministerial influence.

DCMS, through Arts Council England (ACE), encourages the development of new artists and innovative art. ACE has a central role in supporting the development of the visual arts. Exchequer funding in the arts has increased from £186 million in 1997–98 to £411 million in 2005–06, a real terms increase of 73%.

DCMS is particularly committed to enhancing access to opportunities for young people, ensuring they get the opportunity to develop their talents, whether in the visual or other artforms, and promoting lifelong learning and participation. Our overarching strategy for arts education is to identify coherent pathways for young people, whatever their background or financial means, to progress from:

- first access to art;
- to opportunities to deepen their interest or develop their talent;
- to support for the most talented; and
- to making a living in the arts.

Current work under our key priorities for visual art includes:

First access to Visual Arts

DCMS is investing at least £151 million up to 2008 in the Creative Partnerships (CPs) programme, a national initiative to develop sustainable partnerships between schools and creative and cultural organisations and individuals. There have been 964 visual arts-based projects supported by CPs to date. For example, CPs in Durham/Sunderland run a project called "Creative Spaces" with artist Lothar Götz. Lothar is working with staff and pupils at Westlea Primary School in Sunderland to create an inspiring communal entrance area for the school. Using blocks of brilliant colour and often dividing walls into bands and grids, Lothar devises special colour schemes to accentuate the particular characteristics of the buildings he works with. Lothar Götz uses walls as canvases to create "walk-in" three-dimensional abstract paintings, so that when encountering his works one feels to be inside fields of saturated pigment. Each work is conceived specifically for the place for which it is realised, and each is on an architectural scale, rather than that of conventional painting. Götz is Senior Lecturer at the University of Sunderland.

⁵⁴ Source: "The European Art Market in 2002—A Survey" by The European Fine Art Foundation.

The popular Artsmark scheme, managed by ACE, seeks to recognise schools in England for their arts provision and requires them to dedicate a minimum amount of time per week to art and design and to provide additional out of hours opportunities in art and design/the visual arts. By May 2004, a total of 2,708 primary, secondary and special schools—were Artsmark schools. 27% of all secondary schools are Artsmark schools.

Deepening interest and developing talent

The Young People's Arts Award provides a means for young people aged 13–25 to increase and sustain their participation and enjoyment in the arts. The Award is currently being piloted by Arts Council England (ACE) in over 100 settings across the country. ACE has allocated £700,000 in 2005–06 to roll out the programme nationally, with further funding to follow;

There are now 304 Specialist Arts Colleges, many of which will be offering high quality visual arts experiences. They are also having a positive impact on first access to the visual arts in their feeder primary schools.

Support for the most talented

The national programme for gifted and talented education, led by DfES, is designed to support gifted children and young people aged up to 19 in all schools and colleges throughout England. It provides support for those with ability in a range of different fields, including the artistically talented.

Support for artistically talented young people is offered at local level through the gifted and talented strands of the Excellence in Cities, Excellence Clusters and Aim Higher—all designed to improve the education of those from relatively disadvantaged backgrounds. At regional level, London Gifted and Talented (part of the London Challenge) is developing support for pupils and teachers across London and this includes provision for the artistically talented. At national level, support and guidance for educators of artistically talented pupils has been provided through the online resource at www.creativegeneration.co.uk⁵⁵ and the National Academy for Gifted and Talented Youth are beginning to engage the arts sector more systematically in providing outreach activities for the artistically talented.

Making a living in the arts

DCMS has been a keen champion and a member of the development group for the Creative and Cultural Industries Sector Skills Council. The new body, Creative & Cultural Skills, is an industry-led organisation which aims to have real influence over the supply of education and skills across the UK.

It will ensure that employers and individuals have access to high quality education and skills. It will aim to increase the vocational relevance of qualifications on offer and provide students with informed choice on courses and career pathways.

The National Endowment for Science, Technology and the Arts (NESTA), was established in 1998 to help create a vibrant, dynamic culture and economy by supporting and promoting innovation and creativity in the UK. To this end, their aims are to help talented individuals reach their potential, to help innovative ideas reach the market, and to contribute to public knowledge and appreciation of science, technology and the arts. NESTA run a series of programmes supporting innovation and creativity, two examples of which are:

- the NESTA Creative Pioneer Programme, which focuses on the creative industries and the unique issues facing individuals wanting to practice in the areas of design and the moving image. The programme offers opportunities for personal and professional development for creative graduates who are at the entry stages of their career. The programme offers a residential course where graduates receive personal coaching alongside intensive experiential training in business practice. They then have the opportunity to win an award of up to £35,000 in start up finance; and
- the NESTA Fellowship Programme which is aimed at providing exceptional individuals with the time, space and resources to pursue their creative goals, undertake speculative research, experiment, break new ground and develop their talent. Help is in both cash and kind with support tailored to individual needs. 20–50 “Fellows” are selected each year, with awards of up to £75,000 spread over three to five years.

NESTA also has a pilot fellowship project “Ignite”, launched in autumn 2003, for exceptionally creative young people aged between 10 and 21 years old. This is being piloted in 2003–04 and aims to reach young people “whose creative ability leaves you standing” and provide them with opportunities to develop their potential.

⁵⁵ Sponsored by DCMS, DfES, ACE, NESTA, Raising Standards and the Centre for British Teachers.

2. WHAT IS THE GOVERNMENT DOING TO IMPROVE GREATER AWARENESS AND INTEREST IN CONTEMPORARY ART AMONG THE WIDER PUBLIC?

Due to a combination of free entry and capital investment in new gallery spaces, many more people have been able to enjoy and experience contemporary art. Since the opening of Tate Modern, with free admission, in May 2000 and the introduction of free admission at the V&A, in combination with the opening of the British Galleries, the number of visits to DCMS-sponsored Art Galleries has increased by 6 million per annum from 9 million to over 15 million (an increase of 67%). This national trend has been further enhanced by the provision of new gallery spaces in the regions, such as the Baltic in Gateshead and the Walsall Art Gallery. Many contemporary regional galleries, such as the Ikon in Birmingham also provide free access.

These galleries mount regular exhibitions of cutting edge contemporary art, widely supported by the public.

Examples of the programmes National Galleries are running to promote greater awareness and interest in contemporary art are:

Tate

The Tate has a range of programmes designed to promote greater awareness and interest in contemporary art among the wider public. These include:

- the Turner Prize, an annual exhibition celebrating British contemporary art practice by artists under the age of 50 at Tate Britain;
- the Liverpool Biennial, a biennial exhibition of international contemporary art, the centre-piece of which is held at Tate Liverpool;
- the Untitled programme at Tate Modern, a series of small scale projects by international artists;
- the Art Now programme at Tate Britain, a series of small scale projects by British based artists;
- regular displays of contemporary artists within the general loan exhibition programme at each site (eg Tony Caro retrospective at Tate Britain, Richard Wentworth at Tate Liverpool, Callum Innes at Tate St Ives, Time Zones at Tate Modern); and
- a significant element of the annual acquisition budget is dedicated to purchasing work by contemporary artists. However, it should be noted that the purchasing power of the acquisition budget has declined markedly over the last 20 years and it is increasingly difficult for Tate to acquire work by leading contemporary British artists.

National Gallery

The National Gallery:

- has a programme of Associate Artists who work with the collection for two years and then display the resulting work to the public in an exhibition: “John Virtue—the London paintings”, the next in the series, opens in March;
- displays the work of other contemporary artists from time to time: the next, “Tom Hunter”, an exhibition of photographs, opens in December 2005;
- encourages people to draw or paint in front of its pictures;
- runs drawing and painting courses and practical art workshops for adults, families and children on a regular basis;
- displays the work of those who take part in our community projects (eg the work of young women in prison at Bullwood Hall was displayed in “The Space@NG”); and
- takes part in and promotes events such as “The Big Draw”.

National Portrait Gallery

The National Portrait Gallery offers national level exposure to artists in three principal ways:

- the Schweppes Photographic Portrait Prize (open to all around the world: nearly 8,000 images submitted in 2004);
- the BP Portrait Award and Travel Award exhibition (presently with an eligibility of artists under 40; open to all around the world; 900 submitted portraits in 2004); and
- the National Portrait Gallery annual commissions programme in which seven or eight commissions are offered to artists each year, to create new works of art for the national collection.

Victoria and Albert Museums (V&A)

The V&A collects and displays a broad range of the contemporary visual and decorative/applied arts, architecture, design, craft and fashion. Objects range from unique crafted artefacts to items of mass consumption and production. Many contemporary artists and designers cite the V&A's collections as being an inspiration for their work eg Vivienne Westwood, Simon Periton, Jean Paul Gaultier, Sir Paul Smith, Gillian Wearing, Jeremy Deller and Tord Boontje.

The V&A runs competitions, exhibitions, and events bringing the best of today's visual culture from around the world to the Museum. All aspects of art and design (including fashion, furniture and product design, craft, graphic design, digital media, architecture and photography) and it consider the interrelationships between these art forms.

National Museums Liverpool (NML)

NML operates on eight unique venues with varied collections covering social history to space travel, entomology to ethnology, dinosaurs to docks, arts to archaeology. It supports contemporary art through:

- Collections—at least 20% of annual acquisitions fund spent on contemporary work. Four galleries are devoted to art from 1950s until the present day including winners and purchases from the John Moores exhibitions; and
- Exhibitions—John Moores Exhibition (biennial) that showcases contemporary painters.

Government Art Collection

Through the Government Art Collection (GAC), works of art are placed in major Government buildings in the UK and around the world to promote British art, history and culture. The works of art create stimulating environments in these buildings for staff and visitors. Since 1898, the GAC has acquired works of art mainly by British artists dating from the 16th century to the present day. The Collection now holds approximately 12,500 works of art in a broad range of media including oil paintings, prints, watercolours, video and photographs.

In undertaking its role, the GAC helps increase awareness and interest in contemporary art by purchasing and commissioning contemporary work and by displaying it in Government buildings in the UK and abroad. Displays of works from the Collection are usually accompanied by interpretative material and GAC staff give talks about works of art both at the GAC and in specific buildings. Many of works of art in the Collection are accessible on its website, www.gac.culture.gov.uk <<http://www.gac.culture.gov.uk>>.

New Home Office Building

In an exciting new development for a Government building in London, a number of works of art specially commissioned from a range of 10 artists will be integrated into the new Home Office building. As well as supporting British art, this project will enhance the building and emphasise its landmark status in the surrounding community.

The project was developed through collaboration between the Home Office, the GAC, architects Terry Farrell and Partners and the Private Finance Initiative (PFI) developer Anne's Gate Property plc.

Artist and curator Liam Gillick was recommended by the GAC and commissioned to enhance the building façade in five key areas designated by the architects. Gillick developed his ideas in collaboration with Terry Farrell. The completed elements are: a coloured glass canopy, coloured glass fins in the ground floor windows and a unique *brise-soleil* (sun blind) above the main entrance. Gillick also designed a hidden text that runs across the façade and sculptures for the front of the building.

Gillick, with the Government Art Collection, then selected six of Britain's most talented artists to create site-specific work for the immediate area surrounding the new building. These include:

- a neon light sculpture inset beneath a bridge between two buildings (complete);
- mosaic rugs to sit in front of log fires cast in bronze in one pedestrian area (complete);
- films reflecting life in Bangladesh and Whitechapel presented on screens submerged in the water feature in front of the main building (in production);
- a large, colourful and playful sculpture that will glow and slowly rotate (in production);
- a sculpture for the entrance plaza (under development); and
- a 26 year project that will, over time, engrave a street with thoughts on what it means to be a British citizen (ongoing).

For the interior of the new building, the Home Office asked the GAC to select artists to develop three other projects. The Home Office suggested one project should include liaison with the Koestler Award Trust, an organisation that supports the rehabilitation of offenders through arts education. The following work has been initiated:

- two wall paintings for areas flanking the main reception desk;
- a large sculpture for the main atrium; and
- a project that promotes the rehabilitation/educational aspects of visual art in prisons enabling the Home Office to establish the Home Office Collection of Prison Art that will be presented at points in the building.

3. WHAT RESOURCES DOES THE ARTS COUNCIL COMMIT TO ARTISTS' PROFESSIONAL DEVELOPMENT, AND WHAT KEY AREAS AND ISSUES HAVE THE COUNCIL IDENTIFIED? HOW IS SUPPORT FOR ARTIST DEVELOPMENT WEIGHTED IN COMPARISON TO PROMOTING ACCESS TO THE WORK OF ESTABLISHED ARTISTS?

Studies on the art market

In 2002, the Arts Council commissioned Morris Hargreaves McIntyre to report on how to cultivate the art market. The results, published in October 2004, make 27 recommendations on how sales of contemporary art and innovative contemporary art can be developed. These are attached to five broad strategic objectives, as follows:

- to help more artists to sell more work;
- to help more people buy contemporary art;
- to develop the supply side;
- to build the collector base; and
- to attract more cash into the sector.

The art market does not have a regulatory body at present and operates mainly on levels of interest in particular artists. Art world professionals (academics, curators, dealers, critics, artists, buyers) advocate and endorse artists' work through exhibitions, critical appraisal and private and public purchases. The value of an artist's work is therefore directly proportional to the levels of interest it attracts and sustains. Sales to public collections are seen as positive endorsement and enhance the reputation of the artist, whereas sales to lesser known, unknown or less respected parties can have either no or detrimental effect on the level of interest in the artist. Therefore, a successful artist can, by maintaining his or her exclusivity and avant-garde appeal, command high prices in the market. Paradoxically, a wider expansion in the market for their art—popular appeal—may work against them by reducing cachet and therefore drive down the prices work can command.

Other initiatives and activities

ACE aims to place the artist at the centre of its activities and to grow the economy for artists. To widen the current market and collector base for contemporary art, the Arts Council's New Audiences Department commissioned research on the size and composition for the market for contemporary art in England for which little data existed.

ACE also funds organisations that provide exhibition space, affordable studio space, business advice and continuing professional development to artists. These include Spike Island in Bristol, Space Studios in London and CreativePeople, a web-based project that provides information, advice and guidance on professional development in arts and crafts.

Crafts Council England, through its "Next Move" initiative, supports arts graduates to establish themselves in business by providing them with access to equipment and resources.

Arts and Business (A&B)

Arts and Business claims to be the world's most successful and widespread creative network. Receiving around £5.5 million per annum from ACE, the purpose of A&B is to promote mutual benefits, helping business to be more successful in engaging with the arts and to increase resources for the arts from business. Funding from central government helps to foster innovative and long-term partnerships between business and the arts through an investment program. See Annex A for details of amounts of funding generated.

To encourage greater corporate sponsorship, A&B highlight the benefits of business/arts partnerships by running a series of Introduction to Sponsorship seminars. To facilitate effective evaluation of these benefits they provide guidance on evaluation and also promote it through their new partners programme.

Own Art

DCMS directly funds "Own Art" through a subsidiary company of Arts Council England. "Own Art" is designed to encourage people to buy art and thereby stimulate the contemporary art market for the benefit of artists. Loans are only available up to £2,000 (to be repaid within 10 months) therefore favouring work by new and up and coming artists as well as appealing to low spend consumers.

DCMS funding for Own Art in 2005–06 is £250,000. “Own Art” is administered by HFC bank (a subsidiary of HSBC). “Own Art” pays HFC a fee per loan, in return HFC administers the credit arrangements, provides a call centre for customers and takes on the risk of bad debt, as well as providing cash-flow. “Own Art” aims to have 250 galleries participating in the scheme. Arts Council England monitors the scheme through a Grant Agreement with DCMS.

The art galleries are carefully selected for this scheme to ensure that they sell contemporary work by living artists and are not at the expensive end of the contemporary art market. The majority of contemporary galleries are small, often linked to subsidised galleries or local authorities. These galleries are important in providing a source of income for artists and giving space for their work to be seen.

4. WHAT ROLE DOES THE BRITISH COUNCIL PLAY IN PROMOTING BRITISH ARTISTS OVERSEAS? HOW IS AN APPROPRIATE BALANCE MADE BETWEEN ESTABLISHED AND NEW ARTISTS?

The British Council focuses on presenting new and young British artists overseas both in the public and commercial sectors. It does this in four ways:

- “Creative Exports”—This is an open-submission scheme for professional artists with invitations to exhibit in commercial galleries overseas. Over 100 artists are supported annually through this scheme.
- Exhibitions—British Council organises around 12 exhibitions annually, focusing on young British artists. These exhibitions are organised with the museum sector overseas, to encourage sales directly into the museum network and to increase awareness of developments in young British art among dealers, art fairs, curators and practitioners. Some recent examples include: “Tracey Emin and David Hockney prints”: tour of Chile, Colombia 2004–05; Anthony Gormley’s “Asian Field”; tour of China, Japan and Korea 2003–05 and Sam Taylor-Wood: first solo exhibition in Russia, 2005 (Moscow and St Petersburg).
- International Biennials and Triennials—The British Council organises and supports British participation in international Biennials and Triennials to maximise coverage for British artists within the international art world. Examples include: Venice Biennale (Chris Ofili shown in 2003; Gilbert and George in 2005); Sao Paulo Biennial (Mike Nelson shown in 2004); Indian Triennial (Roderick Buchanan shown in 2005).
- Displays—The British Council Collection is displayed in offices throughout the British Council Estate in order to maximise awareness of contemporary British art among clients and customers of British Council overseas. The policy is to focus on contemporary developments to support profile of an innovative and creative Britain today. The British Council Workshop sends 4,000 works of art per annum overseas. New commissions by British artists are given whenever possible eg David Tremlett for BC Nairobi; Howard Hodgkin for BC New Delhi; Catherine Dowson for BC Sao Paulo; Paul Morrison for BC Brussels. Special exhibitions of up to 50 works from the British Council Collection are put together for overseas offices to meet public diplomacy requirements, with published catalogue for distribution to wider audiences.

A small proportion of the visual arts programme features historic and older developments, but presented in new ways, in order to introduce overseas British skills in ancillary museum services such as education, lighting and design, architecture, branding and graphics. “Constable selected by Lucian Freud”, shown at the Grand Palais, Paris in 2002–03 is an example.

Government Art Collection

The GAC places works of art in the reception areas of several hundred British Embassies and Residences around the world in order to promote British art, history and culture.

5. IS THERE A NEED FOR A CODE OF BEST PRACTICE FOR GALLERIES AND AUCTION HOUSES? IF SO, WHAT SHOULD THIS PROVIDE FOR, AND WHO SHOULD IMPLEMENT AND MONITOR IT?

The Department does not have strong views either way on the need for a code of practice. However it is aware that there are views for and against within its sectors:

Tate

Each of the four Tate Galleries has spaces available for the presentation of contemporary art. Tate feels a code of best practice would be unhelpful given the very different institutional contexts within which contemporary art is exhibited and displayed and suggest a better way forward would be for Government to encourage specific funding to support contemporary art acquisitions, to encourage funding bodies to support contemporary art practice, and to review the incentives available to encourage acquisitions of contemporary art by public institutions. This could be promoted through existing funding bodies, and through the fiscal regime (cf Goodison).

National Museums Liverpool

National Museums Liverpool welcomes the opportunity to explore with others, the development of best practice guidelines to ensure responsibilities by galleries and auction houses to artists are in place.

6. WHAT ARE THE PROSPECTS FOR ACHIEVING INTERNATIONAL (ESPECIALLY WITH THE USA AND SWITZERLAND) AGREEMENT OVER ARTISTS' RESALE ROYALTIES BEFORE THE UK HAS TO IMPLEMENT *DROIT DE SUITE*? DOES THE UK INTEND TO MAKE MAXIMUM USE OF THE DEROGATION THAT WOULD ALLOW FOR SOME DELAY IN INTRODUCTION OF THE RIGHT, OR WILL IMPLEMENTATION BE TIMELY?

The following sets out the Department of Trade and Industry's position on this issue.

Background

1. The Directive was agreed in September 2001 and requires a "artists' resale right" (often referred to by its French name *droit de suite*) to be introduced by 1 January 2006. The right will entitle artists and, for 70 years after death, their successors in title to a percentage of the sale price whenever original works of art are re-sold in transactions involving art market professionals.

2. The art market has been fiercely against the introduction of the right and a number of concessions were gained during the negotiation of the Directive to minimise the potential damage to the UK art market.

Current position

3. The Government will be consulting on the implementation of the Directive throughout February to April 2005. The full background and draft impact assessment will be published as part of the consultation process. Copies will be sent to the Committee as soon as they are available.

Detail

4. Artists' resale right is intended to support artists by paying them a royalty when one of their works is resold by an art market professional. This supplements their income and encourages them to produce more works to enhance the reputation.

5. There is a risk that sales will be diverted to countries outside the EU (principally Switzerland and the USA, the UK's major competitors), which do not have the right, to avoid royalty payments.

6. To allow the art market time to adapt to the new right, the UK secured a derogation so that the right need not apply to works of deceased artists until 2010 (this may be extended to 2012 if the UK makes a case for requiring more time). These are the high value works in which the UK market specialises and are most at risk of diversion. The UK intends to make full use of this derogation.

7. In 2002 the Commission agreed that it was a priority for the EC to negotiate internationally to make the relevant article of the Berne Convention mandatory so that the right would be introduced in the USA and Switzerland. To date such attempts have not succeeded and both the USA and Switzerland have said they do not intend to introduce the right.

8. It is likely that the majority of payments would be made via a collecting society. This would reduce the administrative costs involved and maximise the benefit to the artists. There is an option within the Directive to make collective management compulsory and the UK is consulting on whether this would be the most efficient process.

7. TO WHAT EXTENT COULD THE INTERNET PROVIDE EFFECTIVE EXPOSURE TO EMERGING ARTISTS? WHAT SUPPORT IS AVAILABLE, OR COULD BE MADE AVAILABLE TO ARTISTS TO ENABLE THEM TO EXPLOIT THIS MEDIUM?

The internet is an important means of providing exposure to established and emerging artists/photographers, particularly through on-line galleries.

There are broadly three types of on-line galleries:

- Long-standing commercial picture agencies/libraries. These tend to have established artists on their books, rather than emerging artists, particularly those that are not working in traditional media or working in abstract art. Agencies hold collections of many thousands or millions of images. They can range from the work of a single individual artist to that of many and enable picture-users to find the image they need quickly and easily. Picture libraries provide artists with marketing and administrative services. Traditionally, this business has been conducted using photographic media, ie film and prints, but an increasing proportion is now transacted digitally and on-line.

- These organizations are in the business of selling pictures: their purpose is strictly a commercial one, to meet the demand for stock pictures from such markets as magazine and book publishers, advertising agencies, travel operators, greetings card and calendar publishers, and many more. Agencies handle pictures of every subject under the sun. Some specialize in particular subjects, while others act as general agencies, covering the whole spectrum of subject matter. They generally work on a commission basis, 50% being the most usual rate, and few buy works from artists outright.
- There is a UK trade association for such agencies—the British Association of Picture Libraries & Agencies (BAPLA—www.bapla.co.uk). BAPLA is the largest organization of its kind in the world. With over 400 member companies, it represents the vast majority of commercial picture libraries and agencies in the UK. Agencies range from small specialists to multinationals, collectively managing in excess of 350 million images, within an industry estimated to be worth over £500 million per year in domestic revenue.
- New web-based sites (eg. www.uklandscape.net) emerging as a result of easier internet access. These are small-scale versions of the larger commercial agencies. Some of these receive sponsorship and may be run as a sideline to an individual's day job. They usually have a commercial element, such as sales of a photographer/artist's work on a commission basis (usually less than 50%). Some of these sites specialize in new artists (eg www.zerooneart; www.outsiderart.co.uk; www.minigallery.co.uk; www.takingitglobal.org, which is supported by the UN (UNESCO and UNICEF));

Many artists have developed their own web-sites, which they use to promote their own work (eg. see almost any photographic magazine or the Bulletin Board on "Amateur Photographer" magazine website—www.amateurphotographer.co.uk—for many examples). They often have online galleries of works currently available for sale, and links to any works in public collections or information on their work that is on display in other places—such as in business premises. Many artists also publish low-volume runs of cards, books and other items for sale, and some auction their work on commercial sites such as eBay.

There are also other examples of the internet providing an outlet for artists' work. Commercial galleries, even those that operate at a very small scale, often have their own websites that they use to promote exhibitions. Art Schools may promote the work of their students in online galleries of their Degree Shows to give wider exposure. Many small museums and public art galleries have temporary exhibitions, which promote the work of emerging artists. These will then be promoted on their own websites and through portals such as the 24 Hour Museum (www.24hourmuseum.org.uk). The Tate Gallery commissions digital art for its website, as do others. Some new media companies commission work from emerging artists during the development of new projects.

Apart from individual Culture Online projects (see www.cultureonline.gov.uk), there are already plenty of examples from elsewhere in the world of online galleries for artists/photographers. In the UK, the Arts Council supports the work of individual artists, many of who work in digital arts, and who publish their work online. The important thing is to get a critical mass of artists to have their work represented, and to get a critical mass of audience in front of it. These two factors are obviously linked and done correctly there is the possibility of a virtuous circle.

Further support could be made available through a portal (public or private) to promote the existing initiatives. New ideas might include a virtual gallery of new art—with an accompanying high profile competition—a virtual Royal Academy Summer Exhibition; and encouraging the commissioning of new art by major online sites, on the same basis as the percentage for the arts in capital spend. There could also be a role for broadcasters; Channel 4 has commissioned new work in the past.

A significant barrier is the position on copyright, where public institutions must obtain the permission of the artist in order to use an image of a work of art in order to promote an exhibition, both in marketing materials such as posters, and also online. In some cases this could result in public institutions being required to pay significant fees to the artist in order for the institution to promote their work. Auction houses have an exemption under copyright law to enable them to use images of works of art in order to advertise the sale of the work of art.

Annex A

RESULTS OF 2002–03 BUSINESS INVESTMENT SURVEY

The 2002–03 Business Investment survey collected data from 2,020 arts organisations. The following information comes from this survey.

In what follows, please note the following definitions:

Museum/Gallery—A venue holding a permanent collection of visual arts or artefacts.

Visual Arts—Non-collection based venues, which are used primarily for temporary exhibitions of visual arts (including public art and sculpture).

In 2002–03 Museums/Galleries and the Visual Arts in the UK raised income from the following sources in the private sector:

<i>Income Source</i>	<i>Museums & Galleries</i>	<i>Visual Arts</i>	<i>Total for all art forms</i>
General Business Sponsorship	14,200,615	3,562,970	64,112,562
Corporate Membership	2,481,273	929,900	13,876,270
Corporate Donations	1,828,314	301,625	6,984,427
Capital Projects	1,845,959	223,050	6,246,555
Sponsorship in kind	1,420,529	1,107,071	14,599,975
Creative training and development	98,890	67,148	3,469,677
Total Business Support	21,875,580	6,191,764	109,289,466
Individual Donations	8,148,735	1,511,782	43,323,067
Friends Schemes	2,318,402	7,248,440	99,382,272
Gift of Shares	159	0	2,454,877
Payroll Giving	3,028	2,794	41,241
Legacies	1,794,788	3,280,661	57,551,657
Total Individual Giving	12,265,112	12,043,677	202,753,114
Total Trust Income	14,004,636	1,738,099	52,896,419
Total of Business Support, Individual Giving and Trust Income	48,145,328	19,973,540	364,938,999

Individual Support of the Arts

Through the Maecenas Initiative, funded by the DCMS, Arts & Business is:

- training arts organisations on how to raise money from individuals;
- undertaking research in this area; and
- developing a stronger understanding of key developmental issues in this area and working to addressing them (a key priority in this, for instance, will be the area of tax and giving).

BUSINESS SUPPORT OF THE ARTS

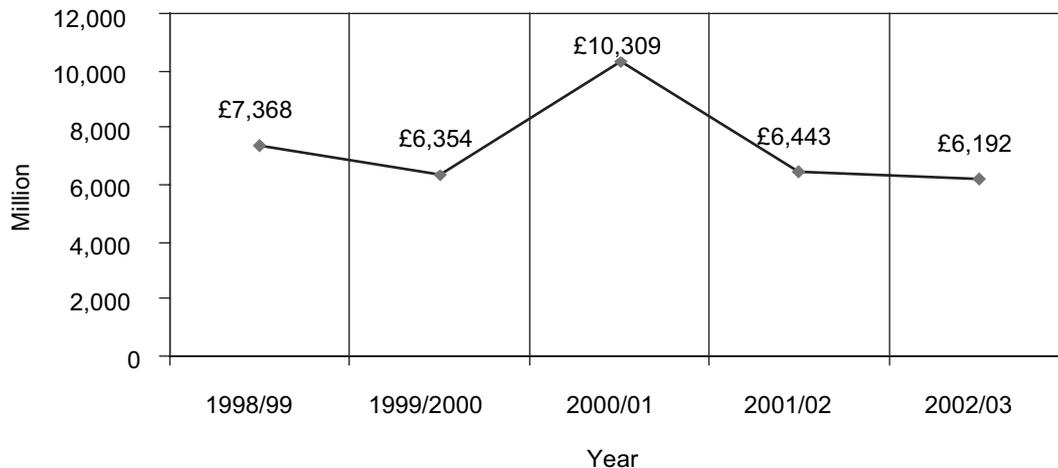
The following table outlines how business support for Museums/Galleries and the Visual arts sector has varied over the last seven years relative to other arts sectors

<i>Artform Category</i>	<i>2002–03</i>	<i>2001–02</i>	<i>2000–01</i>	<i>1999–2000</i>	<i>1998–99</i>	<i>1997–98</i>	<i>1996–97</i>
Arts Centres	3,972,935	3,253,041	2,895,523	1,694,936	1,634,232	1,177,292	1,303,227
Community Arts	2,795,544	3,272,013	1,734,742	1,475,236	1,651,479	1,382,218	752,460
Crafts	194,119	142,035	23,600	162,100	127,139	13,725	39,845
Dance	4,945,900	2,002,953	1,679,744	1,698,170	3,011,503	1,751,730	3,006,472
Drama/Theatre	12,861,843	10,903,777	11,288,531	15,420,589	17,176,612	19,919,157	16,549,317
Festivals	8,776,561	6,711,607	7,086,247	8,984,105	9,751,654	10,418,031	8,119,294
Film/Video	7,973,989	7,601,175	6,049,562	10,594,861	5,399,042	5,875,379	3,847,112
Heritage	4,674,443	2,259,726	3,602,614	3,788,811	6,723,467	1,946,402	2,231,541
Literature/Poetry	1,138,931	1,066,518	1,612,907	1,340,615	793,211	517,115	424,270
Museums & Galleries	23,044,087	25,721,407	25,237,797	38,746,457	31,790,492	18,313,456	12,759,449
Music	14,673,545	9,596,274	10,870,058	10,891,285	12,335,848	10,869,071	11,094,608
Opera	5,530,476	8,585,850	8,345,314	18,122,161	13,035,696	8,055,328	9,707,898
Photography	723,452	414,760	207,500	231,348	1,851,528	813,621	62,700
Services	2,208,202	2,655,495	1,331,240	1,589,362	2,014,689	472,418	360,713
Visual Arts	6,213,457	6,443,240	10,309,402	6,353,526	7,367,971	8,826,481	5,062,723
Other	11,612,354	8,706,280	9,580,349	13,533,497	16,068,578	13,064,571	10,810,263
(Inc. Local Authorities)							
Total	111,339,838	99,336,151	101,855,130	134,627,059	130,760,141	103,415,995	89,680,562

Source: Arts & Business Survey Data 2002–03, 2001–2002, 2000–2001, 1999–2000

When looking at business investment in 2002–03 Museums/Galleries brought in the largest amount of investment (20% of the overall total). In put this into context, Music brings in 20% of the total investment, Drama/Theatre 11%, Opera brings in 5%, Arts Centres account for 4%, Heritage 4%, Dance 5%, and Visual Arts 6%.

FIGURE 1. BUSINESS INVESTMENT IN UK VISUAL ART ORGANISATIONS



Source data: the Arts & Business, Business Investment in the Arts survey

11 February 2005

Witnesses: **Rt Hon Estelle Morris**, a Member of the House, Minister for the Arts, **Mr Nigel Pittman**, Head of DCMS Museums and Cultural Property Division, Department for Culture, Media and Sport; **Lord Sainsbury of Turville**, a Member of the House of Lords, Parliamentary Under-Secretary of State, Department of Trade and Industry, examined.

Chairman: Minister, I would like to welcome you back. We are very glad to see you. Frank Doran will open the questioning.

Q65 Mr Doran: There are two areas I want to look at. We are looking at artists and the art market and one of the things that come up frequently in our inquiries is the benefit to the economy of the arts generally. We had it come up in our theatres inquiry recently and it has come up again here. There does not seem to be any systematic process for producing an impact study which gives us clear economic guidelines as to the value. Is that something which either of your two Departments has been working on?

Estelle Morris: I think it is a very important point. I think the whole issue about the value of the creative industries in general is one where measuring this impact is not always as easy as measuring the impact of some of the other industries and yet it is important. The art market itself is important for the trade, for the auction houses and the London market and the regional market, but I think the skills that artists have in terms of creativity—and they can contribute to lots of areas of our life, whether it be art in health, art in schools, art for social regeneration—is important as well. We did put a figure in our Department on the value of the creative industries and art will be subsumed in that. The Arts Council have begun to try and collect data on the value of art to our community and I think that is something that has to happen. It is very important that we get some agreed criteria against which we collect that data. One of the problems we have in persuading the rest of the nation and sometimes the

rest of Government about the importance of creative industries including art is a feeling that they are not real figures, it is not real money, we could do without it; it is not like nuts and bolts or manufacturing. I think it is important, it is a growing sector of the economy and so the more we can do in working with the Arts Council to get a database and accurate information about the value the better.

Q66 Mr Doran: There is also the problem at the local level. It seems that another gap is that not every local authority seems to be aware of just how important arts and culture are to regeneration, which is a buzzword in itself. Is any encouragement being given to local authorities to go down this route and do their own local impact studies?

Estelle Morris: We have been working very closely with the RDAs and RCCs on this rather than local authorities. Last year we commissioned the RCCs to collect information about the state of all the creative industries in their region. Prior to that there had been no national picture of what was happening in each of the regions. Different local authorities and RDAs were collecting data but it was not against a common dataset. We financed that from within the Department. They have just produced their report. In fact, I was due to meet them this week and the meeting got put back, but that is in train. One of the things that surprised us when we looked at it last year was that there was not in local authorities or RDAs a common understanding and agreed set of criteria as to how they would judge the impact in the

8 March 2005 Rt Hon Estelle Morris MP, Mr Nigel Pittman and Lord Sainsbury of Turville

region and we very much hope to have that data now because the information has been collected against a common standard.¹

Q67 Mr Doran: The second issue I want to look at is the introduction of *droit de suite*. We have seen the consultation document that has been introduced by DTI. A lot of the debate has been taken up by whether or not we should have *droit de suite*, but I think what is more important now is that the Directive is in place, we are obliged to follow it and how are we going to implement it and make sure it works and make sure we do not have an over-bureaucratic system and that we get the money to artists.

Lord Sainsbury of Turville: That is exactly our position. We have the Directive. We are now going out to consultation on this. We want to get people's views on this so that we can get the balance right between the rights of the artists and making certain it has not too much impact on our art auctions where we are considered world leaders. We would very much welcome any views from this Committee to help us frame that in the statutory instrument when we get there.

Q68 Mr Doran: One of the things we have picked up is that there is still tension between the galleries and the art dealers and the representatives of the artists and the artists about how the system should work. I think the consultation document gives us a steer in some directions, but there are others where it is not clear. For example, with the collection process, is the Government looking at a system which would include collectors rather than leaving individual artists to do the collecting themselves, so a *laissez faire* system as opposed to a structured system?

Lord Sainsbury of Turville: I think one of the issues is whether you make the collective system compulsory. I think we are inclined to go that way because it quite significantly reduces the administrative costs of this and that has to be desirable. If you manage the transactions by individual artists it comes to about £38 for art work; if you have it done on a collective basis it goes down to about £28. It is well worth looking at. Our inclination would be to do it on a collective basis and I suspect artists would prefer that as well.

Q69 Mr Doran: Would that mean the Government collecting or would you look to appoint agents?

Lord Sainsbury of Turville: No. We would be appointing a collective agency which already exists.

¹ The *Culture at the Heart of Regeneration* consultation of last summer argued that culture is a key driver in the sustainable regeneration of communities. The document gave a picture of work undertaken in the culture and regeneration area from the local to the national level. It aimed to build on the evidence base, which needs to be strengthened, possibly through the adoption of a shared evidence gathering and analysis framework. This will be taken forward by a Development Forum during the spring of this year. The Forum will also draw together the diverse work currently being undertaken in the culture and regeneration agenda, including that of RDAs.

Q70 Mr Doran: There is still clearly a debate going on about the impact that this may have on our art market, which is extremely important to us and I do not think any of us would want to minimise that. One of the issues that I have been interested in for a long time is the impact that the buyer's premium has on the market. I do not know whether this is something the Government has looked at recently. When I go to an auction I set a maximum price and I now include in that the buyer's premium which means that the seller is getting less. To me that is a disincentive to sell in an auction house. Is this an area the Government is including in its studies?

Lord Sainsbury of Turville: Going back to your original question about whether or not this will affect our position on auction houses, it is bound to have some impact. The extent of that will depend on how the auction houses respond. If you take the situation of a wealthy Italian collector who has got a picture which would come in this category, say a Francis Bacon or a Giacometti, and he wants to sell this, the costs of transmitting it to Zurich or London or New York are probably not very significant, so you could put in either of those. You are then faced with a choice of which is the place you would get the best price for this, the one difference being that if it was going to be London and if it is over £2 million you have got £12,500 extra to pay for this. I think it is bound to have some impact, but the £12,500 is quite small compared to the premiums you would pay on a £2 million picture. It is a particular segment of the market. It is not people who have been deceased for more than 70 years, it is the heart of the market. The auction houses have the ability to adjust their premiums for that range of pictures. There is the question of how they compete on that. All our major auction houses have offices in both Zurich or Geneva and New York and so what you might find is that the picture was sold by a UK auction house in New York or Zurich. It is quite complicated to see how it would work through, but there is no doubt it will have some impact.

Q71 Mr Doran: The law on auctions dates from the 1845 Auctions Act which has not really been updated in a century and a half. Is that an area which the Government is looking at given that the art market has changed substantially and *droit de suite* is just the latest development in the arts market? Is it not time it was updated?

Lord Sainsbury of Turville: It is not something that is top of our agenda at the moment, if it is on the agenda at all. I will certainly have a look at that and see whether this is something that needs to be looked at. We have an interest in this and it is mainly in terms of the normal horizontal issues of consumer protection, competition policy, intellectual property rights, but it might be a good time to have a look at the basis of that Act.

Mr Doran: Let me encourage you to do that. Thank you very much.

Q72 Derek Wyatt: I want to talk a little bit about Creative Partnerships. We heard some comments before you came in about the fact that the artists

8 March 2005 Rt Hon Estelle Morris MP, Mr Nigel Pittman and Lord Sainsbury of Turville

themselves find spaces in towns and cities and then they become very attractive and their rents go up and they have to move out in some areas. Is there anything in the Creative Partnerships that could give space to artists? In schools which are going to go to 18 hours if not 24 hours instead of just the GP surgery and the maternity unit and all these things that are being added to these schools so that they become a community centre there might be a place for artists as well who could live on-site as well as have gallery space.

Estelle Morris: I do not see why not. I think that would be very innovative and it is exactly the sort of thing that could happen. The way that Creative Partnerships might enable that to happen is that it is building a quality of relationship between the school and the artist that was never there before and it is there over time. I would be delighted if as part of extended schools space was made for artists. The one place I have seen that happening in the planning is in Folkstone where a couple of City Academies are doing major regeneration and they have bought up all the old shops to make artists' space, and you can see there that the schools concentrating on art and the towns with lots of space for artists are almost blurring into one.² I think space for artists is one of the biggest issues facing us today. They go from having lots of space when they are students at art colleges to having no space the day that they leave. I think there is an obligation to make sure that they have space to continue their work. I know the Arts Council have invested quite a lot of money in this. I think it would be entirely proper for us to claim a place for some artists' space in extended schools. I think it would fit all of the agenda in terms of improving the curriculum and also out-of-school activities as well.

Q73 Derek Wyatt: I will take you up on that. On the re-sale, which has been one of our issues, your definition of art goes back to the Patents Act of 1988. How would you define what art is?

Lord Sainsbury of Turville: I think it is given in the Directive. I think they are pretty broad. We need to be very clear when we get to the statutory instrument what exactly is covered by this because it goes well outside the visual arts; it goes into jewellery, furniture, all sorts of things. I think we need to look very carefully at how we define that. I think there is an issue here where it is well worth looking at what is happening in other countries that already have *droit de suite* and learn lessons from that so that we do not get it too broad and it becomes unmanageable.

Q74 Derek Wyatt: I was at the Museum of Modern Art in New York the other day and I was amazed at how much video and film there is in contemporary

art in that gallery, more than anywhere else in the world and this is a whole new area I had not got my mind round. You would not deny that, would you? Can you define the art in the statutory instrument or does it require an amendment to the original Act?

Lord Sainsbury of Turville: I think for the purpose of these regulations work of art includes any artistic work within the meaning of section 4 other than a work of architecture or work which is computer generated. I think the categories you are referring to would claim to be works of art.

Q75 Derek Wyatt: Can the statutory instrument define that or do you need an amendment to the original Act?

Lord Sainsbury of Turville: I would need to look at that. We will have a look at that particular point.

Chairman: The question is whether the original Act has got a definitional clause in it.

Q76 Alan Keen: In the evidence we have received there has not been great enthusiasm for *droit de suite*. What room for manoeuvre have we if we do not want to introduce it here? Have we any room for manoeuvre?

Lord Sainsbury of Turville: No, we have no ability not to introduce it. There are questions of a balance here between the rights of the artist and the rights of getting the payments. There are a couple of areas where you can set the boundaries differently. There is the question of whether works of art which are under 3,000 euros are included. We are inclined not to do that because we think at that point the administrative costs become an absurdly high proportion of the actual payments which will go to artists. There is a choice of timing but there is not a choice of bringing it in.

Q77 Alan Keen: What I read tells me that there is absolutely no chance of the States or Switzerland adopting it and so that other solution does not exist, is that right?

Lord Sainsbury of Turville: I think they said that they have no intention of changing and I would have been very surprised if they had stepped forward to do that.

Q78 Alan Keen: I think too many of us spend too many hours sitting in front of the television when we could be painting or drawing. What are you doing to make sure that the 60 million people who were artists in nursery school do not forget all about it as they get older and forget what a wonderful past time it is? What are you doing to let people understand what they are missing?

Estelle Morris: I think we are probably working at it from two angles. Since free entry to art galleries and museums the number of people going to art galleries and seeing exceptionally good works of art has increased massively, so I think that in itself rekindles interest that might have been lost and makes the whole subject one which more people talk about and so it becomes a more integral part of our life. I think more has to be done in schools and we have tried to do a lot in recent years on that. You are right, your

² The Minister meant to say—The one place I have seen that happening in the planning is in Folkestone, where Roger De Hann, who is sponsoring Folkestone Academy is doing major regeneration and has been buying up all the old shops to make artists' space, and you can see there that the schools concentrating on art and the towns with lots of space for artists are almost blurring into one.

8 March 2005 Rt Hon Estelle Morris MP, Mr Nigel Pittman and Lord Sainsbury of Turville

children did not go to school knowing how to read and write, but they did go to school and learn how to draw pictures and sometimes by the age of 18 they left feeling they did not have to draw pictures any longer whereas they could read and write. The DCMS introduced Artsmark as an opportunity for a school to show its prowess in art. Art and creative subjects do not get a very high billing in the performance tables that are published. Artsmark was designed to make sure that schools could have recognition for the art work that they do. I am very optimistic about the role that the over 300 specialist arts colleges will play. What I would really like to see happening is ideally, if you have got an arts college in every community, that becoming a focal point for art in the community and they are honour bound as a specialist college to make their facilities open to the wider community as well. What we have seen a loss of over the years is what might have been considered the old fashioned further education classes where adults went during the daytime if they were not at work or in the evening for arts. I think they have tended to get squeezed out a bit in the pursuit for literacy and numeracy and skills which help productivity in the workplace. I have got no complaints about that, but it should not be either or, it should be both. I hope in future years the specialist arts colleges will be seen as the place in the community where people other than young children can go to carry on with their artwork. I think there is a range of initiatives around. There is the gifted and talented work which has been introduced by the Department of Education and that includes those children who are gifted and talented in arts and the arts award for young people that has been piloted and will be rolled out nationally. We are trying to change the culture in schools so that it is not something which vanishes by the time the children get to secondary age, and then what you have got to do is to make sure that there is progression. Universities that specialise in the arts and our arts colleges have got work to do there so that there is a seamless transition through from school to college and beyond and then back to school to do the arts classes in the specialist arts colleges.

Q79 Alan Keen: There are lots of facilities in the private sector within local areas where they are not being used fully. I asked a question in relation to theatres last time of the person from Wales who mentioned that the Welsh Assembly is encouraging local authorities to form arts forums and that is really to bring people together in an area to help get the best out of the facilities and the knowledge and the enthusiasm that is there. Have you looked at this scheme at all?

Estelle Morris: We ought to be offering something and I would be happy to do that. I would see cultural consortiums as taking the lead role within that for doing an analysis of what the cultural needs were in an area. I take your point. I think more can be done and if there is a good example somewhere else I am more than happy to look at it. I think the whole of that relationship, which we did touch on the last time I was here about the role of that creative cultural

sector higher up the agenda, is one where we still need to see lots more progress. I think the work that has been done in Renaissance in the Regions, which I know is particularly in museums, and which throws open the whole galleries and the museums sector to decision-making at a local level is one that would be helpful, but I would not claim for a minute that out there in every local authority there is an eagerness and a speed of action in making sure that this sort of activity is higher up the civic agenda. Equally, as I said to Mr Doran about the RDAs, we ought to look beyond local authorities and at the regional agenda in this because I think that could be quite an important driver given the economic impact of the sector.

Q80 Alan Keen: Take the local authority of Hounslow, it is easy to see there are two theatres and there is a gallery attached it, the Watermans Arts Centre. There is the Wand Street Cinema as well and that is a great place. Also—and this is not my constituency, it is the posh end and that is not part of my constituency when it comes to election times—at Chiswick you have got a café society there. Chiswick High Road is filled with cafés; new ones are opening and old ones are closing and what a wonderful venue they are for art. If we have someone locally who is going and encouraging these sorts of links, it can only be good, can it not?

Estelle Morris: Sometimes it can be something as simple as the display of local artists' work in those places. I think local authorities probably can do more to display local work in civic buildings over which they have responsibility for, quite honestly, not a lot of extra cost. One more thing: what you are talking about is changing the culture so that our urban areas and rural areas as well have at their centre an appreciation of culture and an availability of art to everybody who lives there. We have talked about—and you are well aware of this so apologies really—the whole regeneration on the back of art and culture that is taking place in most of the old Victorian cities now. If you go to the centre of my constituency in Birmingham or in Manchester or in Leeds or in Liverpool there is very, very little regeneration being done there or there are very few buildings being built where there is not art on display. Last week I went to see the new Home Office. I think that is the first government building that has been built in central London for a long time, and that has had artists working with the architects when the building was designed and built not as a bolt on extra but almost accepting that you do not build a building unless you look at what art can contribute. We are further along the road than we were but I do not think we have changed the culture yet. I do not think we have got that café society—and I use that as a short form for appreciating art as well—throughout all of the areas where people live, but I think we are better than we were a decade ago.

Q81 Chris Bryant: Just on the resale rights briefly, Lord Sainsbury. Sub-section 17 of the preamble to the Directive allows Member States that do not already have any system of re-sale rights to delay for

8 March 2005 Rt Hon Estelle Morris MP, Mr Nigel Pittman and Lord Sainsbury of Turville

some period the implementation for deceased artists. You make no reference to that in the consultation document but I wonder whether that might not meet the problem that some of the art houses have been referring to in terms of diversion away to other countries?

Lord Sainsbury of Turville: We secured a derogation on that so that it does not apply to the works of deceased artists until 2010. That may be extended to 2012 if the UK can make a case that they require more time. So I think we will do it until 2010 and then obviously we will have to look at it again as to whether at that point we could make a case for requiring more time.

Q82 Chris Bryant: That seems a pretty sensible way forward because then works of art that were selling for £2 million by Giacometti or Francis Bacon might still remain in this country notwithstanding that.

Lord Sainsbury of Turville: It would delay the process and in that sense give the auction houses more time to deal with the problem, but of course you still eventually get the same issue. I think we do need to make certain that the auction houses do have time to adjust to this particular problem.

Q83 Chris Bryant: A completely different issue, the Goodison Review. As you will know, there are several much-loved paintings in art galleries in the UK which belong to owners who might at some point choose to sell them or whose estates might choose to sell them. There is a sort of “at risk” register of paintings. I wonder whether you are hopeful that the Budget will make any announcements on fiscal changes?

Estelle Morris: I always remain hopeful about what the Budget might do, ever since 1992.

Q84 Chris Bryant: But have you made a case to the Treasury?

Estelle Morris: We have made a case. The Goodison recommendations clearly fell into two parts. One was the responsibility of the DCMS and the other was directly the responsibility of the Treasury. We have delivered all the targets from the DCMS and the rest is for the Treasury.

Q85 Chris Bryant: It is now incumbent upon the Treasury to meet the DCMS’s delivery targets?

Estelle Morris: I suppose you saying that might assist the DCMS!

Q86 Chairman: Hence the saying “that will be the day”!

Estelle Morris: I think we live in hope rather than expectation.

Q87 Chris Bryant: Oh dear! That sounded like a counsel of despair. Let me try another issue. We have heard earlier today that the art market is one of the last completely unregulated markets in the UK and we know that got the auction houses into some difficult problems some 10 or 15 years ago, as we all know, but some artists have been saying to us that there are real problems about the established

relationship between artists and dealers and whilst I suspect that most of us on the Committee will be hesitant about bringing in any government legislation to regulate in the area, I wonder whether the model that the DTI has been using to try and enable without legislation employment rights for clergy where they have brought all the groups together and have negotiated a code of practice might not be quite a good way for DCMS to proceed or DTI, whichever, to try and bring about a better sense of fair play between artists and dealers and auction houses?

Estelle Morris: This is an interesting area. I have given it more thought since your Committee announcement than I had previously.

Q88 Chris Bryant: When you did not any strong views.

Estelle Morris: We welcome what your Committee might say on this. I would not want to go into regulating the market; I do not think that is right. Just for the record, the Government has no intention of starting to regulate the market. I do not think that would be helpful. I am conscious, however, that it is a particularly difficult market to get into if you are a young or not so young person leaving university with some skill. Because we meet artists we are aware of some of the difficulties. I notice that the Arts Council evidence talked a lot about managing that interface between artists and the sector. I am wondering if that is a way to go forward so that young artists are given guidance on what they ought to charge. I notice that is part of the Arts Council England evidence to you. I would sooner take that approach than I would a regulated approach but a lot of people in preparation for this hearing have talked about a code of practice. It depends on what a code of practice means. If after hearing the evidence that you have taken today it was thought that we ought to look at it in the DCMS, we are more than happy to reflect on the Committee’s recommendations. It was not something that we intended to do.

Q89 Chris Bryant: Maybe a code sounds too regulatory.

Estelle Morris: Too regulatory, yes.

Q90 Chris Bryant: But movement towards best practice. For instance, some of us found it incomprehensible that there is not an expectation that an artist would have a contract with the dealer, and if there was a suggestion of good practice then that might make it easier for individual artists not to fall out with their dealers.

Estelle Morris: I do not think there can be anything wrong with looking at good practice and making it available to people. I think there is another approach in this as well and that is giving artists the skills they need to negotiate entry into the market and survival in the market. It is something we have spent a lot of time on over the last 12 months and all the evidence shows that no matter what art colleges do to try and teach this and make this available to students at the arts colleges, they do not want it, they

8 March 2005 Rt Hon Estelle Morris MP, Mr Nigel Pittman and Lord Sainsbury of Turville

want it at the point at which they need it. Over the last 12 months there have been quite a few initiatives of continuing support for young artists after they have left art college or university to give them the business skills and the wherewithal to manage to cope with entry to the market. I do not think there is anything wrong in a good practice guide but I think essentially you have got to make sure that young artists have the knowledge to know what their rights are and to know what they may argue for and to know where to go for good advice at the point at which they need it.

Q91 Chairman: When we were in Paris last week I asked the relevant officials of the Ministry of Culture there whether there was not a danger that the implementation of this Directive might lead to driving elements in the art market underground with cash payments rather than registered payments, throwing doubts on provenance, and accompanying the possibility which already existed, as we have discovered in this Committee, with regard to the art market and the art market being used even more for laundering other transactions, including drug transactions. Have you thought about that and have you got a view on that?

Lord Sainsbury of Turville: It is important to realise that the Directive only applies to sales which take place through professionals in this market. In that context I think it has to be another factor which would tend to push people towards selling without going through the professional art market because by the time you have added on premiums, *doit de suite*, and so on you are making it increasingly expensive to go through the professional art market, so I think it would have to have the impact of having more things going through personal sales between individuals. There may be other problems of money laundering and drugs and whatnot, but I do not think this would have any impact on this. It might lead to more sales through individuals selling to one another with those issues of authenticity and so on which would arise from that.

Chairman: Thank you very much. We have had a very meaty session this morning and I find it interesting, if sad, that when some of the greatest experts in the field have assembled to discuss the future of the most important art market in the whole of Europe, not a single journalist, even from the posh papers, has bothered to turn up. Oh, there is one journalist from a posh paper. You should have sat on the journalists' bench and then I would have been able to identify you, but thank you for making your presence known.

Written evidence

Memorandum submitted by BECTU

BECTU is a trade union representing workers in the cultural and media industries, specifically including a number of visual artists.

Whilst our visual artist members work mainly in cinema and television and other sectors of the creative and media industries, many produce works of fine art alongside their commercial work. We also have a number of members who are wholly fine art practitioners.

BECTU welcomes the inquiry by the Culture Media and Sport Committee into the sponsorship of the UK art market and into ways of supporting and encouraging living artists and the production of new work. It also welcomes the Committee's interest in the artists' resale right.

We do not wish to comment on the sponsorship or functioning of the UK art market as this falls outside BECTU's remit. There are many ways of supporting and encouraging living artists and the creation of new work but it should be recognised that many artists normally earn their living from a range of sources and not just from the sale of their artworks. Copyright provides an increasingly important revenue source for them, a source from which every artist can earn an income, if not a living, from their work. The artists' resale right, as part of copyright, will contribute to that once introduced in the UK.

We would also like to stress the importance of ensuring that the education and training of artists includes professional practice issues such as copyright and contract law, financial management, health and safety as well as purely creative subject. These are vital skills for every artist and underpin their professional future.

As far as the Department for Culture Media & Sport are concerned, we note its interest in mapping the Creative and Cultural Industries to encourage proper statistical research into and analysis of the sector and its increasingly important contribution to the UK's creative, cultural and knowledge based economies. We also welcome the DCMS and DTI cross-departmental IP Forum and look forward to seeing more such initiatives. For example, joint initiatives with DfES on the skills needs of artists working in the art market and in other more commercial sectors.

Our main comments are on the Directive on the Artists' Resale Right (2001/84/EC) and its implementation here in the UK. BECTU strongly supports the introduction of the Artists' Resale Right in the UK, its harmonisation across Europe and work to ensure its future at International level.

As far as the UK is concerned, we believe that the artists' resale right is a fundamental right of all artists. It is an integral part of copyright to which artists are entitled. If implementation is to provide the highest level of benefit for artists then the UK should not seek to implement to the minimum standard required by the Directive, but should legislate more generously (also provided for by the Directive). In that way younger and lesser known artists will obtain greater benefit from the right.

With this in mind, the following are our views on implementation in the UK of specific articles in the Directive:

1. ARTICLE 3—THRESHOLD

BECTU recommends that UK Government applies the minimum threshold of €1,000 and not the maximum threshold of €3,000 for sales to which the resale right applies

This will provide maximum benefit to younger and less well known artists.

We believe there is no substance to the argument that the resale royalty paid on sales below €3,000 are too small to be administered economically. In recent years BECTU members have benefited from the collection and distribution of much smaller sums by DACS, for example, those resulting from the licensing of photocopying. DACS is also responsible for the licensing of individual reproductions of works by fine artists, including low as well as high value transactions. Experience of other collecting societies, such as the Authors' Licensing and Collecting Society, demonstrates quite clearly that it is possible to distribute small sums efficiently, transparently and economically.

2. ARTICLE 4—ROYALTY RATES

The UK should opt for a royalty rate of 5% on the lowest resale price band

For the reasons outlined above, BECTU believes that the UK Government should opt for a rate of 5% which will be more generous to younger and less well known artists.

3. ARTICLE 6.2—COLLECTIVE MANAGEMENT & ARTICLE 9—RIGHT TO OBTAIN INFORMATION

DACS is the organisation to manage and administer the resale right on behalf of all artists in the UK and compulsory collective management is the preferred option

BECTU prefers compulsory collective management of the right through DACS or, at the very least, the granting of the right to information (Article 9 and Recital 30) to DACS as the UK's only collecting society for visual artists.

First and foremost to develop a single source to provide swift and speedy collation of data on resales and the matching of this to data held on artists. In turn this will reduce compliance difficulties for the art market by providing them with a single body to which data on sales is submitted.

There is only collecting society for visual artists in the UK and that is DACS. It is an organisation established for and governed by artist members and operates on a not for profit basis. It has a large number of reciprocal agreements with other similar visual artists collecting societies elsewhere in Europe (and internationally), which manage the resale right in their countries and it can thus guarantee the reciprocation of resale right revenue streams between the UK and other countries.

It has in recent years developed rights management systems which not only handle primary licensing of works by its fine art members but also handle revenues from a number of collective licensing schemes. DACS has worked tirelessly to ensure that sums received from the collective licensing schemes are available, accounted for and distributed to any artist with a valid claim and not just to its members (through its "Payback" programme). BECTU, amongst others professional bodies was consulted by DACS on the arrangements for these schemes, has participated in its distribution work and has supported DACS throughout.

If DACS, as the collecting society for visual artists, is acknowledged by UK Government as the collective management body for the artists' resale right it can reduce the possibility of individual artists being pressurised into non-exercise of their right. In addition, DACS can help compensate for the current low level of artist awareness of the right and its exercise by actively seeking out artist claimants, even where those artists are not direct members.

4. ARTICLE 8—EFFECT OF IMPLEMENTATION ON TERM

The term of protection of the resale right should be the life of the artist plus a further 70 years and this should be applied to all artists from the date of implementation

Anything else would be ungenerous to the heirs and estates of deceased artists and further distorts differences in implementation of the right between EU Member States and, in the UK between the treatment of heirs and estates of those who create literary, dramatic and musical works and those who create artistic works.

Memorandum submitted by the British Copyright Council

The British Copyright Council is a national consultative and advisory body working on behalf of organisations representing those who create, or hold interests or rights in literary, dramatic, musical and artistic works, and those who give performances, or hold rights or interests in performances under the Copyright Designs & Patents Act 1988 as amended.

The Council has no direct involvement with the art market and no specialist knowledge of the way in which it functions. We leave it to those professional organisations and bodies which represent artists directly to comment in more detail. We welcome increased Government interest in the status of the creator and performer, and in this case, the artist. Creators of all types make a major contribution to our creative, cultural and media industries and they and their work should receive proper respect, protection and remuneration.

We have watched the progress of the European Directive 2001/84/EC with great interest and have been kept informed of developments by those organisations on whose members it will directly impact. Our member, the Design & Artists' Copyright Society (DACS) in particular, has provided us with regular briefings.

In discussions with Government representatives and with representatives of the European Commission, the Council has over many years given its support to the harmonisation of the resale right and its introduction in the UK.

The artists' resale right forms an integral part of copyright and provides a means by which visual artists, whose work is rarely reproduced to the same extent as that of other creators and performers, can retain an economic interest in their work.

All artists should have the opportunity to benefit from the resale right whenever their work is resold. However, we feel that it is particularly important to implement legislation in the UK which ensures that younger and lesser known artists will also reap its benefits. We therefore recommend that the Threshold (Article 3) should be €1,000 and that a Royalty Rate (Article 5) of 5% should be applied for the lowest resale price band.

It is also essential that every possible encouragement is given to the Design and Artists Copyright Society, as the British collecting society for visual artists, to manage the right on behalf of British artists. It is our experience that collecting societies such as DACS provide the best method for ensuring that creators and performers receive their rightful share of certain types of royalties, such as resale right payments.

If you would like further information or assistance from the British Copyright Council, please do not hesitate to contact me.

10 February 2005

Memorandum submitted by the Contemporary Art Society (CAS)

BACKGROUND

- CAS is a charity that buys works of art by living artists for its member museums and has done so since 1910.
- CAS' individual members are largely collectors of contemporary art.
- CAS earns income through advising companies on how to purchase or commission works of art from artists or their dealers.
- CAS also earns income, and supports artists, through an annual art market, ARTfutures, at which works of art are for sale on behalf of artists.
- CAS has run a £3.5 million Special Collections Scheme in England (with £2.5 million from the Lottery through ACE and matching funds from museums) which made substantial purchases for public collections; a similar scheme, the National Collecting Scheme for Scotland currently operates with Lottery funds from the Scottish Arts Council; no funds have been forthcoming, yet, for the continuation of the English scheme to the detriment of artists, museum audiences and dealers in Britain.
- CAS has recently set up two membership groups for young collectors: blood in London and Spin, in partnership with the National Galleries of Scotland and, soon, a second branch with a public partner in Glasgow.

VIEWS

- There is a large potential collector base in Britain as both recent ACE research (Market Matters/Taste Buds) and the success of Frieze Art Fair/Zoo indicate.
- Without a substantial national market, dealers seek to sell outside Britain through carefully managed museum and auction sales; exponentially, museums can never catch up with increased prices.
- Without active public collections, private individuals are not given the confidence to begin collections or develop relations with museums as potential donors; the situation is bad in London and severe in the regions and in Scotland.
- Implementing droit-de-suite is less important than changing the laws governing tax relief on gifts of art to museums during the donor's lifetime; the income and recognition that accrue from museum acquisitions is more valuable.

RECOMMENDATIONS

- Re-establish adequate purchase funds for museums, both national and regional, preferably through the creation of endowments.
- Change the tax system to encourage more major purchases to be made in Britain by British tax payers, if works could be subsequently given to museums, and not just national museums, in lieu of tax during the donor's lifetime.
- Re-establish funding for CAS Special Collections Scheme and widen it to the waiting list of museums so that carefully designed collections and commissions of contemporary art and craft can support artists, develop regional audiences and extend the number of active supporters and collectors of contemporary art in areas beyond London.
- Establish which DCMS-funded organisation has collections of contemporary art as its remit: ACE does not have museum collections as its focus although it maintains its own loan collection; MLA does not focus on contemporary art nor have specialist staff in this area.

- Increase the matched funding for contemporary art purchases within the MLA/V&A Purchase Grant Scheme.
- Look at the success of artists' initiatives and commercial galleries in Glasgow, and subsequently Edinburgh, and use evidence as a template for the development of public collections and a collector-base in Manchester and beyond.

February 2005

Memorandum submitted by Deborah Rawson, Executive Director, ETA

“A PARTICULAR FOCUS IS WAYS OF SUPPORTING AND ENCOURAGING LIVING ARTISTS AND THE PRODUCTION OF NEW WORK.”

1. ETA is a development agency based in South East England. We provide professional development services for visual artists and craftspeople in the region which take the form of skills training, information and mentoring. We help artists make connections to the contemporary art markets principally through our mentoring schemes.

2. At ETA we believe that a healthy art practice is one in which the artist has the resources to take time to reflect, plan and act upon the conditions of their practices. We support artists who want to “stand back” and take stock help and them reconnect with their markets and audiences. We also bring regional artists into contact with writers, critics, curators who have an active role in the contemporary art markets.

3. We pioneered the first mentoring scheme for artists 10 years ago. Our mentors spend 18- months working with small groups of artists and offer ongoing critical dialogue about their work. We find that strengthening the practice itself results in tangible outcomes such as commissions, exhibitions, new contacts and so on. We deliberately work at a high level and believe there is a direct correlation between the time spent on support services and the quality of the experience.

4. Regional artists are particularly disadvantaged because of the concentration of art markets in London. What is lacking are opportunities for regional artists to (a) improve their art; (b) earn income directly through sales of their art; (c) connect with art markets and (d) to present work.

5. Artists are adept in responding to changing climates. For example they tailor their outputs (their art) to service other agendas (such as social inclusion, health, education, regeneration) and in recent years job opportunities and funding for artists have tended to lie in these fields. However, these agendas tend to distort artists' work and hamper the development of their art.

6. There are initiatives which focus on business start-up (advice and information) but few address the quality of the art itself and its place within the Art Markets and audiences for art. Also, there are few differentiated initiatives pitched at an appropriately high level which suit mid-career practitioners.

7. As the Committee is interested in supporting artists and the production of new work I would suggest that it starts with an understanding of the characteristics of mid-career artists. My 20 years' experience in the field tells me that, because artists work in isolation, they can:

7.1 Become prone to uncritical repetition of models of activity that have been successful in the past.

7.2 They become increasingly unsure of the relationship between critical thinking and production; they can fail to refresh their ways of thinking in response to new developments in their field; their established professional networks can remain static.

7.3 They can fail to assimilate changes in types of opportunities, audiences and markets into their thinking about the practices' direction and purpose.

7.4 They can become unsure of their position in relation to other practices; production can become a refuge from an increasingly disconnected field.

7.5 They lack the experience to present work professionally and to deal with curatorial or commissioning relationships.

8. We believe our work is valuable and makes a considerable contribution to artists' chances of success because it addresses these difficulties directly. Our work is informed by, and delivered by, experts at the top of their profession.

9. However, it is difficult to sustain this type of support because of a lack of resources. Whilst there has been unprecedented levels of funding for the arts in recent years (Arts Council, Lottery, NESTA *et al*) we find that our work does not fit easily with the criteria of these Government funded agencies because:

9.1 We cannot claim that the artists we work with are particularly disadvantaged (many are educated to degree level).

9.2 Our work is not specific to a particular community apart from the SE region in general.

9.3 Our work does not specifically deal with social inclusion issues (although if artists are helped to make better art then their work in these fields will be better).

9.4 We want to focus on offering high quality services which need a corresponding level of investment.

9.5 Our work doesn't immediately benefit others because we are investing in time for artists to reflect; the benefits come two to three years down the line.

9.6 Our work has matured over 10 yrs so we cannot claim it as a new initiative.

9.7 Our organisation is too small (turnover £150,000, one employee, 15 casual freelancers) to reach large numbers of artists.

9.8 We are looking for resources to sustain that which we already do, so that we have stability which will enable us to direct our resources towards expansion.

10. We believe it makes economic sense to invest in mid-career artists (but not exclusively) because they are in a better position to make use of the investment. Mid-career or mature artists are largely ignored by existing support structures mainly because they require sophisticated services, which demand expert knowledge. The current trend for artist-led initiatives and peer critique groups, whilst laudable, does not actually help artists to make connections with the host of professionals who make up the arts arena (writers, critics, curators, commissioners, etc) and these are the connections which lead to real opportunities for new work.

11. There is more training available and access to good information as never before, but the gap lies in serious critique—paying attention to the quality of art produced, and how it is presented to audiences. The support system for artists is skewed. The majority of artists can run a good workshop and understand their rights under contract law, but many haven't been able to attend to their fundamental and primary job which is to create art which is located within contemporary discourse and markets.

12. I would recommend that the committee consider broadening the scope of existing funding opportunities (ie NESTA, Arts Council and Lottery) to encompass support structures for artists which address art itself. The DCMS could also consider direct sponsorship of activity which promotes critical development and the production and presentation of art.

February 2005

Memorandum submitted by Fosterart

Thank you for the opportunity to respond to your inquiry. I am a relative newcomer as an art market professional, having had a 25-year career in IT and banking prior to starting this business two years ago. A collector for a number of years, I started the business to "foster art", ie to develop additional audiences for contemporary art. My goal was to get more great work into circulation by breaking down the barriers that prevent people from experiencing art in the first place, including reducing the cost and risk of the "art transaction".

After looking at several alternative ways of meeting this objective, we decided to go down a new path by establishing a "virtual" collection of artist-owned work that is vetted by a panel of experts and available for borrowing or purchase. We've called it the Fosterart Collection. Because we have established relationships with like-minded artists that want to have their work in the public domain, the Collection is a reliable source of high-quality work.

(Diagram not printed here.)

A. PROACTIVE DISTRIBUTION SERVICE FOR ARTISTS

Artists are invited to submit work. If selected by an independent panel of experts, the work is included in the Collection and then actively placed with subscribers. This service is an additional income-generating channel for artists and is maintained alongside any existing gallery arrangements. (Collector-owned work is not precluded from being in the Collection, but the focus is on Artist-owned work.)

Participation in the Collection is intended to be prestigious, with an ethos of public service, lifetime relationships with artists, quality work, and economic sustainability. The project/exhibition space at 20 Rivington Street, in collaboration with members of the selection panel, is used to profile artists participating in the Collection.

AN ART MANAGEMENT SERVICE FOR SUBSCRIBERS

Art in the Fosterart Collection is proactively placed with institutional or private subscribers on either a hire or purchase basis. Subscribing to the Collection is a good way to support contemporary artists on a long-term basis, continually experience new work, and invest selectively. The goal is to form long-term relationships with companies and public institutions and manage some or all of their art collections.

We have agreements with several NHS Trusts that allow them to borrow work from the Fosterart Collection, provided that sponsorships can be arranged to fund the subscriptions. We have already installed work in two locations and are actively seeking sponsors. If this programme is successful, thousands of health service workers and members of the public will have the privilege of experiencing some of the best contemporary art available in a less reverential setting. Hopefully, companies will be inspired to both sponsor work in the NHS and borrow work from the Collection to benefit their own employees.

CURRENT STATUS

The Collection is officially launched with the first exhibition on 3 March 2005, at 20 Rivington Street. The selection panel has been formed and the first round of invitations and selections took place in late January with over 50 artists participating. Five companies are currently subscribing to the Collection.

A copy of the artist agreement is enclosed (*not printed*).

12 February 2005

Memorandum submitted by Mr Anthony Green

“*Droit de Suite*”—a levy imposed by the European Union (nobody asked my opinion!).

This bureaucratic intervention will really only benefit the super-famous and financially already secure few (Picasso, Chagall, Warhol etc), their widows—and their lawyers.

I have traded as a professional painter for 40 years, exhibiting in 100 one-person shows in the UK and around the world. I earn a modest but comfortable living—despite never owning a new motorcar or a house in a London postal district! When my work comes up at auction it fetches (1996–2005) about 60% of my current market prices—slightly embarrassing to say the least.

Nobody forced me to sell my paintings for £50 in 1962 or £750 in 1976—but because they were bought at those prices then, it allows me to sell an equivalent work for £8,000 in 2005. Good luck to those early buyers and agents! It would be puerile to blackmail them intellectually into giving me a sweetener now just because I have been increasingly and modestly successful. If my work was still very cheap, should I return those early fans their money while they foreclose on my palette and paints? I think not! I certainly don't want to have an automatic resale right attached to my new work since this might well affect the price. I can charge, with buyers asking for a corresponding discount to take account of this.

Don't throttle the art world with “School of Paris” bureaucracy (thought up pre-1939)—just let me and my fellow artists, our agents and dealers get on with the business of trading freely with brave collectors and prescient fans.

1 March 2005

Memorandum submitted by Laura Hunter

Could I draw your attention to the following problems which seriously impede working artists trying to earn and sustain a living from their practice within the commercial gallery system in the UK.

Many artists sell work through galleries as “agents” that charge high rates of commission—upwards of 40–50% plus VAT on commission.

Due to this arrangement, artists are unfairly liable to account for tax and VAT purposes on the full gallery selling price turnover before deduction of commission. The artist must register for VAT when gallery sales turnover reaches £58,000, even though they receive half or less back from the gallery from the sale. A treadmill is set in motion at that vulnerable point when the artist's career is taking off.

The artist also loses clientele as price of work must increase by 17.5%. True artistic development is seriously hampered in the process of trying to produce work to sustain sales and accommodate VAT.

After deduction of gallery commission, studio and business costs, the artist will be fortunate if they have a modest salary of £16,000 before tax, NI 2 + 4.

A fairer, more sustainable system, which would also result in the production of better work, would be if the artist was instead liable to account on their artist's price turnover rather than on the gallery selling price turnover.

I would also like to point out that many artists subsist on poverty pay and this issue must also be addressed. In Scotland, £5,000–£8,000 is the average salary.

The *droite de suite* is welcome if at least artists will now receive details of their clients in a formal notice of sale which is not common practice at present.

Overall, the introduction of “industry-standards”: tax incentives and reforms would be in order.

15 February 2005

Memorandum submitted by the Institute for Conservation

Inquiry into the sponsorship by the DCMS of the UK art market with emphasis “on ways of supporting and encouraging living artists and the production of new work” and “in establishing what scope exists to promote best practice in the conduct of financial relationships between artists and art market professionals”.

1. We should like to draw attention to the role of professional conservators and restorers in ensuring the continued existence of art so that owners and the public may continue to enjoy works of art as initially conceived; conservators' and restorers' skills can enable the distorting or obscuring effects of ageing and degradation to be minimised.

2. In the context of publicly-owned collections, the work of conservators is an important factor in ensuring that visitors continue to have access to the art and that their understanding and enjoyment continues to be of the highest quality. Such work can be both preventive (non-interventive) and remedial (interventive).

3. The financial value of an artwork can be affected by its condition. This is not a consideration for conservators, although it is recognised that a conservator's work can be a significant factor in maintaining the financial value of a work of art.

4. It should be recognised that some artists are indifferent to the longevity of their creations, or consider eventual ageing and destruction part of the conceptual message of the artwork. Owners, curators and conservators need to be aware of and respond to the wishes of artists and collectors.

5. An understanding of the materials and processes by which an artwork was created is the starting point for any conservation treatment. The scientific analysis of materials is one method which assists conservators in building a base of knowledge from which decisions may be made.

6. The number of conservators qualified to undertake work on modern art is not keeping pace with the increasingly experimental and transient nature of work by living artists. The provision of relevant internships for art conservators should be encouraged.

7. We are impressed by the Arts Council of England's Own Art scheme, which encourages the purchase of works of art by the provision of interest-free loans. We should welcome the opportunity to explore a similar scheme which encourage owners to have the art they own conserved.

Note: The Institute of Conservation is the lead voice for the conservation of cultural heritage in the UK, and results from the merger of five existing bodies: Care of Collections Forum, Institute of Paper Conservation, Photographic Materials Conservation Group, Scottish Society for Conservation and Restoration and the United Kingdom Institute for Conservation.

February 2005

Memorandum submitted by the National Art Collections Fund

1. The National Art Collections Fund (Art Fund) welcomes the opportunity to respond to the inquiry by the Culture, Media and Sport Select Committee into "The Market for Art".

2. The Art Fund is the UK's largest independent art charity, with 80,000 members. The Art Fund exists to make great art available for everyone to enjoy, through enriching museum and gallery collections. In 2004, it offered £4.3 million in grants to museums across the UK. The Art Fund also champions the interests of museum visitors, and was at the forefront of the successful campaign for free admission.

3. The Art Fund will restrict its comments to the most relevant areas of the Committee's inquiry, as below. The terms "museum" and "museums" are used to denote both museums and galleries.

WAYS OF SUPPORTING AND ENCOURAGING LIVING ARTISTS

4. The Art Fund believes that living artists need more opportunities for their work to be seen and more opportunities to sell, both in the UK and abroad.

More opportunities to be seen

5. Museums and galleries play a key role in the art market, and in supporting living artists. The acquisition and display of contemporary art by public institutions has a direct impact upon an artist's profile and reputation, and provides a stimulus to a healthy market and the production of new work and ideas.

6. There is at present little money available for acquisitions of any kind by museums—but especially explicit funding for contemporary acquisitions. The Contemporary Art Society (CAS) is the only source of funding dedicated to contemporary collecting, distributing £100,000 annually. The CAS also manages two lottery funded schemes in England and Scotland, which enable participating museums to develop challenging and distinctive contemporary collections, and also provides money for travel and research. However, the Special Collection Scheme in England has now come to an end and funding for the Scottish scheme will run out in March 2006. The programmes have provided a model of good practice in contemporary collecting. Both the Arts Council England and Scottish Arts Council should be encouraged to invest again in similar programmes for contemporary art.

7. Additionally, the Art Fund has markedly increased its support for contemporary art in recent years. 32% of grants given by the Art Fund in 2004 were for contemporary acquisitions, for a total of 49 works—including contributions towards Julian Opie's Sara Walking, Sparkly Top and Jeans (for Aberdeen Art Gallery and Museums) and Bill Viola's Observance (for The Walker, Liverpool).

8. But public collections should not be reliant on grants from private charities or Lottery funding (which, in the case of the Heritage Lottery Fund, operates under the 10 year rule). More government grant-in-aid is needed to enable public institutions to acquire contemporary art, and to facilitate more and better public exhibitions of living artists' works.

More opportunities to sell

9. A buoyant art market is self-evidently essential. There is a need to encourage collecting, both by public institutions and private UK collectors.

10. European Directive 2001/84/EC (*droit de suite*) is likely to have an adverse impact upon the British art market, in terms of driving the sale of modern and contemporary art out of Europe. The Art Fund is concerned that this may make it more difficult for both public museums and private UK collectors to collect in this area. *Droit de suite* legislation could, in practice, actively discourage contemporary collecting in the UK.

11. We need more incentives to encourage both collecting and giving, and to promote relationships between private collectors and public institutions. The Government should create a climate of private giving through greater tax incentives, including an extension of Gift Aid. This would allow donors to set gifts of works of art to the nation against income tax bills, as is already possible with land and shares. Such an incentive would encourage the development of ongoing relationships between private owners and museums, and would help to enrich national and regional collections with objects of all kinds including contemporary works at little additional cost.

10 February 2005

Memorandum submitted by Pyramide Europe

Pyramide Europe is an EEIG representing photographers, illustrators, designers and others across much of Europe and with a total membership of some 80,000 creators. Although we usually confine ourselves to Europe wide matters it is increasingly the case that the flexibility that is allowed within the implementation of some areas of legislation means that we must take specific interest in national matters. We would therefore like to comment on some aspects of this right which specifically affects our members.

OVERVIEW

Pyramide Europe welcomes the attention of the Culture Media and Sport Committee to the market for art and believes that any inquiry will show the inequalities and inadequacies of the current situation. We would, however, like to bring the committee's attention to the fact that the "art market" is only the tip of the iceberg for the majority of artists who make what living they can from a number of sources.

Commissions rather than direct sales make up the bulk of the actual market for art and these come from industry broadcasters, publishers, the record industry, advertising, image banks, packaging, as well as private sources. It is here that the major problem for artists today occurs in that they are often forced into signing completely unfair and unreasonable contracts for these commissions on a no sign no work basis. These contracts are usually completely contrary to the spirit of national and European legislation and are designed to strip the artists of their rights and their integrity. This is the reality for the majority of artists in this country on a daily basis who are faced with large corporations demanding their rights, if any real change to their conditions and ability to create new work is to happen it is by legislative process to stop this abuse.

However, we would like to specifically comment on the issue of the Resale Right and hope that the Committee will open up their discussions to these other vital issues in the future.

THRESHOLD

We would like to state our view that the threshold for application of the resale right is currently much too high. It is our belief that the number of artists included in these schemes would multiply many fold if the limit was reduced to €1,000—especially those whose work sells at the lower end of the scale. The origin of this right was the principal of returning some of the profits from resale of works to those who needed it most. This lower limit would greatly enhance this. Many of our members' work often comes under the current €3,000 barrier, photography and illustration in particular still attracts lower prices than those working in "traditional" mediums

RATES

The rate of 4% is also, we believe, too low as recompense at the lowest resale price and would like to suggest that, as we are concerned with putting income back where it is needed most, to support the artist in generating and improving their work, we should be more generous in this rate. We would ask that the rate of 6% is considered as being both fair and having a positive impact on the creation of new work.

Our threshold and rates positions have common agreement throughout our European membership but as each country has different historical relationships with its collecting societies we will make the comments, thoughts and beliefs on collection based only on our UK branch, Pyramide UK and Eire's.

COLLECTION—UK PERSPECTIVE

Pyramide UK and Eire believe that the resale right should have a compulsory collective management and that this should be managed by DACS, the Design and Artists Copyright Society.

Most of Pyramide UK and Eire's 10,000 membership are represented by DACS' various secondary licensing schemes. DACS have shown, that as a not for profit organisation, they are efficient in the distribution and collection of often smaller amounts of money than are envisaged at even the lowest thresholds we are proposing for the re-sale right.

CONCLUSION

Fortunately, both time and experience has shown that the arguments put forward by those who lobbied against the acceptance of the re-sale right to be unfounded. The only impact that this right could have is a positive one in stimulating and supporting the creative force that drives so much of our cultural and economic lives. We hope therefore, you share our view that the limits and rates set must be at a level that make the resale right both fair and worthwhile.

February 2005

Memorandum submitted by the Scottish Arts Council

INTRODUCTION

The break up of the Arts Council of Great Britain in 1994 led to the establishment of the Scottish Arts Council along with the Arts Council England, Arts Council of Wales and the Arts Council of Northern Ireland.

The Scottish Arts Council was established by Royal Charter and operates at arm's length from the Scottish Executive. In addition, the Scottish Arts Council has statutory functions under the National Lottery Act 1993 as amended by the National Lottery Act 1998.

The Scottish Arts Council is the lead body for the funding, development and advocacy of the arts in Scotland. In 2004–05 the Scottish Arts Council has a total budget of £67 million: £47 million (70%) of this money comes from the Scottish Executive and £20 million (30%) from the National Lottery fund.

SCOTTISH ARTS COUNCIL SUPPORT FOR VISUAL ARTS

The Scottish Arts Council is concerned with contemporary art and prioritises support to the work of living artists.

The Council invests £3.9 million in the visual arts each year (£3.881 million in 2004–05 and £3.975 million in 2005–06). This funding is used to support the visual arts and encourage the production of new work in a number of ways including:

- supporting a network of galleries which deliver high quality exhibitions to Scottish audiences and exhibit contemporary Scottish artists;
- additional investment in studios and production facilities that support artists throughout the country;
- supporting individual artists through fellowships, awards and residences;
- growing audiences;
- assisting public collections to display and promote contemporary work.

In addition, the Scottish Arts Council also invests around £730,000 in supporting the Crafts Sector in Scotland.

SCOTTISH ARTS COUNCIL SUPPORT FOR THE ART MARKET

The Scottish Arts Council supports a number of initiatives which specifically provide support for the art market.

The Scottish Arts Council focuses its support on the primary art market, encouraging more people to buy work, as well as providing funds directly to Scottish artists to create work. However, the Council also provides support to galleries to market in the secondary art market of auction houses, dealers and art fairs.

INTEREST FREE CREDIT FACILITY SCHEME—OWN ART

Own Art is a new national scheme from Arts Council England (ACE) and the Scottish Arts Council. Members of the public are offered interest free loans of up to £2,000 over 10 months. ACE research has shown the interest free facility encourages new people to buy work, and existing clients to spend more money.

Own Art was set up to encourage increased purchasing of contemporary art by individuals and thus generate more money for living artists (and galleries). The development of the scheme in Scotland will be closely monitored to track number of sales, money generated, and payment going direct to artists.

Embedded within the gallery application process are criteria to ensure best practice: eg contracts between galleries and artists, standards of customer care.

ART FAIRS—UK AND INTERNATIONAL

Selling work through national and international art fairs supports artists in terms of profiling their work to new audiences and generating revenue through sales.

Art Fairs are expensive. To enter the circuit, new galleries often need major investment. Success is partly dependent on a year-on-year presence and once established can yield large returns for the artist, gallery and country of origin. Large sums of money are exchanged at art fairs, reputations are made (with direct impact on home art market—London) and important relationships nurtured between different countries through the galleries with private collectors, corporations, and museums.

The Scottish Arts Council has supported a number of our “core funded” galleries to exhibit at art fairs, including The Modern Institute and Transmission galleries in Glasgow.

DROIT DE SUITE/ARTISTS RESALE RIGHT

Scottish Arts Council research indicates that artists incomes are low and we welcome any reasonable measure which aims to improve them and to allow artists to benefit from resale of their work in future years. The principle can be compared favourably with royalty systems which are embedded in other art forms such as music and publishing.

11 February 2005

Memorandum submitted by Mr Simon Stokes

MAKING THE MOST OF THE OPTIONS AVAILABLE TO THE UK IN IMPLEMENTING THE ARTISTS RESALE RIGHT (DROIT DE SUITE) DIRECTIVE 2001/84/EC

1. BACKGROUND TO THE DIRECTIVE: OPTIONS FOR THE UK

What the Directive is about

The Directive is a harmonisation measure—*droit de suite* is new to UK law. This means the UK should not seek to “gold plate” nor try to enhance what the Directive says: the objective must be to harmonise UK law in a legally certain manner consistent with the Directive and to take account of the hard-won concessions the UK achieved during the negotiation process. In summary the Directive requires the UK to give artists and their estates a right to a royalty on a sliding %age basis of the sale price (4 or 5%—0.25%) where their work is resold (except for private sales where no art market professional is involved).

The need for the UK to take advantage of the options built into the Directive

The UK is able to take advantage of a number of options in how it implements the Directive. Section 2 of this paper highlights what these are. The UK Government should adopt these options in order to implement the Directive in the most favourable way to the UK art market and to reflect the hard-won concessions the UK gained during the European legislative debate on the Directive. In the author’s view the case against a harmonised *droit de suite* has been well made by a number of lawyers, economists, artists and art dealers, and the art market generally. This paper accepts the Directive as a *fait accompli* and does not reiterate these arguments. It does however assume and highlight the need for the Directive to be implemented in a fashion that will cause the least damage to the UK art market.

The need for further clarification and guidance

In addition there are uncertainties regarding the legal effect and scope of a number of the key provisions of the Directive. For example, it needs to be clear precisely what sorts of works of art are covered (Applied art? Film/video works? Limited edition works?), how the resale price “net of tax” will be calculated in practice, how works of joint or multiple authorship will be dealt with, and how the right will pass on the death of the artist(s). The Patent Office should either clarify the intention when it drafts the implementing law or at the very least provide clear guidance on these areas in advance of the Directive becoming law in the UK. Based on the recent Consultation document (see below) it looks like the Patent Office are proposing to address some but not necessarily all of these areas.

The need for a full Consultation

As a practical matter the uncertainties noted above, the need for the UK art market to have time to comply with this new right, and the need for a workable method of collection mean that a full and extensive consultation by the Patent Office and proper Parliamentary scrutiny are required prior to implementing Regulations being finalised. It is noted that the public Consultation on implementing the Directive commenced on 18 February 2005.

2. MAKING THE MOST OF THE OPTIONS AVAILABLE

2.1 *Protecting the primary art market in the UK*

Member states are able to exclude sales from the application of the right where the seller has acquired the work directly from the artist less than three years before that resale and where the resale price does not exceed EUR 10,000. The UK should take advantage of this exception to protect those dealers who buy direct from artists and/or promote their recent work and so bear considerable risk in selling, advertising and marketing the artist’s work—they are important to the success of new artists and cultural production in the UK.

- Recommendation: the right should not apply where the seller has acquired the work directly from the artist less than three years before that resale and where the resale price does not exceed EUR 10,000.

2.2 *Making the seller the person liable to pay the royalty*

The royalty is payable by the seller unless a Member State decides that the art market professional involved in the sale is liable or that liability is shared between the dealer and seller. Whilst the Committee will want to hear the views of the art market, in the author’s view it would certainly be simplest if liability to pay is placed on the seller alone. Problems will arise if both the seller and dealer are liable. Dealers would be put at risk if the seller does not pay, for example. Joint liability would also cause dealers to reassess and revise their contracts/terms of business and trading processes—a costly exercise and an additional burden. Artists are able to demand information from dealers in order to collect their royalty and this it can be argued provides sufficient protection.

- Recommendation: only the seller should be liable to pay the royalty.

2.3 *Reducing the impact on the UK art market: getting the royalty calculation right*

Member States can decide the threshold or minimum sale price above which the right must apply, although this cannot exceed EUR 3,000. To reduce the effect on the UK art market the threshold should be set at EUR 3,000: this is what the UK Government fought for at the time.

The royalties are based on bands:

- 4% (or 5% if Member State chooses) for the portion of the sale price up to EUR 50,000;
- 3% for the portion of the sale price from EUR 50,000.01 to 200,000;
- 1% for the portion of the sale price from EUR 200,000.01 to 350,000;
- 0.5% for the portion of the sale price from exceeding EUR 350,000 to 500,000;
- 0.25% for the portion of the sale price exceeding EUR 500,000

The UK should choose the lower 4% rate for the first royalty band to minimise the economic impact of the right.

- Recommendation: the royalty should only be payable on sales over EUR 3000 in value and at an initial rate of 4%.

2.4 *Persons entitled to receive royalties/Collective Management*

Member States may permit or require artists' and other collecting societies (eg in the UK the Design and Artists' Copyright Society (DACS)) to administer the right. This must be done in a transparent and efficient manner. Member states must also ensure that amounts intended for authors who are nationals of other Member States are collected and distributed.

The UK must decide how, if at all, the right must be administered. It would certainly be in line with the current EU thinking on Collecting Societies to have any Collecting Society (and there could be more than one) administer the right on a voluntary basis. It would be for the artist to decide how they wanted to proceed—this should not be mandated by law.

- Recommendation: there should be no compulsory collective management.

2.5 *Getting reciprocity right*

Artists who are not European nationals are only entitled to the right if their home state permits European Union nationals to also benefit from the resale right. The European Commission is to publish an indicative list of third countries which fulfil the condition for reciprocity: the Commission should be pressed to provide this list before 1 January 2006.

The UK, along with other Member States, has the option to treat artists who are not nationals of a Member State but who have their habitual residence in that Member State in the same way as their own nationals for the purposes of the resale right. To avoid complexity and difficult arguments about residence it would be better if the UK relied purely on nationality in determining the entitlement of an artist to the right.

- Recommendation: habitual residents of the UK (non EU nationals) should not be entitled to the right. The European Commission must be pressed to publish a list of final countries where there is reciprocity as soon as possible.

2.6 *Term of protection of resale right/implementation*

The right lasts for the duration of the copyright term ie until 70 years from the death of the artist. It must be implemented by 1 January 2006. As far as the UK is concerned (as well as for other Member States which do not currently have the right, as of 13 October 2001), the right need not come into force until 1 January 2010 with a possible further extension to 1 January 2012, in respect of those entitled to the royalty following the artist's death.

The UK must take advantage of this derogation so that the right will only be available to living artists until 1 January 2010 at the earliest. The UK should also consider whether at this stage the date for bringing the right in for dead artists should be extended to 1 January 2012.

- Recommendation: the UK must ensure the right does not come into effect for the estates of dead artists until 1 January 2010 at the earliest.

2.7 *Right to information*

Artists and any collecting society will have a right to information from the relevant art market professional to enable them to collect the royalty, for up to three years following the resale. It would be logical to require that all claims for payment in respect of *droit de suite* are brought within this three year period. This will encourage artists to promptly deal with collecting the right and remove the need for the dealer to keep extensive historic records.

- Recommendation: artists and any collecting society must be obliged to claim the royalty within three years of the relevant resale taking place.

ABOUT THE AUTHOR

Simon Stokes is a solicitor and partner in the London law firm Tarlo Lyons, and an acknowledged expert in the relationship between art and copyright—he has written the leading UK text on this area. He is also a Visiting Research Fellow at Bournemouth University. His clients include a number of prominent dealers and artists. He also lectures and provides pro-bono support to artists in this area. Simon has taken a particular interest in the implementation of the Artists Resale Right Directive into UK law and has published the first detailed legal analysis of the issues for the UK Government in implementing *droit de suite* (see *Entertainment Law Review*, October 2002). He is also cited by the Patent Office in their recent February 2005 Consultation on the implementation of the Artists Resale Right Directive into UK law.

22 February 2005

Memorandum submitted by Sarah Thelwall

I am a freelance strategist who works in the UK Art Market. I work on two levels 1) supply chain development initiatives and research projects 2) hands on organisational and artist development.

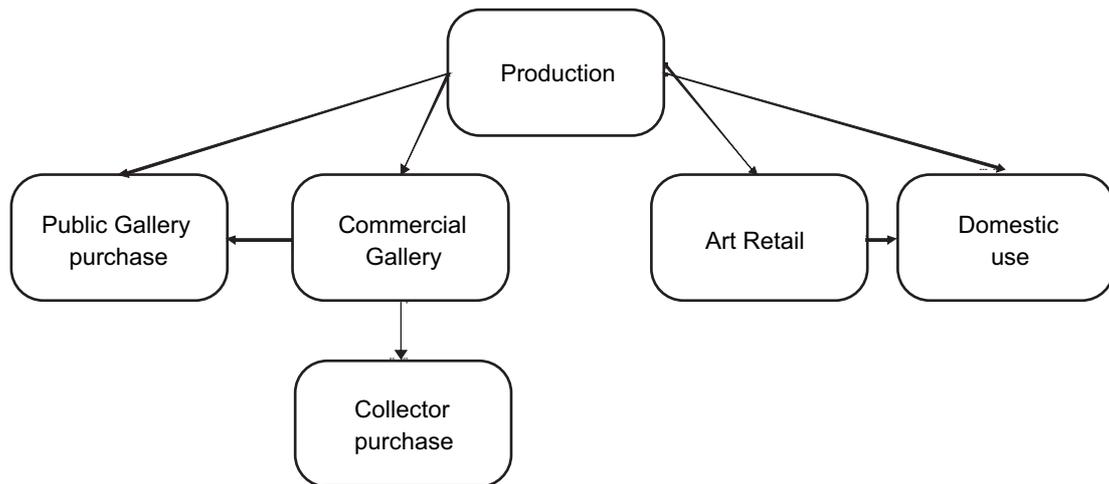
This written evidence sets out my understanding of:

- The basic structure of the market(s).
- Recent developments.
- Key barriers to sector development.
- Suggested future developments.

UK ART MARKET—STRUCTURE & DEFINITIONS

The UK Art Market is in fact split into two main areas—art as product and art as service. The market for art as product operates differently at the top and bottom ends (defined by price and re-saleability). The market for resale of art goods (via auction houses etc) only exists at the top end of the market. These markets are approximated below:

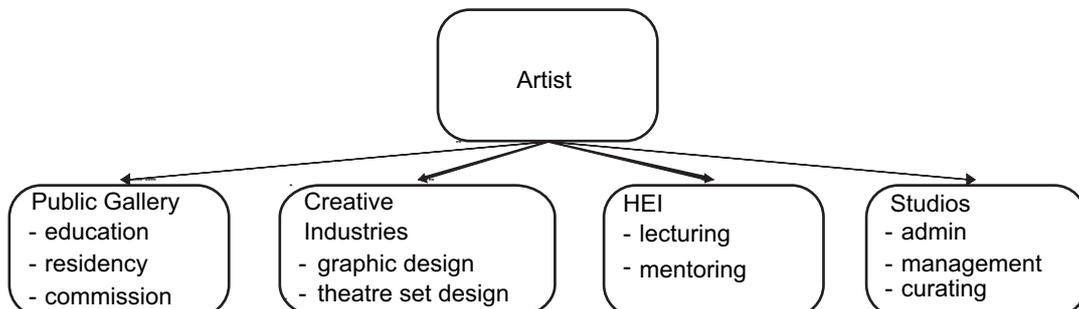
Market for Art as Product



Art as Product—This covers the market for art objects across all media and covers both permanent acquisitions (to public or private collections or for domestic use) and loans and residencies connected to exhibitions of art objects.

Art as Service—This covers the market for the skills and resources that artists provide. It is as broad as the skills supplied by trained individuals who, upon leaving art college, choose to work in the Creative Industries. It is as focused as the provision of services through galleries such as fulfillment of commissions, residencies and provision of educational programme content.

Market for Art as Service



KEY DEVELOPMENTS

The UK art market has grown significantly over the past decade. The most notable developments are:

- The top end of the “Art as Product” market is demonstrating significant and ongoing growth from the position it occupied a decade ago. The most prominent marker of which is the ability of the UK market (artists, dealers and collectors) draw sufficient international collectors to it to justify the risk of establishing Frieze Art Fair in London.
- Relationships between publicly funded galleries and collectors continue to grow as this provides an alternative acquisition route (ie bequests) by which the galleries can acquire key pieces of contemporary art.
- The retailing of art goods for domestic use is also showing significant growth both in London and beyond as seen in the success of individual retailers such as Art Lounge (Birmingham) and The Biscuit Factory (Newcastle) but also seen in the ongoing success of The Affordable Art Fair (London).
- Growth of “Art as Service” as gallery education programmes expand.
- Growth of “Art as Service” as artists find more demand for their skill set as the Creative Industries grow.

BARRIERS TO GROWTH

The “art as product” market faces barriers to growth which may be summarised as follows:

Top End:

- Lack of appropriate trade association for commercial gallerists hampers ability of the sector to interface with DTI and prevents it from making use of export assistance.
- Lack of code of practice between elements of the market requires participants to learn by their mistakes which mitigates against sector development.
- Insufficient funds for and patchy acquisitions of contemporary art by publicly funded galleries often results in key works being sold to collectors and galleries abroad.
- Inappropriateness of acquisition models in public galleries—models that can no longer accommodate or reward the risk involved in buying the works of young artists.
- Lack of business skills and market knowledge amongst artists due to lack of coverage of these areas in HEI’s.

Lower end:

- Lack of business skills amongst artists means that few have the skills needed to sell direct to buyers nor do they have the skills required to establish sufficient B2B relationships with art retailers to provide them with a sensible level of income.

The “art as service” market faces barriers to growth which are largely related to the appropriateness of the skill sets that artists develop whilst at art college. There is presently little emphasis given to the skills that they need to manage their portfolio careers or to take a proactive stance upon their career development as artists.

OVERALL DEVELOPMENT

All elements of the market are reacting to this market growth. Clearly the focus of activities for artists, dealers, collectors, public galleries and funders are different. There are however a number of initiatives that would deliver value to across the board. These include:

- Improvements in data collection objectives, methodologies and processes so that these better reflect the goals of the participating elements, structures of the market and are better placed to provide ongoing & easily replenished statistics.
- Professionalisation & development of key elements of the supply chain.
- Recognition by key sector support bodies that this market is within their remit eg Arts Council England, Creative Industries Development Agencies, Regional Development Agencies, Small Business Service.
- Support for mechanisms that bring together the expertise held in the current continuing professional development organisations in the visual arts with the scale and resources of the Business Link network to improve access to such support.
- Support for key representative bodies eg a trade association for contemporary dealers in the primary art market, support of the trade association for artists (National Artist Network).
- Support of the professional development group for artists (Artists Professional Development Network).

- Support of an initiative for the professional development of gallerists and dealers.
- Development of best practice within the sector for artists, public galleries and dealers and their interactions with each other.
- Better use or more appropriate SIC codes and a separate index for the Art Market in the Creative Industries would be particularly useful in the improvement of the data on the sector.

CONCLUSIONS

In conclusion the UK art market continues to demonstrate significant growth in all areas. There is the appetite within the sector to develop the infrastructure and practices that support it. There are a number of changes that, if made, could make quantum leap differences to the efficiency with which the supply chain operates. Such changes could be expected to be well received by the majority of organisations and individuals in the sector.

February 2005

ISBN 0-215-02400-1

