



ARR: An Overview and Update

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This Presentation

- Overview of ARR in the UK
- Development of the right in the UK since 2006
- Current UK art market issues
- Current developments

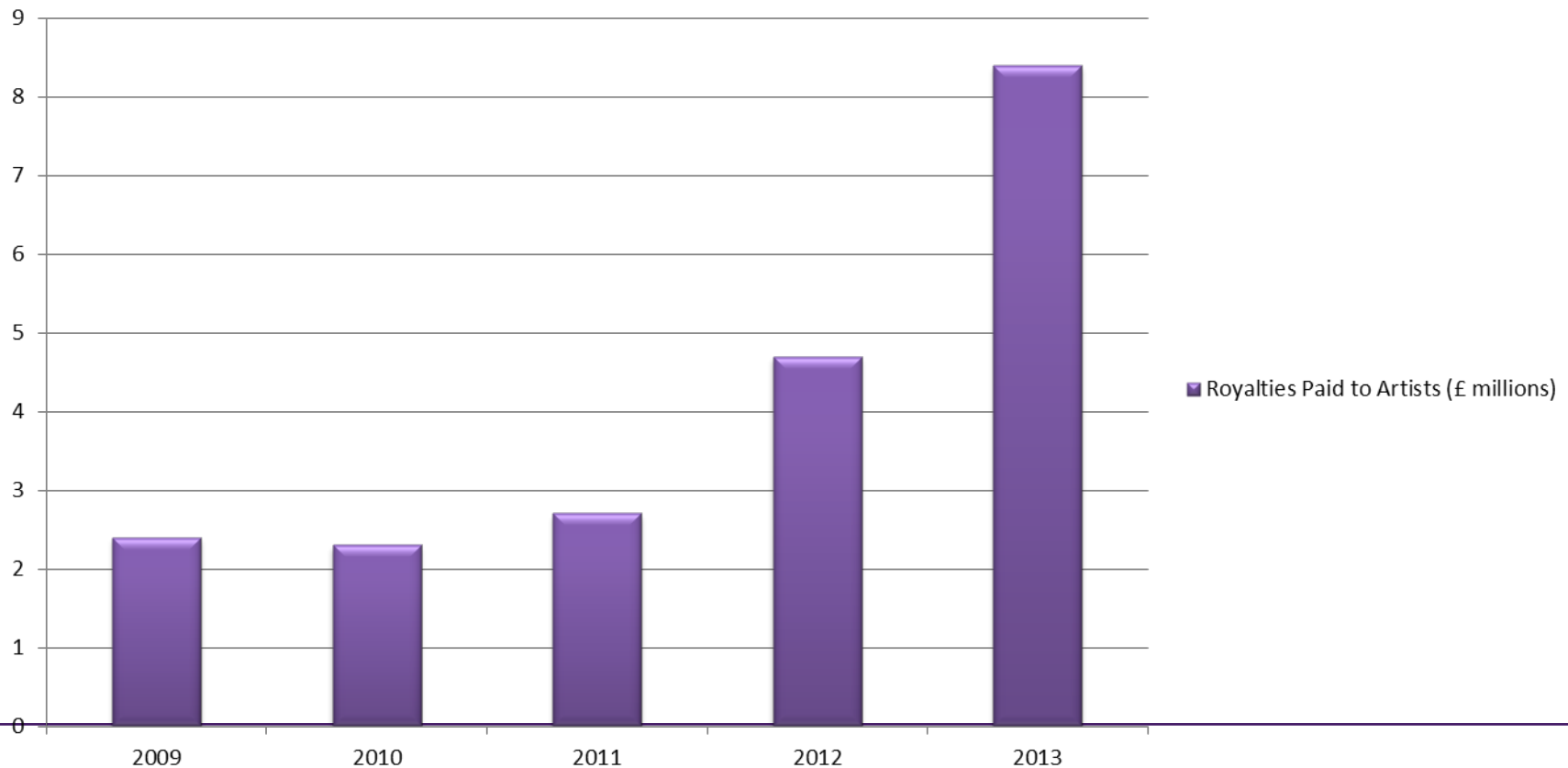
ARR in the UK

- Legal Basis: ARR Directive 2001/84/EC; in UK, Artist's Resale Right Regulations 2006 (as amended)
- Royalty (sliding scale 4% to 0.25% based on consecutive portions of sale price) on original artistic works sold in the UK on secondary market with the involvement of an art market professional (amp); can't be waived
- Seller and amp jointly and severally liable to pay ARR
- Can only be collected through a collecting society (ACS & DACS)
- In practice, artist must be an EEA national and work must be protected by copyright (so artist is alive or died in 1944 or later)
- Royalty capped at EUR 12,500; Threshold EUR 1,000; bought as stock exception (bought from artist; resold within 3 years for EUR 10,000 or less)
- Applied to estates of artists from 1 January 2012

Growth of ARR in the UK

(Source – DACS Annual Review 2009-2013)

Royalties Paid to Artists (£ millions)



Some current UK Art Market issues

- Impact of EUR 1,000 threshold on art market
- Linked transactions – works bought and sold in quick succession – dealers “pay ARR twice”/”double payment effect”/”cascade effect”
- Lack of clarity on how right applies to international sales
- What happens where ARR beneficiary can't be traced/no collecting society appointed

Recent UK Developments

- IPO Online survey of art market earlier in 2014 to assess how ARR is operating
 - Dealers; Auction houses; “Others”
- Report due this month
- Responses sought from art market on 13 questions including
 - Proportion of sales subject to ARR
 - Proportion of these below EUR 3000 (£2450)
 - Proportion of re-sales where double payment effect
 - Who bears cost of paying ARR – amp or passed to buyer
 - Data on time taken in administering the right [linked to assessing costs on business to collect]

Recent international developments

- February 2014 Stakeholder dialogue - Key principles and recommendations on management of ARR in Europe
- Case involving challenge by French antique dealers against Christie's charging buyer rather than seller ARR referred to European Court of Justice earlier this year
- Swiss looking into right – petition by Swiss member of parliament earlier in 2014 requesting Swiss federal counsel to submit to parliament a report on ARR [with a view to encouraging implementation of ARR]
- China?
- USA looking at the right...again...1992 US Copyright Office study not persuaded there was a need for the right...things have changed, now have ARR in twice as many countries than in 1992

Recent developments in USA

- Recent pressure for legislation
 - Proposed Equity for Visual Artists Act of 2011 (EVAA) (Herb Kohl (S)/Jerrold Nader (C)); US Copyright Office (USCO) requested to review issue in 2012
 - USCO issued updated report to 1992 report in December 2013: *Resale Royalties: An Updated Analysis*
 - *“issues are as complex as the art market itself...Congress may want to consider a resale royalty, as well as a number of possible alternative or complementary options for supporting visual artists...”*
 - *No evidence to conclusively establish ARR would harm US art market, “many of the arguments against the right are overblown”*
 - *However ARR not the only option – “resale royalties appear to benefit only an extremely small number of artists...in light of the potentially limited benefits, the costs of the law (eg administration and enforcement), while not insurmountable, suggest Congress should approach this issue with some caution”*
 - *If Congress wants to proceed with ARR USCO suggests European type of model followed that at least initially only applies to living artists*

Recent developments in USA (cont'd)

- As of September 2014 American Royalties Too Act of 2014 “ART Act” before Congress
 - Applies just to auction sales; \$5,000 threshold; royalty 5% of price capped at \$35,000
 - Unconstitutional? 5th Amendment “Taking Clause” - private property shall not be taken for public use without just compensation (William Charron, New York Law Journal 6 May 2014) [NB California Resale Royalties Act declared unconstitutional in 2012 as violating the Commerce Clause – case on appeal]
 - Govtrack.us website says bill has 2% chance of being enacted but more traction now? Auction houses strongly lobbying against (The Art Newspaper 16 July 2014)

(with thanks to Howard Spiegler, Herrick, Feinstein LLP New York for assistance with the US update – views expressed are presenter’s not Herrick, Feinstein’s)