The Society of London Art Dealers (SLAD) represents 125 of the top art dealers in the UK. The great majority of these are based in London, hence our name, but we also have members from elsewhere in the UK. Unlike other UK art trade associations, all of our members deal in fine art. As a result, our members are amongst those most directly affected by Artists Resale Right (ARR). According to our last survey, 62% of our members are currently affected by ARR on living artists and this would rise to 70% if ARR is extended to deceased artists. But whereas some of the 62% are only slightly affected by ARR at present, all of the 70% would be substantially affected if ARR is extended to deceased artists.

SLAD is a member of the British Art Market Federation (BAMF), which is the umbrella organisation for the British art trade. BAMF is providing detailed figures on the development of the British art market over the period 2005-2010 and we see no point in trying to duplicate these in this response. What we have tried to do in what follows is to supplement BAMF’s information from our own researches and offer the dealer perspective.

The British art market is not only a very large one, with somewhere between a quarter and a third of the world art market, but an international one with buyers and sellers coming to Britain from all over the world. There is a very large and important entrepot trade, with a very high level of both imports and exports of works of art by both auction houses and dealers. Much of this revolves around the presence in the UK of the major auction houses, Sotheby’s, Christie’s and Bonhams and the location of a high proportion of their major sales here. These major auction houses are underpinned by a network of smaller auction houses with a mixture of international and domestic sales. Dealers are to some extent in competition with the auction houses but they also depend on them, not only as a source of works of art, but also as a pole of attraction bringing potential clients to London. A good example of this has been the recent creation of Master Paintings Week in the first week of July, during which a group of top dealers put on exhibitions in their galleries timed to coincide with major auction sales. The recently created Masterpiece Fair also takes place at the same time, for the same reason. Both of these events have proved highly successful. Our members are all too conscious that if international consignors of art were to decide that for whatever reason the UK was becoming less attractive as a place for business, or the auction houses were to decide to relocate major sales to other locations, this would have a devastating effect on their own business. Perceptions and confidence are all important in this. The decline of France as
an art market, from its position of pre-eminence in the fifties and sixties to its distant fourth place today, provides a salutary warning.

We are naturally extremely anxious that the UK should not suffer the same fate. But we are also conscious that art is easily transportable and that consigners have a choice. There is no law to say that, for example, works by top UK contemporary artists need to be sold in Britain and indeed recent auction sales in New York, for example of works by Lucian Freud, prove the contrary. The major auction houses also have a choice over where to locate their main business. Dealers have less choice, but as we remark later in this response, it is noticeable that the number of our members with overseas bases has increased very rapidly over the last few years, particularly in favour of New York. The accumulation of some of the best works of art is very important to ensuring the success of major international art fairs which are becoming increasingly important to dealers livelihoods. Dealers can also choose to sell works at locations outside the EU, such as Switzerland (especially Basel) and the USA.

Finally we are conscious that London is not only competing with Switzerland and New York. We are competing with China, whose art market has made dramatic advances over the last few years and also with Russia, India and the Middle East, all of whose markets have been growing rapidly at our expense, and none of whom are saddling themselves with the burden and complications of ARR. There is a clear risk here that in seeking to create a level playing field in Europe and help artists and their heirs, we tilt the international playing field to Europe’s disadvantage and end up damaging the people we are trying to help. Because artists, no less than dealers, live by selling their work, and they too will lose out if the UK and EU markets decline as a result of ending our derogation. So will many of the 60,000 people estimated to be directly employed in the UK art trade and the other 60,000 indirectly employed. And if the UK, and EU, market does lose out, it will not be easy to recover. While therefore, reluctantly, we have accepted ARR for living artists, we urge the EU to extend our derogation limiting it to living artists indefinitely, and extend the derogation to any other EU countries which wish to benefit from it, at least until our main global art market competitors can be persuaded to adopt ARR on an equal basis.

We are happy for this reply and the answers to the questions that follow to be made public.

Christopher Battiscombe
Director General
1. Developments in the UK art market over the period 2005-2010

Full information on this is being provided by BAMF. However this only covers auction sales. Precise figures for sales by dealers are not available. However a study carried out for TEFAF in 2007 concluded that out of total UK art market sales in 2006 of €11,595mn, dealers accounted for €6,029.4mn or about 52%. A similar study carried out for TEFAF in 2010 concluded that out of total UK art market sales in 2008 of €14,202mn, dealers accounted for €7,811mn or about 55%.

It seems reasonable to assume that UK dealers have fared similarly to UK auction houses over the period, and that their share of the global and EU market has followed a similar pattern. Our own surveys of our 125 members are consistent with this, except that they suggest that our members were experiencing the effects of the economic downturn well before the end of 2008. Those who achieved an increase in sales in 2008 only slightly outnumbered those who suffered a decrease, whereas 65% of our members increased their sales in 2006 compared to 2005 and only 10% suffered decreases. Unfortunately we do not have precise turnover figures, nor precise figures for sales of works by living or deceased artists.

2. Factors influencing developments and competitiveness

The main factors influencing the development of the UK art market over the period 2005-2010 have been the introduction of Artists Resale Right (ARR) on 14 February 2006 and the global economic crisis in the second half of 2008.

ARR in the UK is at present limited to the resale of works by living artists so it has had no effect on the sale of works by deceased artists. There are calculated to be 4 times as many resales of works by deceased artists as there are resales of works by living artists, so the impact of ARR so far has been reduced. Nevertheless it has had an impact and this impact has been exclusively negative.

The main reason is the cost of paying the levy itself, which impacts particularly heavily on works under €50,000 (where the levy is 4%) and between €50,000 and €200,000 (3%). According to our latest survey of members carried out this year, almost all our members feel obliged to absorb the cost of this themselves rather than passing it on to buyer. Our members tell us that this cuts heavily into profit margins, which are often less than 10% and can be as low as 5%. Moreover dealers have to pay ARR both when they buy works and when they sell, (unless the two operations are part of one deal) meaning that they have to pay ARR twice, i.e. 8% rather than 4% on works up to €50,000 in value. Our members say that this offers a strong incentive not to deal in ARR liable works or to buy and sell them in countries where ARR does not apply, eg Switzerland. In answer to a question about this in a survey of our members conducted this year, 60% of those affected by ARR said that up to 10% of their sales were being diverted in this way, to countries in which ARR does not apply. The effect of ARR on dealers is more marked in this respect than it is on auction houses, since auction houses can at present pass on the cost of paying ARR to the buyer. Naturally
the impact of ARR reduces the higher the value of the work. It is most noticeable on works up to €200,000 and clearly has much less impact on multimillion euro works.

ARR has also had a negative impact on the liquidity of the market. A very important element of the dealer market is dealer to dealer sales. We have received strong evidence from our members that such sales are being inhibited by liability to ARR, which applies each time a work is resold. This cuts heavily into profit margins, which are often even smaller for dealer to dealer sales than they are for dealer to private client sales and risks making such sales uneconomic, greatly reducing the liquidity of the market. This point has been made to us particularly strongly by dealers in top end original prints. It is the normal practice in marketing original prints for the originating dealer to sell copies through a number of other dealers rather than trying to sell them all himself, with each dealer making a small profit. Because of the very small profit margins, such sales become totally uneconomic if ARR has to be paid on each transaction.

We would like to see the directive re-opened and ARR calculated on the profit margin rather than the resale price, which would reduce this problem. This would also avoid the injustice of dealers having to pay ARR even if they make a loss on a sale. Alternatively a scheme might be introduced under which ARR already paid on a purchase could be set off against liability for ARR when a work is sold, as already happens for VAT.

An equally negative effect of ARR has been its administrative inconvenience and cost, details of which are set out in our answer to question 6. Virtually all of our affected members (currently about 62%) have told us that they find this inconvenience and these costs significant and they have expressed the fear that this will impact much more widely and heavily on them if ARR is extended to the works of deceased artists. It is clear from our surveys that this is another factor deterring dealers from dealing in ARR liable works, and influencing them towards dealing in non ARR liable works or dealing in countries where ARR is not payable. In a survey of our members carried out in 2009, the percentage of our members having overseas bases had increased from 12% in 2006 to 25% in 2008. Most of these overseas bases were in New York.

The impact of the global economic crisis on the UK art market has been considerable and this is apparent from the figures set out in BAMF’s answer to question 5. The crisis has had a negative impact on all sectors of the market, but more particularly on the contemporary sector the global market for which fell in 2009 by 60% compared to 2008. Turnover in dealers sales in the UK in 2009 is estimated to have fallen by 21% compared with 2008.

**Competition with Third Countries**

The UK share of the global art market was 27% in 2006, rising to 30% in 2007 and 34% in 2008, but then falling back to 29% in 2009. The USA had 46% of the global market in 2006. In 2007 this fell to 41% in 2008 to 35% and in 2009 to 30%. Much of this movement was probably due to changes in the value of the dollar. Over this same period China’s share has risen from 5% in 2006 to 8% in 2007, 9% in 2008 and 14% in 2009. Auction sales in China grew by 200% between 2004
and 2009. Auction sales in the UK fell by 52% in 2009 and dealer sales fell by 21%, whereas aggregate sales in China grew by 12%.

Sales of works by living and deceased artists account for about 62% of the UK market, and it is in these sectors that China is particularly strong. China achieved 24% of global auction sales of contemporary art in 2007, though this has since slipped to 17%. From 2003 to 2008 turnover in the contemporary auction market in China grew by 200 times, and average prices increased by 300%. From the start of 2004 to January / February 2008, the contemporary market in China grew by 1500%. Russia, India and the Middle East are also art markets which have grown significantly in the last few years, but their total size is at present much smaller, probably less than 2 – 3% of the global market.

The key point for us in all this is that the EU appears to have made no effort, and has certainly made no progress, in persuading our main competitors, the US and China and Switzerland to adopt ARR. Our fear is that extending ARR to the works of deceased artists will give these markets a significant competitive advantage over the EU art market at a time when the EU is already losing market share, and could provide a tipping point persuading international consignors and the major auction houses to locate sales elsewhere. If this happens it risks having a devastating effect on dealers who risk seeing an important proportion of their international client base moving to other locations.

3. Role played by ARR and effects on competitiveness with other markets

The impact of ARR on the British art market has been reduced by the derogation limiting it to the work of living artists. Nevertheless it has still had a negative effect. 62% of our members are currently affected by ARR. If it is extended to deceased artists it will affect 70%.

60% of those currently affected who responded to our latest survey of our members said that up to 10% of their trade had been diverted to non ARR countries as result of ARR. This is in part because of the heavy administrative burden of dealing in ARR liable works, (see answer to question6 for details) and in part because of the direct cost of paying the levy, which most dealers feel obliged to absorb themselves. These costs cut into dealers’ profit margins making dealing in ARR liable works comparatively unattractive.

For similar reasons many of our members have told us that they are also less inclined to buy new ARR liable works outright and more inclined to take them on consignment. This avoids the need to pay ARR when the works are first sold to clients but means that artists are deprived of receiving income upfront.

As explained in our answer to question 2, ARR has also had a strong adverse effect on the liquidity of the market particularly on sales of original prints.
We have seen no evidence that ARR has affected trade in the internal market. For example our 2009 survey showed virtually no difference in the amount of trade our members did with EU countries in 2008 compared with 2006-14% in 2006, 13% in 2008. According to the TEFAF survey of 2010, art market turnover in the UK grew by 10.8% from 2007 to 2008, compared with 81% over 2002-06. Art market turnover in France declined in 2007-08 by 11.3%. In Germany it declined by 2.2%, in Austria by 5.2%, Belgium 1.3%, Spain 30.9%, Ireland 36.2% and Netherlands 25%. Only in Denmark was there an increase, of 34.6% and in Italy 11%.

We believe that the fact that ARR has been introduced in the UK at a time when it has not been introduced in the markets of our main competitors, the USA, China and Switzerland, has given them a significant competitive advantage and that this advantage will greatly increase if ARR is extended to the works of deceased artists because of the much greater volume of sales involved. It is not only the size of the levy which is concerned, though this is significant particularly for works in the €50,000 to €200,000 range, but the cost and administrative difficulty of dealing with ARR, for example determining whether or not an artist is eligible to receive ARR, or what the nationality of his heirs is or where they are resident. It is particularly worrying that this additional burden may be imposed on the UK and EU markets at a time when we are already losing market share. It is worth bearing in mind recent history and remembering the importance of France as one of the world’s top art markets as recently as the 1950s and 1960s. It is generally believed that France lost this position because of the burden of regulation and taxation. There is already a danger of some of our art market being lost to the US and China and other rising markets and it seems foolhardy to add to this danger by saddling ourselves with new competitive disadvantages. This is particularly true of the auction trade in view of the representation of the major auction houses in all the main art markets, with the ability to switch consignments or even whole sales between them, but it is also true of some dealers who have overseas bases, particularly in the US. Markets once lost can be very difficult to recover.

4. Outlook for UK art market. Major risks and opportunities

2009 was a particularly difficult year for the UK art market, with almost all dealers suffering some fall out from the global economic crisis at the end of 2008. There appears to have been some rebound from this in 2010. Early results from our survey of members for this year suggest that most of our dealers either increased their sales and profits in 2010 or maintained the same level as in 2009. Over 55% increased both their sales and profits and a further 25% kept them about the same. Less than 20% reported a drop in sales and profits. Just over 50% expect to do about the same in 2011 with 40% expecting to do better. Less than 10% expect to do worse. But we are still some way below where we were in 2007-08.

The major risk for the coming year is the state of the UK and world economies. Just under half our members trade is traditionally with UK buyers, 27-30% with the USA and about 13% with other EU countries leaving 12% for the rest of the world. At present the top end of the market appears to be holding up very well, with top quality works in continuing high demand and continuing to obtain
high prices. The middle and lower ends are doing less well and have undoubtedly been affected by the difficult economic situation in the UK and abroad. If the economic situation continues to be difficult this seems bound to have an adverse effect on our art market.

The major threat for 2012 and beyond is undoubtedly the extension of ARR to dead artists. This would quadruple the number of works affected and increase the number of our members affected from 62% to 70%. Moreover many of those who are at present only slightly affected would be seriously affected if ARR is extended. In this year’s survey of our members, dealers were asked how much, if any, of their trade had been diverted to non ARR countries by the imposition of ARR. About 40% of those affected said that they had no evidence of diversion so far, but 60% thought that up to 10% of their trade had been diverted. This figure seems certain to increase substantially if ARR is extended to dead artists. About 25% of SLAD members have bases overseas, mainly in New York and this figure has increased markedly over the last few years. In 2006 it was 12%. Where there is a choice there will clearly be an incentive to carry out an ARR liable sale in a non ARR country, either through an overseas base or at a trade fair.

The other main threat is competition from abroad. Our main competitor is the USA, which had 35% of the world market in 2008, while the UK had 34%. In 2009 the US had 30% and the UK 29%. Our main new competitor is China, which had 9% of world trade in 2008 (ahead of France 6%) and 14% in 2009. China is particularly strong in contemporary art obtaining a share of 24% of global contemporary sales at auction in 2008. Neither the USA nor China apply ARR, nor is there any sign that either of them will do so in the near future. This will give them a definite competitive advantage, particularly in respect of buyers and sellers in third countries deciding whether to buy or sell in London or New York.

5. Market Data

BAMF is providing material on this.

6. Cost of administering ARR

This reply covers only the costs of administering ARR for living artists, since only living artists are eligible in the UK. It also covers only the costs of dealers.

An independent study for the Antiques Trade Gazette, carried out in January 2008, calculated the average cost per dealer per transaction at £26.50. This was based on dealers having to carry out the following 6 steps:

1. Determining qualifying artists and works
2. Filling out collecting society returns
3. Calculating quarterly liability
4. Receiving collecting society invoices & checking them against original calculation of liability
5. Resolving errors and omissions
6. Paying the balance owing

The study estimated that carrying out these 6 steps would take an average of 35 minutes per transaction. Calculated at £40 per hour, the cost came to £26.50 per transaction, or €31.80.

In a survey of our members carried out this year, we asked members to estimate the cost. 60% of those responding estimated the cost at over £20 per item, which is consistent with the ATG survey result. 40% thought that the costs were still higher. 20% estimated the cost at less than £10 per transaction, but we suspect that they were thinking only of the cost of completing collecting society returns, rather than the full range of costs as outlined above.

In all cases the administrative costs are met by the dealers, unlike the administrative costs of the collecting societies, which are of course met by deducting 15% from the sums of money raised. This represents a very substantial burden for small businesses and will become very much more of a burden if ARR is extended to the work of dead artists since the number of these with which dealers are expected to have to deal is 4 times as high as for living artists. SLAD represents the majority of the top art dealers in London, but even among our members, 70% employ 5 or less staff. 45% of our members have a turnover of less than £2mn and 65% have less than £5mn.

Dealers also face major difficulties in determining whether or not artists are eligible to receive ARR since they will need to know the date of an artist death, his nationality at the time, and the nationality and country of residence of his heirs. It would greatly help if a database were established on which artists and their heirs would be obliged to register in order to receive ARR.

As already pointed out in answer to previous questions, in addition to the administrative costs, most dealers also absorb the cost of the levy itself, since they feel unable to pass this cost on to the buyer. Absorbing both the administrative cost and the cost of the levy itself represents a serious erosion of dealers’ profit margins on ARR liable works.

7. Numbers of Artists Benefiting

We do not have independent figures but understand from figures released by the main British collecting society, DACS, that 1800 artists have benefited since ARR was introduced in the UK on 14 February 2006. We believe that the other main UK collecting society, ACS, has distributed ARR to a further 50 artists. We do not know precisely how many artists there are in the UK but DACS has 50,000 artists on its books, meaning that 3.7% of these have actually benefited.

Only living artists are currently eligible to receive ARR in the UK. According to DACS, £10.5 million has been paid to them since ARR was introduced in 2006, i.e. about £2.5 million per year. £2.4 million was paid by DACS to 840 artists in 2009.
DACS has declined our requests for information on how this money is distributed but according to a survey carried out by Kate Graddy, Noah Horovitz and Stephen Szymanski in 2008, 80% of the money collected should have gone to the top 100 artists during the first 18 months of ARR. According to another independent report by Toby Froeschauer for the Antiques Trade Gazette covering the same period, of 1100 artists receiving ARR, 316 received less than £100 and 112 less than £40. We have no reason to believe that there has been any change in this pattern of distribution. This suggests that 0.2% of artists in the UK are receiving 80% of ARR, that a further 3.5% are receiving small amounts and that 96.3% are receiving nothing at all.

8. Undistributed Royalties

The UK has compulsory collective management, which means that ARR can only be collected through a collecting society. There are 3 collecting societies in the UK: The Design and Artists Copyright Society (DACS), the Artists’ Collecting Society (ACS) and the Artists’ Rights Administration (ARA). No SLAD member has had any dealings with the ARA and we are unable to comment on its activities.

The ACS operates only on behalf of artists who have mandated it to collect for them. This means that it has full details of the artists concerned and so far as we know ACS have no money which they have collected but not distributed. DACS operates both on behalf of artists who have mandated them and as the default collecting society on behalf of artists who have mandated noone. We believe that this has inevitably led to a situation in which DACS has collected ARR which they have found difficult to distribute because they are unable to locate the artists concerned. We also believe that if and when ARR is extended in the UK to the work of artists who have died in the previous 70 years, the amount of undistributed funds will increase enormously because the quantity of works affected will increase and because of the even greater difficulty of identifying and locating the heirs who are entitled to receive ARR.

We consider that any undistributed funds should be held in an interest bearing escrow account and if they remain undistributed after 6 years they should be repaid with interest. We have made our views on this known to DACS and asked them to tell us how much they are holding in undistributed funds. We are very unhappy with the replies we have so far received on all these points. We believe that this, and our answer to question 7 above, highlights the need for greater transparency in the activities of the collecting societies and stronger oversight and control of them by governments.

9. Role of ARR in fostering artistic creativity

SLAD members are the dealers for a significant proportion of the most successful artists in the UK. We have asked our members in regular surveys whether they believe that the resale right has played a role in fostering artistic creativity, and their unanimous view is that it has not. Indeed they
consider that it has had a negative effect since whereas in the past dealers in the primary market have normally bought a proportion of the new works they have for sale in order to help and encourage emerging young artists they are now more likely to take works on consignment to avoid liability for ARR when they come to sell them. This is discouraging for emerging young artists who are often in need of cash up front. Many of our dealer members also say that ARR acts as a disincentive to dealing in works on which ARR is liable and in favour of dealing in works on which it is not, e.g. works by non EU artists. The major share of ARR goes to a small group of well established artists, who are doing well economically and are not generally in need of help. For example the study carried out by Kate Graddy, Noah Horovitz and Stephen Szymanski into the effect of ARR on the UK market in January 2008 concluded that 80% of all ARR payments collected for the first 18 months of ARR in the UK should have gone to the top 100 artists in the UK. DACS reports that 1800 artists in the UK have received ARR since it was introduced in 2006. This means that 1700 artists have shared the remaining 20%. Moreover, DACS claims to have 50,000 artists on its books, which means that more than 96% of these artists have received nothing at all.

What most fosters artistic creativity is not ARR but the ability to sell works of art and get a fair price for them. This depends in turn on having a successful art trade. It is no coincidence that the two countries with the most successful art trades, the USA and the UK, also have a very large number of active and successful artists. In similar fashion artistic creativity in China is clearly being boosted by the extraordinary growth of the Chinese art trade over the past few years. Another important influence on creativity is the steadfast and long lasting support provided by dealers, in particular to emerging new artists. Many SLAD dealers have had arrangements with their artists lasting up to 40 years or more. If ARR, and in particular its extension to the works of deceased artists, leads to a decline in the UK art market, this will damage all concerned, dealers, auctioneers and artists alike, not to mention all the ancillary trades that depend on the art market. The UK art market currently employs about 60,000 people with a further 60,000 employed in the ancillary services.