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**Artist's Resale Right and the Art Market: Evidence from
British Art Auctions**

by

Areti Chavale

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**Submitted in the fulfilment of the requirements for the degree of
Doctor of Philosophy in History of Art**

**School of Culture and Creative Arts, College of Arts,
University of Glasgow**

Abstract

This study examines the implementation of Artist's Resale Right (ARR) and its influence on the art market, focusing on evidence from interviews with key art and policy experts and auction prices in British artists' sales. Since 2006 ARR became obligatory, in the EU, for works of art by living artists while in 2012 ARR became obligatory for works of art by deceased artists still in copyright, which lasts for 70 years after their death. I perform a comparative analysis based on two distinctive approaches. I interview relevant stakeholders, such as auction specialists, gallerists, art dealers, art consultants and policy experts focusing on the art market.

Apart from qualitative methods I collect and use data on prices for artists and their work (from the online index artprice.com) that crystallises the difference in prices before and after ARR. Firstly, I examine prices for works by the four Scottish colourists (Peploe, Hunter, Cadell and Fergusson), which is a relatively homogeneous group, however, only the work of Fergusson (1874-1961) qualifies for ARR. In this instance I can directly observe his auction record and compare the respective auction prices to equivalent work before and after 2012, when ARR became applicable to artists that died up to 70 years ago.

Undoubtedly this research spans across the conventional disciplinary and methodological boundaries, combining knowledge from art history, law and economics, using both quantitative and qualitative analytical methods. Ultimately, the present thesis attempts to shed more light at a previously overlooked research question, which is approached from a new and innovative perspective, while this research also has the clear potential to generate interesting policy implications and impact.

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Author's declaration

I declare that, except where explicit reference is made to the contribution of others, this thesis is the result of my own work and has not been submitted for any other degree at the University of Glasgow or any other institution.

Areti Chavale, April 2024

Chapter 1 - Artist's Resale Right and the Art Market

1.1 Introduction

The artist's labour market is characterised by a contrast between a majority of, low paid, struggling artists and a handful of superstars.¹ What is also typical of the artistic profession is the common belief that recognition occurs later in the artist's life, or posthumously. One way of advancing artists' incomes is through intellectual property, such as Artist's Resale Right (ARR) which is tailored to visual artists and provides them with a reward, when their work sells in the secondary market. This thesis provides a new explanation of the influence of ARR on the British art market.

1.1.1 Why resale rights matter for artists?

As early as the 1960s there has been controversy around ARR, or Droit de Suite as it was referred to back then, and the effect it could have on artists and the art market.² The literature on the subject of ARR is extensive but still inconclusive. Researchers, such as Price (1968), Filer (1984) and Ginsburgh (1996, 2005a, 2005b), predicted that ARR could have a negative influence on art production and prices. In addition, Karp & Perloff (1993) used a model to show that buyers' willingness to pay (WTP) would reduce prices of works of art, as a result of ARR. Further research by Ginsburgh (2005a, 2005b) anticipated that there would be a move of works of art, eligible for ARR, to countries such as the US for sale, to avoid paying for the extra charge. The most recent empirical papers on the subject are: a comprehensive study by Banterghansa & Graddy (2011) and a report commissioned by the British Art Market Federation by McAndrew (2011). In contrast to each other, these two studies offer different results with Banterghansa & Graddy (2011) showing no negative effect of ARR on art prices and no move of artworks outside the UK because of it, while McAndrew (2011) argues the opposite.

¹ For further information on artists' labour markets see Towse (2014), p. 60-63.

² Droit de Suite means 'right to follow', in French.

The subject of the influence of ARR on the British art market is hugely important, as it affects artists and the economy. Gains from sales of art and antiques in the UK reached \$11.9billion, out of \$67.8billion globally, in 2022.³ Thus, the prosperity of the art market and artists is a key element for modern economies, such as that of the EU, and the UK. A great number of jobs depend on the art market, which is part of Britain's creative industries and contributes almost £108billion in gross value, added annually to the UK economy.⁴ Thus, any policy that affects it needs to be carefully evaluated.

The most important stakeholders of the British art market are international auction houses, which have their headquarters in London, together with some of the world's most important galleries, and art dealerships. Such is the importance of ARR to the art market, that in January 2015 Sotheby's and Christies successfully spent \$1million to lobbying, against the passing of a bill introducing ARR in the US.⁵ On the other hand, ARR is also majorly important to artists, with Frank Stella stating that "[v]isual artists are the only members of the creative community in the United States who do not receive residual payments for their works".⁶ Finally, the results of this research could have a significant impact on policy decisions that influence the art market, especially in the post-Brexit era.

1.1.2 A brief history of ARR

The idea of a right for the benefit of artists was born in France in the 19th century, when a painting by the artist Jean-François Millet (1814-1875) sold for 553,000 French francs, while his descendants lived in poverty.⁷ Nevertheless, it was not until 2001 that Directive 2001/84/EC made it compulsory for all European countries, including the UK, to implement ARR for any work of art sold in the secondary market, by a living artist or an artist deceased

³ The Art Basel and UBS art market report of 2023. Available online: <https://theartmarket.artbasel.com/download/The-Art-Basel-and-UBS-Art-Market-Report-2023.pdf> (accessed on 18/04/24)

⁴ According to gov.uk. Available online: <https://www.gov.uk/government/news/ambitious-plans-to-grow-the-economy-and-boost-creative-industries> (accessed on 18/04/24)

⁵ See Milliard (2015).

⁶ See Lescaze (2014).

⁷ See Filer (1984), p. 1-2.

within 70 years from the date of sale.⁸ ARR came into force in the UK with the Artist's Resale Right Regulations 2006, which applied for an artist's lifetime and it was later extended with the Artist's Resale Right (Amendment) Regulations 2011, which applied for 70 years following an artist's death.⁹ Collecting societies across the different EU countries are responsible for the administration and distribution of ARR, with the Design and Artists Copyright Society (DACS) and the Artists Collecting Society (ACS) in the UK.

A definition of ARR is that when a work of art sells in the secondary market for the equivalent of £1,000 or more, on the day of the sale, a percentage is payable from the seller to the appropriate collecting society, for the benefit of the artist or their heirs. In the same way as copyright, it applies to living artists and those who have passed away up to 70 years from the date of the sale. ARR applies to original works of art, such as pictures, collages, lithographs, sculpture, paintings, tapestries, ceramics, engravings, prints, glassware and photographs. This excludes decorative arts, such as furniture or jewellery. ARR is also inalienable and cannot be bought or sold, it is applicable only to sales by art professionals, such as auctions, galleries and art dealers, excluding sales by private individuals or public, non-profit institutions, such as museums and 'bought as stock sales'.¹⁰ VAT is not applicable on ARR. Finally, ARR is reciprocal between the UK, EEA nationals, Australia and New Zealand.¹¹

1.1.3 Research questions and methods

Through my research I aim to answer the following key questions i) how ARR influences buyers' willingness to pay, ii) how ARR influences the art market, and iii) whether ARR should be retained in the post-Brexit era, and if so how it can be reformed. Firstly, regarding the influence of ARR on the behaviour of buyers, I study whether they take ARR into account when deciding what to buy. In addition, I examine if auction house specialists apply lower

⁸ On 27 September 2001, under Directive 2001/84/EC. The Directive is published in the Official Journal of the European Communities on 13 October 2001: L272, vol. 44.

⁹ On 14 February 2006, under Statutory Instrument 2006, No. 346 and on 1 January 2012, under Statutory Instrument 2011, No. 2873

¹⁰ 'Bought as stock sales' is when resale occurs less than three years since the first sale from the artist and is below £10,000.

¹¹ See guidance on Artist's Resale Right from the gov.uk website: <https://www.gov.uk/guidance/artists-resale-right> (accessed on 18/04/34)

estimates on works by artists under ARR, setting them to achieve lower prices even before the auction. To measure the influence of ARR on the behaviour of art buyers, I employ the use of qualitative methodology, in the form of interviews, to a select group of key players in the art market. Through this method I aim to discover the different opinions and perceptions towards ARR, and the different factors that determine the value of art.

Secondly, Artist's Resale Right can influence the art market by lowering prices achieved, for eligible works of art, sold in the secondary market. To measure this influence, I employ the use of quantitative methodology, through the analysis of data on artwork prices. I collect prices achieved for art works by the Scottish Colourists, which sold in the UK market, before and after the implementation of ARR for artists' heirs, and I divide them in two groups of eligible and not eligible for ARR. These art works form my treatment and control groups, for which I perform a difference-in-difference analysis, aiming to discover the effect of ARR on their prices, controlling for other factors of influence. The question of buyers' willingness to pay is complementary to that on the influence of ARR on the art market, as prices often drop or increase as a result of buyers' decisions, which in turn are influenced by factors such as a surcharge in the form of ARR. The qualitative interviews reveal the perception of experts, whereas the quantitative empirical study identifies the direction and quantifies the magnitude of this effect. Ultimately, by going back to the expert interviews, we can shed further light on understanding better *why* this effect is present.

Finally, taking my findings into consideration I examine whether ARR should be retained in the post-Brexit era and if so how it can be reformed. This is a question with important impact on UK policy, and to answer it I employ the use of qualitative methodology. The qualitative method is in the form of interviews to a select group of key players in the art market, as in the first question, with the difference that this time the focus is on policy experts. The insights of policy experts identify the current debate on the subject of ARR within the UK establishment and describe the view of the people who administer it. In addition, the findings of the interviews with art experts together with the results of the quantitative analysis also complement the results of the question on whether ARR should be retained post-Brexit.

Should the evidence from all three research questions show that ARR is not beneficial to artists and the art market, there might be a strong case built for its reconsideration or change. For example, a negative effect of ARR on the art market and artists could be a drop in art prices or reduced earnings for artists. On the other hand, should the results from the above-mentioned analysis show that ARR is beneficial to artists and the art market, there will be a strong case towards retaining ARR in the UK and EU, and even extending it to other countries, such as the US and China.

1.1.4 Thesis overview

As a way of introduction, Chapter 1 provides detailed information on the background of ARR, its history, a breakdown of its current state, and also an outline of the art market. The information provided clarifies the practical aspects of ARR and could be used as a reference throughout the thesis. Chapter 2 offers a review of the existing literature on the subject of ARR and explains the contribution of this thesis. Following on, in Chapter 3 the methods used to answer the research questions are analysed. In Chapter 4, the first body of findings are being presented from the semi-structured interviews evidence, answering the question of how ARR influences buyers' willingness to pay. Consequently, Chapter 5 presents the second component of findings from the price data collection, answering the question of how ARR influences the art market and particularly prices. Chapter 6 presents the third part of findings on the question of whether ARR should be retained in the post-Brexit era, and if so how it can be reformed, showing evidence from interviews with policy experts. Lastly, Chapter 7 offers a conclusion to the thesis, explaining the impact of the key findings and the suggestions for policy changes.

1.2 Background of Artist's Resale Right

1.2.1 Early beginnings and Droit de Suite

In 1889 an auction took place in Paris offering the collection of Pierre-Eugène Secrétan, a wealthy industrialist. The highlight of the auction was a painting by Jean-François Millet

(1814-1875), titled *The Angelus* (1857-9) (fig. 1), which sold for 553,000 French francs, to the American Art Association and subsequently donated to the Louvre;¹² while at the same time it was known that Millet's family lived in poverty.¹³ The amount was significantly higher, than the price of 160,000 French francs the owner paid for it in 1881, and even more so than the initial price that Millet would have received when he first sold it in 1860.¹⁴ Ironically, the subject of the painting highlights the importance of workers and their labour, who are taking a moment to rest over prayer, after a hard day's work. A few years after the Secrétan sale in 1912 a cartoon appeared in the press by Jean-Louis Forain (1852-1931), with reference to the sale of the *Angelus*, titled *Un Tableau de papa!* (fig. 2), showing two street urchins looking at a painting by their father through a smart shop window. It is believed that the sale of the *Angelus* and the cartoon by Forain sparked the debate on finding some way of compensating artists for the lack of appreciation for their work early in their career, and an increase in value much later in their lives, or after they pass away.

¹² According to an article in the New York Times, the equivalent amount at the time was \$111,000. (1889, 3 July), Secrétan's Great Sale; Scattering his Many Art Treasures. Millet's 'L'Angelus' Going to the Louvre for \$111,000. Marking Meissonier's Wedding Day, The New York Times. Available online: <https://www.nytimes.com/1889/07/02/archives/secretans-great-sale-scattering-his-many-art-treasures-millets.html> (accessed on 18/04/24)

According to the Musée d'Orsay, the painting was bought by Antonin Proust who represented the Louvre, however, as he was not able to raise the funds the work sold to Mr James Sutton of the American Art Association. It was subsequently bequeathed to the Louvre in 1909 and it is now in the Musée d'Orsay. Available online: <https://www.musee-orsay.fr/en/artworks/langelus-345> (accessed on 18/04/24)

¹³ According to Filer (1984, p. 2.), legend has it that at the time of the Secrétan sale Millet's daughter was selling flowers in the streets for a living. However, Barrett (2020, p. 664) argues that Millet's children were all adults at the time of Secrétan's sale. Therefore, Forain might have used artistic licence to depict a child saying "One of dad's paintings", or it could have been a granddaughter of Millet's living in poverty at the time.

There is another lithograph by Forain with the same title, "Un tableau de papa" in the Toledo Museum of Art. According to an email by Florence and Alice Valdes Forain from the Fons de Dotation Jean-Louis Forain (April 2024), this lithograph probably dates from 1900-1908. However, it is not known if it was ever published in the press. Available online: <http://emuseum.toledomuseum.org/objects/48737/un-tableau-de-papa;jsessionid=86885A4E8B11591DE30F45595643E2EE?ctx=120e9c99-8fd7-49e6-b573-8a5a5508db56&idx=2276> (accessed on 18/04/24). For the illustration please see Appendix B.

¹⁴ According to an email from the representatives from the Musée d'Orsay to the author and a letter by Dominique Lobstein, documentalist from the Musée d'Orsay, from 1994, the prices that we know were paid over the years for *The Angelus* are:

1872 - 30,000 francs

1872 - 38,000 francs

1875 - Millet dies

1881 - 160,000 francs

1889 - 553,000 francs (Secrétan sale)

1890 - 800,000 francs

After that it was bequeathed to the Louvre. For further information on the provenance of the painting see Appendix A.



Figure 1, Jean-François Millet (1814-1875), *The Angelus*, oil on canvas, (55.5 x 66cm.), Painted in 1857-9, Musée d'Orsay, Paris. © Musée d'Orsay.

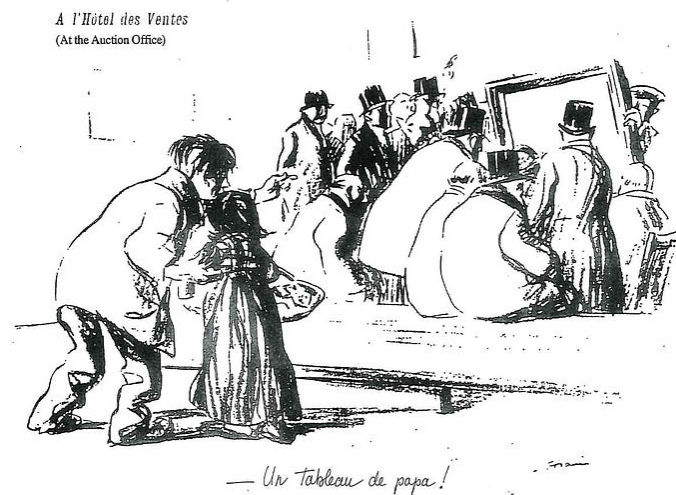


Figure 2, Jean-Louis Forain (1852-1931), *A l'Hôtel des Ventes (At the Auction House)*, *Le Figaro*, 16 December 1912. © artinsociety.com.

In 19th century France the Paris Salon, where artists sold their works along galleries, started to decline and there were groups such as the Société des Amis des Arts and the Alliance des Artes, which supported artists.¹⁵ At the time of the Secrétan sale artists' rights were protected by the Berne Convention, which was adopted in 1886 and at the time covered artists

¹⁵ See Roodt (2018).

for the copying, exhibition and reproduction of their work.¹⁶ Within the Berne Convention there is an optional clause, Article 14ter, introduced in Paris in 1971, which furnishes artists with a resale right. However, this aspect of the convention is not mandatory and was not adopted by all the member states.¹⁷ The agreement applies to all countries in the union for the benefit of creators and their successors.¹⁸ The basic principles of the Berne Convention are that it works the same in all member countries (reciprocal), the protection is unconditional and independent from the country of origin.

The Droit de Suite was first proposed in France in 25 February 1893, when Albert Vaunois introduced the term in an article at the *Chronicle de Paris*.¹⁹ What followed in 1896 was a report supporting the right by the attorney Edouard Mack to the Berne Congress of the International Literary Association; and the formation of the Société des Amis du Luxembourg in 1903, which drafted the proposal in 1904, for the 1920 law.²⁰ The 1920 act furnished artists, and the widows of artists killed in World War I, with the right to receive resale royalties in the form of a percentage of the sale price when the works sold at auction.²¹ Belgium followed in 1921 and other countries started implementing ARR with different rules and procedures: Italy in 1941, Germany in 1965, Portugal in 1966, Luxemburg in 1972, Spain in 1987, Denmark in 1989,

¹⁶ World Intellectual Property Organisation. (1982). *Berne Convention for the Protection of Literary and Artistic Works: texts*. Geneva, World Intellectual Property Organization.

¹⁷ Berne Convention for the Protection of Literary and Artistic Works (as amended on September 28, 1979). Article 14ter “Droit de Suite” in Works of Art and Manuscripts: 1. Right to an interest in resales; 2. Applicable law; 3. Procedure.

1. The author, or after his death the persons or institutions authorized by national legislation, shall, with respect to original works of art and original manuscripts of writers and composers, enjoy the inalienable right to an interest in any sale of the work subsequent to the first transfer by the author of the work.

2. The protection provided by the preceding paragraph may be claimed in a country of the Union only if legislation in the country to which the author belongs so permits, and to the extent permitted by the country where this protection is claimed.

3. The procedure for collection and the amounts shall be matters for determination by national legislation.

¹⁸ The Berne Convention was later merged with the Paris Convention (1883) in 1893. There have been several treaties after 1893 (Paris 1896, Berlin 1908, Berne 1914, Rome 1928, Brussels 1948, Stockholm 1967, Paris 1971) with a final amendment in Paris in 1979.

¹⁹ See Hauser (1962), p. 96.

²⁰ *Ibid.*, p. 96.

²¹ France: Act of 20 May 1920, amended, Act of 11 March 1957, Article 42. [1957] *Journal Officiel de la République Française* [J.O.] 2723, [1957] *Bulletin Legislatif Dalloz*, [B.L.D.] 197.

The act provided artists with a percentage of the auction sale of their ‘original’ work. There was an effort to extend this to sales by dealers in the 1957 French Copyright Law, but this failed. For more information see Hauser (1962).

Greece in 1993, Finland and Sweden in 1995.²² Up to 2001, when Directive 2001/84/EC was adopted, 11 out of 15 European countries had a form of ARR and the UK was one of the 4 that did not, together with Ireland, the Netherlands and Austria. Interestingly, from the 11 countries mentioned above only 8 enforced ARR.²³ Which shows that although most countries agreed, in theory, that they should have ARR, in practice it proved difficult to enforce it, perhaps due to its administrative costs.

1.2.2 The establishment of ARR

In the early 1990s talks began in the European parliament about the possibility of harmonizing Droit de Suite throughout the European Union. The first proposal for what was to become the Directive 2001/84/EC was submitted to the European Council in 25 April 1996.²⁴ The main points of this proposal were that the Berne Convention was not enough for the protection of artists, as the domestic provisions of each country cannot be relied upon. Furthermore, it stressed the importance of harmonisation of laws and regulations between European states for the benefit of the internal market. But most importantly, it laid the foundations for the basic rules of ARR, such as the 70-year period, which borrows from copyright for authors, and the percentage and minimum threshold where ARR would apply.²⁵ This proposal came after the January 1991 Follow-up to the Green Paper-Working programme of the commission in the field of copyright and neighbouring rights, which “seeks to reinforce the protection of copyright and neighbouring rights so as to protect creativity in Europe”.²⁶ Soon after that, in November 1997, a report by the Art Market Federation suggested that such a directive would harm the British art market, as sales would move to other locations such as the US, Geneva and Tokyo, which initiated the controversy of ARR in the UK.²⁷ A year later in 1998, in his

²² For more information on ARR provisions across Europe before the Directive 2001/84/EC, please see McAndrew & Dallas-Conte (2002). For a list of resale rights in different EU countries see Appendix C.

²³ See McAndrew & Dallas-Conte (2002), p. 26.

²⁴ Proposal for a European Parliament and Council Directive on the resale right for the benefit of the author of an original work of art COM/96/0097 final – COD 96/0085. OJ C 178, 21.6.1996, p. 16-19.

²⁵ Ibid.

²⁶ Follow-up to the Green Paper-Working programme of the commission in the field of copyright and neighbouring rights, COM(90) 584 final, 17.1.1991. Green Paper on copyright and the challenge of technology-copyright issues requiring immediate action, COM(88) 172 final, 7 June 1988. European file, The emergence of community-wide protection for creativity, Copyright and neighbouring rights in the European Community, p. 3.

²⁷ Market Tracking International Limited (1997). *The British Art Market 1997; a study of the Value of the Art and Antique Market in Britain and the Implication of the EU Harmonisation of Import VAT and Artists Resale Right*, BAMF.

report David Heathcoat-Armory MP argued that the harmonisation of the import VAT and Artist's Resale Right would 'destroy' the British art market.²⁸

Artist's Resale Right regulations were eventually approved by both Houses of Parliament in 2006, generating substantial discussions and debates about its effectiveness and impact on the UK art market and artists. Some of the most important points for debate were discussed in parliament on the subject of ARR, and those were on the minimum threshold and the percentage that the UK would adopt; in particular Tony Blair, the prime minister at the time, defended the decision of setting the threshold to €1,000 for the benefit of lower paid artists without effecting the art market, as at this level it would not be viable to transfer sales abroad.²⁹ At the time of the ARR implementation in the UK, one important point was made by the Under-secretary of State on the obligation of the European Commission to make effort for Article 14ter of the Berne Convention to become compulsory, as this would protect the movement of works of art for sale outside the EU.³⁰ ARR was extended to artists heirs on the 1st of January 2012, following postponements, which allowed the art market to adjust to the changes.³¹ According to Directive 2001/84/EC, the UK was required to extend the right to heirs between 2010-2012, after a consultation commissioned by the UK IPO, the government decided to extend the implementation to 2012.³²

Internationally there are more than 80 other countries where a form of ARR applies, with the important exceptions of the United States, Switzerland and China, as the major art markets of New York and Hong Kong compete with those of London.³³ Switzerland is a signatory of the Berne Convention, however, it never adopted Article 14ter. Members of the Swiss parliament have tried several times in the past to put motions forward for the adoption

²⁸ See Heathcoat-Armory. D. (1998). The Art Market under Threat, How the European Union could destroy the British Art Market, Centre for Policy Studies. Available online: <https://cps.org.uk/wp-content/uploads/2021/07/111027145813-AMarketUnderThreat1998.pdf> (accessed on 19/04/24).

In his report Heathcoat-Armory mentions the Whitford Report – Report of the committee to consider the law on copyright and design from 1977, which also opposed the introduction of ARR in the UK.

²⁹ Danby, G. & Ward, P. (2020). Artist's Resale Right. House of Commons Library. p. 4.

³⁰ Danby, G. & Ward, P. (2020). Artist's Resale Right. House of Commons Library. p. 7-8.

³¹ The Artist's Resale Right (Amendment) Regulations 2011 no. 2873, 29 November 2011.

³² Intellectual Property Office, Resale right: the derogation for deceased artists, June 2008.

³³ WIPO website, Available online: <https://www.wipo.int/copyright/en/activities/resale-right.html> (accessed on 19/04/24)

of ARR, such as in 2001 when the Directive 2001/84/EC was introduced, or in 2012 when it was implemented in all EU countries, which were all unsuccessful.³⁴ Similarly, China does not offer provisions for ARR under its Copyright Law of 2001.³⁵ However, there have been several draft revisions to the regulation presented to China's State Council, the last one in 2014.³⁶ Though, these attempts to establish resale royalties in China have not become law as yet. The reason for this could be that there has been heated debate in China over ARR, with fears from art market representatives over its negative effects of the art market together with the acknowledgement of its benefits to artists and their heirs. Furthermore, there has been discussions about how ARR could help to address the problem of fakes in the Chinese art market, as artists and their heirs would need to be traced for every sale.³⁷ Another interesting case is that of Canada, where in 2018 a work by Kenojuk Ashevak (1927-2013) titled *The Enchanted Owl* (fig. 3) sold for \$216,000, a steep rise from the \$24 the artist received for it in 1960. With no ARR provisions in Canada the artist's estate did not receive any remuneration for that 800% increase in value within 58 years.³⁸ Australia has also adopted a form of Artist's Resale Right in 2010, which greatly benefits aboriginal artists among others.³⁹ Similarly, several African countries have adopted ARR for the same reasons, as they have a large number of emerging artists who sell predominantly in European and other foreign countries.⁴⁰ Representatives from Senegal and Congo have written a Task Force on the Artist's Resale Royalty Right in 2020, expressing the views of African artists on the subject. Artist Romuald Hazoumè (b.1962) (fig. 4) reports the benefits of receiving ARR when his work sold for

³⁴ Neuhaus, N. (2016). Switzerland, Fourth attempt to introduce the artist resale right, The Institute of Art and Law. Available online: <https://ial.uk.com/switzerland-fourth-attempt-to-introduce-the-artist-resale-right/> (accessed on 19/04/24)

³⁵ Copyright Law of the People's Republic of China (promulgated by the Standing Comm. of the Nat'l People's Congress, Sept. 7, 1990, effective June 1, 1991, amended Oct. 27, 2001) (Lawinfochina) (China) [hereinafter 2001 PRC Copyright Law].

³⁶ Copyright Law (Draft Revision for Review) publicised on 6 June 2014.

³⁷ Hunt, K. (2013), China debates droit de suite, some say it will stifle the market, others think it could stop fakes at auction, *The Art Newspaper*. Available online: <https://authenticationart.org/pdf/artmarket/20130218-China-debates-droit-de-suite-Art-Newspaper.pdf> (accessed on 19/04/24)

³⁸ Ditmars, H. (2022). Canada moves toward adopting artists' resale rights law. *The Art Newspaper*. Available online: <https://www.theartnewspaper.com/2022/08/12/canada-artists-resale-rights-royalties> (accessed on 19/04/24)

³⁹ Resale Royalty Right for Visual Artists Act 2009 (Cth) (Austl.). Available online: <http://www.comlaw.gov.au/Details/C2009A00125> (accessed on 19/04/24)

⁴⁰ As of 2017 the list of African countries that provide ARR are: Algeria, Burkina Faso, Congo, Gabon, Ivory Coast, Madagascar, Malawi, Mali, Senegal and Tunisia.

€26,000 in the EU (from an initial sale of €16,000), but regretted not receiving any reward for its subsequent sale in the US for €70,000.⁴¹



Figure 3, Kenojuak Ashevak (1927-2013), *The Enchanted Owl*, Stonecut on paper, (55.8 x 65.7 cm.), Executed in 1960.

© gallerieswest.ca.



Figure 4, Romuald Hazoumè (b.1962), *Kind of Blue*, Executed in 2021, Found objects, (38 x 55 x 18 cm.),

Private Collection. © R. Hazoumè. Courtesy the Artist and October Gallery, London.

⁴¹ Dieng, A. A. (2020). Taskforce on the Artist's Resale Royalty Right. Standing Committee on Copyright and Related Rights, 40th Session, Geneva, WIPO. p. 2. https://www.wipo.int/edocs/mdocs/copyright/en/sccr_40/sccr_40_8.pdf

1.2.3 Artists' rights in the USA

Following the sale of his painting titled *Thaw* (1958), (fig. 5), in 1973 at a Sotheby's auction, artist Robert Rauschenberg (1925-2008) said to collector Robert Scull "I've been working my ass off for you to make all that profit!"⁴² The painting sold for \$85,000, a price significantly higher to what Scull originally bought it for, \$900, from Rauschenberg's dealer, Leo Castelli.⁴³



Figure 5, Robert Rauschenberg (1925-2008), *Thaw*, Executed 1958, Mixed media, Private Collection.

© Courtesy of the Robert Rauschenberg Foundation/VAGA.

The 1970s was a period when American art professionals and artists started the initiative of introducing more rights for artist, in the style of ARR. In 1971, art dealer Seth Siegelau together with lawyer Robert Projansky established the Projansky Contract, which would provide artists with a 15% of the resale value of their work, 50% of any rental fees and a say when their work was exhibited or reproduced.⁴⁴ Although the Projansky Contract was rarely

⁴² Sussman, A. L. (2017). How the Scull Sale Changed the Art Market, *Artsy*. Available online: <https://www.artsy.net/article/artsy-editorial-three-ways-single-auction-1973-changed-art-market> (accessed on 27/04/24)

⁴³ See Merryman (1993), p. 110-111.

⁴⁴ See Graddy, Horowitz, & Szymanski (2008), p. 42-43.

signed by buyers, it led the way for The California Resale Royalty Act of 1976 (CRRA), which provided artists, and their heirs up to 20 years after their death, with a 5% percentage of the sale of their work, when the sale took place in California or the seller of the work is based there.⁴⁵ Public opinion on artists' royalties in the US has been divided from the early 70s, when ARR was introduced in California.⁴⁶ For example, a New York Times article of 1975 lists various concerns about ARR, mainly about the ethics of it, how fair it is for artists, but also how damaging it might be for the US art market.⁴⁷ Following the CRRA there were several attempts to introduce ARR in the US with the most notable being VARA in 1990, which led to the 1992 US Copyright report.⁴⁸ After Directive 2001/84/EC, Equity for Visual Artists Act of 2011 (EVAA) was introduced, again unsuccessfully, which led the way for the US Copyright office to issue an updated report in December 2013, suggesting that Congress revisit the issue of artists' royalties.⁴⁹ Following the report, in 2014, representative Jerrold Nadler (NY), who in 2011 unsuccessfully introduced a bill in the House of Representatives in favour of ARR, introduced the American Royalties Too Act (ART) in 2018, again with no success.⁵⁰

California was the only state in the US with ARR provisions, from 1977 until 2018 when The California Resale Royalty Act was deemed invalid. A crucial development that led to the invalidation of the CRRA was in 2011 with the case by a group of artists and their heirs against Sotheby's, Christie's and eBay.⁵¹ Artists Robert Graham, Chuck Close, Laddie John Dill and the Sam Francis Foundation accused Sotheby's, Christie's and eBay of selling works by Californian sellers in a state outside California, New York, without making the ARR payments.

⁴⁵ The California Resale Proceeds Rights Law, Californian Civil Code 986, amended 1982. In the state of California artists could receive 5% of the total resale price of their work, but only if the resale of the work was above \$1000 and above what the seller paid for it. The right applied to paintings, drawings, sculpture and works on glass and it was inalienable. It applied to living artists and to those that passed away 20 years before the sale. The artist was able to negotiate a higher percentage by contract, but not a lower one.

⁴⁶ Hughes, R. (1974). A Modest Proposal: Royalties For Artists. *Time*. Available online: https://www.darkmatterarchives.net/wp-content/uploads/2011/11/ModestProposalHughes1974.TIME_..pdf (accessed on 29/04/24)

⁴⁷ Bongartz, R. (1975). Writers, Composers and Actors Collect Royalties – Why not Artists?. *New York Times*. Available online: <https://www.nytimes.com/1975/02/02/archives/writers-composers-and-actors-collect-royaltieswhy-not-artists.html> (accessed on 27/04/24)

⁴⁸ VARA, Visual Artists Rights Act, Public Law 101-650, Codified at 17 U.S.C.A. S106A. Most notable occasions: 1978 Waxman Bill, 1986 Kennedy Bill, 1987 Kennedy-Markey Bill, all unsuccessful.

⁴⁹ United States Copyright Office (2013), Resale Royalties: An Updated Analysis.

⁵⁰ H.R. 6868 – American Royalties Too Act of 2018. 115th Congress.

⁵¹ The cases are *The Sam Francis Foundation et al. v. eBay Inc.*, case number 16-56252; *Estate of Robert Graham et al. v. Sotheby's Inc.*, case number 16-56234; *The Sam Francis Foundation et al. v. Christie's Inc.*, case number 16-56235, all in the U.S. Court of Appeals for the Ninth Circuit. Available online: [law360.com https://www.law360.com/articles/900325](https://www.law360.com/articles/900325) (accessed on 27/04/24)

Circuit Judge Jacqueline Nguyen of the US Court of Appeals for the Ninth Circuit concluded that the CRRA violated the Commerce Clause of the United States Constitution, for sales taking place outside California, a decision was taken in 2012 that CRRA will apply to in-state sales only.⁵² However, in 2018 judge Michael Fitzgerald argued that the CCRA was pre-empted by section 301 of the Copyright Act of 1976 and so the Ninth Circuit nullified the CRRA on the 9th July the same year.⁵³

1.3 Artist's Resale Right Framework

1.3.1 Description of ARR

A basic definition that the Intellectual Property office gives to Artist's Resale Right is that it "entitles creators ('authors') of original works of art (including paintings, engravings, sculpture and ceramics) to a royalty each time one of their works is resold through an auction house or art market professional."⁵⁴ When a work of art sells in the secondary market, such as an auction house, gallery or through an art dealer, for the equivalent of £1,000 or more, a percentage of 4% (with an increase scale and a cap of £12,500) is payable to the artist or their heirs, from the seller to an appropriate ARR collecting society.⁵⁵ Subsequently, auction houses and galleries/art dealers are responsible for monitoring works that are eligible for ARR and making payments to one of the appropriate collecting societies. According to Directive 2001/84/EC,

⁵² See Duffy (2022), pp. 12-13.

⁵³ The Ninth Circuit Court of Appeals in *Close v. Sotheby's, Inc.*, 894 F.3d 1061 (9th Cir. 2018) has held that for sales after January 1, 1978, the California Resale Royalties Act is expressly pre-empted by the federal Copyright Act of 1976 (17 U.S.C. § 301(a)). *Id.* at 1064,1076. The California Resale Royalties Act is no longer valid for sales beyond the aforementioned date. Available online: <https://cdn.ca9.uscourts.gov/datastore/opinions/2018/07/06/16-56234.pdf> (accessed on 27/04/24)

According to Suchen (2021) "Specifically, under the first sale doctrine (17 U.S.C. § 109(a)), a copyright owner has exclusive control over distribution of an artwork until he places it in the stream of commerce by selling it. Finding that the CRRA fundamentally reshaped the contours of federal copyright law's existing distribution right, the Ninth Circuit held that the California law was pre-empted under 17 U.S.C. § 301(a). The CRRA is now only applicable to the sales of a small number of artworks sold between January 1, 1977 and January 1, 1978. (Laurel. W. S., 2019)." P. 11.

⁵⁴ Available online at Gov.uk: <https://www.gov.uk/guidance/artists-resale-right>. (accessed on 27/04/24)

⁵⁵ 4% up to £50,000, 3% up to £200,000, 1% up to £350,000, 0.5% up to £500,000 and 0.25% over £500,000. Prior to 1 April 2024 the values were in euros, the change in currency was introduced in the UK by The Design Right, Artist's Resale Right and Copyright (Amendment) Regulations 2023.

“The royalty shall be payable by the seller. Member States may provide that one of the natural or legal persons referred to in paragraph 2 [sellers, buyers or intermediaries art market professionals, such as salesrooms, art galleries and, in general, any dealers in works of art.] other than the seller shall alone be liable or shall share liability with the seller for payment of the royalty”.⁵⁶ In the UK the majority of auction houses, galleries and art dealers charge ARR to buyers rather than sellers. However, some galleries and art dealers adopt a more flexible policy, where they often not charge ARR to either sellers or buyers and bear the cost of ARR themselves.⁵⁷

1.3.2 Collecting societies

The right is collected and distributed by different collecting societies in each country, some of which collaborate.⁵⁸ In the UK those societies are the Design and Artists Copyright Society (DACS) and the Artists Collecting Society (ACS). These are both non-profit organizations that charge a commission of 15% for UK sales and 5% for overseas sales and collect royalties directly from auction houses and art professionals, on a quarterly basis.⁵⁹ The right is exempt from VAT, in that there is not surcharge on it, and artists and heirs need not declare it in their VAT returns. Artists or their heirs need to register with one of the societies, in order to receive payments.

⁵⁶ Directive 2001/84/EC, Chapter I, Article 1, Paragraph 4, L 272/34.

⁵⁷ In the UK auction houses pay ARR directly to the collecting societies after charging it to buyers, as per their terms and conditions, see Appendix G.

In 2015 Christie’s France engaged in a long legal battle about its right to charge ARR to buyers, Case C-41/14 *Christie’s France SNC v Syndicat national des Antiquaires*, Judgment of 26 Feb 2015. They won when the French Supreme Court (The Cour de Cassation) ruled that it is lawful to transfer the charge to buyers, *Société Christie’s France v Syndicat National des Antiquaires* H 17-16.335, Plenary Assembly of the Supreme Court, 9 November 2018.

⁵⁸ List of some collecting societies by country: Austria – BILDRECHT, Belgium – SABAM and SOFAM, Czech Republic - GESTOR, Denmark - COPYDAN BILLEDKUNST, Estonia - EAU, Finland - KUVASTO, France - ADAGP, LA SAIF and SCAM, Germany - BILD-KUNST, Greece - OSDEETE, Hungary - HUNGART, Iceland - FJOLIS, Ireland - IVARO, Italy - SIAE, Latvia - AKKA-LAA, Liechtenstein - PRO LITTERIS, Lithuania - LATGA-A, Mexico - SOMAAP, Netherlands - PICTORIGHT, Norway - BONO, Poland - ZAIKS, Portugal - SPAUTORES, Romania - VISARTA, Slovakia - LITA, Spain - VEGAP, Sweden - BONUS PRESSKOPIA and BUS.

⁵⁹ For details on charges please see: DACS website: <https://www.dacs.org.uk/artists-resale-right/what-is-arr/how-arr-payments-are-calculated> (accessed on 24/09/24). And ACS website: <https://artistscollectingsociety.org/artists-resale-right/> (accessed on 24/09/24).

1.3.3 Brexit and ARR

ARR became obligatory for all European member states in 2001, with Directive 2001/84/EC, and it applies to all countries in the European Economic Area, for artists who are EEA nationals.⁶⁰ The UK, Ireland, the Netherlands, Malta, and Austria were allowed six years further to extend the right to artists' heirs, as they did not have an equivalent law previously. In Britain the Directive was implemented in 2006, for living artists only, and extended in 2012 for those who passed away within the 70-year period. It is administered by the UK IPO and the Department of Trade and Industry.

In June 2016 the UK public voted to leave the European Union, as a result of a referendum. Brexit revokes Article 50 of the Treaty on European Union, and the exit took place on 31st January 2020.⁶¹ The result of the referendum and Brexit is of key importance to the art world and to ARR in particular. Brexit touches on areas of the arts concerning import VAT, export licences and art funding, as well as the Directive 2001/84/EC on ARR. Articles about Brexit and its influence in the art world predicted that post-Brexit there would be an effort to abolish ARR, as this could help London remain competitive. Tim Maxwell, a partner at Boodle Hatfield, said:

It would not surprise me if those in the art trade now push for a renegotiation of ARR, to better compete with New York and Hong Kong. Artists themselves are likely to oppose changes to ARR that could see their royalties reduced.⁶²

Some media sources argue that the UK has already suffered losses due to the referendum, though London is still coming second as the largest art market after New York and before Hong Kong.⁶³ Before its implementation in 2006, media coverage showed an opposition to the right,

⁶⁰ EEA countries: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden.

⁶¹ The UK voted to leave the European Union in the 23 June 2016 EU referendum. As a result of the referendum the UK exited the European Union on the 31st January 2020, with a transition period until 31st December 2020.

⁶² Boodle Hartfield (2006). Brexit: What now for the Arts? *Art Law & More*. Available online: <https://artlawandmore.com/2016/06/24/brexit-what-now-for-the-arts/> (accessed on 27/04/24)

⁶³ Kakar, A. (2013), How Brexit is Still Impacting the British Art Market. *Artsy*. Available online: <https://www.artsy.net/article/artsy-editorial-brexit-impacting-british-art-market> (accessed on 27/04/24)

even by artists themselves, such as David Hockney, who claimed that this right would harm the art market and emerging artists.⁶⁴ In parliament, Minister of State Ian McCartney opposed the right based on the aforementioned report.⁶⁵ Furthermore, there is still controversy around ARR in the EU, where art professionals are debating its minimum threshold and having to pay ARR twice for the same work.⁶⁶ Nevertheless, the UK government decided to retain ARR with the same rules and regulations as the Directive 2001/84/EC, as part of the European Union (Withdrawal) Act 2018.⁶⁷ DACS campaigned to ensure the retention of ARR with “Fair Share for Artists” in 2019 and the UK government reviewed the ARR legislation to confirm its effectiveness.⁶⁸ As part of the EU-UK Trade and Co-operation Agreement Section for ARR (Article IP.13), which reaffirmed the majority of benefits and protections for intellectual property in the UK and part of the UK copyright law came for EU legislation, ARR was retained in its original form with the regulations amended to reflect the UK’s position outside the EU and it reads:

Each Party shall provide, for the benefit of the author of an original work of graphic or plastic art, a resale right, to be defined as an inalienable right, which cannot be waived, even in advance, to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author.⁶⁹

The response from the media was mixed, with Alex Capon reporting in the *Antiques Trade Gazette* the ARR retention news and highlighting that though the legislation remains in place, there is now the option to change how ARR operates. The two most important changes mentioned in the article are those of the percentage and thresholds of ARR, but most

⁶⁴ Barnes, A. (2006). Hockney’s Angry Old Men, *The Independent*. Available online: <https://www.independent.co.uk/news/uk/this-britain/hockney-s-angry-old-men-340226.html> (accessed on 27/04/24)

⁶⁵ Danby, G. & Ward, P. (2020). Artist’s Resale Right. House of Commons Library. p. 2.

⁶⁶ Milliard, C. (2014). Art Industry Representatives Sign European Commission’s New Recommendations on the Controversial Artist Resale Right, *Artnet*. Available online: <https://news.artnet.com/market/art-industry-representatives-sign-european-commissions-new-recommendations-on-the-controversial-artist-resale-right-2739> (accessed on 27/04/24)

⁶⁷ The Intellectual Property (Copyright and Related Rights) (Amendment) (EU Exit) Regulations 2019 (Intellectual Property (Copyright and Related Rights) (Amendment) (EU Exit) Regulations 2019), passed under the powers of the European Union (Withdrawal) Act 2018, came into force on 1 January 2021. Available online: <https://www.legislation.gov.uk/ukSI/2019/605/regulation/29/made>. (accessed 16/04/24).

⁶⁸ DACS, Copyright Uncovered: The Artist’s Resale Right in a post-Brexit world, what you need to know. Available online: <https://www.dacs.org.uk/latest-news/the-artist’s-resale-right-in-a-post-brexit-world-w?category=For+Artists&title=N> (accessed on 27/04/24)

⁶⁹ Official Journal of the European Union (2021). The EU-UK Trade and Cooperation Agreement. p.130, Article IP.13: Resale Right. Available online: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf (accessed 16/04/24).

importantly the change of those thresholds from euros to pounds.⁷⁰ On the other hand, Ivan Macquisten from the Art Newspaper argued that ARR is a business levy, or even tax, that only benefits the already successful artists. He also brings caution on changing the way it operates, and particularly the cap of €12,500, as raising this could be extremely damaging to the UK market.⁷¹

1.4 Analysis of the Art Market

The quantitative methodology I use for my research requires the accumulation and analysis of auction art price data. Through this method I aim to discover how ARR influences art prices and as a result the art market. The use of quantitative methods has become increasingly important as a trustworthy way of predicting developments in the art market. The websites of artprice.com, Artnet and Blouin Art Sales Index play an important role in this by being the major platforms which provide auction art prices, and are available online by subscription.⁷² However, the limitations of these websites are that they only cover a limited selection of auction houses and that they extract the data from auction house websites, where there can always be mistakes in prices achieved. Before the internet, researchers used data from books such as the Mayer International Auction Records.⁷³ On the other hand, art market sales by galleries and art dealers are much more difficult to measure as they are not publicly available the same way as auction sales.

To identify the causal effect of ARR on art prices I control for other confounding factors that might have influenced the results, such as economic crises, political instability, change in fashion etc. For example, if prices in the area of Contemporary Art have fallen in the UK, during the period where ARR was introduced (2006-2012), it could be due to a general fall in

⁷⁰ Capon, A. (2021). Brexit deal retains Artist's Resale Right as per level playing field, *Antiques Trade Gazette*. Available online: <https://www.antiquetrade gazette.com/print-edition/2021/january/2476/news/brexit-deal-retains-artist-s-resale-right-as-part-of-level-playing-field/> (accessed on 27/04/24)

⁷¹ See Macquisten (2021).

⁷² Artprice.com: <https://www.artprice.com/>, Artnet: <https://www.artnet.com/price-database/>, Blouin Art Sales Index: <https://www.blouinartsalesindex.com/> (accessed on 16/04/24)

⁷³ For example: Mayer, E. (1993). *International auction records* (Vol. 27). Edition M.

the art market as whole, or a shift of interest in a different category. Goetzmann (1993) states that an increase in collectors' wealth is what influences the art market, which has a causal relation with the stock market. Therefore, it is important to look into the history of the art market and the different factors that influence it. Within Directive 2001/84/EC itself there is a prerequisite that the effect of ARR on the art market is measured every four years.⁷⁴

1.4.1 The art market in the UK

Therefore, in order to understand the effect of ARR on the UK art market, one needs to examine how the market works, who are the main stakeholders, and how it compares to other art markets. An overview of the art market in 2022 is drawn from the Art Basel and UBS art market report of 2023 and the BAMF (British Art Market Federation) report of the same year, both written by Dr Clare McAndrew from Arts Economics.⁷⁵ The art market consists of auction houses, galleries and art dealers, and in the UK there are around 7,800 art businesses, which offer 45,520 jobs and produce sales of £9.7 billion. At the same time in 2022 there were 43,400 visual artists recorded as working in the UK. Therefore it is clear that the prosperity of the art market is of great importance to the UK government and to artists. Of these businesses auctions take 42% of the UK market, with 3,000 establishments and the most prominent ones are Christie's, Sotheby's, Bonham's and Phillips.⁷⁶ Galleries and art dealers make up 58% of the UK market, with 7,000 establishments. The existence of a strong secondary market is what makes the art market unique, and while auction houses deal only in the secondary market, galleries and art dealers deal in both primary and secondary markets.⁷⁷ Furthermore, galleries and dealers attend Art Fairs, where they exhibit and sell works to a global audience annually,

⁷⁴ Directive 2001/84/EC, Chapter II, Article 11, Paragraph 1 – Revision Clause “The Commission shall submit to the European Parliament, the Council and the Economic and Social Committee not later than 1 January 2009 and every four years thereafter a report on the implementation and the effect of this Directive, paying particular attention to the competitiveness of the market in modern and contemporary art in the Community, especially as regards the position of the Community in relation to relevant markets that do not apply the resale right and the fostering of artistic creativity and the management procedures in the Member States.” L272/36.

⁷⁵ The Art Basel and UBS art market report of 2023. Available online: <https://theartmarket.artbasel.com/download/The-Art-Basel-and-UBS-Art-Market-Report-2023.pdf>. (accessed on 18/04/24). BAMF, The British Art Market Report 2023. Available online: <https://tbamf.org.uk/wp-content/uploads/2023/11/British-Art-Market-2023-Final-Low-Res-FINAL.pdf>. (accessed on 18/04/24)

⁷⁶ According to Statista, the top auction houses of 2018 were Christie's, Sotheby's and Bonham's (excluding those not operating in the EU). Available online: <https://www.statista.com/statistics/272983/market-share-of-art-auction-revenue-and-lots-sold-by-auction-house/> (accessed on 18/04/24)

⁷⁷ The primary market is when a work is sold for the first time by the artist to a collector through the gallery. The secondary market is when a work is resold and that only happens when an artist is already established.

the major ones being those of Art Basel Miami, TEFAF, Masterpiece, Frieze Art Fair and The Armory Show.

The centre of the art market in the UK is London, where the highest value auction and gallery/art dealer sales take place. Internationally, in 2022 the US took up the largest share of the market with 45%, the UK with 18% and China with 17%, Switzerland only makes 2% (fig. 6). The US traditionally dominates that market followed by the UK or China in second place, AS China and the UK have been competing since 2009 when China's increase of share started. Looking at the performance of the art market throughout recent years, there have been two major events with a global negative impact. Those were the 2008 financial crisis and the Covid-19 pandemic of 2020 (fig. 7). In the UK there was also Brexit, which coincided with the pandemic in 2020. Those two major disruptions caused a drop in art sales globally. However, the art market was able to bounce back within a year in both cases. Brexit on the other hand, only affected the British art market, which performed slightly worse than the other market leaders in 2020. The most direct effect of Brexit in the UK art market was the drop of imports of works of art, which is something that auction houses depend on for their specialised sales. The Deloitte Report 2017, predicted that Brexit could have a negative impact on the UK market for Contemporary Art. The same report also states that political and economic factors play the most important role in the development of the art market, specifically the instability in North Korea and Brexit.⁷⁸

⁷⁸ Deloitte and ArtTactic. 2017. Art & Finance Report 2017, pp. 40-41. Available online: <https://www2.deloitte.com/content/dam/Deloitte/at/Documents/finance/art-and-finance-report-2017.pdf> (accessed on 15/04/2024).

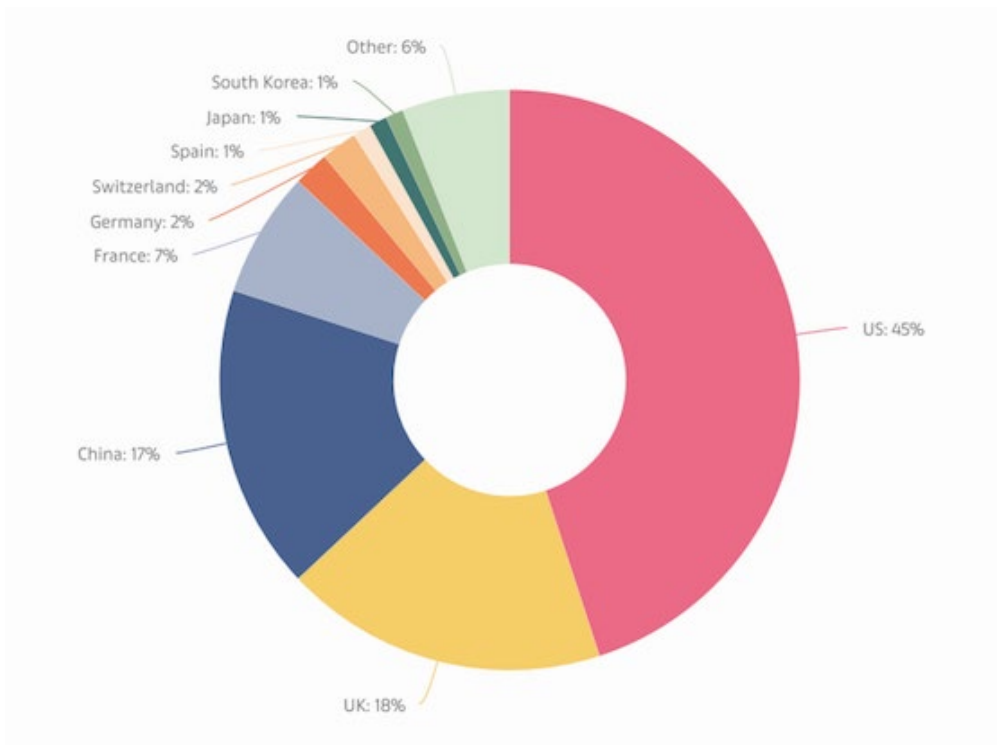


Figure 6, Global Art Market Share by Value 2022. © Arts Economics 2023.



Figure 7, Global Art Market Annual Change in Sales by Value 2009-2022. © Arts Economics 2023.

1.4.2 The Scottish Colourists' market

Looking at Scottish art, we focus on the market for the four Scottish Colourists, as they are the group used in the quantitative analysis of Chapter 5. The Colourists are: John Duncan Fergusson (1874-1961), Samuel John Peploe (1871-1935), Francis Campbell Boileau Cadell (1883-1937) and George Leslie Hunter (1877-1931). The group's work has been actively sold in the UK art market since the 1920s. However, it has been largely overlooked until the 1980s, when interest in their work started to come from areas outside the confines of Scotland.⁷⁹ During the mid 1980s galleries and art dealers aided the advancement of the Scottish Colourists by promoting their work. This was part of the rise of British Art during this period, and Christie's started their first dedicated Scottish Art auction in 1986.⁸⁰ Such was the change in demand for the Colourists, that Peploe's work moved from achieving prices such as £35,000 for an oil in 1979, to £506,000 in 1988. Since then their auction prices have been advancing, with Peploe, Cadell and Fergusson achieving the highest figures and Hunter following at a lower level. The highest price achieved for the group used to be for Peploe's *Still life with Tulips* (fig. 8), sold at Christie's for £992,750 (including premium), in June 2018. Until recently, when Fergusson's *Submarine and Camouflaged Battleship* (fig. 9), sold at Christie's for £1,074,000 (including premium), in March 2023 setting the record of the highest price for a Scottish Colourist at auction. Followed by records for Cadell's *Reflection* (fig. 10), sold at Sotheby's for £942,000 (including premium), in Jun 2022, and with Hunter's *Still Life with Tulips and Oranges* (fig. 11), sold at Sotheby's for £433,250 (including premium), in 2009.

⁷⁹ de Burton, S. (2011). The market: Scottish colourists. *Financial Times*. Available online: <https://www.ft.com/content/1e4cb0e4-ce63-11e0-b755-00144feabdc0> (accessed on 29/04/24).

⁸⁰ Gleadell, C. (1989). The Scottish Market. *Art Monthly*, p. 24-25. Available online: <https://www.proquest.com/openview/d666c0950bd018dd50fc2837fc918285/1?pq-origsite=gscholar&cbl=2026363> (accessed on 29/04/24) and Nuding, G. P. (1991). The Year in the Art Market, *Irish Art Review Yearbook 1990/1991*, pp. 244-247.



*Figure 8, Samuel John Peploe R.S.A. (1871-1935), Still Life with Tulips, oil on canvas, (76.2 x 63.5 cm.),
Painted circa 1919, Private Collection. © Christie's.*



*Figure 9, Francis Campbell Boileau Cadell R.S.A. R.S.W. (1883-1937), Reflection, oil on canvas, (63.5 x 76 cm.),
Painted in 1915, Private Collection. © Sotheby's.*



Figure 10, John Duncan Fergusson (1874-1961), *Submarines and Camouflaged Battleship*, oil on canvas, (76.2 x 86.4 cm.),
Painted in 1918, Private Collection. © Christie's.

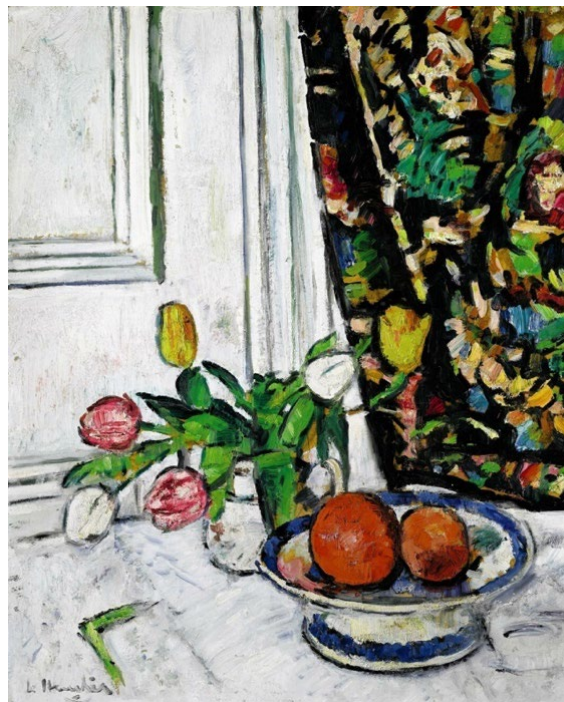


Figure 11, George Leslie Hunter (1877-1931), *Still Life with Tulips and Oranges*, oil on board, (68 x 55.3cm.),
Painted circa 1925-29, Private Collection. © Christie's.

1.5 Summative Analysis

In the first section of this introductory chapter I offer a presentation of ARR as the subject of this thesis. The influence of ARR on the British art market is a subject that is important for artists, the art market, the government and society, as the art market contributes to the British economy. The current literature on the subject offers contradicting results on the question of the influence of ARR and hence this study is intended to fill this gap in the ARR literature. Furthermore, the key research questions of this thesis are presented and explained, which are the core themes of ARR and willingness to pay, ARR and the art market and ARR post-Brexit. The first section finishes with an overview of the thesis, which comprises of seven chapters, an introduction, a literature review, a methodology chapter, three findings chapters and a conclusion.

In the second section of this chapter, there is a detailed history of the background of ARR, from its early origins in 19th century France and the Secrétan sale to Directive 2001/84/EC. There is a timeline of how Droit de Suite was adopted by different countries and what the Berne Convention offers visual artists. Then follows an analysis of how the Directive came to be and the controversy around it. In addition, there is a coverage of the talks in the UK parliament and how it adopted the right in two stages in 2006 and 2012. Finally, I examine how ARR has been applied internationally with a few countries as key examples and a focus on the major art markets such as China. There is also a separate analysis of ARR in the US, as the US holds the largest share of the art market. There we see how the state of California used to have a form of ARR up to 2018, but otherwise all attempts to pass a bill through Congress have failed.

The third section covers the ARR framework, providing a detailed breakdown of how ARR works in the UK and who are the key stakeholders. The two collecting societies of DACS and ACS are introduced, explaining how they operate and their role in the administration of ARR. What follows is an analysis of the impact of Brexit on the British art market and how it might influence ARR in the UK.

The final section provides an overview of the art market with a focus on the UK and the Scottish Colourists in particular. This helps lay the foundations for the understanding of the data collection and analysis. Firstly, there is a description of what the art market in the UK is comprised of and its performance as an art market in contrast to the rest of the world. The key findings are that the UK is the second largest art market following the US and followed by China. Another important factor is that situations such as the 2008 financial crisis and the Covid-19 pandemic of 2020 have a direct impact on the art market. Furthermore, there is a focus on the market for the Scottish Colourists as they form the sample group of the quantitative data analysis which follows in Chapter 5. There we see the development of that market over the years and the top prices achieved for each artist. What follows in Chapter 2 is a literature review of the relevant research on the subject of ARR and on the wider subject of intellectual property, which lays the foundations for this thesis.

Chapter 2 - Literature Review

2.1 Introduction

There is a dense literature on Artist's Resale Right, as the subject has been approached from many different perspectives, both theoretical and empirical, but within this body of work my study focuses on the much less-explored influence of ARR on art prices. Commentaries have studied ARR from various perspectives, going beyond the conventional disciplinary and methodological boundaries. Scholars working in disciplines such as art history, economics and law, have offered diverse outlooks. While each disciplinary approach may offer useful insights, when studied on their own here I argue that it is essential to build a unified interdisciplinary framework for the analysis of this pressing research and policy issue.

As ARR has been implemented in the UK only recently, 2006 and extended in 2012, the subject remains understudied and most papers are written either before the implementation or just after.⁸¹ This study fills this gap in the existing literature, combining diverse theoretical and empirical methodological techniques. The methods used in this study include gathering a select sample of data on art auction prices and conducting interviews with key art market players. Directive 2001/84/EC makes it a prerequisite for the European Commission to review the influence of ARR on the art market and its effectiveness every four years.⁸² This shows that an ongoing update on the existing research is not only interesting, but also necessary. In addition, in the post-Brexit era this research is of paramount importance to policy makers, when reviewing the future of ARR. To my knowledge this thesis offers the first comprehensive study following the full implementation of ARR in the UK after 2012.

⁸¹ On 27 September 2001 the European Parliament finalized Directive 2001/84/EC; which was implemented in the UK in 2006 for living artists only and in 2012 it was extended to those who passed away up to 70 years before the sale.

⁸² Directive 2001/84/EC, Chapter III, Article 11, Paragraph 1.

2.1.1 Chapter overview

Following the short introduction, this literature review chapter is structured as follows: Section 2.2 forms a unified policy framework for ARR, laying the foundations for academic research. Following on, Section 2.3 investigates the history of copyright and identifies common elements with ARR. In Section 2.4, I analyse the harmonization of ARR legislation within the EU, while also focusing on the clashing ideologies between Europe and the UK. In Section 2.5, I focus on the theoretical and empirical literature, specifically on the subject of ARR, and analyse historical data sources, that can be explored further for the purpose of this study. Ultimately, Section 2.6 looks at the factors that influence buyers' willingness to pay and how this applies to art and ARR in particular, together with an overview of the existing research on art market performance.

2.2 Institutional Background and Policy

Artist's Resale Right is an important and pressing policy issue that influences artists, the art market and the economy as a whole. The key policy questions that still need to be answered have been laid out by Merryman (1993) as: What are the arguments for and against the right? How valid are these arguments? How has the *droit de suite* worked in the jurisdictions that have adopted it? Who benefits and who loses from the application of the right to real world transactions?

Price (1968) suggests that ARR legislation should not be based on the romantic idea of the struggling artist, which no longer applies to the art world. Thus, it is necessary for policy makers to base their decisions concerning ARR on research and core evidence in order to offer informed recommendations for the future; especially while the UK has left the EU as a result of Brexit. Nevertheless, most existing research on the subject of ARR is theoretical, with only very few empirical studies available. This is probably due to the difficulty of acquiring data on

art prices, especially of sales by art dealers, galleries and auction private sales.⁸³ Turner (2012) highlights the ‘information problem’ around the subject of ARR and argues that stakeholders will need to base their decisions on evidence rather than theoretical predictions. In this section, I look at the different factors of ARR that influence policy decisions.

Since Directive 2001/84/EC, several reports and surveys have been commissioned to inform policy makers about the different ways that ARR can be implemented and about its influence on the art market. This shows that there is an ongoing debate on the subject and that there is a consistent need for improvement and change, founded on evidence-based, policy-oriented research. Specifically, the Arts Council of England commissioned McAndrew & Dallas-Conte (2002) to complete a report investigating, among other things, how other EU countries administer ARR and how the UK administers other intellectual property rights. This would help policy makers to better understand and tailor the implementation of ARR to the UK system. The administration of ARR is of major importance, as according to Merryman (1993) poor administration practices have led in lack of enforcement in some countries.

The main aspects of ARR that policy makers in the UK are interested in are the following: rights collection practice and costs, move of art to other countries (such as the US), and loss of sales and jobs as a result. According to McAndrew & Dallas-Conte (2002):

Droit de Suite is useless and runs counter to its purpose if the costs of administering it completely or partially offset the gains in artists’ income.⁸⁴

Some important figures from the same report show that for a £9.9 million royalty revenue, collection costs may be as much as £1.68 million. Art market revenue that could have moved to the US, for sales eligible for ARR in France and in the UK, would be £311.8 million and £6.5 million in ARR revenue, respectively, in the year 1998 alone.⁸⁵ Notably, in terms of lost jobs, due to the implementation of ARR in Europe and the consequent flow of sales abroad,

⁸³ Most major auction houses conduct ‘private sales’ which are separate to their public auctions. The major differences to auctions are: firstly, that sellers do not need to wait for the next appropriate auction and can sell their item quickly; and secondly, the prices realised from these sales are not published and the whole process is more discrete.

⁸⁴ See McAndrew & Dallas-Conte (2002), p. 48. Hansmann & Santilli (2001) also use this argument.

⁸⁵ Values in original currency were: €355.5 million and €7.5 million.

the cost has been estimated to be 5,000-8,000 jobs, by the British Art Market Federation.⁸⁶ In the same report by McAndrew & Dallas-Conte (2002), there is an extensive analysis of the way that other rights are administered in the UK, such as copyright for authors, to be used as an example for ARR implementation. Nevertheless, McAndrew & Dallas-Conte (2002) examine the influence of ARR on administrative costs alone and not on prices of art works, which I believe is the most important aspect of ARR that policy makers need to consider.

Furthermore, in 2008 the UK IPO commissioned a study to measure the effect of ARR on the art market. Graddy, Horowitz & Szymanski (2008) use a mixed methodology, similar to the present thesis, of data on art prices, questionnaires and interviews. They collect prices realised for works of art sold at auction from Blouin Art Sales Index and compare market share by volume and value between countries for the periods of 2003/4 and 2006/7. They also sent questionnaires to artists and art dealers from lists provided by DACS and conducted interviews with a select group of artists, art dealers, auction specialists, collecting societies and ARR lobbyists. Their results show that the majority of ARR payments are small and 80% of them go to the top 100 artists. Regarding the impact of ARR on the British art market, they find no evidence of reduction in prices eligible to ARR, in contrast to those which are not eligible and no move to countries with no ARR for sale. In terms of the administration of ARR, the questionnaire and interviews results show that opinions are divided with half arguing that they are troublesome and half that they are not. Also, most artists believe that ARR is beneficial to them, although 2008 (when the study was published) was only two years after the implementation in the UK, hence it would be hard to know its effect on them.

One of the most important findings from the study is that most interviewees think that ARR is a moral right and thus its cost and impact is beyond the point.⁸⁷ Nevertheless, its cost and impact could be potentially harmful to artists, who are supposed to benefit from it, as “a benefit cannot be created out of nothing and the cost of paying ARR must be borne somewhere.”⁸⁸ Though the study by Graddy, Horowitz & Szymanski (2008) yields interesting

⁸⁶ According to McAndrew & Dallas-Conte (2002), this number could be an exaggeration.

⁸⁷ See Graddy, Horowitz & Szymanski (2008), p. 29.

⁸⁸ *Ibid.*, p. 33.

results it is important to note that it covers the effect of ARR for living artists only, as ARR was extended to heirs in the UK a few years after the study in 2012. The market for heirs is much larger and its effect on the market after 2012 could be different. Also, the selection of the sample for the questionnaires was provided by DACS and could potentially be biased. The present thesis builds on the study by Graddy, Horowitz & Szymanski (2008) by extending the impact analysis on the heirs market and for a much longer period after the implementation. It also offers a more specialised sample for both the quantitative and qualitative analysis.

The most recent report on the economic implications of ARR, commissioned by WIPO is by Farchy & Graddy (2017). In their study they analyse the art market in detail providing evidence from the three major annual art market reports of artprice.com, TEFAF and Art Basel. They also investigate the influence of ARR on the art market in the UK and France in particular. According to Farchy & Graddy (2017), there has been no change in market growth due to ARR after 2006 and 2012 in the UK. However, they recognise that it is difficult to find the correct methodology to measure the effect of ARR in isolation. Finally, they also stress the importance of the recognition of ARR in Australia and in Africa for the benefit of indigenous Australian and African artists. Both of these groups of artists have seen a recent rise in the value of their work and would benefit from ARR should their countries recognise it.⁸⁹

In this section I also examine the literature that relates to the research question of whether ARR should be retained in the post-Brexit era. The element that would mostly influence this decision would be if ARR benefits British artists and art market. Existing literature is divided in opinion with Merryman (1993) arguing that ARR has a negative impact for the majority of artists and the art market and Banderghnasa & Graddy (2011) arguing that its influence is positive. Tepper (2007) argues that Tony Blair based his decision to adopt ARR in the UK on emotional reasons alone, ignoring its possible negative effect on the economy. DACS, together with Alliance for IP, British Copyright Council and the Creative Industries Federation, campaigned to keep ARR in the UK after Brexit, with their main argument being the benefit to artists and artists' estates. According to a report by DACS (2023) nearly 6,023

⁸⁹ Australia adopted ARR in 2010 and there are only a few African countries that recognise it.

artists profit from ARR and over £120 million has been paid in royalties since 2006.⁹⁰ Since then, Brexit has taken place and the UK government agreed to retain ARR in the UK (see footnote 66). The policy debate on whether to keep ARR post-Brexit is still active and my work can offer informed recommendations on this pressing issue based on rigorous evidence.

2.3 Is ARR for Artists What Copyright is for Authors?

The Berne Convention was established in 1886 for the protection of literary and artistic works (to include paintings, drawings and sculpture). Yet, although the Berne Convention protects artists when their work is reproduced, exhibited or copied, it does not provide compensation for the resale of their works when their value increases; Article 14ter of the Berne Convention gives artists the right to an interest in resales, however, it is not mandatory to adopt it (see footnote 17). In this section, to fully understand ARR, it is important that I examine its relation to copyright as it applies to authors; its history and theory, the way that it is administered and its influence on authors' earnings. Although ARR can be interpreted as a remuneration right under the umbrella of copyright, in this thesis I make a distinction between ARR and copyright for ease of reference.⁹¹ Fine artists are considered 'authors' too, however, in this thesis I make a distinction between artists and authors to separate them from writers, performers and musicians.⁹²

2.3.1 Creativity and innovation

The main purpose of copyright is to encourage creativity, by increasing the income of authors. However, authors' earnings are rarely studied in copyright research and Towse (2006) argues that copyright might influence supply in a positive way or raise the cost and limit supply. Which

⁹⁰ See DACS (2023), p.5.

⁹¹ This distinction is also used on the gov.uk website when explaining ARR. Available online:

⁹² According to the Copyright, Designs and Patents Act 1988 'the author of a work is the person who creates it'.

is exactly what I endeavour to investigate in this study for ARR. She also argues that copyright often works for the benefit of distributors rather than creators.

Plant (1934) is one of the earliest studies to examine copyright for books and his analysis and critique serves as a useful comparison to the study of ARR. He mainly focuses on the effects of copyright on the output of literature. Some of the main arguments against copyright that Plant (1934) presents, are analogous to those against ARR, such as overproduction of works that the market cannot absorb, which in turn results in underproduction of good quality works. Towse (2006) also claims that copyright encourages overproduction, and specifically it has been observed that in Holland, where a minimum wage for artists was enforced, there was a surge of too much bad quality art. On the contrary, in the case of ARR both Solow (1998) and Hansmann & Santilli (2001) argue that artists have an incentive to maintain the value and quality of their works, in order to keep making a profit from their re-sale. In terms of copyright's influence on authors' incomes, Hansmann & Santilli (2001) examine specifically the difference between royalties for artists and royalties for authors and composers. In their paper, they claim that copyright can drive payments for authors to old age; that authors and not publishers bear all the risks and that only successful authors receive rewards. Nevertheless, they also state that authors still chose to be paid in royalties. Copyright can also have a negative effect on the market if it causes the mobility of talent. Plant (1934) states that if copyright does not apply internationally then the native authors and publishers of the UK would be jeopardized. Yet, he argues that the Act of 1842 increased profit while at the same time it also increased prices. This affected the competition between the UK and the US, where there was no such act. Finally, it is also worth investigating the influence of copyright on innovation. According to Moser (2013), legislation for patents, when strong, can influence innovation negatively. In her paper she uses empirical methods to challenge traditional views on copyright's influence on innovation. She looks into 19th century technology fairs and finds that patents can have a negative effect on innovation, as they restrict movement of information.⁹³

⁹³ Giorcelli & Moser (2016) look at the influence of copyright law on creativity using data from Italian operas. They find that in states with copyright laws there is an increase of creativity but extension of copyright duration has no effect. For a similar study also see Li, MacGarvie and Moser (2018).

2.3.2 Copyright and ARR

Almost the entire literature on ARR examines its relation to copyright for authors. Most scholars believe that artists are fundamentally different to authors and as such they should not enjoy the same rights. Ginsburgh (1996) argues that the EU Commission wrongly compares artists to writers and as such is considering extending their rights with ARR, while at the same time he predicts that this would have a negative effect for most artists. The main difference between artists and authors is their ability to sell their 'manuscript'. According to Ginsburgh (1996), artists sell their work once and for all and they should not be entitled to payment upon resale, unlike authors who do not sell their manuscript but depend only on the sale of copies. Price (1968) and Tepper (2007) also state that artists are not treated unfairly under copyright law, as they benefit from the initial sale of their unique work, while they do not have to be paid in instalments later in their career. In addition, ARR differs from copyright as it is inalienable and therefore cannot be sold or denied. Merryman (1993) and Rushton (2001) argue that ARR is inalienable because of artists' inferior positions to dealers, but consider it unjustifiable.

According to Merryman (1993) the equivalent of copyright for artists would be to charge a fee for the exhibition of their work in a gallery or museum. However, that has proved inefficient as museums often do not have enough funds and artists prefer to have their work exhibited, even without any direct profit. This argument has also been examined by Hansmann & Santilli (2001) in their section on 'Display Rights', where they argue that artists should benefit every time their work is exhibited. In their paper they extensively cover the subject of copyright for authors versus resale rights for artists. They explain the reasons why authors are paid in copyright royalties and argue that overall this is the most effective way for them to profit from the success of their work. Though, they make it clear that there is not enough research on the subject of copyright for authors. They also compare authors to artists and they explain in what ways they are similar and different. They then conclude with the belief that the equivalent to copyright for artists is the commission agreement with dealers in the primary sales and not ARR. Their final argument is that there should be ARR for artists except it should be waivable, as with copyright, and also that the rate needs to be flexible, depending on individual agreements. Several reports were commissioned in the UK before the

implementation of Directive 2001/84/EC, to examine different aspects of copyright administration. These were to serve as an example for the best collection and distribution practice of ARR. One such report is by McAndrew & Dallas-Conte (2002), which looks into the collection of other rights in the UK. The same study is one of the main literature sources on the subject of harmonization of ARR, which is the subject of the next section, as it describes the different ways that EU countries enforced ARR before 2001.

2.4 EU Harmonization and Clashing Ideologies

Artist's Resale Right was conceived in France in 1893 and implemented in 1920.⁹⁴ It was later adopted by several other European countries in different forms, which has created instability for EU artists and art market. The first discussions in the European Parliament about a Directive for the harmonization of all ARR legislation started in 1996, to eliminate distortions in the internal market.⁹⁵ There is a number of literature sources from around that time in anticipation of harmonization, which touch on the main arguments for ARR and the problems that might arise. There are also reports commissioned to analyse the logistics of harmonization and implementation of ARR. Directive 2001/84/EC achieved harmonization of ARR legislation for all EU countries, in a way that each of them had the freedom to administer it themselves in accordance with Dietz (1978) who states that:

harmonization was best achieved by recognising the 'de facto' national monopolies of authors' collecting societies and then issuing EC Directives designed to achieve specific results, in which each member state could choose the specific form or method involved; and furthermore, the reforms could take place in stages.⁹⁶

This provided EU countries with the chance to implement the changes smoothly, so that they do not disturb their markets and in accordance with the different ideologies of their individual cultures. The UK was one of those countries, as it implemented part of the Directive in 2006 and the rest in 2012 for this reason. The EC (European Commission), which is responsible for all copyright policy decisions in the EU, has made efforts to harmonize copyright laws in the

⁹⁴ It has since then been updated in 1957 and this legislation is currently covered under the *Code de la Propriete Intellectuelle* (CPI) of July 1992 (Article 42 of the Copyright Law 1992).

⁹⁵ Commission of the European Communities (1996), Proposal for a European Parliament and Council directive on the resale right for the benefit of the authors of an original work of art, COM(96) 97 final, Brussels.

⁹⁶ See Porter (1991), p. 39.

EU since the 1980s, bearing in mind the effect that these changes would have on cultural activity. The main argument for the harmonization of legislation was:

to ensure the proper functioning of the internal market by eliminating distortions of competition as well as obstacles to the free movement of goods and services.⁹⁷

Through harmonization ARR was implemented in all EU countries, while it was also reinvented to be more up-to-date with the needs of today's market. Another similar example of copyright harmonization is that of rental rights, which had to happen to coincide with technological developments in the field of digital entertainment.⁹⁸

2.4.1 ARR in the EU

Prior to Directive 2001/84/EC, 11 out of 15 European member states had a form of ARR and only 8 enforced it.⁹⁹ Interestingly, the UK was one of the 4 countries not to have a form of ARR, together with Ireland, the Netherlands and Austria. The key differences in legislation before harmonization were: payment to heirs in general or just family, the type of works that ARR applies to, the type of sale (auction and dealer), charge on the gross price or on top of premium/VAT, the percentage of ARR, the minimum value and the type of collection. These differences created distortions in the EU market and harmonization could help eliminate them. However, it has also been argued that although ARR would eliminate distortions in the EU art market, it would not do so for the international art market. According to Ginsburgh (2005), while art might not move within the EU to avoid ARR, it has in the past moved to the US for the same reason. An illustrative example of this is that of 2001 when the £50 million French Gaffé sale was moved to New York from Paris, as its beneficiary UNICEF preferred to avoid paying ARR.¹⁰⁰

2.4.2 Cultural differences and ARR

⁹⁷ Ibid.

⁹⁸ Ibid., p. 43.

⁹⁹ Belgium, Denmark, France, Germany, Finland, Portugal, Spain and Sweden implement the right.

¹⁰⁰ See Bennett (2001).

Attitudes towards ARR are very different between countries, especially between the two very distinctive cultures of France and the UK. According to Tepper (2007), *Droit de Suite* originates from the French civil law and the moral rights movement of the French Revolution.¹⁰¹ He specifically states that:

The restoration of an individual's rights took a greater importance in French philosophy during the tumultuous years following the French Revolution and during the Enlightenment as new philosophies embraced the vision of art as the reflection of an individual's personality.¹⁰²

Towse (2006) also argues that France is a country where moral rights of artists are perceived more important than, for example, in the US where they are not particularly strong. Ginsburgh (1996) even suggests that France had a greater interest in the harmonization of ARR in the EU. In his theoretical analysis, Price (1968) argues, among other things, that ARR had a negative effect on the French art market and because of that the French are eager to harmonize legislation internationally.

Also, Tepper (2007) discusses how the US and UK are under common law, which perceives art as property in contrast to France, which is under civil law and perceives art as a moral right. Hansmann & Santilli (2001) claim that the French mentality towards ARR is different to other EU countries, as before Directive 2001/84/EC France was one of the few countries that collected royalties in contrast to, for example, Italy which did not. According to the report by McAndrew & Dallas-Conte (2002), for the year 1998 France collected the largest amount of royalties in the EU, with 42% art market share of all the works sold under ARR. That might not be surprising, as France also holds the largest share of the EU art market after the UK. Banterghansa & Graddy (2011) compare results for artists that are subject to ARR between France and the UK and find that, after Directive 2001/84/EC, there is an increase in French art sold in France rather than moving to the UK for sale, provided that these works would be subject to ARR in both countries. On the contrary, McAndrew (2011) finds that the harmonization of legislation brought by Directive 2001/84/EC created no difference within the EU, with the UK still being the predominant market. From a different perspective, according

¹⁰¹ For an in-depth analysis of the legal framework of the French *Droit de Suite* see Hauser (1962). In her paper she discusses the nature of *Droit de Suite* as an extension of copyright rather than a moral right.

¹⁰² See Tepper (2007), p. 11.

to Ginsburgh (2005), France is the country which has the highest administrative costs for ARR, with a very low percentage being paid to artists. He also mentions a collecting agency scam, where copyright royalties were used to cover salaries. On the other hand, continental countries, such as France and Germany, have provisions for royalties to be paid to art funds for struggling artists, which is something that does not happen in the UK.

These differences in culture and attitude are reflected in the legislation and in how artists, together with art professionals, think about ARR. As the subject has not been adequately covered in the current literature, this is precisely the area that this study explores with interviews, where I approach key art market players to examine their attitudes towards ARR (this is discussed in a later section of this chapter).

2.5 ARR: Theoretical Predictions and Empirical Evidence

Since as early as the 1960s there have been several papers focusing on ARR or *Droit de suite* as it was then called. These papers are divided between theoretical and empirical, European and American, those written before and after Directive 2001/84/EC and those by scholars from legal or economic backgrounds. Most research on ARR is theoretical, with a small selection of empirical papers that are dated around the time of the implementation of ARR in the UK. The empirical papers are of greater interest to this thesis, as they use quantitative and qualitative methods that serve as good examples. Nevertheless, in most of these papers there are common themes and opinions that are discussed below in detail.

From an ethical point of view, as artists' incomes are generally low, it seems fair that they receive some reward when their work is re-sold for a price, typically much higher than the original.¹⁰³ One of the main arguments in favour of ARR is that artists have contributed to the success of their works and are therefore entitled to a share from the increase in their value.

¹⁰³ For a comprehensive study on artists' incomes see Alper & Wassall (2006).

Nevertheless, as Merryman (1993) argues, art dealers, collectors, art journalists and museums also contribute to the success of artists and gain or lose if artists they invested in are unsuccessful. There is of course an issue as to whether artists in the 21st century are as disadvantaged as they might have been in 19th century France, where the concept of the ‘Starving Artist’ originates. Price (1968), Filer (1986) and Merryman (1993) all argue that the romantic idea of the struggling artist no longer applies to today’s art scene, as some artists even achieve seven figure sums while still in their thirties. Nevertheless, the art industry is characterized by exceptionally high inequality in earnings, with a few global superstars on one hand and the average struggling artist on the other. However, the most recent papers on ARR focus on the influence of ARR on art prices and the art market, which is also the approach that I take for this thesis.

2.5.1 The primary art market

The early studies on ARR explore the history and rationale of the Droit de Suite and make predictions about its efficiency and influence on artists and the art market. Here I analyse a selection of papers written before Directive 2001/84/EC, which discuss the effects of ARR on the primary market.¹⁰⁴ Price (1968) and Filer (1984) expect that there will be a drop in the prices that emerging artists achieve when selling their works for the first time. This will happen when buyers consider ARR firstly, as a charge that they must bear in future secondary sales and secondly, as the lack of full copyright ownership. Primary sales are important as according to Merryman (1993) artists make most of their profit from them and only a limited selection of artists sell in the secondary market. Karp and Perloff (1993) go as far as suggesting that artists would be deterred from the profession due to the drop of initial prices. Nevertheless, their model shows that artists would prefer a lower initial price, given that they might have higher returns from ARR later in their career, as it also applies to authors. Similarly, Mantell (1995) uses economic models to prove that artists would be worse off if ARR was law in the US, as they would gain less early in their careers when they need it most. A different perspective is that of Solow (1998) who argues that artists would only benefit from ARR on those works that were sold in the primary market, before ARR was implemented and thus at higher prices.

¹⁰⁴ The primary market is art galleries and dealers buying directly from an artist’s studio.

In addition, Ginsburgh (1996) highlights that artists are either successful and benefit from the resale of their work, or they are unsuccessful and they do not receive any of the benefits of ARR, as their work is never resold. This is a view also supported by Hansmann & Santilli (2001).¹⁰⁵ Directive 2001/84/EC adopts a redistributive scheme, as an increasing percentage scale protects artists who achieve lower prices, while using a cap of what one can receive to prevent ‘superstars’ and their heirs from over-earning. Yet, a more generous solution might have been to allow superstars to generate larger royalties from ARR and redistribute them to low-earning artists. It is also believed that with the implementation of ARR emerging artists are worse off, while established artists and their heirs generate most of the profit. Interestingly, McAndrew & Dallas-Conte (2002) point to the fact that in Germany, before harmonization of the law, a portion of ARR was distributed to a welfare fund established for struggling artists. Overall, it seems that most scholars believe that ARR has a negative effect on prices in the primary market and is therefore not useful to emerging artists. Nevertheless, the aforementioned papers derive mainly theoretical predictions, rather than evidence as to the influence of ARR on the primary market. This is a gap in the literature that I fill with interviews that help us understand what key art experts, who work in the primary market, think about ARR.

2.5.2 The secondary art market

One of the main research questions of this study is whether ARR has a negative effect on art prices, particularly for works sold in the British art auction market and if as a result it is harmful to artists. Literature from before 2006 (when ARR was first implemented in the UK), which is based on theoretical analysis, predicts that prices of works of art will drop when an extra charge is applied to them (Price 1968, Filer 1984 and Ginsburgh 1996, 2005a and 2005b). Ginsburgh (1996), in his theoretical paper, shows that emerging artists would be worse off with ARR, as they might never sell in the secondary market or might not sell above the lowest limit that,

¹⁰⁵ In their paper Hansmann & Santilli (2001) also discuss dealers’ commission in primary sales and its similarities to ARR. They argue that the percentage paid to the dealer gives him the incentive to promote the artist’s works successfully.

ARR applies over. These predictions, however, have been challenged by recent empirical studies such as Banterghansa & Graddy (2011). Also, most of the theoretical studies focus only on the influence of ARR on initial prices for living artists (which is analysed above), rather than subsequent prices in the art auction market for both living and deceased artists.

The most closely related study to this thesis is by Banterghansa & Graddy (2011), who use empirical analysis to examine the influence of ARR on art auction prices. Their contribution is significant to the study of ARR, as they use publicly available data on art work prices from Blouin Art Sales Index and analyse it with a difference-in-difference method of analysis. Blouin Art Sales Index offers prices realised from sales at auction houses, such as Christie's and Sotheby's, which are more transparent than galleries, art dealers and private sales. Banterghansa & Graddy (2011) select a sample of art auction prices for the period of 1993-2007, as 1996 is the year that the European Commission proposed the Directive on ARR, and they consider characteristics such as measurements, auction house and medium.¹⁰⁶ The methodology they use is a treatment group of art works sold in the UK, that would be eligible for ARR by 2006, in contrast to art works that would not be eligible for ARR, which forms their control group. They measure for price and sales growth, across market segments and countries and their results show that there is no real effect on art auction prices, for works that would have been eligible for ARR, for the period studied.¹⁰⁷ This contradicts the previous theories such as by Price (1968), Filer (1984) and Ginsburgh (1996, 2005a and 2005b). One way to explain the results is firstly, if I consider that the market for living artists is hotter than other markets, and secondly, that in comparison with buyer's premium, the effect of ARR appears small.¹⁰⁸ If ARR has no negative effect on auction prices this means, among other things, that buyers think that ARR is fair and they are happy to pay it, or they just do not take it into consideration when they make decisions on what to buy and for what price. Finally, although their sample is large (with as many as 700,000 observations), it is also very heterogeneous and does not focus on any specific group of artists or art, except for the exclusion of Modern British art, as it only sells in the UK. The time span they use is significant but also

¹⁰⁶ They do not consider different titles or artists' names due to the quantity.

¹⁰⁷ They base their methodology on the two theoretical predictions that assume that ARR would lower prices of works of art and that it would cause the movement of works of art to the US.

¹⁰⁸ Christie's and Sotheby's charge a buyer's premium of 25% on the hammer price. Generally, auction houses have a policy of not bargaining or waiving buyer's premium under any circumstances.

restrictive for the analysis of long-term effects, as it was written at a time when ARR only applied to living artists and the date span goes as far as one year after the actual implementation, 2007. However, they do perform a robustness check where they measure for the effect on works where the artists passed away within the 70 years period and find the same results as in the other categories. Finally, the paper examines the prediction of how buyers react to the anticipation of ARR rather than measuring the real effects of ARR after it has been implemented.

Another empirical study focusing on ARR is a report by McAndrew (2011), which uses data from Artnet and the TEFAF Art Market Report, for the period 2005-2014, for both auctions and art dealer sales. However, as this report was commissioned by the British Art Market Federation, as a response to the European Commission's consultation on ARR,¹⁰⁹ it is potentially biased. McAndrew's report compares data across different art market sectors such as Contemporary and Modern Art versus Old Masters or Impressionists and Post-Impressionists; and across different countries, such as the UK and the rest of Europe or the UK and the US. She accounts for market share and market value between works eligible and not eligible for ARR, for both living artists and those who passed away within the 70 years period. Her results show that there has been a decline in auction prices in the UK for these specific groups and a growth in the US and China. She also shows that there has been a decrease in market share for the EU art market as a whole and an increase of EU artists selling in the US. She argues that the reason for that could be that perception plays an important role, as collectors consider the EU to be a costly and complicated place to buy and sell art and therefore avoid it. In addition, and in contrast to Banterghansa & Graddy (2011), McAndrew (2011) studies the market for works by deceased artists that fall within the 70-year period and also finds that there is a decrease of prices in this area after 2012. At the same time there seems to be no change in the market for Old Masters and Impressionists, which remained stable in the UK, the US and China. Considering her results, she challenges the EU Commission's consultation, which mentions that although there seems to be a correlation between ARR and the fall of auction prices for Contemporary and Modern Art in the UK, causality is not established. Nevertheless, the comparison she makes does not control for any other factors that might have driven those

¹⁰⁹ European Commission (2011). Report on the Implementation and Effect of the Resale Right Directive (2001/84/EC), Brussels COM (2011) 878 final. Available online: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0878> (accessed on 16/04/24).

decreases in value and market share in the UK and the EU, and does not isolate the effect of ARR, which contributes to the lack of robustness of the results.

Nevertheless, both studies only use data for the major sectors of Contemporary and Modern Art as the only platform that living artists and those deceased within the last 70-year period sell in, overlooking sales which include works eligible for ARR in lower price ranges. These sales are of paramount importance as they often represent artists that are not as successful and are likely to be the victims of a decrease in their prices. Importantly, for these less successful artists royalties from ARR represent a larger fraction of the hammer price and therefore are more likely to influence the behaviour of buyers.

2.5.3 Reports on the effect of ARR

In the UK Artist's Resale Right is collected and distributed by non-profit collecting societies, such as the Design and Artists' Copyright Society (DACS) and the Artists' Collecting Society (ACS). These societies charge a 15% commission to artists or their heirs, that is used towards the societies' administrative costs. The effectiveness and costs of the administration of ARR have been extensively covered by the existing literature. The study commissioned by the Arts Council of England to McAndrew & Dallas-Conte (2002) is the most comprehensive analysis on the subject. McAndrew & Dallas-Conte (2002) argue that administration costs amount to 10-20% of ARR payments, at the time of study, which is a significant amount that could be reduced perhaps with a better model of collecting and distributing ARR. Still, their study was conducted before the implementation of ARR in the UK and it offers data solely from the EU countries which were exercising the right before Directive 2001/84/EC and California. The first report on the effectiveness of ARR by the European Commission (2011) showed that in the area of administrative costs for ARR there were differences between the EU countries and there were inefficiencies. Art professionals seem to be burdened with the administrative costs that then lead to poorer payments to artists. McAndrew (2011), who conducted a report as a response to that of the EU Commission, argues that, among other issues, the administrative cost of ARR is too high for small businesses, with 98% of artists receiving no benefit.

In their paper Graddy, Horowitz & Szymanski (2008) argue that artists are in favour of ARR and happy with DACS's handling of royalty payments. They conducted interviews with 11 artists and they all agreed on the benefits of ARR, however, some mentioned that dealers seem to oppose ARR and only one feared that it might have a negative effect on the art market. Nevertheless, it is important to note that the selection of artists was performed by DACS which is an organisation directly benefiting from ARR. Furthermore, the interviews were conducted in 2008, two years after the implementation of ARR for living artists in the UK, which means that only a few payments would have been made and the effect of ARR on the art market would not have been felt.

2.5.4 ARR in the USA

Several scholars from the principles of economics and law have examined the effects of the California Resale Royalty Act (1976) before it was nullified in 2018.¹¹⁰ Bays (2008) asks the very important question of whether ARR benefits artists and uses an empirical model with data on art work prices from Askart.com for the period between 1987-2005, where ARR would be applicable in California. He compares prices achieved between works by Californian artists sold in the state of California and those sold in other states and finds that there is an effect of the royalty on prices for those sold in California, which are lower by 27%; controlling for other factors influencing prices. Bays (2008) concludes that the assumption that “the initial price penalty could be offset by sufficient resales overtime”¹¹¹ is difficult to achieve for two reasons; firstly, works do not resale enough times and secondly there was a movement of art from the state of California to other states where there was no royalty.¹¹²

There is extensive literature by American scholars that examines how ARR could be adapted for the American art market, artists and society. Although a principally French idea,

¹¹⁰ See Chapter 1, Section 1.2.3.

¹¹¹ See Bays (2008), p. 8.

¹¹² Colonna & Colonna (1982) is also a theoretical paper that discusses artist's resale rights in the US, and provides a good analysis of the California act. They argue that art dealers perceive ARR as a business tax as it is difficult to define the legal framework of artists royalties.

ARR was easily tailored to the other EU countries. Price (1968) and Filer (1984) suggest that the art market in the US is completely different to that of the EU and ARR would simply not be effective there. According to Merryman (1993) and Turner (2012), US art dealers and galleries are heavily unregulated and it would prove difficult to record sales results, for the purpose of both claiming ARR and evaluating its influence. However, most scholars agree that, regardless of any practical issues, the introduction of ARR in the US is long overdue.

One of the main arguments in support of Directive 2001/84/EC is that it removes distortions of legislation within the EU.¹¹³ However, unless the same applies internationally, and especially in countries such as the US, there are still distortions that can significantly affect the art trade.¹¹⁴ These distortions could lead to the transfer of art for sale from the EU to the US, where ARR does not apply; and for art under ARR already in the US, that would otherwise be transferred to the EU, to remain there. Ginsburgh (1996) has calculated that around 10% of the total EU sales come from the US and if that ceased to happen, the market would be severely wounded. As the UK accounts for 60% of the EU art market, it is the country that would receive the strongest impact if art moved for sale elsewhere. Banterghansa & Graddy (2011) test the theory and find no evidence that owners of art changed venues of sale, for the data set of 1993-2007. The main reason for this is the cost of transportation, as well as the fact that art that would be under ARR traditionally sells in the EU anyway. On the contrary, McAndrew (2011) finds that there has been a shift of works for sale from the EU to the US for the data set of 2011-2013. Importantly, a shift of art to the US would mostly affect smaller auction houses and dealers, as all major auction houses already have provisions across the Atlantic. Finally, McAndrew & Dallas-Conte (2002) show that by calculating the cost of transport, it would only be viable to change venues for works of art over €50,000.

¹¹³ Directive 2001/84/EC, (9).

¹¹⁴ For studies focusing on the application of ARR in the US see Price (1968), Merryman (1993), Solow (1998), Tepper (2007) and Turner (2012).

2.6 Buyers' Willingness to Pay and the Art Market

In this section I examine the literature that discusses the inner workings of the art market and the behaviour of art collectors, art professionals and artists. In particular, I look into buyers' willingness to pay and investigate the following questions: firstly, how art buyers decide what to buy and for what price and secondly, how auction house specialists decide on estimates of works of art.

2.6.1 Buyers' willingness to pay

The literature on Willingness to Pay (WTP) and Willingness to Accept (WTA) is mainly in the areas of economics and law, however, there are also several papers that have used experiments to apply WTP on intellectual property. One of these papers is by Buccafusco & Sprigman (2010), who have shown that when the owner of a property is its creator the gap between WTA/WTP is bigger. I intend to apply this theory to find the effect of ARR on the art market. An important study about ARR that focuses on WTP is that of Karp & Perloff (1993), who use several economic models to investigate whether resale royalties would be beneficial to artists and whether the government needs to mandate them. They refer to transactions between art dealers, rather than auction houses, and artists in the primary market. Their hypothesis is that the price for a work of art in its first sale would 'probably' drop because of ARR, as the buyer's willingness to buy would be lower because of it. The logic behind this assumption is that a buyer has to consider the extra cost they would have to pay in the form of ARR, when they resell the work. This of course assumes that the seller always pays for ARR, which we know is not the case in most transactions in the UK, where the cost is transferred to the buyer. They conclude, among other things, that some artists would prefer to receive a lower first price with the prospect of receiving ARR from future sales and others would prefer to receive a higher first price and no ARR. In their paper Hansmann & Santilli (2001) also argue that buyers of art in the primary market would be willing to pay lower prices, considering that they would have

to pay for ARR when they sell the work (assuming that sellers pay for ARR). Their hypothesis is that artists would prefer to receive a higher price early in their career, without the prospect of ARR in the future. This thesis expands the question posed by Karp & Perloff (1993) and Hansmann & Santilli (2001), to whether ARR influences buyers' willingness to pay, using a combination of qualitative and quantitative methodology, rather than theoretical models.

2.6.2 Studies on the art market

To answer this very important question we need to look into the literature on the broader subject of the art market. This will give a better understanding on the best methods that have been used to measure art market performance, which could help inform the present study. According to Price (1968):

..it is impossible to measure the relevance of so important a concept as the *droit de suite*, or any other techniques, for providing greater economic security for artists, without a great deal of information about trends and movements in art.¹¹⁵

Looking at the existing literature on the art market there is a great number of papers, mainly in the field of economics, that deal with auctions and art as an investment. Below we will look into the ones most relevant to this thesis. Mei & Moses (2002), examine whether art is a greater investment than bonds and stocks and also investigate the performance of 'masterpieces', works art which establish the top prices by established artists. They use a dataset of repeated sales on prices for art works sold in the US by Christie's or Sotheby's, for the period of 1875-2000. They have a large sample size, of around 4,500 observations of price pairs in the areas of American art, Impressionist and Modern Art, Old Masters and 19th century art, collected from printed catalogues.¹¹⁶ Their method is empirical, using a repeat sales regression model which has been used in art market research before. What Mei & Moses (2002) find is that "art outperforms fixed income securities as an investment" and that masterpieces underperform as an investment due to overbidding.¹¹⁷ Their data set is very similar to the one used in the present thesis, though their sample size is larger and more diverse. These two qualities are found in

¹¹⁵ See Price (1968), p. 1338.

¹¹⁶ These offer the same information to the online platforms such as Blouin Art Sales Index and artprice.com.

¹¹⁷ Mei & Moses (2002), p. 2.

most empirical works that use data on art auction prices and provide a larger quantity of observations that is, however, less precise. The repeat sales regression model is also a common method for measuring art market performance and while using it they encounter similar limitations to the present thesis, that of sample bias and difficulty in controlling other factors that influence prices.

Another important paper on the subject of the art market, and auctions in particular, is that of Beggs & Graddy (2009), an empirical study which uses data on art auction prices and investigates the effect of ‘anchoring’ on prices realised. Their hypothesis is that prices realised, for Impressionist and Modern Art and for Contemporary Art, is influenced from the previous price achieved for a work, the ‘anchor’. This anchor could potentially affect sellers and auctioneers ideas of value, through the estimate and reserve price and of course the buyer’s willingness to pay. In their study Beggs & Graddy (2009) use secondary data from public websites and auction catalogues, they note individual characteristics for the paintings such as measurements and title and analyse the data using hedonic regressions. Their results show that there is a strong anchoring effect on prices realised for Impressionist and Modern Art and a lesser effect on Contemporary Art. Their methodology and findings are important points of reference for this thesis for many reasons; firstly, it is one of many studies to use datasets from public sites and with the same characteristics as variables. Furthermore Beggs & Graddy (2009) use hedonic regressions as a way of measuring influence of prices and show that this is a valid method for analysing art market prices, and finally they show that buyers’ and sellers’ willingness to pay is influenced by other factors, such as a previous price. This is of particular importance to the study of ARR, as if initial prices for art works are lower because of ARR we can assume that would create an anchor for any future sales of the particular work.

Furthermore, Ashenfelter & Graddy (2003) use empirical methods to measure the influence of the auction mechanism to prices. From the beginning of their paper they explain how difficult it is to evaluate data on art, because of its unique nature, and how carefully selected the sample needs to be. For that purpose they use repeat-sales and hedonic indices and analyse the advantages and disadvantages of each. Furthermore, they explain the workings of the auction mechanism and use data to test the masterpiece effect, unsold bias and ultimately how the auction mechanism affects prices. They also examine the existing literature that uses

art price data and evaluate the best methods.¹¹⁸ Ashenfelter & Graddy (2003) also examine art experts and auction estimates and find that experts in some instances possibly manipulate estimates for strategic purposes. In the case of ARR in Chapter 4 I investigate whether auction specialists adjust estimates for works that are eligible for ARR, to cover the price difference. Ashenfelter & Graddy (2003) also have found that there is a correlation between higher charges for buyers, such as ARR, and lower prices achieved. Notably, a relevant paper is that of Ashenfelter (1989), who uses data from art prices to compare auction house performance. He finds that in 1986 Sotheby's London hammer prices had 12% higher returns, in contrast to Christie's London. Considering that at the time Sotheby's charged a 10% buyer's premium, whereas Christie's did not charge any premium, I understand that the difference in prices reflects the difference in buyer's premium.¹¹⁹ These findings are extremely relevant to the subject of ARR and serve as a useful example for my research methods.

2.7 Summative Analysis

The media coverage on the subject of ARR shows that this is a popular and often controversial issue, with journalistic and political interest. From the early beginnings of the *Droit de Suite* in 19th century France, when the cartoon by Forain appeared after the Secrétan sale, the subject of ARR has been of great importance. It remains a pressing issue, with an article in the *Financial Times* from 2018, predicting big changes in the global art market as a result of ARR, such as the move of major art auctions from London to Paris.¹²⁰ More recently in January 2021, Ivan Macquisten from the *Art Newspaper* posed the question of whether ARR should be retained post-Brexit, claiming that although ARR is in their opinion unfair it would be difficult to change.¹²¹ The debate continues to this day and the present thesis contributes to it with much needed evidence on the effects of ARR.

¹¹⁸ See Anderson (1974), Stein (1977), Baumol (1986), Frey and Pommerehne (1989), Buelens and Ginsburgh (1993), Pesando (1993), Goetzmann (1993,1996), Barre, Docclo and Ginsburgh (1996), Pesando and Shum (1996), Czujack (1997) and Mei and Moses (2001)

¹¹⁹ Daniel Grant in his recent article in the *Observer* argued that the rise in buyers' premium in 2019 could negatively affect hammer prices, Grant (2019).

¹²⁰See Gerlis (2018).

¹²¹ See Macquisten (2021).

To conclude this chapter, I examined the literature relevant to Artist's Resale Right from different perspectives, that lay the foundations for a framework around ARR. Firstly, I studied ARR from a policy perspective, as it can potentially generate severe repercussions on the UK economy and culture. Particularly as the UK government navigates the post-Brexit era and reconsiders many of its EU-influenced policies on intellectual property. Also, I evaluated the theoretical propositions and tested their empirical relevance following the existing literature on copyright for authors, which serves as a useful example to ARR for artists. Examining copyright and its influence on creativity helps us comprehend the possible issues that might arise from the implementation of ARR. Furthermore, I investigated the concept of harmonization of legislation within the EU and the clashing ideologies between the UK and Europe. I also looked at the literature focusing specifically on ARR, which mostly consists of academic journals and commissioned reports. The literature is traditionally theoretical, while some of the most recent work is empirical. The studies are also divided into those that argue ARR has a negative influence and those that claim the opposite. Lastly, I explored recent studies on willingness to pay and the methods that have been used for other similar research to understand the different perspectives on ARR. This section facilitated the construction of the questions for my interviews in the findings chapters, that shed more light to what art experts think of ARR.

Considering the existing literature of papers and reports on the subject of Artist's Resale Right, it is evident that there is a need for more up-to-date empirical research. It is also evident that there is a need for an art history perspective on the subject. In the absence of hard evidence, the theoretical papers, although important in their ethical and philosophical arguments, they fail to convince us of their predictions of ARR's negative effect on the market, without any hard evidence. Filer (1984) Price (1968) and later Ginsburgh (2005a,b) approach the subject of ARR as a future issue rather than a current pressing one that it is today. In addition, most papers focus on aspects of administration and primary sales, rather than the pivotal effect on art prices in the secondary market. The most important empirical works, such as that of Banterghansa & Graddy (2011) and McAndrew (2011), either use data from too early a date or they use very limited groups of artists and most importantly show contradictory results. This is precisely the gap that I aim to fill and the area that my research attempts to contribute the most.

Contrary to the existing literature, I use a recent selective group of data from the database of artprice.com. Incorporating an art history perspective to this literature, that is dominated primarily by legal scholars and economists, I collect prices for the coherent group of the Scottish Colourists, whose work is closely linked in terms of period, style and auction prices, but not in terms of their eligibility for ARR. In addition, the time period that I collect data from starts before the implementation of ARR in the UK in 2003 to 2021, so the results capture the real impact, both in the short and in the long-run, of ARR due to appropriately expanded time scale. I explain my contribution in further detail in the following methodology chapter.

Chapter 3 - Research Methods

3.1 Introduction

In this chapter I explain which methods are most suitable to answer each of my research questions and how I use these methods to produce the most accurate results. In addition, I discuss the process I followed to decide on my research strategy and the steps that led to my choice of methodology. I also review the methods that have been used in the existing literature on Artist's Resale Right and how my own work contributes to the existing theories and empirical findings. Furthermore, I describe my research design and the particulars of each method and analysis used, I consider the ethics and other methodological limitations arising and how I plan to resolve them. Lastly, I lay out the results hypothesis and outline its potential impact.

3.1.1 Research questions

The first question I aim to answer is how ARR influences buyers' willingness to pay. Specifically, I examine the behaviour of art professionals in order to find out whether they take ARR into account when they decide what to buy and for what price. This could lead to lower prices achieved for art works eligible for ARR, considering that an extra charge is added to the final price. Willingness to pay (WTP) is commonly used in business research, in economics and marketing to measure buyers' inclination to purchase a product or service.¹²² To measure the influence of ARR on the behaviour of art buyers, I employ the use of qualitative methodology, in the form of interviews to a select group of key players in the art market. Through this method I aim to discover the different opinions and perceptions towards ARR that circulate in the art market and the different factors that determine the value of art.

¹²² There are numerous papers on WTP, one relevant example is: Chan, T. Y., Kadiyali, V., & Park, Y. H. (2007). Willingness to pay and competition in online auctions. *Journal of marketing research*, 44(2), 324-333.

The second question that I am seeking to answer is how ARR influences the art market. In particular, I aim to discover if the implementation of ARR has caused a negative or positive effect on the UK art market. This is a question of importance as a negative (or positive) effect could translate in the drop (or increase) of art-work prices. To measure this influence, I employ the use of quantitative methodology, through the analysis of data on art-work prices. I collect prices achieved for art works by a select group of artists, the Scottish Colourists, which sold in the UK market before and after the implementation of ARR for the heirs group, and I divide them in two groups of eligible and not eligible for ARR. These art works form my treatment and control groups, for which I perform a difference-in-difference analysis aiming to discover the effect of ARR on their prices, excluding all other factors of influence. I examine prices from UK auctions only as Britain holds the largest share of the EU market.¹²³ The question on the influence of ARR on the art market is complementary to the question of buyers' WTP, as prices often drop or increase as a result of buyers' decisions, which in turn are influenced by factors such as a surcharge in the form of ARR.

This leads to my third and last question of whether ARR should be retained in post-Brexit UK, and if so how can it be reformed. ARR was adopted in the UK following the European Union EC Directive 2001/84, therefore post-Brexit (since the UK is no longer a member of the European Union), it is possible that the UK government to reconsider the retention of ARR. This is a question with potentially important impact on UK policy. To address this issue, I employ qualitative methodology, of interviews with a select group of key ARR policy experts and combine it with the findings from the quantitative analysis. The opinions of key policy experts are crucial to this debate as they identify any administrative issues and discuss the current debate on the subject of ARR within the UK art market and government. Should the quantitative analysis and the qualitative interviews indicate a negative influence of ARR on the art prices, policymakers might have a convincing arguments for its reconsideration. In contrast, if the abovementioned analysis reveals a non-negative effect of ARR on prices, there will be a strong case towards retaining ARR in the UK, and even extending it to other countries where it does not apply, such as the US and China.

¹²³ According to Statista the UK held 18% of the global art market value in 2022, with all other European countries at 12% all together. The US held the largest percentage at 45% and China came third with 17%. Available online: <https://www.statista.com/statistics/1223977/global-art-market-share-in-the-uk-and-eu-27/> (accessed on 17/04/24).

3.1.2 Research motivation

Overall the purpose of my research is to evaluate the efficacy of ARR and to provide policy recommendations on whether it should be retained, abandoned or updated. My aim is to empirically estimate both the sign and the magnitude of the influence of ARR on art prices, and I aim to corroborate these empirical findings with qualitative evidence from interviews with experts which will show its influence on the art market and artists. Ultimately my main goal is to be able to form a well-rounded and fully informed account on the performance of ARR in the UK and to be able to make recommendations, which can lead to evidence-based policy interventions.

At the early stages of my research, I was mainly interested to quantify and measure the effect of ARR on art auction prices. I intended to do that in a strictly numerical fashion, using a select group of artists. As my research developed, I understood that I needed to investigate the importance of the human element for this subject, which could be explored through interviews. While talking to art collectors and colleagues within the art auction market, I realised that their opinions are informative and very much complementary to the hard evidence that I aimed to find through an art auction price data collection. This train of thought led to my decision of combining quantitative and qualitative methodology. Using empirical methods in the field of history of art is less common, if not innovative, but this study indicates that it may be essential for the credibility of scholarly and policy-relevant research. In terms of the quantitative methodology, my professional experience in the auction world as a pictures specialist inspired me to use the public data on art auction prices provided by artprice.com to measure the influence of ARR. As I live, work and study in Scotland, Scottish art was an obvious choice and specifically the group of the Scottish Colourists. This select group of artists provides an excellent example for my study, as their works are fairly homogenous, yet some are eligible and ineligible for ARR – precisely what is needed in a difference-in-difference approach.

I have also considered the different types of qualitative research design and concluded that interviews would be the most efficient way of data collection. The reasoning behind this

decision was that open-ended questions are the best way to approach a select group of key art market players, that are experts in their field. As opposed to, for example, using questionnaires with closed questions that would be better suited to a much larger sample of different individuals. Open-ended questions can be subjective and difficult to interpret, nevertheless they are best suited to the group of people approached, considering their expertise and the sample size.

3.1.3 Research methods used in the existing literature

Before embarking on explaining the research strategy and design in more detail, it is important to look at the methodology that has already been used in the existing literature, on the subject of ARR. Early works focusing on the subject of ARR have used theoretical methods to predict its influence on the art market. Only in recent years scholars have used empirical methods of data analysis, to produce more concrete evidence on the effect of ARR on art prices. Most papers use theoretical analysis to show that although the intention of ARR is to benefit struggling artists, in fact its implementation would have a negative effect on the art market.¹²⁴ Their argument is a convincing one. However, even though this proposition is theoretically solid, there is no evidence proving it is right.

Importantly, the few empirical studies, such as by Banternghansa & Graddy (2011) and McAndrew (2011), use quantitative methods of data collection of art prices and show contradicting results. The Banternghansa & Graddy (2011) data set shows no real effect of ARR on the art auction prices, when McAndrew (2011) shows that there is a drop in art auction prices and an outflow of art works for sale from the EU to the US as a result of ARR. Lastly, to my knowledge there is only one survey conducted by the Intellectual Property Office from 2014, which makes use of questionnaires to gather opinions of art market professionals, nonetheless the number of contributors was not significant.¹²⁵ The two studies that are closer to the methodology used in this thesis are by Graddy, Horowitz & Szymanski (2008), commissioned by the UK IPO, and by Farchy & Graddy (2017), commissioned by WIPO.

¹²⁴ Some of the theoretical papers are by Price (1968) and Filer (1984), among others.

¹²⁵ Artist's resale Right – Summary of UK IPO survey findings, 2014.

Graddy, Horowitz & Szymanski (2008) also uses a mix of quantitative and qualitative methods of art prices and interviews and Farchy & Graddy (2017) use a quantitative method of art prices from online database and art market reports. This makes my thesis one of the first of its kind to combine two different methodological approaches, quantitative analysis and qualitative interviews, to tackle the same research question and provide more reliable results.

3.1.4 Methodology design

To summarise my strategy, the methodology used is comparative and exploits data from art sale indexes and interviews with key players in the art market. Undoubtedly this research spans across the conventional disciplinary and methodological boundaries, combining knowledge from art history, law and economics, using both quantitative and qualitative analytical methods.¹²⁶ Interdisciplinarity is key for this research as it brings together art historical knowledge and professional experience in the art world, together with in depth research in sampling, especially for the construction of appropriate control and treatment groups.

My own background as an art auction specialist provides me with all the necessary skills to identify the most suitable people to interview and draw the most tailored data that best answers my research questions.¹²⁷ I plan to perform a comparative analysis based on two distinctive approaches. Initially, interviews are conducted with a selected group of people, directly involved with the art world. Through a list of well researched questions I discover their opinions regarding the influence of ARR on different sectors within the arts and its importance. I also investigate the influence of this extra charge on valuations and estimates provided by auction specialists. In addition, I examine what their beliefs are regarding ARR post-Brexit. Furthermore, I collect and compare data on auction prices for works of art, in the UK, that

¹²⁶ The legal framework around the implementation of ARR in the EU and the UK in particular is of great importance to this project. Particularly, as many of the scholars working on the subject of ARR are from a legal background.

¹²⁷ Having worked as a Junior Specialist in various pictures departments (including Scottish Pictures) at Bonham's London and Edinburgh, I have the appropriate experience to identify the most influential people in the art world (auction houses, galleries, dealers etc). In addition, my work experience together with my academic background in art history helps me to identify which groups of artist are best to compare such as the Scottish Colourists.

qualify for ARR and compare them to those of similar works that do not qualify, before and after the implementation of ARR.

The combination of the two different methods yields the most accurate outcome, as the quantitative analysis considers the facts, which are then reinforced by the subjective opinions of society springing from the qualitative analysis. This study considers the two methodological approaches as complementary. According to Mills and Birks (2014), quantitative research is about proof that something exists and qualitative research is about why and how it exists.¹²⁸ In addition, my research combines the two different disciplines of art history and social sciences, such as economics, to produce a more informed method. Firstly, knowledge of art history and the art business helps to create an accurate sample of data, both for the qualitative and quantitative analyses, while the difference-in-difference method, which is mainly used in empirical social sciences, helps to provide a more concrete result.

As with every methodology design, this combination of methods is also expected to be subject to limitations and concerns of validity that can, nevertheless, be identified and resolved. A key concern around the robustness of the quantitative analysis is to take into account changes in fashion and other factors that might have affected prices, independently of the ARR implementation. A further challenge is associated with differences in the commerciality between works, that might be similar but not identical. Precisely for this reason, a significant amount of time and effort is allocated in generating an appropriate matching strategy between the works of art which have been affected and those which have remained unaffected by ARR (treatment and control groups). Another important concern is the sample size for the group of the Scottish Colourists, as the number of works sold in the time frame examined and the number of artists are limited. The same applies to the qualitative analysis as the select group of interviewees is small in size and the selection of the group is purposeful rather than random. Nevertheless, as with the quantitative analysis, in-depth research is conducted together with

¹²⁸ See Mills & Birks (2014), p. 21.

personal experience and knowledge of the art market to identify the most relevant and important experts in the field, whose opinions are influential and well informed among peers.

3.2 A Combination of Methods

Until recently, researchers believed that the combination of quantitative and qualitative methods is incompatible, but new advances in academia show us otherwise. According to Onwuegbuzie et al. (2009), mixed methodology research became popular in the 1980s and since then there have been several books, articles and journals focusing on the combination of quantitative and qualitative analysis.¹²⁹ Qualitative approaches generate knowledge that is seen to reflect the reality of individuals and groups, while quantitative research seeks to validate that knowledge, and its potential global application, through empirical testing; “quantitative researchers are more concerned with proof ‘that’ a natural phenomenon exists, whereas qualitative researchers concern themselves more with ‘how’ and ‘why’ situations occur in the social world.”¹³⁰ Through induction, qualitative research methodologies can generate theory, conversely, through deduction quantitative research primarily aims to test theory. Lastly, in qualitative research the subjective interpretation of the researcher affects the result and that is why it is better combined with quantitative research.

For the purpose of this thesis a combination of quantitative and qualitative methods is most appropriate, as each method aims to answer a different research question. Together their results shed light on the whole of the subject of the influence of ARR. Methodological triangulation is the combination of two methods in the same research and in this thesis the combination of quantitative and qualitative analysis is a form of triangulation. Denzin (1978) believes that mixed methods (triangulation) need to be used in every research, as they are ideal

¹²⁹ See Onwuegbuzie, A. J., Johnson, R. B., & Collins, K. M. (2009). Call for mixed analysis: A philosophical framework for combining qualitative and quantitative approaches. *International journal of multiple research approaches*, 3(2), 114-139.

Some of the most prominent ones are: Tashakkori & Teddlie (2003); Bergman (2008); Creswell & Plano Clark (2007); Greene (2007); Johnson & Christensen (2008); Plano Clark & Creswell (2007); Ridenour & Newman (2008); Teddlie & Tashakkori (2009).

¹³⁰ See Mills & Birks (2014), p.21.

but they are time consuming and costly. Nevertheless, according to Mertens & Hesse-Biber (2013) there is a strong link between mixed methods and credibility of evidence.

Through the use of qualitative analysis, I aim to answer my first and third research questions of how ARR influences buyers' willingness to pay and whether ARR should be retained in the post-Brexit era, and if so how can it be reformed. Through quantitative analysis I aim to answer my second research question of how ARR influences the art market. Firstly, I choose to begin with the interviews mainly because the results are more difficult to predict and to measure, as they can be more subjective and open to interpretation. I then proceed with the quantitative analysis, and art auction price data collection, since I anticipate the results to be more tangible and measurable, in contrast to the results from the qualitative analysis. Lastly, there is always the possibility of the two methods to produce different results, which is not uncommon in the literature and interestingly such conflicting findings may point to a new promising avenue for future research that could reconcile such contradicting conclusions.

3.3 Qualitative Method – Interviews

In this section I examine the method used to answer my first and third research questions. The first question concerns buyers' behaviour in how they react to alterations in charges, and how this subsequently affects their choices. It is complementary to my second question on the influence of ARR on the art market, as buyers' behaviour is integral to its performance. The answers to the questions of influence of ARR on the art market and on buyers' WTP can be extremely important and can yield serious impact, which can produce changes in government policy. This is why the question of whether ARR should be retained in the post-Brexit era both evolves naturally and is essential.

As ARR was incorporated into UK law following Directive 2001/84/EC, the UK government was anticipated to re-evaluate the legislation and to potentially reconsider it. There are different groups who advocate for and against ARR, with ACS and DACS campaigning for its retention, stressing its importance to artists, and the British Art Market Federation (BAMF)

working to show ARR's detrimental influence on the UK art market. The overall results of this project will answer the crucial question of the benefit of ARR for artists and the art market. To understand the influence of ARR on human behaviour and the current debate on this specific subject in the post-Brexit era, I use qualitative methodology, and specifically I perform interviews with selected art experts.

3.3.1 Explanation of purposeful sampling

When deciding on which sampling method best fits my research questions I came to the conclusion that random sampling is not a suitable option, as the subject of ARR requires the knowledge of experts in the field of art. Optimal generalization is difficult to achieve in the absence of a random sample, nevertheless, the expertise of the sample group provides the credibility needed. A select small sample is optimal in this case, rather than a larger sample as there is scope for repetitiveness if multiple similar experts are interviewed. Therefore, I choose purposive sampling, as it is most suited to the present research design. A definition of purposeful sampling is "strategically selecting information rich cases to study, cases that by their nature and substance will illuminate the inquiry question being investigated."¹³¹ Purposeful sampling gives us in-depth understanding, in contrast to empirical generalizations deriving from random and large samples. The purposeful sampling strategy that I adopted falls in the category of group characteristics sampling and specifically under key informants, key-knowledgeables, and reputational sampling. By following this method I approach people whom I have identified as "having great knowledge and/or influence (by reputation) who can shed light on the inquiry issues."¹³² According to Patton (2015) key-knowledgeables (or informants) are best for specialized subjects, which is best seen in the evaluation of the Paris Declaration Principles on development aid which used key informants in governments and international agencies.¹³³ It is common practice within the field of qualitative research to interview key-knowledgeables, nonetheless, the most challenging aspect of this method is to identify the correct group of people and successfully arrange the interviews. In addition, it is important to clarify that the sampling group is not a convenience group of experts based mainly in the UK

¹³¹ See Patton (2015), p. 265.

¹³² Ibid., p. 268.

¹³³ Ibid., p. 284.

for location ease, or experts who are personal contacts. My experience of working in the auction world certainly provides me with the necessary knowledge and personal contacts, which combined with in-depth research in sampling methods creates the optimal strategy for participant selection.

Sample size is derived from the “size needed for representativeness when the purpose is generalizing from a sample to the population of which it is part” as the sample size depends on the research aims and the time and resources that are available.¹³⁴ For example, it is not necessary to interview all auction house pictures specialists, considering how much time will be required for this, together with the similarity in opinions and their significance (especially within the same company). In addition, a smaller expert sample can create depth instead of breadth, which is found in larger samples. According to Morse (2000), in semi-structured interviews one gets a small amount of data per interview therefore a sample size of at least 30-60 is needed.¹³⁵ Nevertheless, a limitation that needs to be considered is that interviews can last longer than expected and thus, there is less time available, which can lead to a smaller number of interviews and as a result to a smaller sample size.

The interviewees are divided in two groups, each suitable to answer a different research question. The first group of art experts consists of auction specialists, gallerists, art dealers, art consultants and art collectors. The answers of this first group are used in Chapter 4 to answer the question of how ARR influences buyers’ willingness to pay. The second group of ARR policy experts consists of collecting society representatives and government officials. The answers of the second group are used in Chapter 6 to answer the question of whether ARR should be retained in the post-Brexit era, and if so how can it be reformed. Evidence from the first group of art experts is also used in Chapter 6. Most of the interviewees are based in the UK and their interests are within the UK art market. Each individual group that has been approached sheds light to a different angle of ARR and its role within the art world. Therefore, a list of questions is constructed and tailored to each distinct group. Some questions are general,

¹³⁴ Ibid., p. 311.

¹³⁵ See Morse (2000), p. 5.

for example on the nature of ARR, and they are presented to all groups while other questions are specific to each group.

3.3.2 First participant group analysis - art experts

Regarding auction specialists, I interviewed a group of paintings experts from two major auction houses, Thomas Podd, Head of Scottish Art Sale, Sotheby's and Veronique Scorer, Head of Knightsbridge Pictures, Board Director, Bonham's.¹³⁶ This group of experts represents the largest section of the art trade (auctions) and their opinions are most valuable, as they are best qualified and informed when it comes to the influence that ARR might have on prices of art works sold in their sales. Auction specialists, among other things, shed light on the influence of ARR on auction estimates as well as prices. Specifically, a possibility exists that art valuers take into account the extra charge of ARR and give lower estimates on eligible lots to account for it.¹³⁷

Regarding other art experts such as gallerists, art dealers, consultants and collectors I interviewed gallerists such as Emily Walsh, Director, The Fine Art Society, Edinburgh and Megan Pockley, Head of Commercial Purchasing, The White Cube, London, I have also interviewed independent art dealers, consultants and collectors who do not wish to be named.¹³⁸ This group of art experts have a dual role as both buyers and sellers, since they buy stock from artists' studios and from auctions to then sell on. Thus, their opinions have added significance as they influence prices set and prices realised. Among other themes, they are also asked questions that show if they are aware of ARR before buying at auction or in galleries, and if they think that the ARR symbol is visible in auction catalogues or gallery labels.

¹³⁶ Christie's and Phillips were approached for an interview but did not wish to participate.

¹³⁷ This is based on personal experience of working as an art valuer in an international auction house.

¹³⁸ The remaining participants are two art dealers specialising in Modern British Art, one art consultant and one art dealer/collector.

3.3.3 *Second participant group analysis – policy experts*

For the question of whether ARR should be retained in the post-Brexit era, interviewees were conducted with a select group of four participants, which can be broken down into two distinct groups. The policy experts group includes two participants: Emily Jones, from the Digital Technologies team, Copyright and Enforcement Directorate at the IPO in the UK and Interviewee A4, an ARR policy expert who wishes to remain anonymous. The Intellectual Property Office is the governing body of ARR in the UK where all legislative decisions are being made and who is in communication with WIPO. The ARR collecting societies group includes two participants: Gilane Tawadros, Chief Executive of DACS and Lady Bridgeman, Managing Director and founder of ACS, together with Kimberley Ahmet, Senior Manager of ACS.¹³⁹ In terms of the collecting societies, there are two in the UK, DACS and ACS, which are very similar as they are both non-profit organizations that collect ARR on behalf of artists and their beneficiaries, and distribute it to them with a small commission.

Collecting societies' representatives are able to answer questions on the importance of ARR for artists and their heirs/foundations. Furthermore, government officials, especially from the Intellectual Property Office are most qualified to answer questions on what the government stance is on matters of copyright and ARR, in particular with regards to Brexit. They also provide information on their opinion on the influence of ARR on the overall art market and what are the factors that influence any policy changes.

3.3.4 *Explanation of semi-structured interviews*

Exploring the variety of interview types used in qualitative research, semi-structured interviews are best for an expert sample group and for the specific research questions. A pure qualitative strategy is followed for the interviews with experts, as I perform a naturalistic inquiry with qualitative data and content analysis. This is a fixed design as the sample group is known in advance. The reason why structured interviews are not suited to my research is that they are

¹³⁹ A representative from an ARR collecting society in France, ADAGB, was approached for an interview but did not wish to participate.

most appropriate for larger random samples, where it may be necessary to save time and make the analysis of data easier. For smaller more select samples this is not the case. In addition, the reason why open-ended interviews are better suited to this project, as opposed to closed questionnaires, is because “the purpose of qualitative interviewing is to capture how those being interviewed view their world, to learn their terminology and judgements, and to capture the complexities of their individual perceptions and experiences”.¹⁴⁰ Among the kinds of semi-structured interviews the expert interview is tailored to this research design. In these types of interviews there is more interest in the interviewee’s professional capacity, rather than them as a person, especially as some experts represent large organizations.¹⁴¹ Some challenges with these types of interviews are that the experts often move away from the subject in question and it is for the interviewer to make sure that they stay on track. Another issue is that interviewees might be tempted to speak in their personal and not in their professional capacity and to also lecture on their opinion, straying away from the questions.

A traditional social science research interview approach is best suited to this project, where interviewees are presented with a set list of open-ended questions. The same questions are used for all interviewees in the same manner, when the interviewer remains objective and tries to control any bias.¹⁴² Wording of questions and probes is most important in this type of interview format, as they need to be the same for all interviews. Probes in particular are good for eliciting better answers, without losing validity. In addition, with open-ended questions the researcher does not play a role in how the interviewee will answer and thus, the data is more authentic. One of the limitations for this kind of semi-structured questions approach is that the questions are asked in the same way and wording, so the interviewer has little room for naturalness; nevertheless, according to Patton (2015) there is also little room for bias as the interviewer cannot adjust the questions depending on the participants, to influence the results. Another issue to be addressed is for the interviewer to maintain a professional approach to interviewees, which can be achieved through appropriate training, to develop interviewing skills. Lastly, significant effort is put to construct interview questions in such a way that dichotomous

¹⁴⁰ See Patton (2015), p. 442.

¹⁴¹ Auction specialists for example are expressing the views of the auction houses they work for, not their own opinions.

¹⁴² For the list of interview questions see Appendix D.

answers of ‘yes’ or ‘no’ are avoided, as they do not cover much of the question essence and do not provide adequate data.

The kind of questions asked are knowledge questions together with opinion and values questions. The sequence of the question groups starts with opinions and values first, followed by knowledge together with background questions at the end. The reason for this is to make it easier for interviewees to open up by expressing their opinions and values before I question them on the knowledge and for them not to get bored by starting with background. To record the responses without inserting interpretation I use a digital recorder and I transcribe the text with accuracy. Apart from the obvious efficiency of recorders, using one helped me focus on the interviewee rather than on keeping notes. Nevertheless, I kept some notes to help build reliability and validity and to cover for any technological let downs. Lastly, with this semi-structured question approach of open-ended questions, it is much easier to analyse data as it is simpler to compare answers to the same questions, especially as questions are known before the start of interviews. This makes for better evaluation.

3.3.5 Method strategy - qualitative

Regarding the strategy followed for the interviews, first I created a list of all the contact names and details of the people that I wanted to approach for an interview. Before I started conducting interviews, I took training for interviewing and performed a test interview. The interviewees were approached via email, where I informed them of my PhD thesis subject and purpose and asked them to arrange an interview date and location. It was incredibly difficult to solicit responses and it required a lot of perseverance to convince people to participate, also many wished to remain anonymous. Most interviews were conducted in-person, as this is the most effective way.¹⁴³ Nevertheless, some interviews were conducted via skype, due to either inability to travel or illness.¹⁴⁴ In-person interviews are ideal as the personal approach creates better results. At the interview meeting participants were provided with an information sheet

¹⁴³ Eight interviews were conducted in person including: Walsh, Pockley, Scorer, Podd, Tawadros and three anonymous art dealers, consultants.

¹⁴⁴ Three interviews were conducted via Skype including: Jones, Ahmet/Bridgeman and an anonymous policy expert.

together with a consent form.¹⁴⁵ The interviews were conducted by myself, the researcher, between November 2019 – February 2020 and each of them lasted 30 minutes on average. With regards to my data management strategy, I stored all interview data on my laptop for the duration of my thesis writing. I also plan to store the finished data in the University of Glasgow repository called Enlighten.

3.3.6 Method analysis - qualitative

After the recording and transcribing of the interview data was finished, I then moved on to interpret and analyse the content of the interviews. This aspect of the methodology is more challenging as with the content analysis of interview data human error is possible, due to misinterpretation occurring. Through the analysis I transform data into findings and show what different sample groups believe about ARR and match the results to those from the quantitative analysis. The success of the analysis depends on the skill and dedication of the researcher, as the importance of working with a large number of data is to weed out what is useless and create patterns. With the natural design employed for this thesis the analysis forms part of the data collection, as according to Patton (2015) some patterns begin to be confirmed and some disconfirmed early on. Therefore, it is clear that the analysis begins in the field and as it progresses there is always the possibility that more data will be needed for the success of the analysis, or there might be a need to verify or add to the data. Identifying the theoretical framework is very important in order to determine the style of analysis most suited for the project. The qualitative inquiry framework for this thesis is that of grounded theory which is often used in social sciences. Glaser & Strauss (1967) developed the theory which is closely linked to quantitative concepts. A basic definition for the theory is that “grounded theory depends on the methods that take the researcher into and close the real world, so that the results and findings are ‘grounded’ in the empirical world.”¹⁴⁶ The main reason why grounded theory is used for dissertations is because it is systematic as it follows clear steps.

Before analysis begins the volume of data needs to be considered and appropriate time plans need to be made. For example, according to Patton’s (2015) estimation for interviews I

¹⁴⁵ The Participant Information Sheet and the Consent Form can be found in Appendix E.

¹⁴⁶ See Patton (2015), p. 110.

anticipated around 10 pages of transcript for each interview.¹⁴⁷ In addition, field notes are extremely important and must be complete before the analysis begins. Another helpful tool is a software for organizing qualitative data, which helps the analysis, although the human factor is still the most important component. There are several appropriate kinds of software, such as CAQDASs which fit to different designs. The positive aspects of using this type of software is that it is easier to organize and code data, but it can be time-consuming to learn how to use it and it might be quicker to code by hand, especially with small amounts of data. After careful consideration and training in data analysis I decided to analyse the results without the help of a software.

To analyse the verbal data from the interviews I divided the answers in themes, which I thought were appropriate to answer each research question. These themes were grouped in the different findings chapters and quotes were extracted from different participants, with either similar or contrasting views on the particular theme. As the number of participants is not large there was no need for a more structured analytical approach, such as coding for example. I then proceeded to critically reflect on the reporting of participants and in many cases connect the findings with those from the quantitative data from Chapter 5. The most important limitations in this analysis are that some participants did not provide meaningful answers to every theme and that certain answers were almost identical. However, due to the structure provided by the tailored interview questions it was easy to find the themes and analyse the findings in accordance with the research questions.

The first step of the analysis was an in-depth description of the subject to be analysed, which is the art world in the UK and internationally and the role of the key players being interviewed. Setting the scene is very important for the reader to understand the analysis. The approach adopted for this project is a flashback and retrospective approach of storytelling. The current legislation and debate on ARR is explained in detail from the beginning and the historical information and background of ARR is laid out later on. Subsequently, the sequence that needs to be followed is to build case studies and on which to then to perform the cross-

¹⁴⁷ In reality the transcripts from this set of participants varied in quality and length from 4 pages (1,800 words) to 14 pages (6,600 words) depending mostly on how passionate and knowledgeable the participants was on the subject of ARR. On average they were mostly around 10 pages long (3,500 words).

case analysis. This can be achieved by identifying similar patterns and comparing different answers to the same open-ended interview questions (grouping matching answers from different people), which is the best method for standard open-ended questions.

The analytical framework of the study is based on the interview questions, as a sub category of the two research questions for which the qualitative method is used. In addition, I use an inductive type of analysis, as the results springing from the data form a theory, rather than having a theory that needs to be validated through data. This is the foundation for the interpretation when analysis is complete. Furthermore, categories need to be examined for ‘convergence’ and ‘divergence’, what brings them together and what keeps them apart. Likewise, categories need to be prioritized according to the significance to the project/research question. Lastly, no data should be left out of categories as the data would be incomplete.

With regards to the interpretation of the findings, it needs to confirm what was expected, challenge any wrong beliefs and bring to light any new discoveries. Additionally, the data needs to be interpreted properly, rather than merely described. According to Patton (2015), for a qualitative work to have substantive significance, the equivalent of statistical significance, is to be able to show that the findings increase the understanding of the subject, that they are useful, to how they compare with other knowledge and with how solid the findings are.¹⁴⁸ After interpreting the findings, I begin to explain them by finding the cause in ‘why’ something happened the way it did. Cross-analysis of the explanations that interviewees give is not enough, these need to be interpreted and the cause to be found. Qualitative causal analysis is particularly important to the subject of ARR, as it makes a huge difference to find ‘why’ there is an influence of ARR on art auction prices and what drives that influence. It is believed that quantitative methods and especially randomized control trials (RCTs) can establish causality in a convincing way. Nevertheless, interviews can also point to associations between variables of interest, while these relationships can be explored further with quantitative methods. Lastly, a way that triangulation can be achieved is to interview art professionals and policy experts in order to examine the research questions from different angles.

¹⁴⁸ See Patton (2015), p. 572.

3.4 Quantitative Method - Auction Prices

The second research question that I aim to answer is how ARR influences the art market and to analyse this question in more detail, I seek to discover if the implementation of ARR has caused auction prices in the UK to drop, for art works by artists that are eligible for it.¹⁴⁹ To test this, I choose to use quantitative methodology of art-work price data and a difference-in-difference analysis. Specifically, I collect data on art auction prices for art works sold at auction before and after the implementation in the UK, that shows differences as a result of ARR. The existing empirical studies provide secondary data that serve as excellent comparisons to my data collection, as the methods and sources that previous scholars have used to amass are similar to those used in the present thesis.¹⁵⁰ Nevertheless, regarding the existing empirical studies, their samples are too broad as they collect art auction price data for the large and extremely diverse groups of Contemporary Art and Impressionist and Modern Art Auctions. In addition, they only measure art market shares for a shorter time period for the evaluation of real, particularly longer-run effects of ARR on prices.

3.4.1 Analysis of the data collection

For the purpose of this research I collect data on prices for art works sold at auction in the UK from the online index of artprice.com. The data collected crystallises the difference in prices before and after the implementation of ARR, for eligible and non-eligible works. Artprice.com is a public website that is accessed by subscription and lists the results of art auctions internationally.¹⁵¹ Although the data collected from the online platform includes art-work prices by artists who have died less than 70 years, it only lists artists who are established within the secondary market of auctions. Therefore, it excludes emerging artists whose work typically

¹⁴⁹ I choose to collect price data only for auctions in the UK as it is the largest art market in the EU.

¹⁵⁰ Most notably, McAndrew & Dallas-Conte (2002), Graddy, Horowitz & Szymanski (2008), Banterghansa & Graddy (2011), McAndrew (2011) and Farchy & Graddy (2017).

¹⁵¹ The information they publish is drawn from auction house websites and catalogues for older sales and is subject to whatever auction houses are willing to publish. There are cases where mistakes have been found on prices realised, descriptions or photographs of specific works of art. Nevertheless, it is the most credible source for art auction prices in existence. In general, more recent results provide more information whereas older results are less informative.

sells by gallerists or by art dealers and rarely sells in the secondary market. The reason behind my choice to use a sample group only from auctions is simply because price results from galleries and art dealer sales are not publicly available and would be extremely difficult to amass.

The variables that I list for each work are the artist's name, art-work title, medium and measurements, as I believe these are the most important elements that influence prices.¹⁵² The most important variables that differentiate works of art by the same or similar artist are medium and measurements, for example it makes a huge difference in value if a work is an oil on canvas or an ink on paper.¹⁵³

Table 1 – Example of data collection

Artist	Title	Medium	Measurements	Price
<i>John Duncan Fergusson</i>	Poise	oil on canvas	<i>76.20 cm. (height) x 71.00 (width) cm.</i>	£10,000

Furthermore, the data collection is only for works sold for over €1,000 as this is the scale set for the application of ARR.¹⁵⁴

I start by examining a sample of data on art auction prices for works by the Scottish Colourists, as this is my area of expertise. The data collected comprises auction prices realised during the period of 2003-2021, which is 9 years before and after 2012, the year when ARR was implemented for artists deceased within 70 years before the sale. A comparison of the prices realised at auction between treatment and control paintings, before and after the introduction of ARR in 2012, would reveal the effect of this policy – the implementation of

¹⁵² The exact information provided by the websites is: artist's name with date of birth and death, nationality, title, medium, measurements, inscriptions, date of creation, provenance, literature and exhibition history, estimate low and high, price achieved in different currencies (sometimes as hammer price or including buyer's premium), auction house name, date of sale and location, title of sale, lot number, sometimes condition report and images.

¹⁵³ See also Banterghansa and Graddy (2010), Chanel et al (1996) and Goetzmann et al (2010) who argue that these are the key determinants of auction prices.

¹⁵⁴ This was before the minimum threshold in the UK changed to pounds, £1,000 by The Design Right, Artist's Resale Right and Copyright (Amendment) Regulations 2023.

ARR. The Scottish Colourists group is purposeful sampling in quantitative form and not random sampling, which gives a more focused view of the influence of ARR. Nevertheless, as the sample is small there is always a danger of lack of validity.

Among the works of art created by the four Scottish Colourists, which consist of Peplow (1871-1935), Fergusson (1874-1961), Hunter (1877-1931) and Cadell (1883-1937), only the works by Fergusson qualify for ARR, as he passed away within the 70-year period in 1961. In this sense works by Fergusson shape the treatment group, with works by Peplow, Hunter and Cadell forming the control group. This is a largely homogeneous group as the Colourists worked during same period (c.1904-1930s), with similar technique and style, they covered related subjects and were often collected by the same patrons. Lastly, the values for their works are relatively similar as well, although Peplow generally is the highest selling of them all, however, Fergusson holds the highest auction record of the group.¹⁵⁵ I can directly observe Fergusson's auction record and compare the respective auction prices to equivalent works before and after 2012. I aim to collect data from 2003 to 2021, as this is 9 years before and after ARR was extended for the benefits of artists' heirs in 2012. I also perform robustness checks, firstly controlling for size and secondly controlling for date range to test the validity of the results. Firstly, I perform the same comparison for the period 2003-2011, with a placebo date of 2007 as the ARR implementation. Secondly, I do the same for the period of 2013-2021, with a placebo date of 2017.

3.4.2 Why the Scottish Colourists?

The Scottish Colourists were active in Scotland and also in France, between the 1900s-1930s. They form a coherent group, as they were all Scottish, working during the same period and all influenced by French art and Impressionism and Fauvism in particular. They used bold colours and explored similar themes, mainly still lives of flowers, landscapes and interiors. In addition, they worked in similar media, oils and drawings, with Fergusson being the only one who also experimented with sculpture. Furthermore, their works are often exhibited together in museum collections and periodic exhibitions, although they exhibited together only a few times during

¹⁵⁵ See Chapter 1, Section 1.4.2.

their lifetimes. Most importantly, their works are offered for sale by the same galleries and art dealers and in the same auctions each year, mainly in the UK, London and Edinburgh. The main auctions that offer works by the four Colourists are titled: Scottish Art, Modern British Art and The Scottish sale in Christie's, Sotheby's and Bonham's annually or twice annually, works by the Scottish Colourists rarely sell in other locations.¹⁵⁶

An increase in the difference between Fergusson's prices and the rest of the Scottish Colourists would be an indication of the influence of ARR on his prices and on the prices of other artists eligible for ARR. If buyers are proven to offer less for a work by Fergusson only as a result of ARR being applied to it, the same could apply to other artists eligible for ARR, whether living or deceased within the 70-year period. This influence would have a direct impact on the UK art market as whole.

3.4.3 Method strategy - quantitative

With regards to my strategy for the price data collection, I started by attending an online quantitative data collection and analysis course at the University of Glasgow. I then proceeded to access the prices realised on artprice.com for each artist, year by year. I copied by hand all prices realised and all other information needed to an excel sheet, again one for each artist. I chose to use Stata as the software to analyse the data with, as it is the most readily available and easier to use by someone new in quantitative analysis. After the excel sheets with the data were uploaded on Stata, I created a regression and run them. The results were then added to tables that are easier to present and explain. I did this several times with different regressions to accommodate the different robustness checks I performed. All the data and the results from Stata are saved on my private computer and will also be kept in the University of Glasgow repository called Enlighten, for future use by other researchers.

¹⁵⁶ Works by the Scottish colourists are offered for sale by other auction houses and different auction sales within Christie's, Sotheby's and Bonham's. They also very rarely sell in other countries, such as the US.

3.4.4 Method analysis - quantitative

Following the collection of the art auction price data, I proceed to evaluate my findings using the difference-in-difference method of analysis. This type of analysis clearly identifies the causal effect of ARR on prices, as it controls for the other factors of influence. The adoption of a distinctive interdisciplinary approach is essential for this methodology, as art history facilitates the selection of this homogeneous and therefore comparable control and treatment group of works. Whereas, business and social science experimental research methods enable the execution of the key premise of this thesis, which is the evaluation of the influence of ARR on auction prices. First, I perform a natural experiment with a control group of works by Scottish Colourists that do not qualify for ARR (Peploe, Hunter and Cadell) and a treatment group of works by a Scottish Colourist that qualifies for ARR (Fergusson). I compare results before and after 2012, for both the treatment and control groups, to isolate the effect of ARR on prices, after accounting for pre-intervention trends and differences between the two groups. If prices for works in the treatment group show significant change in value after 2012, in comparison to those in the control group, accounting for other factors, the conclusion will be that ARR has a negative effect on prices. In addition, it would be interesting to observe the relation between prices for the four colourists after Fergusson comes out of ARR in 2031, or should ARR stops to exist in the UK. For this particular research it is not possible to have a controlled lab or field experiment. Nevertheless, I borrow key insights from laboratories and apply them to this natural experiment, following the practice of the social science experimental research. In this natural experiment confounding factors are eliminated, using the treatment-control, before-after design, while at the top of this I control for other key determinants of prices, such as the artist's name and art work title, medium and measurements of the work of art.

One of the main reasons this method applies perfectly to both comparison groups is that the artists are different before the implementation and still different after it, but I compare them and account only for the ARR (treatment) effect, singling out all other differences that were there anyway. If it is discovered that there are common trends between the two groups for the untreated periods, their prices increased or declined the same way, it can be assumed that they would have moved the same in the absence of treatment. The following equation clearly shows how the differences are measured:

$$\text{Effect} = (\text{Treatment}_{\text{after}} - \text{Treatment}_{\text{before}}) - (\text{Control}_{\text{after}} - \text{Control}_{\text{before}})$$

As the particular comparison has more than four points of reference, a regression is needed to calculate the numerous points.¹⁵⁷ For example, one single comparison would be: the ARR effect equals the difference in price of a works by Fergusson after 2012, minus a similar work before 2012 (2011), minus the price of a work by Peploe after 2012, minus a similar work by Peploe before 2012 (2011). This is just one DD comparison which needs to be applied to numerous works of art by all four artists and for a number of years. The following equation clearly shows this example:

$$\delta_{DD} = (\text{PRICE}_{F, 2012} - \text{PRICE}_{F, 2011}) - (\text{PRICE}_{P, 2012} - \text{PRICE}_{P, 2011})$$

Difference-in-difference is the ideal framework to measure the effects of change in ARR policy, as with the minimum legal drinking age level in the US example from Angrist & Pischke (2014) and in contrast to the RD framework (regression discontinuity).¹⁵⁸

3.5 Research Limitations and Ethics Considerations

Though I have dedicated considerable effort and research into identifying the most appropriate sample groups for my analysis there are limitations to the results, as with most research designs. In this section I consider the possible shortcomings of both methodologies used, qualitative and quantitative, and I explain how they can be overcome. Each different methodology has different issues that I anticipated and tried to solve and some that remain unsolved.

3.5.1 Limitations - qualitative method

Before I embarked on my interviews with key art players, I anticipated to encounter one main difficulty, which was the number of participants that I would be able to secure an interview

¹⁵⁷ See Angrist & Pischke (2014), p. 187.

¹⁵⁸ For an example of the use of DD model in MLDA see Carpenter & Dobkin (2011).

with. The quantity of participants, together with the quality of evidence from the interviews, contributes to the robustness of the results. Overall, 11 interviews took place with 2 auction specialists, 1 art dealer, 2 gallerists, 1 art consultant, 1 private collector and art dealer, 2 collecting society representatives, and 2 policy experts. Although 11 interviewees do not form a large sample, they are a select group, considering that these are key art experts/players, which is more appropriate to answer the specialised research questions. In terms of auction specialists, the sample is restricted as Christie's and Phillips did not respond to my invitations for an interview. Furthermore, I initially planned to interview artists so that I can have their perspective as to the benefit they see for themselves from ARR. I approached the Glasgow School of Arts and was put in contact with art students to form a focus group on the subject of ARR. However, the art students did not show an interest in participating as there was no response to my call. This, though an isolated incident, might be proof that emerging artists are not as concerned with intellectual property, and ARR in particular, at this stage of their career. Finally, the robustness of the results would improve if it was possible to add art collectors as participants, however, they are the most difficult group to reach, as there is privacy issues around their contact details.

Another limitation concerns the interview questions, as each group of interviewees had a different set of questions which were appropriate to their position within the art market. The different question groups included: auctions, galleries and art dealers, private collectors, collecting societies, and policy experts. Overall, the limitations have not hindered the results of the research, as there is enough and good quality evidence to address the research questions. In addition, participants who did not accept to be interviewed might be those who disagree with ARR, leading to sample selection bias. Also, the sample of people that I approached was not random and therefore a good analysis of the reasons behind the selection is necessary for the credibility of the result. The participant sample largely depended on my own personal knowledge of the key players in the art world, based on my experience as an art specialist, together with in-depth research on sampling methods. There are advantages and disadvantages with this sample selection as although it is not random it is more select and targeted, which leads to more accurate results.

In terms of ethics considerations, the people I interviewed do not belong to a vulnerable group, however, an ethics approval has been secured.¹⁵⁹ Before each interview the participants were provided with an information sheet, explaining my research in detail and providing all the necessary information on ARR. In addition, the participants were requested to sign a consent form, on which there was either consent to their names being divulged in the thesis or indicate their preference to remain anonymous. I do not anticipate that the anonymity will influence the result, provided that the group they belong to is clearly stated. Another possible issue is that of the date of the interviews. There is an argument that if experts are interviewed on different dates changing factors such as politics or the economy might influence their responses differently. Therefore, I made sure that interviews were performed during the same period to control for other factors that might influence the participants' answers. Also, different interviewers could produce different reactions to participants resulting in different answers. Thus, I performed the interviews myself, to avoid different reactions caused by the difference in whoever is conducting the interview.

3.5.2 Limitations - quantitative method

With regards to the data collection of the Scottish Colourists group from artprice.com, there are a number of issues that need to be considered. The most important concern is that of sample size, considering that the data collection begins in 2003 and ends in 2021 and that there is a limited number of auctions of such works each year.¹⁶⁰ Furthermore, the Scottish Colourists are a small group of four artists, with a treatment group of one artist. However, there can be hundreds of observations for each artist. In addition, the comparison between the Scottish Colourists only tests for the effect of ARR to works by artists eligible for ARR as they have passed away within the 70 years, however, it can be assumed that the same effect would apply to living artists eligible for ARR. This is precisely the reason why I also combine my results of the quantitative analysis to those from the interviews with key players in the art world, for a more holistic approach on the effect of ARR.

¹⁵⁹ Ethics approval was granted in April 2019.

¹⁶⁰ The number of observations for prices is 758.

3.6 Summative Analysis

To summarise the key points of this methods chapter, firstly I explain why a mixed methodology is the most appropriate for my research design. In particular, I present how the combination of quantitative and qualitative analysis produces a more robust result, with the first one showing that something exists and the latter why and how it exists. Furthermore, each different method is used to answer the appropriate research question, separately or together in some cases. Importantly, there are very few other studies on the subject of ARR that combine the two methods, therefore this would yield innovative results.

For the qualitative method I explain how I chose to perform interviews with key players in the art world, using semi-structured interviews. As a sample, a select group of experts was chosen rather than a random sample, as there was a need for specialised knowledge on the subject. The sampling was purposive, and the researchers experience in working in the art world assisted in selecting the appropriate group. The participants are separated in two distinct groups of art professionals and policy experts, each being interviewed with a different group of research questions in mind. Semi-structured interviews were selected for this group of participants, as this is a small group therefore it would not be too time consuming and it also means that the questions can be tailored for the individual sub-groups. Similarly, the findings are analysed by theme and grouped in a coherent way to directly respond to the research questions.

For the quantitative method I perform a natural experiment, in particular I explain how prices achieved for the Scottish Colourists are the best to use as a treatment and control group, to isolate the effect of ARR on the prices of the treatment group (works by Fergusson). What follows is a detailed discussion on the process of data collection from the website artprice.com and the use of the Stata software to analyse the data. The difference-in-difference method of analysis is used to interpret the data, a method that is often used in economics, making this thesis unique in its combination of methods from different disciplines. The prices achieved for

the homogenous group of four Scottish Colourists are compared for 9 years before and after 2012, where ARR was implemented in the UK for artists deceased within 70 years, such as Fergusson.

In terms of the limitations of the methods used, one of the main issues with the qualitative data is the small sample size of key art players and the process of selecting participants, which is not random. Nevertheless, the sample might not be large in quantity, but it is comprised of high quality experts, as the interviewees are people directly involved with the art market in the UK. Similarly, there is an argument to be made about the sample size for the quantitative data, which offers only one artist for the treatment group and three for the control. However, the actual number of observations is significant and as it is a specialised group it offers a more targeted sample. At the same time one other issue with the price data is that it is difficult to isolate the effect of ARR on them. Though great care has been taken to isolate other influences, such as fashion and the economy.

This research is innovative within the field of ARR, especially as it brings together the different disciplines of art history, law, economics and business. The interpretation of the results will have considerable societal and policy impact, especially for the UK, as they help answer whether ARR should be retained in the post-Brexit era. So far, previous empirical works on ARR have shown contradicting results and thus, a more up to date analysis is pivotal. Lastly, the methods used for the purpose of this thesis can be applied in other research areas of market and art market analysis. For example, this research could provide a useful tool for the investigation of the impact of an increase in buyers' premium on art auction prices, or the influence of other key factors that determine the price of works of art. There is a growing need for data based research, related to art market performance from academics and from members of the art business industry, where such tools can prove highly valuable.

Considering the three research questions my hypothesis is that art market professionals could argue that ARR might have a negative effect on buyers WTP, which means that sales drop for works eligible for ARR or they might argue that there is minimal or no influence on them, which would mean that there is no effect on prices. Furthermore, the data on art prices

for the Scottish Colourists could either reveal a drop in prices for works eligible for ARR (treatment group) or no effect at all. The results of the quantitative methodology would need to be interpreted in Chapter 6 where both methods and results from interviews and price data are combined for a more credible answer to the question of whether ARR should be retained in the post-Brexit era. Nevertheless, I remain open to new hypotheses and unexpected results that might come up from data analysis, as will be shown in the following three findings chapters.

Chapter 4 - ARR Influence on Buyers' Willingness to Pay: Evidence from Interviews With Key Art Experts

4.1 Introduction

How does ARR influence buyers' willingness to pay? This chapter addresses this core research and policy issue, in the following two steps. Firstly, it is important to distinguish buyers between trade and private. In turn, trade buyers are broken down in art dealers and galleries. Art dealers buy primarily from collectors, art fairs and auction houses, among others. Galleries, act in a similar fashion, with the main difference of having a permanent venue for trading, the gallery. Thus, trade buyers – art dealers and galleries – engage in selling too. Instead, private buyers purchase for their own collection, and reselling art is seldom their main intention. Particular types of buyers might, therefore, be influenced differently by ARR, as they anticipate paying royalties multiple times or just once.

A second central distinction needs to be made, this time not from the buyers but from the sellers perspective. Auction sales are resolved by hammer prices, with multiple charges being added atop; whereas, galleries and art dealers sell in final prices, which include almost all associated costs, making it more likely to also absorb ARR in the final price. Consequently, ARR might influence particular groups of sellers differently too, as royalties are more visible in auctions, however, they often remain concealed in gallery and art dealer sales. Surprisingly, these key distinctions, between trade vs private buyers and auction vs gallery/art dealer sellers, remain largely underexplored, both conceptually and empirically. This study sheds more light on the issue. In particular, evidence from semi-structured interviews can fill these gaps in the related literature on whether these two, seemingly similar but ultimately distinct, groups of buyers and sellers respond differently to ARR.

4.1.1 Research questions

This chapter examines how ARR influences buyers' willingness to pay using qualitative analysis. Specifically, semi-structured interviews have been conducted with a select group of key art experts that help answer this key question. Chapter 5 examines whether ARR influences the art market using quantitative analysis. Firstly, data on prices of works of art have been collected, from artprice.com, which are eligible and not eligible for ARR before and after its implementation. Following on, Chapter 6 focuses on whether ARR should be retained in the post-Brexit era, and if so how it can be reformed, with evidence from semi-structured interviews that is tested using qualitative analysis. Lastly, Chapters 4 and 6 use evidence collected from the same interviews with different groups of key art experts, using questions which are tailored to the specific research question that each chapter examines.¹⁶¹

4.1.2 Information on participants - key art experts

Interviews were conducted with eleven participants, belonging to different categories, and the evidence from these categories is used to answer the different research questions. For the question of how ARR influences buyers' willingness to pay evidence has been collected from a select sample of seven interviewees, which can be broken down into four distinct groups: auction specialists, galleries/art dealers, collectors/art dealers and art consultants.¹⁶² The auction specialists group comprises of two interviewees: Veronique Scorer, Head of Knightsbridge Pictures and UK Board Director at Bonham's in London who specialises in 19th British and European art, Modern British and European art and Prints, and Tom Podd, Head of Scottish Art at Sotheby's in London, who specialises in Scottish and Modern British art.¹⁶³

The galleries and art dealers group consists of four interviewees: Emily Walsh, Managing Director of the Fine Art Society in Edinburgh,¹⁶⁴ Megan Pockley, Head of

¹⁶¹ For the list of interview questions see Appendix D.

¹⁶² See Appendix F, Table F.1.

¹⁶³ Bonham's website: <https://www.bonhams.com> (accessed on 18/04/24). Sotheby's website: <https://www.sothebys.com/en/> (accessed on 18/04/24)

¹⁶⁴ The Fine Art Society was established in London in 1876, one of the world's oldest dealerships, and merged with Bourne Fine Art, now The Fine Art Society Edinburgh, in 2004. The gallery specialises in Scottish art from the 17th century and British Art from the 19th century. The Fine Art Society website: <https://www.thefineartsociety.com> (accessed on 18/04/24)

Commercial Purchasing at White Cube Gallery in London, who coordinates secondary market purchases and all sales,¹⁶⁵ Interviewees A3, two anonymous art dealers who specialise in Scottish and Modern British art, and Interviewee A2, an art consultant who specialises in 19th century British, European and Modern British art. Lastly, the collectors group with Interviewee A1 who is both a collector and an art dealer of, mainly, Scottish art.

4.1.3 Chapter overview

The questions posed to the interviewees are broken down into three different themes: perception of value, presentation of ARR, and influence of ARR on buying decisions. Through the interviewing process the most prominent patterns that emerge are: quality and rarity as determinants of value, lack of familiarity and confusion around the presentation of ARR, and the different attitudes between private and trade buyers. These are presented across three distinct sections. Section 4.2, discusses the key characteristics that determine the value of an art work and the influence of ARR on valuing. Section 4.3, examines the different ARR policies that art professionals follow, the presentation of ARR to the public, and the level of awareness of ARR among buyers. Lastly, Section 4.4 studies the influence of ARR on buying decisions, the importance of the level of value, the role of other extra charges and the influence of ARR on the choice of location for sale.

4.1.4 Preview of results

To preview the results, the key findings from Section 4.2 are that ARR is not among the key attributes that determine the value of an art work and that it does not play a significant role on valuing. The evidence presented in Section 4.3 shows that the ability of some art market professionals of transferring the cost of ARR to buyers instead of sellers creates an imbalance within the market. It also shows that private buyers need to be better informed about ARR,

¹⁶⁵ White Cube is one of the first museum quality commercial galleries in the world, first opened in 1994 in London by the art dealer Jay Jopling. The gallery became known for representing the YBAs (Young British Artists), such as Damien Hirst, and now focuses on Modern British and Contemporary art. It has two offices in London and one in Hong Kong. White Cube website available online: <https://www.whitecube.com> (accessed on 18/04/24).

especially as they are often unaware of its existence before they buy. Lastly, the results from Section 4.4 reveal that trade, as opposed to private, buyers are most affected by ARR when deciding what to pay. In addition, results show that there is a certain price level where ARR has most influence, that it is difficult to isolate the effect of ARR from other charges, and that there is no significant change of sale location to avoid paying ARR.

4.2 Quality and Rarity

4.2.1 *The key determinants of value*

The first theme emerging from the interview process explores the different characteristics that influence the value of works of art. Interviewees, including sellers and buyers, explain how they determine value. Auction specialists, galleries/art dealers and collectors report that things such as rarity and quality come at the top of the most influential attributes for the price of a work of art.¹⁶⁶ Thomas Podd, Head of the Scottish Art Sale and Specialist at Sotheby's, explains what are the characteristics that he considers when valuing works for sale:

So really I think you're looking for quality of art work, feeding into that rarity, and then subsequently condition, and its history, in terms of its art market history.

(Podd, Interview, London, November 2019)

Thus, it is clear that what influences value for most interviewees is the physical characteristics and history of the particular work of art and not financial determinants, such as ARR. Nevertheless, such charges could be considered further down the process of assigning value, as Interviewee A1, a collector and art dealer of Scottish Art, reports:

Quality, condition, subject matter, the artist and the rarity of either the subject of a painting or the rarity of the artist. So these are the things I consider most important. So that's before I even think about Artist's Resale Right or anything. These are the key things I'm looking at, initially.

(Interviewee A1, Glasgow, November 2019)

¹⁶⁶ These are all the characteristics mentioned: artist, subject matter, medium, size, condition, frame, provenance/history, period, fashion, quality, rarity, desirability and investment.

It is therefore evident that, in contrast to auction specialists, a collector and art dealer does consider ARR when deciding on the value of a work of art but only after considering the key determinants of quality and rarity, among others, which remain constant for all groups (eligible or not for ARR). There is, however, an exception among art professionals as Megan Pockley, Head of buying at White Cube gallery, reports characteristics that influence her assignment of value which are different to the other interviewees in her group:

..desirability, as in, whether something is difficult to procure.. Also, re-saleability.. I think that our biggest interest is in things that people know that they can keep as an asset, and probably almost immediately resell..

(Pockley, Interview, London, November 2019)

This variation in the evidence among the galleries/art dealers and auction specialists groups can be explained by the fact that contemporary art galleries, such as White Cube, have a different pricing strategy to that of the other interviewees. Characteristics such as condition and provenance do not play an important role in the value of contemporary works of art, while re-saleability is crucial as buyers often buy contemporary art as an investment.

4.2.2 The influence of ARR on valuing

After examining the influence of ARR exclusively on the valuing process of art experts, the evidence shows that there are different opinions between and within the interviewee groups. Auction specialists report that ARR does not play a part in their pricing strategies, as according to Thomas Podd from Sotheby's:

I mean, sometimes it's discussed. Interestingly, it's discussed less than if.. we are getting a piece of art over from the US. - We would definitely be taking into consideration the import VAT that's payable on that, which is 5%, which is [an] amount that would perhaps influence our thinking, also the cost of transportation, etc.

But actually, generally speaking, I think ARR is a far more accepted charge within the art market, both by sellers and by collectors and clients. So, when we're valuing something it's not taken into consideration in the same way.

(Podd, Interview, London, November 2019)

Two important points spring from Podd's report, one is that the percentage of ARR (which starts at 4% and decreases as the price goes up), is not significant enough to influence decisions in pricing. The second point is that the purpose of ARR is much more well respected by the art market, in contrast perhaps to other charges, which are regarded only as financial burdens. Veronique Scorer, Head of Knightsbridge Pictures and UK Board Director at Bonham's, confirms that other charges, such as import VAT, can play an important role in her pricing decisions, by bringing prices down, to calculate the extra charge:

..so [if] something is coming from outside the EU then definitely, cause that's VAT on the whole hammer, not VAT 5%.. we will try, if we can, and just come down one increment.

(Scorer, Interview, London, November 2019)

When a work of art on sale has been imported from outside the EU a VAT of 5% is added to the hammer price (not on the buyers' premium as in the case of UK VAT). Similarly, if a buyer imports a work purchased in the US they would need to pay 5% VAT. The subject of import VAT and its effect on the art market has been widely covered in the literature on ARR. According to McAndrew & Dallas-Conte (2002), when import VAT was harmonised in the EU with the 7th Directive there were concerns that the UK art market could be negatively affected.¹⁶⁷ This could happen as sellers might choose to sell in other locations to avoid paying the extra 5%, much in the same way as with the introduction of ARR. Nevertheless, the European Commission argued that there was no change in the UK art market as a result of the increase of import VAT.¹⁶⁸ Interviewees belonging in the galleries/art dealer group express contrasting views on the influence of ARR on their pricing strategies. Emily Walsh, Managing Director of The Fine Art Society in Edinburgh, explains how extra charges affect her final decision on a given price:

¹⁶⁷ Import VAT legislation was harmonised in the EU with the Seventh VAT Directive, Directive 94/05/EC in 14 February 1994. Before the seventh Directive, the UK did not charge import VAT for works of art coming from non-EU countries and following the Directive there were concerns over its effect on the competitiveness of the UK art market.

¹⁶⁸ A report produced by the European Commission in June 1999 showed no real effect of VAT on the market: "The Commission has nevertheless found no evidence to suggest that VAT has a significant impact on the competitiveness of the Community art market vis-à-vis the markets of third countries." European Commission, Commission Report examining the impact of the relevant provisions of Council Directive 94/5/EC on the competitiveness of the Community art market compared to third countries' art markets, COM (99) p. 14.

I look at the end price of .. what a buyer is paying and if the putting the AR on top pushes it just a bit beyond what I think.. the work of art is worth or is likely to find a buyer for, I will bring the price of the art work down on the wall, in order to accommodate the AR.

(Walsh, Interview, Edinburgh, November 2019)

This statement is in contrast to what auction specialists reported and can be explained by the difference in their policies towards ARR. The reason why auction houses, such as Bonham's and Sotheby's, do not consider ARR in their pricing could be because they charge ARR to buyers, with no exceptions. Galleries such as The Fine Art Society on the other hand, charge ARR to buyers but often choose to absorb it as part of a deal. This action might lead them to adjust their pricing, so that they do not have to cover the extra ARR charge themselves. On the other hand, although White Cube is also a gallery that charges ARR to its buyers, and often has to absorb it, Megan Pockley reports that she does not take consideration of ARR when pricing. The reason for that is that White Cube often sells art works in locations where ARR does not apply (Pockley, Interview, London, November 2019). It is therefore not possible to know if an ARR charge will apply to a work at the pricing stage. Lastly, similarly to the report by Emily Walsh, Interviewees A3, art dealers specialising in Modern British and Scottish Art, highlight that ARR "comes up in pricing" (Interviewees A3, UK, November 2019). Their policy is to always absorb ARR and they therefore have to incorporate the extra charge in their prices. On the other hand, Interviewee A2, an art consultant specialising in 19th century and Modern British Art, reports that ARR does not play any part in their decision making when they value works of art, and they do not "even think about it" (Interviewee A2, London, November 2019). This could be because art consultants often value works for both auction houses or galleries/art dealers, where the ARR policies are different.

The first finding from the evidence in this section about the perception of value is that 85% of interviewees, from all groups, agree that physical and historical characteristics, for instance quality and rarity, determine the value of a work of art, in contrast to charges such as ARR. Megan Pockley, at White Cube, is the only interviewee who adds investment and desirability, as key determinants of value for contemporary art. The second key finding is that according to 66% of the interviewees who are art professionals, ARR does not influence them

when they assign value.¹⁶⁹ There is an evident difference in opinion that is related to the individual ARR policy to which each interviewee adheres to, with ARR affecting galleries and art dealers that often have to absorb it, to achieve better deals.

4.3 Familiarity and Confusion

4.3.1 *Who pays for ARR?*

Though the Directive 2001/EC/84 states that the seller is obliged to pay for ARR, it gives the option of transferring this charge to other parties such as the buyers and in the UK art professionals adopt different charging policies.¹⁷⁰ Auction houses transfer the charge to their buyers and galleries and art dealers either charge ARR to buyers or they absorb it as part of a deal. As Thomas Podd from Sotheby's explains, auction houses have a common policy, which does not change:

So, like most large.. commercial art organisations the Artist's Resale Right is charged to the buyer. - We never absorb the cost, no. It's instantly offloaded, offset on to the buyer.

(Podd, Interview, London, November 2019)

The decision by auction houses to transfer the cost to buyers instead of sellers can be explained by considering the difference in attitude between the two kinds of client. Firstly, auction houses compete with each other to win consignments by sellers, often reducing or removing their commission and other charges.¹⁷¹ Nevertheless, they never discount their commission (buyers' premium) for buyers. It is therefore logical that auction houses would choose to add this extra charge of ARR to buyers rather than sellers.¹⁷²

¹⁶⁹ See Appendix F. Table F.3.

¹⁷⁰ See Chapter 1, Section 1.3.1.

¹⁷¹ Ashenfelter & Graddy (2003) show that when charges to buyers are increased (such as buyers' premium) the real change is in sellers revenue as the reserve price goes down.

¹⁷² Farchy (2014) in a report for WIPO provides a similar analysis, stressing the difference in ARR policy between auctions and galleries/art dealers, p. 19.

On the other hand, galleries and art dealers have different ARR policies between them. Many of them have a policy to charge ARR to the buyer, but they often do not charge it, to help finalise a sale, as Emily Walsh from the Fine Art Society describes:

We do charge it to buyers. And this was a policy implemented by the last Managing Director, Pippa Stockdale, and she was quite right to implement that because that is obviously what happens at in auction - but [this is] something that is relatively recent for us to do, and it's still something that [the] public doesn't understand, and when you're going to negotiate with somebody we obviously, unlike auction, will discount a work - Sometimes we end up absorbing it in order to make a deal happen. But our policy is to charge it on.

(Walsh, Interview, Edinburgh, November 2019)

According to Megan Pockley, the White Cube gallery has adopted a similar approach to that of the Fine Art Society, where, although they charge ARR to buyers, they sometimes have to absorb it. This is mainly due to the fact that their sales team find it hard to include ARR in deals with potential buyers:

I think the sales team are really struggling to have conversations with clients about it. So it's something they always want us to absorb.. and then it just hits our margin.

I'm always pushing back.. to have people add it on top.. it's just trying to get it into everyone's mentality cause they forget to mention it and then they don't feel they can go back and ask the client for that extra bit of money.

And also, because we sell a lot of our primary artists and secondary as well then they kind of offering two Tracey Emins, for example, at the same time and one's got Artist's Resale Right, one hasn't and then they feel like they need to have a conversation about why one has, why one hasn't..

(Pockley, Interview, London, November 2019)

It is therefore evident that there is a real difference between auction houses and galleries, as the latter only have one type of client to negotiate with, their buyers. That leads galleries and art dealers to often absorb the cost of ARR as part of a deal, especially as they find it hard to justify the existence of ARR to their clients. This is particularly difficult for galleries that offer

both primary and secondary works, such as White Cube, as works that sell for the first time do not qualify for ARR, whereas secondary do.¹⁷³

With regards to art dealers, similarly to galleries, some choose to charge ARR to buyers while others adopt a policy of absorbing it from the start. Concealing ARR from buyers is a choice some art dealers have made as a response to potential clients being negative or even confused about ARR. Interviewees A3, art dealers, report:

A3a: ..we did initially say “It’s plus artist’s levy”, but because people are not so well versed into it, they didn’t know what is the price.

A3b: A lot of people found it offensive, quite frankly.

A3a: So then we decided to include it in the price.

(Interviewees A3, UK, November 2019)

Likewise, Interviewee A2, an art consultant, reports that he would not advise dealers to charge ARR to buyers, as it can deter them from proceeding with their purchase. In particular, potential buyers might find ARR as an ‘extra’ charge that they assume should be included in the price. Interviewee A2 further explains how displaying ARR can be bad for business in the case of an art fair:

..you don’t put plus ARR on your stand. You build it into the sale price, you don’t mention it, it’s there... because people just look at it and say “What’s this ARR? You mean I have to pay 3,000 plus another one?”. They want a deal, so you don’t put it there.

(Interviewee A2, London, November 2019)

Absorbing ARR results in higher expenses for galleries and art dealers as they often pay for ARR twice, when they source from the secondary market and when they re-sell.

¹⁷³ ARR only applies to the re-sale of a work of art, hence if an art professional offers for sale a work directly from the artist on commission ARR is not charged.

4.3.2 Visibility of ARR

The art professionals who choose to transfer the charge of ARR to their buyers are obliged to inform them of its presence in their terms and conditions and also with a special symbol in their advertising material (catalogues, labels and online). Auction houses have a uniform way of presenting ARR to the public via their catalogues, with a symbol next to eligible lots, for example Bonham's displays an AR symbol next to the lot number (fig. 12). Albeit there are different symbols for each auction house that can often create confusion. Another way of making sure that buyers are aware of ARR is through a private discussion, in which the auction specialist informs their client about its presence and meaning.

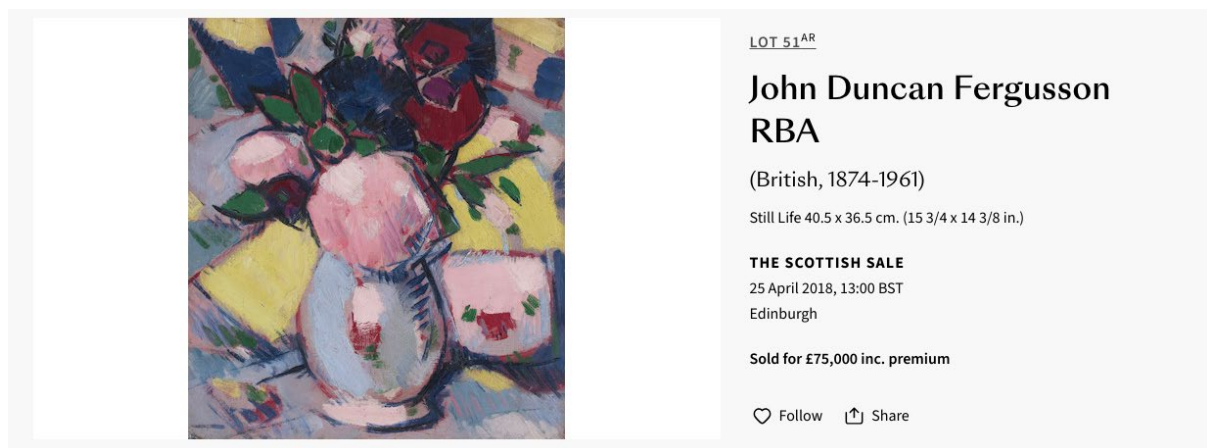


Figure 12, Example of how ARR is indicated in an online auction catalogue. © bonhams.com.

Tom Podd from Sotheby's explains how, although the ARR symbol is clearly visible to clients, they often need some further information about it:

.. it's pretty obvious - I verbally tell clients quite regularly that ARR is applicable on certain lots. Particularly if they're interested in them, and, you know, quite often clients will ask me directly.. what the costs involved in purchasing this work would be.

(Podd, Interview, London, November 2019)

Veronique Scorer from Bonham's confirms that clients are familiar with the existence of ARR, however, she reports that she also has to have a conversation with them:

If it's a new buyer we might just say "Double check the catalogue for the symbols".

(Scorer, Interview, London, November 2019)

In addition, Thomas Podd reports that he always notifies private or new buyers so as to avoid later complaints, or even the cancelation of a sale (Podd, Interview, London, November 2019). It is therefore clear that the presence of ARR on certain works is evident to all. Nevertheless, what is lacking is enough information to support and justify it. Gilane Tawadros, Chief Executive of DACS, highlights that the way ARR is communicated and explained to potential buyers can play a key role in their attitude towards it (Tawadros, Interview, London, December 2019). Thus, if a buyer is informed about the purpose of ARR, that it benefits artists and their descendants, they might be happier to pay it.

Galleries and art dealers who charge ARR to their buyers also indicate its presence by a symbol in their sale catalogues, labels, and online. Nonetheless, their reports further reinforce the view that many buyers are unfamiliar with ARR. Emily Walsh from the Fine Art Society explains how a conversation about ARR is necessary at the point of sale:

..it's stated on the label, however, because, as I've said, it's not something that a lot of people are familiar with we're always - point it out at the point at which they're asking about the price or inquire about the picture and we will give a short synopsis of what it is and why we have to charge it.

(Walsh, Interview, Edinburgh, November 2019)

Similarly, Megan Pockley from White Cube reports how it is often hard to have a conversation with prospective buyers about ARR (Pockley, Interview, London, November 2019). Specifically, she explains that their main way of communicating ARR is by informing clients verbally. As they often sell in different locations, where ARR might not apply, they are not able to display the ARR symbol on labels or online for eligible works:

..it should be discussed with the sales person when they're having the kind of deal conversation. But often it depends on where the work might end up, if ARR is applicable. So it's always noted on our system, so the team should be checking before they offer things, and it doesn't pull through onto any kind of offering materials, which is not so good, but it's kind of a decision we've made to not have it on every secondary work.

(Pockley, Interview, London, November 2019)

Lastly, art dealers, whose policy is to absorb ARR, do not indicate that it is built in their prices and so its presence is concealed from buyers.

4.3.3 Awareness around presence of ARR

From the point of view of buyers, collectors and art professionals, 80% of interviewees report that they are always aware of ARR as “it’s obvious for everybody” (Interviewees A3, UK, November 2019). Interviewees from the galleries/art dealers group act both as sellers and as trade buyers, since they often source their works from auction, art fairs, etc. They are generally better informed about artists’ dates, and therefore about which artists are eligible for ARR, whereas many private collectors depend on the information provided to them by the seller, as Emily Walsh from the Fine Art Society explains:

I’m just aware of the date, so I just know that if an artist has died after a certain point, that I know.. Yeah, it’s fairly engrained in my way of thinking, in a way that it probably isn’t for a private buyer.

(Walsh, Interview, Edinburgh, November 2019)

From this statement it is again clear that private buyers are very different to the trade, as they are not as well informed. Walsh further explains how prices on auction catalogues can sometimes be deceiving, as they do not incorporate several extra charges:

I think a lot of private buyers, and it’s the same even for auction commission - people hook on to the price they see in a catalogue and they don’t think about anything added and then they get the invoice afterwards and go “Ah, yes!”.

(Walsh, Interview, Edinburgh, November 2019)

Walsh’s report shows that private clients act more on impulse, in contrast to trade ones, and are often unaware of ARR before they buy.

There are several key findings resulting from the evidence in this section. Firstly, the option that art professionals, such as auction houses, have to transfer the charge of ARR to their buyers creates an imbalance within the art market. As galleries and art dealers report, that they often have to absorb ARR to conclude a successful deal, and in doing so they end up

paying for ARR twice, if they have sourced the work from the secondary market. The second key finding is that, although ARR is clearly communicated to buyers, there is a greater need for more information about it, and especially on the purpose and use of ARR. On the same theme, trade buyers report that they are always aware of ARR before they buy, but the same does not apply to private collectors. Private collectors often lack the knowledge of the trade and might only become aware of ARR until after the sale takes place.

4.4 Private vs Trade Buyers

4.4.1 ARR and buyers' willingness to pay

The last theme to be covered in this findings chapter is one that directly answers the research question of the influence of ARR on buyers' willing to pay. The different interviewee groups offer some contradictory opinions on the subject, however, 71.5%, the majority, reports that there is an influence and 28.5% that there is not.¹⁷⁴ From the auction specialists group, Thomas Podd from Sotheby's explains how ARR influences buyers:

I think that potential clients and buyers take ARR into consideration when they are determining how much they're willing to spend at auction, i.e. how much they're willing to pay for the hammer price.. I couldn't tell you to what degree that influences.. the end result, because quite often clients will pay more than they thought they were gonna pay, initially. But I'm sure, and I know, that for many clients, they will be considering the fact that they have to pay ARR, on top of the hammer price.

(Podd, Interview, London, November 2019)

However, interviewees identify other parameters that affect buyers' willingness to pay, such as the difference between private and trade buyers, as Veronique Scorer from Bonham's reports:

..I think for maybe a private buyer not so much, because it's difficult to calculate everything and, you know, on the hoof as it were. I don't know, my gut feeling is that

¹⁷⁴ See Appendix F, Table F.4.

it doesn't really affect private buying so much - just from the point of view when we upped our buyers' premium to 17.5% on the first £2,500 - beginning this year, I don't think it did actually really affect people's bidding, maybe because they just didn't realise..

(Scorer, Interview, London, November 2019)

It is therefore evident that there is a distinction between private and trade buyers, with the former being less familiar with the buying process. It is also interesting to note that the introduction of ARR is often compared to the increase of buyers' premium and its effect on prices, which for Scorer had no effect on buyers. Likewise, Thomas Podd confirms that private buyers are more impulsive with their purchases, whereas trade buyers calculate all charges, to include ARR, before each sale:

I think generally speaking private clients are more willing to bid in excess of what they thought they might, because they really love something. I think, generally speaking, dealers, although that's quite a generalist term - they probably have more of a cut off in terms of what they're willing to sell, and so ARR will feed into both of those sort of psyches I suppose..

(Podd, Interview, London, November 2019)

Veronique Scorer confirms that what distinguishes trade buyers is the fact that they act both as buyers and sellers:

.. like say a dealer, absolutely will affect them, because they've worked out everything to the penny, because they've got to make a profit on it.

(Scorer, Interview, London, November 2019)

Therefore, it is no surprise that interviewees from the galleries and art dealers group report that they always take ARR into account when deciding what to pay, as they buy with an intention to re-sell. Emily Walsh from the Fine Art Society highlights that "It's the final price is what is of interest to me, and I will pay what the work is worth including the AR", which shows that ARR influences the amount she is willing to pay (Walsh, Interview, Edinburgh, November 2019). Equally, Megan Pockley from White Cube also explains:

..it's always in mind, and when you're bidding definitely you will be thinking: "Ok this is our maximum we're gonna go to, and add ARR on top, and tax, and then that's our commission"..

(Pockley, Interview, London, November 2019)

Thus, the evidence shows that they both have a price in mind, which they lower when ARR applies to avoid an impact on their charges further down the line. Similarly to auction houses and galleries, art dealers report that ARR is automatically calculated when they decide what to bid. Interviewees A3 explain that they and other trade buyers are used to paying ARR and that they accept the charge:

So we include it in the total, we have to pay 30%, let's say, or 35%, which includes everything and including the 4%..

(Interviewees A3, UK, November 2019)

The same interviewees explain that the art market is broken down to three distinctive groups, each with a different type of buyers: i) the natural market, which is auction houses and commercial galleries, where the prices are determined by bidders who know exactly what they wish to pay, ii) the contemporary art market, which is galleries that make up prices based on marketing and promotion, to buyers who follow their advice, and iii) the old master paintings and traditional art market, where prices are set by established collectors and institutions. Interviewees A3 report:

And.. the ARR of course influences the natural market, because people can instantly see that they have to pay more than they wish to pay..

(Interviewees A3, UK, November 2019)

This gives a new perspective on the question of the influence of ARR as it is clear that buyers' behaviour differs depending on what kind of art they buy and from where. It also shows that buyers at auction and in the majority of commercial galleries play an important role in the pricing of works of art. On the other hand there are art experts who express a different opinion on the influence of ARR on buyers' willingness to pay. Interviewee A1, collector and art dealer, explains that ARR is an accepted charge by his buyers:

..once it's explained they shrug their shoulders and say "Well yeah, nothing can do about it, can't get round it", you know. The only way to get round it is by buying really old paintings or.. buying direct from the artist. So it's kind of unavoidable really..

(Interviewee A1, Glasgow, November 2019)

This evidence shows that there is really no alternative to buying works eligible for ARR, and buyers accept that they just need to pay it. However, this does not necessarily mean that buyers do not lower the prices they are willing to pay as a result of ARR. Building to that, when asked whether buyers would reduce their price for a work that is eligible for ARR Interviewee A2, an art consultant, reported:

No absolutely not, they just don't even think of it to be honest with you..

(Interviewee A2, London, November 2019)

This testimony states that buyers are not in any way affected by ARR when they decide on what they pay for a work of art. Such a categorical report is in contradiction to the majority of the interview responses on this subject, which argue that ARR does influence buyers' willingness to pay.

4.4.2 The influence of ARR on different price levels

From the evidence provided in Section 4.4.1 it is understood that ARR influences buyers' willingness to pay, however, the influence could be greater for trade buyers in contrast to private. Interviewees also argue that other factors such as the price level of the particular work that is eligible for ARR could play an important roles on the level of influence on buyers' willingness to pay. This can be explained by the fact that ARR is calculated as a percentage of the price, which declines as the price increases. Emily Walsh from the Fine Art Society explains how buyers seem to be more affected by ARR when they purchase high value works:

..lower value work that tends to be less of an issue, because it amounts to let's say £50 or £60. And when it's a higher value work people will have an idea in their mind of how much they want to pay, and that could be for any number of reasons, it could just be that's the amount of money they got to spend, or that they come to the gallery thinking "I want to spend 10,000 and not a penny more". So in those situations, at the higher levels, that is when we are more likely to end up absorbing the cost of AR, within the negotiation.

(Walsh, Interview, Edinburgh, November 2019)

Therefore, although the ARR percentage declines as the price increases, buyers are less willing to pay any extra charges over a certain price limit. So in essence if a buyer has a price of £10,000 in mind for a particular work that is eligible for ARR, with a charge of 4% on the £10,000, which would bring the price to £10,400, they would lower their offer to reach £10,000 including ARR. If the argument above is correct then this buyer is willing to pay a price of roughly £9,600, so that with the 4% the end price would come up to £9,984, which is the closest to the £10,000 the buyer is willing to pay. Consequently, if ARR was charged the end price would have to be lower. However, in this case most galleries tend to leave the price as it is and absorb the ARR cost, which is detrimental to the gallery's profit. On the other hand, Megan Pockley's report offers a different perspective:

I found a real switch.. moving from Imp Mod, where the value was so much higher, it didn't have such an impact.¹⁷⁵ It was really a tiny fraction of the bigger price that they were prepared to pay and maybe, as being an auction house, they are more accustomed to paying it.. Whereas, here the values are often a lot lower.. and clients really negotiate more and has more of an impact, so they're more likely to say "Well, you know, ARR has to be inclusive, I'll give you an all-inclusive price"..

(Pockley, Interview, London, November 2019)

In this quote, Pockley suggests that buyers are most influenced by ARR at the low level works, in contrast to what Walsh has reported. Thus, it is imperative to determine what constitutes 'low' and 'high' value works. According to Walsh, low value for the FAS is around £1,000 and high value is around £10,000. Whereas, the average of the majority of works that White Cube handles is valued at £10,000, with some exceptions at the very top price range. At the same time, the average price of works sold by the Impressionist and Modern Art department of an international auction house are much higher. So the evidence shows that ARR is most impactful in the area around £10,000 and not below or above.

Similarly, auction specialists also highlight the significance of the level of price on the effect of ARR, confirming that ARR has more impact on high value works as Thomas Podd from Sotheby's reports:

It's not massive [the ARR influence on prices]. It obviously increases as the value of the art work goes up, but generally speaking I don't think it has too much bearing on

¹⁷⁵ The Impressionist and Modern Art department of an international auction house.

what our clients are willing to spend, particularly privates. I think it's consideration, and I think when you are spending £100,000 plus.. it's more significant amount of money but £1,000 of JD Fergusson, it's £40.

(Podd, Interview, London, November 2019)

The evidence here suggests that although buyers are affected by ARR, the effect on prices is not significant. In particular it confirms that it is less significant for private buyers and more significant as the value of the art work increases above a certain level. Veronique Scorer from Bonham's confirms the same points:

I think at the level of the value of works that we sell here, I don't think it has much effect because.. - obviously once you're talking in 100,000, although it decreases, doesn't it. - is it that a big deal? I'm not sure.- It doesn't feel like big deal to me..

(Scorer, Interview, London, November 2019)

So although Scorer suggests in Section 4.1 that ARR does affect what trade buyers' are willing to pay, here she reports that this effect is perhaps not significant, especially at a certain lower price level.

4.4.3 Isolating ARR from other charges

Another parameter that affects the measuring of the influence of ARR on buyers' willingness to pay is isolating it from other charges, such as import VAT. Interviewees from the auction houses and art dealers group report that buyers' decisions are influenced by ARR, however, they also report that it is a small charge, considering that it is part of a group of other constant charges. According to Thomas Podd from Sotheby's it is difficult to measure the effect of ARR on buyers' willingness to pay:

you can't look at it in isolation either, when you're considering this, cause you always have to consider the buyers' premium, the VAT, other charges that might be levied on the hammer price. Because when you start wrapping all those up you're looking at 34%, you know, including ARR..

(Podd, Interview, London, November 2019)

Isolating the effect of a particular charge is a challenge of this study and all the right measures are taken to control for any other influences, such as buyers' premium or import VAT. In particular, the role of import VAT, as potentially more impactful than ARR, is reported by a private collector and art dealer:

..if I had a sort of figure in my mind and it [ARR] wasn't too much more, I would probably still go ahead and buy. But if it was something extraordinary, like, you know, some kind of import duty or something that was going to substantially alter the price then, yeah, I would [adjust the price].

(Interviewee A1, Glasgow, November 2019)

It is therefore evident that as import VAT is at a higher percentage of 5%, which does not decrease, its significance for some art professionals is bigger than that of ARR much in the same way as when they value works for sale.

At the same time, the rise of buyers' premium to 25%, together with VAT of 20%, and the cost of transport makes it too expensive for galleries and art dealers to then resell, with the 4% of ARR only adding to the total. Interviewees A3 explain how the rise in charges by auction houses, including that of ARR, have driven trade buyers out of buying in the secondary market:

This is... a very good question but the answer is now difficult, difficult to relate to the ARR because there has been [a] repress, yes, in the business a very serious one that has not yet been appreciated. It comes [charges] to 50 -55% on the last bid. Think about it, there's no business on this earth that makes 50% gross, and they're not making anything, it's just a service. So, it's already affecting the business because you have to add to it also 4%..

(Interviewees A3, UK, November 2019)

The nature of auction houses has changed over the years from wholesalers to more exclusive gallery style salerooms, which has resulted in higher charges in commission, buyers' premium, etc. Interviewee A1, collector and art dealer, also reports that the cost of buying at auction is extremely high and it results to them charging higher prices "I've just have to pass that on to clients" (Interviewee A1, Glasgow, November 2019). Thus, the evidence shows that the increase of extra charges has driven trade buyers out of buying at auction. Nevertheless, Interviewee A2 reports that the real reason why some dealers have been driven out of this buying route is that auction prices are nowadays publicly available through online platforms:

The galleries, I can tell you now, much prefer to buy things first-hand from private people, and pay a premium for it, that has not been exposed to the market so they can't track the price, that's what happens.

(Interviewee A2, London, November 2019)

Veronique Scorer from Bonham's also confirms that there has been a reduction of trade buyers buying at auction but not necessarily as a result of extra charges:

I think there is a decrease, but I'm not sure it's to do with ARR. I think it's to do with transparency of results, which, you know, even from the smallest auction house it's gonna be on Artnet or whatever. So, I think it's more to do with that.

(Scorer, Interview, London, November 2019)

This is perhaps a different issue to do with the more strict regulation of the art market and the introduction of public websites such as Artnet and Blouin Art Sales Index, and is beyond the scope of this thesis.

4.4.4 Transfer of sales to countries with no ARR

One further parameter relating to the influence of ARR on buyers' willingness to pay is that of relocating sales to a country where ARR does not apply, so as to avoid paying the extra charge. Auction house representatives report that this is not common practice for them and their buyers, when at the same time galleries and art dealers explain, that they are willing to buy or sell in locations where they can avoid paying ARR, under certain circumstances. Thomas Podd from Sotheby's clearly explains how other charges, connected with selling outside the EU, outweigh the benefits of not paying for ARR:

I mean ultimately, yes, obviously it's beneficial that ARR wouldn't have to be paid on the hammer price if being purchased from.. a US based auction, but then.. there's the cost of transportation, there's the cost of importing into the EU custom zone.. there's British border clearance charges, there's all sorts of things that would be applicable that would almost outweigh the ARR. So, I do think, generally speaking, that while some clients consider ARR when they either or when they buy, I don't think.. they overthink it, I think they ultimately pay it.

(Podd, Interview, London, November 2019)

Choosing to buy or sell in a location where ARR does not apply, mainly the major art markets of the US, China and Switzerland, is also influenced by the category and level of value of works. As Veronique Scorer reports, sending works at the price level that she handles to the US in particular is not financially viable, as it is a market more suited to the Impressionist and Modern Art or Contemporary Art sales (Scorer, Interview, London, November 2019).

On the other hand, interviewees in the galleries/art dealers group report different views, as Emily Walsh from the Fine Art Society explains that she would be willing to buy from the US, if it proved more profitable than buying in the UK:

..it's probably a picture for me selling out of zone. So, I can buy it cheaper and, even with those charges, it's still coming to me at a better price than if it was being sold in London..

(Walsh, Interview, Edinburgh, November 2019)

Nevertheless, she also reported that Scottish pictures are usually sold in the UK, and so it is not very often that she would source works abroad (Walsh, Interview, Edinburgh, November 2019). Equally, Interviewee A1, collector and art dealer, confirm that they buy wherever is most profitable, considering the cost of ARR to that of all the other charges:

I would look at that "Would the 4% Artist's Resale Right be more than the cost of shipping, and import duties from the States, and getting it shipped up?".. Cause it would have to be put in a proper crate. I do do that, you know, but if there was going to be a choice between two I'd have to work out what costs were.

(Interviewee A1, Glasgow, November 2019)

Thus, it is apparent that many different parameters influence the decision of buying and selling in locations so as to avoid paying for ARR, and it is therefore more of an exception rather than common practice to do so for galleries and art dealers. However, White Cube, a gallery that operates in different countries and often sells in international art fairs, is in a different position. According to Megan Pockley from White Cube, they are able to easily sell works outside the UK, without having to incur any import and transport charges:

..lots of clients and lots of the sales team try and move things around to avoid paying it, even though sometimes it's cheaper just to pay for the ARR than it is to ship something.. – Artist's Resale Right, you know, makes sense, you live in Switzerland let's just sell it to you in Switzerland, and then you can stay there.

(Pockley, Interview, London, November 2019)

The example of the White Cube gallery is unique to the other interviewees as contemporary art galleries and collectors often have platforms to sell and buy in different locations, making it easy to accommodate situations where they can pay less charges, such as ARR, or less taxes. Yet, as Interviewee A2, art consultant, explains, ARR could never reach a significant enough amount to justify the move of location, as it has a cap “That was the big question, but because it's only to 12,000 quid, that's 4% 12,000, it's not worth doing” (Interviewee A2, London, November 2019).

To sum up the findings from this section, the majority of interviewees report that ARR influences buyers' willingness to pay. However, auction house representatives explain that the level of influence is not significant and that trade buyers, in contrast to private, are influenced the most. At the same time, galleries and auction houses explain how the influence of ARR is dependent upon the level of value for the works in question. The evidence shows that ARR has the most effect around the £10,000 price level, however, further research is needed on this topic to be able to determine the exact range where it is most influential. Another important result is the difficulty to isolate the influence of ARR from that of other charges, such as buyers' premium and import VAT. According to interviewees belonging to the art dealers group, the excess cost of extra charges has resulted in trade clients no longer buying at auction. An argument that is debated by auction specialists, as they report publicity of prices realised as the main reason for this change. Finally, evidence from the last section shows that selling in countries where ARR does not apply so as to avoid paying it is not common practice among art professionals. At the same time, gallerists and art dealers report that they would do that under certain circumstances, where the cost of buying is lower than that of ARR.

4.5 Summative Analysis

The results from the semi-structured interviews with art experts yield important findings that both enrich and contradict those of the current literature on ARR. The evidence presented shows no significant effect of ARR on valuations by art experts and an influence of ARR on buyers' willingness to pay. The evidence also shows an imbalance within the art market, created by the choice of some art professionals to transfer the charge of ARR to buyers, rather than sellers. Furthermore, it reveals no relocation of sales to countries with no ARR, so as to avoid payments. Looking at the findings from Section 4.2, the majority of interviewees consider characteristics, such as quality and rarity, when they assign value and not charges, such as ARR; which shows that previous researchers have overestimated the importance of the influence of charges to valuing. Furthermore, 66% of art professionals do not take ARR into consideration when valuing, which contradicts the theoretical papers, such as Filer (1984) and Karp & Perloff (1993), which predict that sellers valuations would be lowered because of ARR, with the exception of those galleries and art dealers who absorb it.¹⁷⁶

This raises the question of whether flexibility around policy decisions on ARR is also a major determinant of the influence of ARR. The evidence in Section 4.3 shows that sellers rarely pay for ARR, as in the UK auction houses and most major galleries transfer the charge to buyers. In many cases the extra charge of ARR ends up having an impact only on the profit margin of galleries and art dealers that choose to absorb it. According to Ginsburgh (2005a and 2005b) and Tepper (2007), among others, it is expected that buyers' willingness to pay in the primary market could be lowered, as a result of the anticipation of the ARR charge when they re-sell (they assumed that ARR is charged to sellers not buyers). However, this argument does not apply to the current situation in the UK as ARR is charged to buyers by auction houses and most galleries, with the exception where the primary market buyer is a trade buyer that will then re-sell the work via an art professional who does not charge buyers but sellers. In her report for WIPO, Farchy (2014) explains how galleries are in a disadvantaged position compared to auction houses as their buyers are able to negotiate a sale price, when they are not

¹⁷⁶ This prediction can also be found in the studies by Merryman (1993), Mantell (1995) and Solow (1998).

able to do so at auction. That creates a significant imbalance within the art trade, with some art dealers bearing the burden of having to pay for ARR twice, when they buy and when they sell. This situation is contradictory to the ideology behind the ARR Directive, which was created to harmonise the distortions in the internal market of the EU, when it seems that there are still distortions in the internal market of the UK.¹⁷⁷

Furthermore, the distinction between trade and private buyers is evident in the communication of ARR and its influence on how ARR is perceived. The evidence shows that special symbols on catalogues and other marketing material make the ARR charge obvious to all buyers. Nonetheless, an important finding is that art professionals regularly need to have a conversation with private buyers, explaining the purpose of ARR, which often leads them to absorb it. Surprisingly, the evidence shows that some private buyers are unaware of ARR before the sale takes place, and it is therefore impossible for it to influence them. This area of ARR has not been previously explored in the related literature, although it does connect with the wider research question of how ARR influences buyers' willingness to pay. From the evidence provided it is clear that there is a need for a drive to educate the public about what ARR is and who it benefits.

Likewise, although the majority of interviewees report that ARR influences buyers willingness to pay, they also add that this influence might not be significant, that it influences trade buyers more than private and have a greater effect at the middle range of price levels. The findings match the early existing literature on the subject of ARR, which suggests that buyers would be negatively influenced by ARR and reduce their willingness to pay, as a result of the extra cost, Karp & Perloff (1993). It also agrees with the report by McAndrew (2011), commissioned by the British Art Market Federation, which uses data to show that prices have declined for works eligible for ARR. However, the results of the present thesis are contradictory to the comprehensive study by Banternghansa & Graddy (2011), which uses

¹⁷⁷ According to Directive 2001/84/EC, Section 11, L272/33 "To that end the Treaty provides for the establishment of an internal market which presupposes the abolition of obstacles to the free movement of goods, freedom to provide services and freedom of establishment, and for the introduction of a system ensuring that competition in the common market is not distorted."

empirical evidence to find no decrease in prices for works eligible for ARR, but does not examine the reasons. On the other hand, a minority of interviewees suggest that there is no alternative to buying works eligible for ARR and most buyers accept the charge, which is in contradiction to Filer (1984) and Ginsburgh (2005a and 2005b), who argue that as a result of ARR buyers will not buy eligible works of art.

The important role of the level of value of a work of art for ARR has not been examined in the existing literature. Banternghansa & Graddy (2011) examine price growth for works of art, regardless of price band, and have not made any distinctions in that area. This study is the first to present evidence showing that at the level of £10,000 is when ARR is most impactful to buyers, however, more quantitative research is needed to determine the exact level. Furthermore, the significance of other charges, such as buyers' premium and import VAT, on prices for works of art has been examined in the previous literature by Ashenfelter & Graddy (2003) and McAndrew & Dallas-Conte (2002). The results from the interviews show that the increasing levels of auction charges, together with ARR, have driven trade buyers out of buying through this route. Nevertheless, auction specialists and consultants report that transparency and greater market regulations in the art market, rather than charges, is what contributed to the change.

Lastly, one prediction that reoccurs in most of the existing literature on ARR is the change of sale location, so as to avoid paying for ARR. According to McAndrew (2011), there has been an increase of European works sold in the US and a decrease in the UK, as a result of ARR. On the contrary, the evidence provided in this study shows that there is no significant move of works for sale in locations where ARR does not apply, as the charges of import and transfer would have to outweigh the ARR, to make the arrangement profitable. One exception is the White Cube gallery, which has sale locations in countries other than the UK, such as the US and China, and it is therefore easier for them to sell there with lower expenses. On the other hand, the evidence from this study complements that of the comprehensive study by Banternghansa & Graddy (2011), which shows no increase of volume of sale in the US in contrast to the UK for works eligible for ARR. As Interviewees A3 art dealers report "Oh, I know, yes! That's what people were saying will happen [move to the US], but it has not happened like that." (Interviewees A3, UK, November 2019).

Chapter 5 - ARR Influence on the UK Art Market: Evidence from Artprice.com

5.1 Introduction

How does ARR influence the art market in the UK? This chapter focuses in this key question. The art market comprises transactions of works of art via primary and secondary sales, such as galleries and auctions. This study focuses on the secondary sales as this is where ARR applies.¹⁷⁸ The secondary market is made up of art galleries, auction houses and independent art dealers. Yet, the data used in this chapter are from auction sales as they are the only ones that publish their results in a transparent and consistent way.¹⁷⁹ Auction houses sell in ‘hammer price’ with charges such as buyers’ premium, VAT and ARR being added on top. My data source the website platform artprice.com publishes prices as ‘hammer price’. ARR could influence prices for eligible works if prospective buyers decrease the amount they bid, and as a result the ‘hammer price’, in anticipation of the extra charge that will be added on top.

One way to observe that influence is through a natural experiment using a treatment and a control group, of works by artists eligible for ARR and works by artists not eligible, respectively.¹⁸⁰ The treatment and control groups are comprised of works by the four Scottish Colourists, Fergusson, Peploe, Cadell and Hunter. The reason why they form a great example for a comparison is that they are a homogenous group, similar in many aspects and different only in one regard: only one of the four is eligible for ARR; Fergusson, as he passed away in 1961 and falls within the 70 years period.¹⁸¹ Therefore, works by Fergusson form the treatment group and works by the remaining three, Peploe, Cadell and Hunter, form the control group. If I compare these very similar works of art before and after the implementation of ARR, between

¹⁷⁸ As per Directive 2001/84/EC ARR comes into effect when a work of art sells in the secondary market. Primary sales take place usually through the artist’s studio, art dealers, galleries and rarely auctions.

¹⁷⁹ The art market in the UK and globally remains heavily unregulated and it would be very difficult to accumulate sale results from private galleries and art dealers.

¹⁸⁰ Both groups include EU artists selling in the EU.

¹⁸¹ For a detailed explanation of why the Colourists are a homogenous group see Chapter 3, Section 3.4.2.

the treatment and control group and find an influence on prices (after controlling for various other factors, such as the size of the painting, the artist and time effects) I can argue that this is the impact of ARR. This analysis can be scaled up and apply to works of art by living artists who are also eligible for ARR.

So far, scholars have explored the influence ARR might have on prices, mainly theoretically but also empirically. However, the existing empirical studies use data on auction prices for just a few years after the implementation of ARR and a large sample of auction prices by a very diverse group of artists.¹⁸² Therefore, this study is the first to use insights from art history to identify a homogeneous group of artists, the Scottish Colourists, separate their works to paintings affected by ARR (treatment group) and paintings that are not influenced (control group), and perform a difference-in-difference analysis for a substantial period after the implementation of ARR. Also, it is the first to bring together these empirical findings using price data from auctions, with results from a comprehensive qualitative analysis from interviews, to further support the results and identify potential channels, through which these effects might function.

5.1.1 Research questions

Evidence gathered through a mix of qualitative and quantitative methods is presented and analysed across three findings chapters, each focusing on a different research question. This chapter examines how ARR influences the art market using quantitative analysis. Previously, Chapter 4 examined how ARR influences buyers' willingness to pay using qualitative analysis. Specifically, semi-structured interviews have been conducted with a select group of key art experts that help answer this key question. Likewise, Chapter 6, focuses on whether ARR should be retained in the post-Brexit era, and if so how it can be reformed with evidence from semi-structured interviews, that is tested using qualitative analysis.

¹⁸² Banternghansa & Graddy (2011) examine prices up to 2006 (the first phase of ARR implementation in the UK) and McAndrew (2011) goes up to 2014 with a large group of samples for all Contemporary and Modern Art sales.

5.1.2 *The Scottish Colourists – data description*

The core data set for this analysis is made up of art auction prices for works of art by the Scottish Colourists, in the UK. For the purpose of answering the research question of how ARR influences the UK art market we need to look at prices from the secondary market, and auction houses in particular. The primary data has been collected from the website artprice.com, which is the database through which many art professionals and private individuals can access auction results via a paid subscription.¹⁸³ The data set covers all works sold in all auction houses in the UK (those who were ‘bought in’ at auction were excluded).¹⁸⁴ Works by the Scottish Colourists, however, are mainly offered for sale by the auction houses of Sotheby’s through The Scottish Art sale, Christie’s through The Modern British Art sale and Bonham’s through The Scottish Art sale, once or twice a year at each house.

The period of study covers the years between 2003 and 2021, nine years before and nine after 2012, when ARR became available to artists deceased within 70 years before the sale, in the UK. This time period was chosen in order to have as many results as possible, while still keeping a balance between the number of years before and after the implementation. A comparison of the prices realised at auction between paintings in the treatment and control groups, before and after the introduction of ARR in 2012, reveals the effect of this policy – the implementation of ARR. All the prices collected are above the €1,000 threshold when ARR begins to apply and all the works studied are oils on canvas or board, rather than works on paper, as pictures of this medium achieve prices above that threshold.¹⁸⁵ In addition, results are in ‘hammer price’, the price achieved when the hammer falls at auction is the raw price to which other extra charges such as buyers’ premium, VAT, import tax and ARR are added. These charges account to 25% of the hammer price for buyers’ premium, through the time period studied for all auction houses, 20% of the premium VAT (not on the hammer price) and 5% of the hammer price import VAT, only applied to works that have been brought in for sale

¹⁸³ There are two other important websites offering the same service, Artnet and Blouin Arts Sales Index. I was advised by a senior auction house director to use artprice.com as a trustworthy and accessible source.

¹⁸⁴ ‘Bought in’ works are those that fail to meet their reserve and remain unsold.

¹⁸⁵ There is a scope to run a separate data set for works on paper to observe the effect of ARR on lower priced works.

from outside the EU.¹⁸⁶ Finally, the variables that were collected are: hammer price, artist's name, title of work, auction date and measurements.

5.1.3 Chapter overview

Following the introductory Section 5.1, this chapter is divided in six further parts. In Section 5.2, there is an analysis of the first data set, for auction prices of works by the Scottish Colourists, in oil during the period between 2003-2021. In this section there is a detailed description of the data set, an explanation of the difference-in-difference analysis and a presentation of the baseline regression estimates. In Section 5.3, robustness checks are performed on the same data set to confirm the validity of the results. Firstly, there is an addition of a 'size' variable to control for the height and width of the works of art, in both the treatment and control group. Furthermore, in Section 5.3, there are two further checks by means of changing the time period. One is for a time period before 2012 and one for after. Additionally, in Section 5.4 all the findings from this chapter and the quantitative analysis are presented and explained in detail, together with a discussion of the scope for further research on the subject using the same methodology. In Section 5.5 there is a comparison of the results with previous empirical works on ARR. Specifically, there is a detailed point to point analysis of the methods used and results shown by Banerghansa & Graddy (2011) and by McAndrew (2011). Finally, in the summative analysis there is a summary of the chapter and a brief introduction of Chapter 6, on whether ARR should be retained in the post-Brexit era.

5.1.4 Preview of results

To preview the findings of this chapter, the results from the difference-in-difference analysis in Section 5.2 show that there is a decline of €32,893 in the average hammer price between the treatment group, works by Fergusson, and the control group, works by Peplow, Hunter and Cadell, after the implementation of ARR in 2012. Specifically, prices for works by Fergusson

¹⁸⁶ Buyer's premium has increased over the years, however, at the time of writing the rates of the three major auction houses are: Sotheby's 25% up to £700,000, 20% up to £3,500,000 and 13,9% thereafter; Christie's 26% up to £700,000, 20% up to £4,500,000 and 14,5% thereafter; Bonham's 27,5% up to £20,000, 26% up to £700,000, 20% up to £4,500,000 and 14,5% thereafter.)

decreased by 9.24% and prices for works by Peplow, Hunter and Cadell increased by 30%. This is an indication of a negative influence of ARR on the prices of eligible works and to the art market as a whole.

5.2 Analysis of Auction Prices for the Scottish Colourists

5.2.1 Difference-in-difference analysis

To measure the influence of ARR on the UK art market a difference-in-difference method of analysis is employed. This is a method often used in experiments in natural sciences and more recently in social science, particularly in economics as a valid way of determining cause and effect, through the comparison of the change in values over time. For a natural experiment involving the works by the Scottish Colourists this method is ideal, as the development of prices for these artists is observed in a comparison of before and after the implementation of ARR, which controls for other effects. Should one have compared just the development of prices for works by the treatment group, paintings by Fergusson, before and after the implementation of ARR, we would have not been able to argue that any change in value would have been caused by ARR. Nevertheless, through the difference-difference method one is able to observe the development of his prices in contrast to another group which is similar in almost every characteristic apart from the eligibility to ARR, and through that to single out precisely this effect. This is shown more clearly in the equation below:

$$\text{Effect} = (\text{Treatment}_{\text{after}} - \text{Treatment}_{\text{before}}) - (\text{Control}_{\text{after}} - \text{Control}_{\text{before}})$$

or equivalently

$$\text{Effect} = (\text{Treatment}_{\text{after}} - \text{Control}_{\text{after}}) - (\text{Treatment}_{\text{before}} - \text{Control}_{\text{before}})$$

Following on is an explanation of how this method of analysis is applied in this study. Firstly, a comparison between the average price for works by the treatment group before 2012 and the control group before 2012 shows what their difference was before the introduction of ARR. We then compare the average price for works by the treatment group to those of the

control group after 2012 which will show us the difference in average price after the introduction of ARR. If we then compare the two results from these two comparisons we get the difference between the differences before and after 2012 (difference-in-difference), and therefore a significant change in this difference-in-difference would reflect the impact of ARR on prices. Other factors that might have influenced prices need to be considered, such as the economy and fashion trends, however, given that we compare between a homogenous group of artists' works those influences would have been the same in both time periods. It is highly unlikely that collectors' preferences changed only for Fergusson after 2012 and not for the other members of the Scottish Colourists. Nevertheless, although the number of observations is large, 758, there is an argument that the sample group is small in size due to the treatment group being formed by one artist. The comparison mentioned above is shown in Table 2, together with the number of observations for each group. The pre-existing price difference between treatment and control before the implementation of ARR in 2012 was: -€20,656.47, with works of art in the control group being more expensive. This pre-existing difference is amplified, as post 2012 it has become -€53,549.74. The result of the difference-in-difference comparison in means is displayed in Table 2 below, in column (7) and it is -€32,893.27:

Table 2: Descriptive Difference-in-Difference

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Treat, Before	Control, Before	Diff- Before (Treat- Control)	Treat, After	Control, After	Diff- After (Treat- Control)	Diff-in-Diff (column 6 - column 3)
Price (in euros)	67,607	88,263	-20,656	61,355	114,905	-53,549	-32,893
Number of Paintings	50	289		72	347		

Notes: Table 2 displays average prices for paintings in euros.

5.2.2 Regression

In this section I provide a detailed description of the data processing. In order to perform the difference-in-difference analysis the group of data collected from artprice.com was imported into Stata, a statistical software where the data can be analysed. The following regression was run at the first instance:

$$\text{Price}_{it} = \beta_0 + \beta_1 \text{Time}_t + \beta_2 \text{Treated}_i + \beta_3 (\text{Time} * \text{Treated})_{it} + \text{Controls} + e_{it}$$

Where Price_{it} is the price of a painting by artist i in period t measured in euros. Time_t is a dummy variable that takes the value 1 if the auction where the painting was sold belongs to the period 2012-2021, otherwise it is 0 (recall that 2012 is the year when ARR was implemented). Treat_i is a dummy variable that takes value 1 if the painting belongs to the treatment group, otherwise it is 0 (recall that only the paintings of Ferguson belong in the treatment group). $(\text{Time} * \text{Treated})_{it}$ is the difference-in-difference variable, which takes the value 1 for paintings of the treatment group which were sold in the period 2012-2021. e_{it} is the error term. This is the baseline version of the regression but later on I add further control variables to control for variables such as different auction years and the size of the painting. This allows us to increase the precision of the regression. The command in Stata for the baseline regression is written as follows:

```
reg price time treat did vce(robust)
```

Where: **reg** stands for regression, **price** for the price of the work of art, **time** for period before 2012 (0) and period after 2012 (1), **treat** for works by the treatment group (1) and works by the control group (0) and **did** for treat*time.

The results of the regression are shown in Table 3 below:

Table 3: Difference-in-Difference

	(1)
	Price
time	26,641.76*** (9,877.261)
treat	-20,656.47 (13,238.62)
did(time*treat)	-32,893.28* (17,762.32)
R-squared	0.024
Number of Paintings	758

Notes: Table 3 shows regression results from auctions. ***, ** and * indicate significance at the 1, 5 and 10 percent significance level, respectively.

According to the results in Table 3, which are the same as those in Table 2, there is a difference of -€32,893.28 between the control and treatment group with a standard error of 17,762.32, which is statistically significant at the 10 percent significance level.¹⁸⁷

Therefore, the introduction of ARR is associated with a decline of €32,893.27 in the hammer price of sold art. This is not an insignificant amount and it is one that makes an impact on the value of Fergusson's work and the art market as a whole. Although the findings show a drop in prices for Fergusson's work, as a result of ARR, the same could apply to other artists that are eligible for ARR, either living or deceased within the 70-year time period. This would mean that ARR influences prices of eligible works negatively. For a better understanding of what this could mean for artists, their heirs and the art market In section 5.6 I connect these findings to those of the qualitative Chapter 4, for a more in-depth analysis of the effect of ARR.

¹⁸⁷ The definition of a standard error is "The standard deviation of the sampling distribution of a statistic". Everitt (2003), p. 409.

5.3 Robustness Checks

5.3.1 *Controlling for the size of the painting*

In order to enforce the validity of the first finding, robustness checks are performed. Firstly, the same dataset is used only this time with an added variable for overall size of the pictures taken into account. Size exists in the dataset already, as it was a variable in the initial data collection, however, it was not taken into account in the first regression. In my data source, artprice.com, the measurements of works appear as height x width in centimetres, with the exception of a handful of works that lack this information. For the Stata analysis of the data I multiplied height by width to get the square size for each work. This way the significance of the average size of works is shown in relation to the price, for both the treatment and control groups before and after 2012. Therefore I regress:

```
reg price time treat did size, vce(robust)
```

The results of the regression are shown in Table 4 below:

**Table 4: Difference-in-Difference,
Controlling for Size**

	(1)
	Price
time	26,195.34 *** (9,287.346)
treat	-10,650.82 (10,902.82)
did(time*treat)	-32,243.5** (15,366.21)
size	29.76879*** (4.128613)
R-squared	0.1432
Number of Paintings	758

Notes: Table 4 shows regression results from auctions. ***, ** and * indicate significance at the 1, 5 and 10 percent significance level, respectively.

Looking in Table 4, I observe at least two main findings. Firstly, the difference-in-difference (did) variable retains its impact, even after controlling for the size of the paintings. The effect is still large and very similar in magnitude compared to Table 3, at -€32,243.5 compared to -€32,893.28. Also, its significance has improved, as now the variable is statistically significant at the 5 percent significance level compared to the 10 percent significance level in Table 3. The second important finding is that the result I get for size is 29.76, which means that works by all artists in the group increase in value by €30, roughly, for every square centimetre. Most importantly, this figure shows that prices increase as the size increases, which is logical for most works of art in any category. This finding reinforces the validity of the analysis. The increase in the R-Squared compared to Table 3 shows the large explanatory power of the variable size on prices.

In order to perform another robustness check, I control for all the different artists in our groups, under variable ‘i.artist’ and I observe the difference in prices over time for each artist individually. I have used i.artist1 for Fergusson, i.artist2 for Peplow, i.artist3 for Hunter and i.artist4 for Cadell and I run another regression with this new variable ‘i.artist’, which controls for every artist in the group and I also include variable ‘size’ as in Table 4. The new command in Stata becomes:

```
reg price time treat did i.artist size, vce (robust)
```

The results of the regression are shown in Table 5 below:

**Table 5: Difference-in-Difference,
Controlling for Artists and Size**

	(1)
	Price
time	22,019.07** (8,531.756)
treat	8,999.766 (11,985.9)
did(time*treat)	-28,055.66* (15,003.65)
i.artist2	80,515.42*** (12,091.44)
i.artist3	-26,999.98*** (8,464.391)
size	31.46236*** (4.087441)
R-squared	0.2630
Number of Paintings	758

Notes: Table 5 shows regression results from auctions. ***, ** and * indicate significance at the 1, 5 and 10 percent significance level, respectively.

The results of this regression reinforce the validity of the initial results even further to a higher statistical importance of an R-squared of 26% (0.2630). This shows that even if I compare the average price before and after 2012 for each artist individually, rather than the controls and treatment groups, I still get the same result, a decrease in the prices of Fergusson's works.

5.3.2 Falsification exercise with placebo ARR years

With regards to the time period examined, the data collected is from 2003 to 2021. To test the validity of the results I change the time period, firstly to 4 years before and after 2007, assuming as in a falsification or placebo exercise that 2007 is the year of ARR implementation using the regression below:

```
reg price time treat did size if inrange(year,2003,2011), vce (robust)
```

The results of the regression are seen in Table 6 below:

**Table 6: Difference-in-Difference,
2003-2011 (placebo ARR = 2007)**

	(1)
	Price
time	23,482.62** (11,138.38)
treat	-8,333.9 (14,748.32)
did(time*treat)	-4,683.862 (21,457.84)
Size	32.44581*** (6.189104)
R-squared	0.1863
Number of Paintings	339

Notes: Table 6 shows regression results from auctions. ***, ** and * indicate significance at the 1, 5 and 10 percent significance level, respectively.

Secondly, I test for 4 years before and after 2017, assuming 2017 as the year of ARR implementation shown in the regression below:

```
reg price time treat did size if inrange(year,2013,2021), vce (robust)
```

The results of the regression are shown in Table 7 below:

**Table 7: Difference-in-Difference
2013-2021 (placebo ARR = 2017)**

	(1)
	Price
time	12,259.38 (15,833.38)
treat	-43,510.05** (19,537.96)
did(time*treat)	4,248.867 (22,771.28)
Size	29.91937*** (6.038097)
R-squared	0.1333
Number of Paintings	366

Notes: Table 7 shows regression results from auctions. ***, ** and * indicate significance at the 1, 5 and 10 percent significance level, respectively.

For the time period 2003-2011, I observe a decrease in price for the treatment group in contrast to the control group of -4,683.862, which is insignificant at any conventional significance level. For the time period 2013-2021, I observe an increase in price for the treatment group in contrast to the control of 4,248.867, which however is insignificant again. Firstly, the difference I see in prices for these time periods is not significant, especially with connection to the price difference observed in Table 3. Nevertheless, the small increase in the time period after 2012 (2013-2021) could mean that prices for works by Fergusson would have risen if it was not for ARR, as it is anticipated for prices by the Colourists to rise through time, as interest in them keeps growing. The falsification exercise suggests that there are no statistically significant effects when I use placebo years, for 2007 and 2017, for the implementation of ARR and this is true for both the period prior and after the real policy change in 2012. This increases

confidence in that the difference-in-difference exercise, which uses the actual year of implementation (2012), captures the real effect of ARR on prices.

5.4 Results Analysis and Further Research

5.4.1 Results analysis

In Section 5.2 the first data set of the Scottish Colourists has been analysed. Difference-in-difference regressions show a change in prices, between the control and treatment groups, before and after the implementation of ARR in 2012. The impact of ARR is equal to €32,893 decrease in prices, as this can be seen in the difference-in-difference coefficient in Table 3. This can also be seen in Table 2 where I just compare averages, particularly in the difference-in-difference column (7). The average price of works for the treatment and the control group were different both before 2012 and after 2012. In fact, prior to the implementation of ARR in 2012 works by the treatment group were cheaper than those of the control group, by €20,656 on average. Post-2012 this gap increased further, as prices for treatment works decreased slightly, while prices for control works increased significantly, leading to a €53,549 average difference between the two groups. This shows that the impact of ARR was a €32,893 reduction in prices. Looking at the average prices for the two groups in percentages, prices for works by the treatment group declined by 9% after 2012, from an average of €67,607 to €61,355. For the control group, prices for their works rose by 30% after 2012, from €88,263 to €114,905. Assuming that all other differences between the treatment and control remained constant before and after 2012, the influence of ARR can be observed in the €32,893 decrease for the treatment group after ARR. This demonstrates a negative influence of ARR on the prices of works by artists eligible for it.

In Section 5.3 I perform robustness checks to test for size, individual artists and time period. Firstly, I look at the same data set adding size as a variable to the regression and I find that prices for works by all four artists increase by €29 for every square centimetre. Hence, it

is logical to assume that price and size increase together, as can be seen in Table 4. The fact that the difference-in-difference variable retains its impact after controlling for size, reinforces the validity of the results. I also find that the same applies when adding other control variables, as the validity of the results holds if I control for the effect of each artist individually rather than as part of the treatment and control group, as seen in Table 5. Finally, I find that if I test for different time periods, using 2007 and 2017 as placebo years of ARR implementation I do not find significant effects on prices, as can be seen in Tables 6 and 7, which highlights that only the real year of ARR implementation, namely 2012, yields statistically significant results. These key findings are a strong indication of the effect of ARR on the art market and can be further supported in conjunction with the findings from the interviews with key art and policy experts. However, considering the limitations of the analysis, in particular the fact that the treatment group is made up of works by one artist and that factors such as provenance, quality of work and change in taste for works by Fergusson are difficult (if not impossible) to control, the results are only a ‘proof-of-concept’ and further research is required for a more robust result.

5.4.2 Scope for further research

There are more ways that this analysis could be expanded to further validate the results, however, these are beyond the scope of this thesis. One such test would be to include lower value works by the Colourists, for example works on paper, and test for the influence of ARR on a different price level. Furthermore, a comparison of estimates for works instead of prices before and after 2012 would show us the influence on valuations, even before the work goes on sale. Finally, there is a need for an up-to-date analysis of a broader data set of prices for works by all European and British living artists and ‘heirs’, selling in the UK. To solidify the results from this thesis the same methodology could be applied to a broader group of artists and art works which would better show the impact of ARR on the art market as a whole. Those results could be directly compared to earlier studies on the subject of ARR, such as those mentioned in Section 5.5.

5.5 Comparison with the Empirical Literature

5.5.1 *Banternghansa & Graddy (2011)*

From the existing literature on ARR the study that is closer to this thesis is that of Banternghansa & Graddy (2011), an empirical analysis of the impact of the Droit de Suite in the UK. Banternghansa & Graddy (2011) examine the impact of Droit de suite in the UK art market using art auction prices data from Blouin Art Sales Index. They achieve this by conducting a difference-in-difference analysis to perform a comparison for growth in prices and sales, for works that would be eligible ARR in the UK (treatment group), against works that would not be eligible for ARR in the UK and works sold in countries with no ARR that would have been eligible for ARR if sold in the UK. Their results show no significant influence of ARR on price and sale growth for works that would be eligible for ARR. They also do not show any movement of art for sale in locations with no ARR. However, it is important to note that Banternghansa & Graddy (2011) study the period between 1993-2007, during which ARR applied in the UK only for 1 year, 2006-2007. Hence, it is fair to assume that the influence of ARR on prices might not show before it was implemented for a substantial period of time. On the contrary the present study examines works sold during a period where ARR was well established both for living and deceased artists, 2003-2021. In addition, the treatment groups by Banternghansa & Graddy (2011) only consider works by living artists as eligible for ARR, whereas this study examines works by deceased artists.¹⁸⁸

Furthermore, Banternghansa & Graddy (2011) use Blouin Art Sales Index as a source for their data set and I use artprice.com, which are online art price databases that can be accessed through a paid subscription. We both use works sold over €1,000, which is the minimum threshold for ARR to apply, and only at sold works, not those that were bought in. However, this study uses data from a homogenous group of artists, with a specific price range, whereas Banternghansa & Graddy (2011) use all paintings that would be eligible for ARR by living artists from all categories. In terms of data variables, the characteristics that are taken into account in the Banternghansa & Graddy (2011) study are: price, size, auction house and

¹⁸⁸ Though Banternghansa & Graddy (2011) briefly examine works by deceased artists as eligible for ARR in their robustness checks.

medium.¹⁸⁹ In the present study I take into account the main characteristics of price and time of sale but omit medium, as all the works in the database are either oil on canvas or board.¹⁹⁰ However, in the robustness checks I also test for size separately.

If I compare the results of this study to those of Banternghansa & Graddy (2011), I find that they are contradictory, as Banternghansa & Graddy (2011) find that there is no significant negative influence on the prices of art that would be eligible to ARR by living artists and no relocation of works for sale in countries with no ARR. In fact, they observe an increase in price by 2.3% per year for works eligible for ARR in the UK. On the contrary, this study finds a decrease in auction prices, for works eligible for ARR by deceased artists, in contrast to those not eligible by €32,893.27. The difference in the results can be explained if we consider that the present study uses data from a period of time which covers more years since the implementation of ARR for deceased artists. As Banternghansa & Graddy (2011) suggest in their conclusion, at the time of their writing the segment for living artists in the UK was 11% of the art market, whereas the segment for both living and deceased artists would be 34%. This is where the present study contributes the most on the subject of the influence of ARR. Firstly, as it covers a more extensive period of time to include more years since the implementation of ARR, and secondly it also covers the segment of deceased artists.

5.5.2 *McAndrew (2011)*

Another empirical study which is close to this thesis is a report by McAndrew (2011), commissioned by the British Art Market Federation, which examines Directive 2001/84/EC on ARR in the British art market. Specifically, the report uses data on art auction prices over the time period of 2008-2013 for three categories: Post War & Contemporary art, all living artists and deceased artists ('heirs'). McAndrew (2011) observes price growth for artists in these three categories from the UK, EU, US and China, focusing on the EU artists who are eligible for ARR. She compares price, sales and market share growth between the UK and the US and China, and between EU countries and the UK.

¹⁸⁹ Artist's name is not as it would be too diverse.

¹⁹⁰ There is a minimal difference in the value and popularity of a work between oil on canvas and oil on board.

McAndrew (2011) finds a drop in sales and market share for living and deceased artists in the UK in contrast to the US and China, across different categories and time periods.¹⁹¹ On the other hand she finds stability in the Old Masters and Impressionist and Post-Impressionist sector, where ARR does not apply. Looking at the data set in more detail, McAndrew (2011) uses Artnet as a source for her data set, which is again an online art price database that can be accessed through a paid subscription. In terms of data variables, the characteristics that are taken into account in the McAndrew (2011) report are price, time of sale and the sector. According to McAndrew (2011), the sample group she uses (Post-War and Contemporary Art, all living artists and the heirs group) represents the largest part of the art market. However, she uses a vast and incredibly diverse group of artists in contrast to the present thesis where I use a select and homogenous group of artists, such as the Scottish Colourists, for a more accurate result. McAndrew (2011) compares price, sale and market share growth between countries with ARR and with no ARR to measure the influence of ARR, however, it is difficult to show causality through this method. This is due to the fact that prices, sales and market share are influenced by so many other factors, such as economic, political or fashion preferences, and so it is hard to isolate the influence of ARR. Therefore, for example although McAndrew (2011) shows that there was a decrease, in the period after the introduction of ARR 2008-2013, in sales and market share growth in the UK in contrast to the US, it is not clear whether this was solely due to ARR.

5.6 Summative Analysis

In this chapter I show how ARR influences the art market in the UK and in particular, I examined the influence that ARR has on art auction prices for eligible artists, using the Scottish Colourists as a sample group, to perform a natural experiment. By using works by Fergusson

¹⁹¹ In more detail the results show: a drop in sales and market share for Post-War sales in the UK in contrast to US and China for 2008-2013, a drop in sales and market share for living artists in the UK vs the US for 2008-2013, a drop in sales value for European living artists in the EU and a lower growth in the UK vs the US for 2008-2013, a drop in 'heirs' sales and market share in the UK vs the US in 2013 and finally a drop of sales and market share for 'heirs' in the EU vs the US for 2011-2013.

as a treatment group (as he is the only one of the four Colourists eligible for ARR) and works by Peploe, Hunter and Cadell as the control group (as they are not eligible) I determine the effect of ARR on Fergusson's prices over time, in contrast to those by the other three. The identification of this effect of ARR on Fergusson's prices is an indication of its potential significance and impact for other areas of the art market. The method used to show this influence is the difference-in-difference analysis, often used in economics to indicate causality. In this particular example it serves as a useful tool to single out the influence of ARR controlling for any other factors that might have contributed to the change in prices. With the use of a data set collected from artprice.com and the Stata software I regress prices for the four Scottish Colourists. Taking into consideration price and the time period of 2003-2021, which nine years before and after 2012 (when ARR was implemented in the UK for artists deceased within 70 years from sale).

The results show that prices for works by the treatment group were lower after 2012 in contrast to prices by the control group. The price gap between the two groups widened by €32,893, so in essence works by Fergusson decreased in price after 2012, when works by Peploe, Hunter and Cadell have increased. Although the four artists' works were different in average before 2012 they are more different after, when the only change during this time period was the introduction of ARR. It is therefore reasonable to assume that this decrease of price is an effect of ARR and a decrease of buyers' willingness to pay for Fergusson's works, in anticipation of the extra charge that they would have to pay, in contrast to the other four artists for whom there is not decrease in price after 2012. Nevertheless, one of the main limitations of this experiment is the sample size, although the number of observations is large the number of artists is small (the treatment group is formed of one artist's work), especially when compared with other studies on this subject, such as Banternghansa & Graddy (2011).

Bringing the findings from this chapter together with those from Chapter 4 gives us a better understanding of the influence of ARR on buyer's willingness to pay and on the art market. The most important connection is that art experts argue that ARR influences willingness to pay and at the same time the difference-in-difference analysis shows a drop in prices as a result of ARR. Yet, in Chapter 4 art experts argue that the influence of ARR on buyers' willingness to pay is minimal, which is in contradiction to the findings of this chapter

and the significant decrease of €32,893. However, though the impact on this group of artworks is significant it is important to note that this is only to a small group of artists. It seems that both qualitative expert interviews and quantitative empirical evidence agree on the direction of the effect, but experts tend to underestimate the magnitude of this effect. On the other hand, art experts argue that they do not consider ARR in the valuing process, however, if prices drop because of ARR, they either do this subconsciously. In this chapter, I also connect my findings to those from the existing empirical literature on ARR. The main studies that I analyse and consider the findings of, are the following two. Firstly, a paper by Banternghansa & Graddy (2011) who also use a difference-in-difference methodology and find no influence of ARR on prices. And secondly, a report by McAndrew (2011) which compares price, sales and market share growth between countries and finds a drop for the UK in contrast to countries with no ARR. Moving forward, in the next chapter I present the findings on the question of whether ARR should be retained in the post-Brexit era, and if so how it can be reformed. I do this based on interviews with key policy experts.

Chapter 6 - Should ARR Be Retained Post-Brexit? Evidence From Expert Interviews and the Need for Policy Reform

6.1 Introduction

After Brexit and the departure from the EU in 2020, Artist's Resale Right in the UK is no longer governed by the EC Directive 2001/84 and it is therefore not obligatory. This leads to a need for a re-evaluation of ARR, its advantages and disadvantages, for UK artists, their heirs and the art market. Furthermore, since ARR is no longer governed by the EC Directive 2001/84, the UK government is free to change its regulations and the way ARR is administered. Hence, in this chapter I answer firstly, whether ARR should be retained in the post-Brexit era and secondly, I examine possible changes that could make it more efficient for the UK.

To shed more light on this issue, I use a qualitative methodology consisting of interviews with key policy experts, such as government officials and royalties collecting societies, who specialise in ARR. Government officials can give an insight into the issues that the policy makers consider in connection to ARR, explain the procedures and steps that they follow and discuss any possible changes and improvements of the legislation. On the other hand, ARR collecting societies highlight the benefits of ARR for artists and their heirs, they explain their goals and achievements, and evaluate their relationship with the government and art professionals. This group of participants can provide valuable information on the practical sides of ARR, such as its administration and the laws that govern it. They can also contribute to the debate on the influence of ARR on the art market and particularly on buyers' willingness to pay, from a different perspective to that of art experts, whose views were analysed in Chapter 4. In addition, they offer an overview of the deeper meaning of ARR for art and society and of its potential impact to artists' welfare in the UK. The findings from the interviews with policy experts, when combined with the findings from interviews with art experts and the quantitative data results, provide a holistic view of ARR, its purpose, its influence and its future.

6.1.1 Research questions

In Chapter 4, I answer the question of how ARR influences buyers' willingness to pay. The method used was qualitative with semi-structured interviews of key art experts, using open ended questions. Subsequently, in Chapter 5, I examined how ARR influences the UK art market. The method used was quantitative with data on prices achieved for works of art sold at auction. In this chapter, I explore whether ARR should be retained in post-Brexit UK and if so, how can it be reformed.¹⁹² The method used is qualitative with semi-structured interviews of ARR policy experts, using open ended questions similar to those in Chapter 4.

6.1.2 Information on participants - key policy experts

The interviews were conducted with a select group of five participants, which can be broken down into two distinct groups. Firstly, the policy group which includes two participants, one is Emily Jones from the Digital Technologies team, Copyright and Enforcement Directorate at the UK IPO and Interviewee A4, a policy expert who wishes to remain anonymous. And secondly, the ARR collecting societies group which includes three participants, Gilane Tawadros, Chief Executive of DACS¹⁹³ and Kimberley Ahmet, Managing Director of ACS together with Lady Harriet Bridgeman C.B.E., Chairman and Founder of ACS. The findings from all the three research questions combined, a mix of qualitative and quantitative methods, provide a rounded view of the influence of ARR on buyers and the art market and it also considers its existence in the UK and any improvements that can be made to it.

6.1.3 Chapter overview

The analysis of the interview results is broken down in three distinct sections: Section 6.2, where I explain the advantages of ARR for the art market and for artists and their heirs. In that section I explore the similarities and differences between copyright and ARR and the benefits

¹⁹² After Brexit the UK government agreed to retain ARR in the UK. Nevertheless, ARR legislation needs to be reviewed every 4 years. Therefore, evidence based research on the subject of ARR, and its influence and efficiency, is necessary on an continuing basis.

¹⁹³ Gilane Tawadros stepped down as Executive Director of DACS in 2022.

for struggling artists. In Section 6.3, I explain the disadvantages of ARR, I investigate the idea of creativity and innovation as a driver for intellectual property and ARR in particular, the influence of ARR on the art market and on buyers' willingness to pay. And finally, in Section 6.4, I describe how ARR can be reformed for the benefit of the UK art market and artists and their heirs.

6.1.4 Preview of results

To preview the results, the key findings of Section 6.2 are the added value of ARR to intellectual property and its distinction from copyright. Also, the value of ARR as a form of social welfare for artists, as it often works both as a pension for struggling artists and as an assistance with estate management for artists' heirs. Section 6.3 shows that ARR alone does not increase creativity and innovation and that there is a need for evidence-based research, to measure the influence of ARR on the art market, such as the negative effect of ARR on prices, which is found in Chapter 5. Participants also argue that there has not been a relocation of works for sale away from the UK. Finally, in Section 6.4, I find that more information on the purpose and benefits of ARR is key to its effective running in the UK. Also, collecting societies stress the importance of locating as many artists and beneficiaries as possible and refunding uncollected royalties. Finally, almost all participants suggest that a multilateral treaty for ARR is the way forward and the natural development of ARR so that all artists can benefit from it, when at the same time the playfield is even.

6.2 The Advantages of ARR

To give a definitive answer to whether ARR should be retained in post-Brexit UK we need to examine its advantages and disadvantages for UK artists, their heirs and the UK art market. In this section I present evidence from interviews with policy experts on the positive impact of ARR, separated in different categories.

6.2.1 *The relationship between ARR and copyright*

One of the most important advantages of ARR is that it provides fairness between artists and authors. Though intellectual property and copyright legislation, such as the Berne Convention, protects fine artists from the copying and exhibition of their work it does not provide them with adequate remuneration considering the nature of the work by fine artists, as previously discussed in the literature review chapter. Artist's Resale Right, combined with copyright better protects artists and their heirs and offers them more control over their work. According to Emily Jones, from the Digital Technologies team, Copyright and Enforcement Directorate at the UK IPO, ARR builds on top of copyright for artists and fixes any unfairness between fine artists and authors and musicians. In her interview she mentions how authors sell a number of copies of their work and gain profit from that, whereas fine artists are different as they mostly sell only one copy of their work (with the exception of prints and multiples):

..the policy rationale for Artist's Resale Right was to kind of try and address that and to help artists be fairly remunerated..

(Jones, UK IPO, Interview, Skype, February 2020)

Similarly, Gilane Tawadros, Chief Executive of DACS argues that ARR and copyright are equal in their importance, however, they complement each other as they bring parity between fine artists and authors:

..musicians do have continued stake, economic stake, in their work after they completed it, and similarly with authors through royalty, through sale, you know, of books and ... book royalties that they have an enduring economic stake and I see Artist's Resale Right as a way of introducing parity between different creators' sectors.

(Tawadros, DACS, Interview, London, November 2019)

Furthermore, Kimberley Ahmet, Senior Manager of ACS, adds that ARR is an important addition to intellectual property legislation for fine artists, as it also covers the increase in value later in artists' careers, as is unusual with visual artists and not as much with authors:

..ARR is vital because it enables artists to a percentage to the increase when their work sells in the secondary market. So they [copyright and ARR] are completely different and both very important.

(Ahmet, ACS, Interview, Skype, February 2020)

The majority of participants state that copyright does not provide enough protection for fine artists and ARR is needed to compensate for the lack of remuneration for when works of art sell later in artists' lives or after their death.

6.2.2 ARR and social welfare

Another important advantage of ARR for artists is that it works as a pension, when they continue to gain from their work later in their lives, when they might not be able to work anymore.¹⁹⁴ Furthermore, it also works as a legacy for artists' families and heirs, after they are gone. Though ARR is considered a royalty and a form of intellectual property, the interviews with policy experts reveal that there is a social welfare aspect to ARR too. ARR being used as a pension for artists and as financial assistance for their heirs, is cited throughout the interviews as the main advantage for artists, who do not have any other financial security in place. According to Tawadros:

..look at someone like Gustave Mucha, whose only recognised with a major exhibition, you know, was he in his 80s? Late 80s maybe., ...that's not uncommon. And similarly families will support artists and suffer and ... give up a lot ... if they have artists in their family. Actually, you know, when artists get older and their thinking about what's gonna happen next they want their family to be able to have some.. income or benefit in some way from that sacrifice, from that investment. Because artists basically invest their lives, that's the investment. How do you put a price on that?

(Tawadros, DACS, Interview, London, November 2019)

What Tawadros means is that artists quite often see their efforts as 'investments' for the future, since they might put in a lot of hard work and expense early in their career, but only see the benefits of these efforts later on in their lives or after they pass away. Also, artists' families traditionally have supported and continue to support artists financially and practically, until they achieve success. She considers that effort and investment of time and resources by artists and their families as something that is almost invaluable. However, a very contrasting view of

¹⁹⁴ Artists are considered self-employed in the UK and will therefore need to organise a private pension for themselves if they wish to plan for their retirement. According to a 2007 report commissioned by the Arts Council in England, 70% of artists do not have a private pension. Available online : <https://www.artbusinessinfo.com/retirement-and-pensions-for-artists.html> (accessed on 22/04/24)

the contribution and role of artists' families to their work is provided by Interviewee A3, art dealers:

..if the artist is already dead, what did his wife do for him? Most cases made his life a misery, because he was a poor artist. And now she should be getting all this money? That's ridiculous.

(Interviewee A3, UK, November 2019)

Of course this argument is extreme and does not necessarily represent the artistic community as a whole, however, it gives an idea on how art professionals, who pay for ARR, sometimes view it. Coming back to the benefits of ARR for artists, Lady Bridgeman, Chairman and Founder of ACS, provides another example of what artists might use ARR for:

..we're very aware that it [ARR] would make an awful lot of difference to old artists that don't make much money anyway. Certainly one artist we're paying [ARR] for staying in a nursing home or old peoples home..

(Bridgeman, ACS, Interview, Skype, February 2020)

This shows that artists use ARR for their caring needs, as there is no other way to sustain a livelihood later in their lives, when they are not producing any work. This is a very direct way that ARR can benefit artists, as it can even be paid directly to their nursing home and assist them financially when they are most vulnerable. McAndrew (2002) in her review on artists taxes and benefits, commissioned by the Arts Council England, examines tax and benefits provisions for artists across different countries and identifies best practice that could be adopted in the UK. According to McAndrew (2002), artists internationally share common characteristics of poor/variable incomes, sporadic employment and an unpredictable market place among other issues.¹⁹⁵ In her review she identifies that artist as a profession is not recognised by the UK welfare system as an employment category. There is also no clear definition of what 'artist' means, which does not help with assistance that artists receive in terms of tax, benefits and social security. On the subject of artists' pensions, McAndrew (2002) states that artists receive 'unsatisfactory levels of pension' mainly due to irregular work patterns, being classified as both self-employed and as an employee and large fluctuations of income.¹⁹⁶

¹⁹⁵ See McAndrew (2002), p. 69.

¹⁹⁶ Ibid., p.15

Furthermore, Kimberley Ahmet, from ACS argues that it is a myth that only established artists benefit from ARR and that it is really the struggling artists who gain the most from it:

..in 2019, 87% of the royalties that we administered total £5,000 or less. So these are not.. the high, high, high profile artists, and it just kind of goes to show the importance that royalties play on estates and artists that generate £1,000 or £2,000 at auction...

(Ahmet, ACS, Interview, Skype, February 2020)

This is proof that ARR acts as a financial assistance to artists that are not the high earners. If one considers that works by the majority of artists who receive ARR payments from ACS, achieve an average price of £1,000-2,000 at auction, and they make an average of £5,000 per year from ARR payments. This is not a significant amount in art market terms, however, it is substantial for individual artists. In addition, she adds that:

..it's a very broad brush to paint, the Artist's Resale Right, if you say it only benefits larger estates, when we know for a fact that that's just not true.

(Ahmet, ACS, Interview, Skype, February 2020)

This statement comes as a response to the arguments by opponents of ARR who have in the past argued that ARR only benefits established artists, who are already earning more than enough. Nonetheless, Gilane Tawadros, from DACS agrees with Ahmet and argues that though the Picasso foundation does receive a big share of ARR payments:

..a lot of people benefit in the middle and some people get very little money from ARR. But it's important, because it tells them that, for example, the artists maybe that don't have representation or ones that did very well early on in their career but not later on, that there is a market in their work.

(Tawadros, DACS, Interview, London, November 2019)

On the other hand, when it comes to successful artists Tawadros provides the example of Peter Doig, who might have sold a work early in his career for £200, only for it to achieve £2million at auction later in his life (Tawadros, DACS, Interview, London, November 2019). From that increase in value the artist is entitled to compensation via ARR, but as there is a cap on the amount one can receive from each sale (£12,500), he only receives £10,000 from that particular sale. Therefore ARR brings fairness for established artists too when they have sold their work

for very low prices, before they were recognised by the art market. Additionally, according to Lady Bridgeman, from ACS, the belief that only successful artists profit from ARR was used by its opponents so as to brand it as an unfair law:

That argument was very much brought forward by the auction houses, in order to rebel against the artist's resale royalty being introduced. Because obviously it was going to affect their profits and they made that up as being one of the major points, you know, [that] people like Freud or Hockney don't need more money..

(Bridgeman, ACS, Interview, Skype, February 2020)

On the subject of artists' gains, Tawadros from DACS explains that even small amounts can make a huge difference to artists, in contrast to some of the arguments that those against ARR have expressed in the past:

..it's not just the big artists that earn money, it's also artists who maybe get £100. I've actually had one dealer say to me "Oh well you can't get a decent bottle of champagne for that" and I said "Well actually if you're earning, you know, very little money, £100 is actually a very significant amount of money".

(Tawadros, DACS, Interview, London, November 2019)

Therefore, the evidence provided during the interviews with key policy experts suggests that it is in fact the middle and lower paid artists who benefit the most from ARR, and that benefit is vital to them and their families. Looking at the evidence from Chapter 4, Section 4.4.2 art market professionals report that ARR mainly affects prices in the middle range rather than the bottom and top. In particular, the findings show that buyers are less affected by ARR when they buy something for £1,000 or for £1,000,000, however, they are more affected when they buy a work at £10,000. The logic behind this is that at £1,000 the £40 ARR is a very small amount and at £1,000,000 the £12,500 is again a small amount in comparison with the hammer price. Considering the evidence one wonders whether there needs to be a minimum threshold of £1,000 for ARR to apply, so that more artists at the bottom price level can benefit from it, with minimal disturbance to the art market. And whether there needs to be a cap of £12,500, if there is not much influence on buyers at the top price level. Tawadros from DACS is an advocate of these particular changes to ARR legislation in the UK and compares the ARR charges to those of copyright for authors and musicians:

Why should there be a cap? I don't know any, you know, there isn't a cap on what royalties authors get, there is not cap on what royalties musicians get, why do artists have a cap?

(Tawadros, DACS, Interview, London, November 2019)

It is, however, clear that more evidence based research is needed to measure the benefit of ARR for the art market and artists and their heirs at the different price levels. And future researchers could examine whether the minimum threshold and the top cap for ARR need to be reformed in the UK.

To conclude, the key findings from Section 6.2 are that Artist's Resale Right is a much-needed addition to the protection that copyright already offers to fine artists. And that it creates fairness between artists and authors, who receive remuneration from their creations through the resale of copies. ARR is an integral part of intellectual property rights as it builds on what copyright already offers to artists through the Berne Convention. This is because fine artists' work is unique, usually not reproduced in numbers (with the exception of limited-edition prints), and it often accumulates value later in an artist's life or after death. Furthermore, ARR acts as a pension for artists for when they decide to retire or are too old to work. This is an important financial assistance to them, as artists do not usually have any other form of pension. In addition, ARR often helps artists and their families with payments for their nursing homes, again when they reach a point in their career when they are unable to support themselves from their work. Finally, it is clear that ARR mostly benefits artists who are placed within the average or low-income range, as the majority of ARR payments are not significant amounts and are paid to artists that do not achieve high-end prices at auction. At the same time, ARR is also important and necessary for established artists who are placed at the top income range, as they often through ARR receive payment for works that they might have sold at low prices early in their careers. This is in contrast to scholars who claim that ARR only benefits established artists.¹⁹⁷

¹⁹⁷ See Price (1968), Filer (1986) and Merryman (1993).

6.3 The Disadvantages of ARR

In this third section, having explored the advantages of ARR in Section 6.2, I now shed more light on any possible disadvantages of ARR, which will help determine whether ARR should be retained in post-Brexit UK. I present evidence on the possible negative impact of ARR to artists, their heirs and the art market. In addition, looking at the existing literature on ARR there are a number of arguments to be found on how ARR could be detrimental to the international and UK art market and I look into some of these arguments to test their validity, with evidence.

6.3.1 *“A very happy by-product”*

In Section 6.2 I looked into how ARR adds on the benefits of copyright to fine artists and brings parity between artists and authors. Consequently, I explore whether ARR increases creativity and innovation, as this is one of the main reasons why intellectual property as a whole exists. However, Emily Jones, from the UK IPO stresses the difficulty in measuring the effect that ARR might have on creativity and innovation, as there is not enough data available to show this (Jones, UK IPO, Interview, Skype, February 2020). Despite the lack of data, the majority of interviewees do not find a connection between ARR and creativity and innovation. In fact, Interviewee A4, an anonymous policy expert, states that ARR could have the opposite effect:

..is money really why the artist creates? Is that really fruitful creation or is it something, you know, more, I don't want to use the word spiritual, but spiritually, not financially, driven. So even.. opponents of resale royalty may argue that this may create a disincentive for new work.

(Interviewee A4, Skype, February 2020)

There are two different arguments in their statement and one is that artists might not be incentivised by money. Therefore, a monetary benefit such ARR would not contribute to the increase of creativity and innovation. However, in the second part of the statement they argue that ARR might have the opposite effect, that of artists creating less work because of the increased financial returns. This is in contrast to the first part of the statement as if they are not influenced by money, ARR could not become a disincentive. Others also argue that ARR alone

does not benefit the artists' labour market, to the extent that it would create more opportunities for people to become artists or for artists to produce more and better work. However, they suggest that it does provide valuable help to artists' finances. To that effect, Lady Bridgeman, from ACS argues that:

I don't think an artist paints a painting simply with the Artist's Resale Right in mind, it's a very happy by-product.

(Bridgeman, ACS, Interview, Skype, February 2020)

This is a very meaningful statement as it clarifies two very important points about ARR, one is that artists are not always aware of it, to the point of ARR influencing their creative output, their prices or even their career choices. The other is that despite ARR being "a very happy by-product" of the effort that artists put in their life and work that is influential to their professional and personal life. That does not mean that ARR is not important or necessary but it means that even if artists, or in fact art collectors, are not always aware of it, its impact is significant and essential to the livelihood of artists and their heirs. Gilane Tawadros from DACS, also states:

I don't think that [ARR] alone is a driver for people to become artists.

(Tawadros, DACS, Interview, London, November 2019)

She explains further that the average earnings of artists are £5,000 a year, which is half the minimum wage. She also notes another interesting figure which is that artists spend 5 years, on average, to pursuing a career in the art world after they graduate from art school and if they do not succeed within that time, they drop out (Tawadros, DACS, Interview, London, November 2019). These figures alone show that artists do not usually follow the profession for monetary reasons and are not always financially driven. It is therefore evident that the collecting societies representatives believe that although ARR is important for artists and their heirs it is not necessarily a driver for creativity and innovation.

6.3.2 The influence on prices and possible relocation of sales

In the second part of this section I test the validity of some of the predictions found in the existing literature on the subject of ARR about its possible negative influence on the art market. Firstly I explore the effect of ARR on art prices and the art market as a whole and secondly I

look into the possible relocation of sales from the UK art market to markets without ARR provisions, such as the US. A negative influence of ARR on the art market and the relocation of sales are two questions that are significant to the decision of the retainment of ARR in post-Brexit UK, as a negative influence could potentially severely impact the art market and artists and their heirs as consequence. The evidence found in this section are combined with those from Chapters 4 and 5 for a holistic approach, that combines qualitative data, from two distinct sample groups, with quantitative data.

On the question of whether ARR has a negative impact on the UK art market, against countries where ARR does not apply, and a negative impact to artists Emily Jones, from the UK IPO, argues:

..the art market have been concerned that it decreases the competitiveness of the UK art market in comparison to, you know, other countries that don't have it, like the US or Switzerland or China for example.. we certainly haven't been able to find any evidence, one way or the other, that you can directly attribute to Artists' Resale Right and having a particular impact like that on the art market.

(Jones, UK IPO, Interview, Skype, February 2020)

The above statement further solidifies the need for evidence-based research, however, it is important to understand that at the time of the interview there was not enough evidence to answer either question. However, it is essential to clarify what the participants mean by 'evidence', as it seems that by evidence they mean quantitative data. It might be that they lay more importance to numerical data rather than qualitative evidence, such as those from the interviews presented in this thesis. The quantitative evidence found in Chapter 5 is therefore of great importance to the study of ARR and its effect and also important to answer the question of whether ARR should be retained in post-Brexit UK. The analysis of the data collected from artprice.com shows a decline in prices for works eligible for ARR, in contrast to those not eligible. Therefore, the quantitative 'evidence' presented in this thesis, as the participants highlight, does show a negative influence of ARR on art prices. But what does this negative influence mean for the art market, artists and their heirs? This question will be formally addressed later on in the chapter where the evidence from all chapters is brought together for a holistic view of the findings.

In addition, Emily Jones from the UK IPO continues and expands her argument on the influence of ARR on the art market further, expressing the difficulty to show cause and effect between ARR and art market performance:

..it's very difficult to attribute any fluctuation in an art market to any particular cause, or at least, you know, that's what we found.

(Jones, UK IPO, Interview, Skype, February 2020)

The limitations of quantitative research, and cause and effect in particular, are also considered in this study, as it is indeed difficult to isolate the effect of ARR on the art market and to exclude any other influences. In Chapter 5 variables such as changes in fashion or economic crises are controlled (for as they are the same for control and treatment works, so that we can isolate the effect of ARR on the art market, and provide statistically important evidence. Furthermore, Gilane Tawadros from DACS, argues that the negative influence of ARR on the art market has always been a form of propaganda from art market professionals, such as auction houses and galleries, which is not supported by evidence. It is also highlighted that the influence that other charges, such as buyers premium and VAT, could have on prices might be even greater than that of ARR, however, this is not addressed by the art market. Gilane Tawadros from DACS reports:

Because I think you're looking at Artist's Resale Right in isolation, and after all we're talking about transactions which have other costs, like the premium for example. So, you know, you could equally ask the question, if auction house premiums were 20% rather than 25% or 30%, would this deter you from buying the work?

(Tawadros, DACS, Interview, London, November 2019)

Another important point to be made about the connection between ARR and other charges is that ARR has remained at the same percentage since its introduction in the UK, whereas other charges continue to increase. As Kimberley Ahmet from ACS highlights, the difference between ARR and auction house charges, which could equally affect the market:

..whilst buyers' and sellers' premium has continually increased throughout the years, the Artist's Resale Right has not changed. It's been set on a sliding scale since its introduction in 2006. The cap of 12,500 has not increased.

(Ahmet, ACS, Interview, Skype, February 2020)

Art market professionals and ARR scholars have argued that the introduction of ARR as a percentage added on the hammer price could be damaging to the art market by reducing prices. The buyers' premium equally applies to auction hammer prices as a percentage and it has increased several times (for example from 20% to 25%) which could equally have a negative impact on prices and the art market. Looking at the evidence from Chapter 4, Section 4.4.3 participants argue that it is difficult to isolate the effect of ARR from that of other charges and highlight that those charges are often greater than ARR.

The second most significant negative prediction for ARR in the literature is that works of art would be transferred for sale in countries that ARR does not apply, to avoid payment, and therefore the UK would lose market share. This argument has been tested in the interviews with policy experts and most of them agree that there is no proof of such a move. According to one participant, we simply do not have enough evidence to prove either way, and it would be very difficult to find the cause of such a move, and attribute it solely to ARR:

..it's hard to tell what the art market.. if there's a change, what is really prompting or causing that change or is merely a correlation..

(Interviewee A4, Skype, February 2020)

Again we see that the need for evidence based research is prominent between participants in most cases. Furthermore, some participants claim that there are practical reasons which are stopping the relocation of sales from the UK to countries with no ARR provisions, mostly to do with shipping costs. According to Emily Jones from the UK IPO, the cost of transferring a work for sale in a different country is not profitable:

In any type of market there are so many different factors that affect why a market goes up or goes down, just things like shipping costs, for example, is an obvious example. I mean if you have to pay ARR on a sale in the UK or you buy it from China but then you have to ship it over to the UK, for example, I mean what's the, you know, is it actually just easier to pay the ARR..

(Jones, UK IPO, Interview, Skype, February 2020)

Similarly, Gilane Tawadros from DACS argues that even art dealers believe that the cost of shipping is too high for such a transfer to take place:

..it costs too much. Dealers who are close to us, and there are commercial dealers who are very supportive of Artist's Resale Right, will tell you. Now, of course I mean I had one commercial gallery dealer come with me to talk to government about this cause I said "Don't listen to me, listen to the gallerist" and he said "No, if you look at the cost of shipping and the insurance and everything.."

(Tawadros, DACS, Interview, London, November 2019)

Therefore, the evidence presented in this section suggests that firstly, it is difficult to measure the effect of ARR on the relocation of sales from the UK to countries with no ARR. And secondly, that such a move would incur shipping costs at a level where it would not be profitable to relocate. These findings are similar to those from Chapter 4 where art experts are asked questions about the same subject. In Section 4.4.4 of Chapter 4 most participants agree that it is not common practice to relocate sales as to avoid paying ARR, however, they would do it if it was profitable considering the shipping costs, and in fact some do it on a regular basis.

To summarise the findings from Section 6.3, firstly, according to the majority of the experts who were interviewed it is difficult to relate ARR to creativity and innovation. Although this would be hard to measure they argue that money is not an incentive for artists to be creative but it is "a very happy by-product". One participant goes as far as to suggest that ARR might be a disincentive for creativity and innovation, which is something that has also been argued in the literature on ARR.¹⁹⁸ In addition, participants argue that though there is no evidence to suggest a drop in prices caused by ARR, it is very difficult to connect any change to ARR alone. This is in contrast to the results from Chapter 5 where the 'evidence' shows a drop in prices for works eligible for ARR in contrast to works not eligible. Furthermore, it is also in contrast to the findings of Chapter 4, where art experts argue that ARR influences buyers' willingness to pay. However, all participants highlight the need for evidence based research of the effect of ARR on the art market. In addition, many participants compare ARR with other charges that are applicable in auction and gallery sales, such as the buyers' premium. They highlight that these charges might have a greater effect on the art market than ARR as they are higher, they keep increasing and they are not benefiting artists. Finally, on the subject of potential transfer of sales from the UK to the US, or other countries with no ARR, the

¹⁹⁸ See Plant (1934) and Towse (2006).

evidence shows that there is no evidence to suggest such as move, which would be too costly mainly due to shipping costs. This is in accordance with Chapter 4, Section 4.4.4 where participants also argue that a possible relocation of sales is not profitable and it is only exercised by limited art professionals and collectors.

6.4 Suggestions for the Reform of ARR

After Brexit occurred, the UK government confirmed that ARR will remain in place, despite it being part of the European EC Directive 2001/84, that made it compulsory only to EU countries.¹⁹⁹ Emily Jones from the UK IPO confirms that there are no plans to change the law governing ARR in the UK, as a result of Brexit, and that there can be no changes unless there are any obvious problems with it:

..the Brexit negotiations, it includes a reference to ARR and seeking provisions on ARR with the EU, so I think that's a pretty.. clear statement at least that we have no plans to at least remove ARR.

(Jones, UK IPO, Interview, Skype, February 2020)

There is, however, a potential for ARR to be reformed and for it to become tailored to the UK art market, as it is now possible to adjust its rules. The EC Directive 2001/84 could not be changed and there needed to be uniformity between the EU member states, which is no longer necessary. That gives the UK an advantage, as since it decided to retain ARR it can now choose to reform it. One such reform has been the change from euros to pounds for all the ARR rates, including the minimum threshold of £1,000, the different price levels and the cap of £12,500. This change was part of The Design Right, Artist's Resale Right and Copyright (Amendment) Regulations 2023 effective from the 1st April 2024, which amends the provisions of The Artist's Resale Right Regulations 2006 (S.I. 2006/346). In this section I look at the different ways in which ARR can evolve, nationally and internationally, so that it is more beneficial to British artists and their heirs and to the British art market.

¹⁹⁹ ARR was introduced by Directive 2001/84/EC in 2006, it is protected by Article 14ter, Berne Convention and the UK Intellectual Property (Copyright and Related Rights) (Amendment) (EU Exit) Regulations 2019 under the powers of the European Union (Withdrawal) Act 2018.

6.4.1 “The power of perception”

As previously discussed in Section 6.2, ARR could potentially have a negative influence on art prices and the art market, and this influence is a result of the effect that ARR has on buyers’ willingness to pay and on sellers. Most participants argue that people’s perception of ARR plays an important role in the influence it exerts on them. Therefore, if whoever is charged for ARR believes that ARR has an important purpose they would be happier to pay it and it would not affect prices and the art market in a negative way. According to Emily Jones from the UK IPO:

..it goes back to the rationale of ARR and, I guess, the extent in which people know what it is that they’re paying for, and why they’re paying for it.

(Jones, UK IPO, Interview, Skype, February 2020)

So Jones here states that the influence of ARR on art prices depends on possible buyers and sellers of art being informed about the purpose of ARR and who their money benefits, in order to accept the payment. This is also a matter of transparency of added charges, as potential buyers would be negatively affected if they believed that ARR is a form of ‘hidden’ charge, with no clear explanation. In addition, Interviewee A4, an anonymous policy expert, agrees that the effect of ARR on the art market is connected to awareness:

I think it really depends, and of course you can’t really discount perception, the power of perception, I mean especially the art market where it is all based on.

(Interviewee A4, Skype, February 2020)

It is therefore evident that more information around ARR is crucial, especially in the art world where value and charges are largely connected to the power of perception. Gilane Tawadros from DACS, also agrees and highlights the importance of informing the public about ARR and its significance:

I do think it depends on how it’s explained to people.
(Tawadros, DACS, Interview, London, November 2019)

She also continues to explain how different parts of the sector view ARR and how that might affect their attitude towards it:

..I know [galleries that] paid Artist's Resale Right before it was even law and it's interesting that the two owners, gallerists, there trained as artists and work primarily with living artists. So they, I think, understand how much closer affinity and relationship .. and understand the conditions of being an artist. I think when someone is dealing purely in the secondary market, and doesn't have a relationship with a living artist or maybe even with an artist's family, I think then you get much more to this question that it's a commodity, which is transacting a piece of property.

(Tawadros, DACS, Interview, London, November 2019)

The different attitudes between some commercial galleries and auction houses depend on their perception of ARR. There is a clear distinction between commercial galleries that work more closely with artists and their heirs and the secondary market, which is auction houses. In the statement above, Tawadros argues that such commercial galleries are more positive towards ARR, which means that they are happier to pay it as sellers and perhaps not pass it on to buyers, who can then negotiate a lower price because of it. On the other hand, auction houses are less happy for their sellers to pay ARR and therefore transfer the charge to their buyers. The importance of the perception of ARR is also stressed by most participants in Chapter 4, where art experts emphasise the significance of information regarding ARR to be provided to buyers. The evidence from Chapter 4, Section 4.3.3 suggests that more information on the purpose of ARR is needed, for private collectors in particular, who might not even be aware of its presence. Bearing in mind all the evidence from both findings chapters, it becomes clear that a symbol in catalogues, labels and a section in the terms and conditions of auction houses and galleries, might not be enough for prospective buyers to realise the presence and significance of ARR.

6.4.2 The administration of ARR

The effective administration of ARR also needs to be addressed in post-Brexit UK. In 2014 the UK IPO conducted an online survey on the scale and cost of the administration of ARR.²⁰⁰ They contacted art market professionals and the two collecting societies of DACS and ACS, the results showed that most of them found the administration of ARR easy and not costly, however, the number of participants was small. Most interviewees in this chapter argue that

²⁰⁰ Artists' resale Right – Summary of UK IPO survey findings, 2014.

ARR has been managed successfully since its implementation, though, they report that there are areas which could benefit from change. Gilane Tawadros from DACS, discussed that the process of collecting and distributing ARR runs smoothly, and that DACS's dealings with the art market are very straightforward (Tawadros, DACS, Interview, London, November 2019). Nevertheless, an administrative issue of unknown beneficiaries was brought up during the interviews. Collecting societies highlight the importance of proactively seeking to sign up artists and their heirs to their societies, so that they can receive payments from ARR.²⁰¹ Both Gilane Tawadros from DACS, and Kimberley Ahmet from ACS, stress the importance of searching for beneficiaries:

We very successfully, actually, trace beneficiaries and repatriate royalties.

(Tawadros, DACS, Interview, London, November 2019)

Another part of this issue is what happens to the ARR that is paid, where no beneficiaries have been traced to collect the funds. Again the representatives of both DACS and ACS report how they make sure that any uncollected royalties are returned to the payee after six years from the sale:²⁰²

..if they've asked their buyer, for example in many auction houses in the UK pass the resale right onto the buyer, they have to give it back to the person that they collected the royalty from.

(Ahmet, ACS, Interview, Skype, February 2020)

..we give ourselves 6 years, which is a kind of recognised period of time, in which we proactively search to find people, and if we do not find those artists or their beneficiaries, the money actually goes back to the art market professionals.

(Tawadros, DACS, Interview, London, November 2019)

The tracing of beneficiaries and the return of uncollected payments is important for transparency as the lack of it could create a negative perception of ARR. In 2007 DACS campaigned to trace beneficiaries of 80 Scottish artists, so that they could pay them royalties

²⁰¹ Artists and their heirs (beneficiaries) can only collect ARR from the two collecting societies in the UK if they are registered with them.

²⁰² According to an auction house representative who wishes to remain anonymous, their auction house has historically received some ARR refunds from uncollected ARR payments, however, these refunds do not happen often. This subject requires further investigation.

of up to £20,000.²⁰³ Despite these great efforts by the collecting societies, some participants from the art experts group argue that they are not happy to pay ARR when they think that there are no beneficiaries to collect the royalties. In particular, Interviewees A3, art dealers, argue about unallocated royalties payments:

You know, like they [DACS and ACS] have already been collecting it for more than 7 years now. So after... 7 years they had x amount of funds, which was not allocated, and I know this from another dealer, apparently they consulted all the dealers, well they did not consult us, and we are major contributors to them, and they wanted to know [to] whom should the money go to, and apparently what they came out with “oh, we give it to charity”..

(Interviewees A3, UK, November 2019)

This statement is contradictory to what the two collecting societies report. Further clarification is needed about the procedure followed by collecting societies and art professionals for royalties due to unregistered artists or heirs. According to a representative from a regional auction house (which did not wish to be named), DACS and ACS contact them on a quarterly basis with a list of registered artists from the auction records. The auction house then transfers funds for the registered artists to the collecting societies and keeps the funds for the unregistered artists. They explained that quite often the collecting societies contact them at a later date should they newly register an artist or their heirs.

A lack of transparency with uncollected royalties can lead to resistance towards ARR by sellers or buyers who pay for it. It is therefore necessary to draft clear guidelines, that would apply in the same way across the art market, with regards to what happens to ARR payments for artists or their heirs who are not registered with collecting societies. Furthermore, building on to this is the issue of enforcing ARR. According to Gilane Tawadros from DACS, some art professionals do not take their responsibility of paying ARR seriously enough:

I have heard one commercial gallery owner say to me “Well, it’s like wearing seat belts” and my point was.... “Yes, that’s the law too, it’s not optional, it’s not an opt in or opt out, it’s actually a law.”

(Tawadros, DACS, Interview, London, November 2019)

²⁰³ It is unclear what the number of unknown beneficiaries and uncollected ARR payments is. DACS and ACS have been contacted regarding this information.

From the above statement it is obvious that there is a need for the art establishment to follow the rules concerning ARR and for the procedure of collecting and paying for ARR to be efficient and fair among all parties involved. However, some art dealers seem to have a different opinion on the matter of enforcement, as Interviewees A3, art dealers, state that they refuse to pay for ARR when they know that there is no beneficiary:

We don't give it to them [ARR]. The thing is that auction rooms just give it to them, they don't care. But the problem is that the law itself, it's not a law, it's a regulation.

And there has not yet been a single court case about any aspect of the ARR, so there's so many interpretations, there's so many possibilities, there's so many things that are wrong with it already.

(Interviewees A3, UK, November 2019)

There is a distinct contradiction in how ARR is perceived by the art trade and by collecting societies, one refers to it as 'law', to highlight its importance, and the other as a 'regulation', to highlight its insignificance. However, The Design Right, Artist's Resale Right and Copyright (Amendment) Regulations 2023 has equal standing as the law and legal action can be taken against those that fail to comply.²⁰⁴ Furthermore, although an exception to the rule, Interviewee A2 reports that some art dealers might choose to not charge ARR at all, as they believe it is unethical:

If I was a dealer and I paid 4% to buy something here and I sold it at home in my gallery - that's it, you know, it's gone, and I wouldn't pay it again, on principle.

(Interviewee A2, London, November 2019)

Though there was indeed no known court case at the time of the interviews during 2019-2020, there has been a recent action in 2022 when DACS and ACS took legal action against the art dealer, Ivor Braka, for unpaid ARR. Braka argued that "It was a European law forced on us. I

²⁰⁴ Statutory Instruments are a form of delegated legislation in contrast to primary legislation. "Statutory Instruments are the means through which government ministers introduce particular regulations under powers delegated to them by parliament in enabling legislation", Slapper, G., & Kelly, D. (2012). *Law: the basics*. Routledge. p. 27.

And one of the main functions of delegated legislation is to advance the purpose of primary legislation. Xanthaki, H. (2014). *Drafting Legislation: Art and Technology of Rules for Regulation*. Bloomsbury Publishing. pp. 257-269.

disagree with it because it favours artists with an active market and ignores those that are really in need.”²⁰⁵ However, a settlement was reached between the collecting societies and Braka, who agreed to pay the royalties due. Thus, it is evident that interested parties need to be aware of the legal standing of ARR in the UK and for the regulations to be enforced in all cases with no exception, and with legal action to be taken where necessary.

6.4.3 *A multilateral treaty*

The final question across the interviews with policy experts is about their vision for the future of ARR. Most participants, with the exception of an anonymous interviewee, discussed how they believe in the creation of a multilateral treaty for ARR.²⁰⁶ All EU countries, and a great number of countries outside the EU including the UK, have adopted a form of ARR. Nevertheless, there are countries with large art markets, such as the USA, China and Switzerland, which do not have such provisions. In the UK Emily Jones from the UK IPO highlights that WIPO have made efforts towards a treaty but some key member states continue to oppose it:

.. at the World Intellectual Right [Property] Organisation, I think it is something that is raised relatively regularly. ..there has been attempts to have an Artist’s Resale Right treaty in the past but.. I understand that’s something the EU would be in favour of and.. the UK supports the Artist’s Resale Right. We are quite open and supporting it as a policy, but I think.. it’s something that would need to have backing from quite a lot key country states that haven’t showed any interest in it..

(Jones, UK IPO, Interview, Skype, February 2020)

It is important to note that the procedure of concluding a multilateral treaty is lengthy and would require the collaboration of many different states.²⁰⁷ Representatives from both

²⁰⁵ See Chesters (2023).

²⁰⁶ The Vienna Conventions on the Law of Treaties (1986) Article 2 §1A defines a treaty as: “Treaty means an international agreement governed by international law and concluded in written form (i) between one or more States and one or more international organizations; or (ii) between international organizations ...”. Kolb (2023), p. 27.

²⁰⁷ Should all key states expressed an interest for a multilateral treaty there would need to be a conference or a meeting by the organisation, attended by the Head of State, Head of Government and Minister of Foreign Affairs of each state. The procedure would be formed of the following steps: negotiation, adoption, signature, ratification, accession, entry into force, registration and provisional application. Kolb, R. (2023), pp. 42-62.

collecting societies, DACS and ACS, argue that moving forward they will be working towards a treaty for ARR. According to Gilane Tawadros from DACS, if ARR was global then that would be more fair to artists, as there would be no distortions within the art market, across different countries and continents:

If I have a vision for it? Definitely a world-wide treaty, an international treaty. I think that that would be fantastic. Because I think that all artists all over the world should be able to benefit from that, and then we can get rid of the unlevelled playfield, whatever, the inequities between different markets.

(Tawadros, DACS, Interview, London, November 2019)

A multilateral treaty on ARR depends mostly on whether the US, China and Switzerland governments are willing to pass the appropriate legislation in their individual states. According to Kimberley Ahmet from ACS, the way that ARR has been applied in Europe and the UK is a great example for its benefits to artists and the art market:

We're certainly doing everything in our power to encourage China, and Japan and America to adopt the system. The existence in Europe and the existence in the UK has proven it has no, from our perspective, we see no impact on the art market at all, it doesn't work to its detriment at all.

(Ahmet, ACS, Interview, Skype, February 2020)

There has been discussions by WIPO on a potential treaty for ARR but as of the time of writing there has been no formal agreement in place.²⁰⁸ The WIPO is responsible for administering a number of treaties, to include the Berne Convention.²⁰⁹ Ricketson (2015), which was presented to WIPO, is the most important study on the subject of a treaty for ARR, and suggests that there are two options for its creation. The first option is making Article 14ter of the Berne Convention mandatory, however, he argues that there might be serious issues with this option, mainly to do with unanimity of voters and the difference between developed and developing countries. He concludes that this option is 'impractical' and 'unattainable'.²¹⁰ The second option is that of a special agreement under Article 20 of the Berne Convention, for which he provides two proposed types of agreement, followed by a framework for a draft treaty for

²⁰⁸ See Ricketson (2015).

²⁰⁹ For further information see WIPO webpage on the Berne Convention. Available online: <https://www.wipo.int/treaties/en/ip/berne/> (accessed on 22/04/24).

²¹⁰ See Ricketson (2015), p. 49.

ARR.²¹¹ According to Ricketson (2015) “the level of support for RRR [ARR] at a national level (up to 81 members of Berne) suggests that this would now be a worthwhile endeavour”, however, he also states that “harmonisation at a national level is difficult to achieve”.²¹²

Similarly, in a paper by Schten (2017) there is a proposition and analysis of two options for ARR to be adopted internationally. Those are an amendment to the Article 14ter within the Berne Convention and a multilateral treaty.²¹³ In her paper Schten (2017) explains how an amendment to the Berne Convention could prove difficult if not impossible, due to the fact that three fourths of the members would need to agree to vote, the vote needs to be unanimous and there might be issues between developed and developing countries. She suggests that a multilateral treaty would be the best option and explains that all states would need to ensure the inalienability of ARR, provide definitions for each term, set rates and decide whether to adopt the UK model of using collecting societies to distribute ARR.²¹⁴ However, Schten (2017) concludes that a multilateral treaty would be a project of “enormous scope”.²¹⁵

From the evidence presented in this chapter it is apparent that ARR could benefit from a reform, to make it more efficient and beneficial for all. One of the key findings in this section is that there is a need for more information and education around ARR and its purpose and benefits for prospective sellers and buyers, as well as art market professionals. This adds to the overall importance of transparency within the art market and with charges associated with auction and gallery/dealer sales. The assumption is that if art buyers and trade buyers in particular, who pay for ARR in the UK, understand how important ARR is to artists and their heirs, their willingness to pay will be less affected. Furthermore, specific administrative changes could also contribute to increased transparency within the art market and the collection and distribution of ARR. In particular, another important finding from this section is the importance of locating artists and their heirs who are not registered with a collecting society. At the same time there is an need for more transparency by collecting societies and art

²¹¹ Ibid., pp. 56-72.

²¹² Ibid., p. 53.

²¹³ See Schten (2017), p. 134.

²¹⁴ Ibid., pp. 135-136.

²¹⁵ Ibid., p. 136.

establishments on the procedure they follow for ARR payments for artist and their heirs who are not registered. This is pivotal to ensure that ARR payments do not remain uncollected for an unspecified period of time, where beneficiaries are not located.

Another finding from this section is a suggestion for the removal of the minimum threshold of £1,000 and of the top cap of £12,500. These adjustments could help more artists benefit from ARR who might not achieve high enough prices. They could also make sure that artists receive a fair share of the gains from their work with no limit, with minimal disturbance to the art market. However, there is no sufficient evidence to support the benefits of this reform and further research is needed on this particular aspect of ARR. Finally, the last finding from Section 6.4 is that the future for ARR is a multilateral treaty. This would ensure that more artists and their heirs across the world profit from the royalty, and that inequalities between countries and art markets cease to exist. The majority of the experts who were interviewed argue that a treaty is their vision for the right. To that effect, efforts have been made by WIPO and by collecting societies to promote a multilateral treaty to include countries such as the US, Switzerland and China, who are the biggest art markets without ARR.²¹⁶ However, and despite the agreement between the policy experts that a multilateral treaty is the future of ARR, the existing literature suggests that this process is complicated, lengthy and costly as it would require the collaboration between a great number of states. It is therefore a subject beyond the scope of the present thesis and further specialised research is required.

6.5 Summative Analysis

This third and last findings chapter provides evidence from the semi-structured interviews with policy experts on the subject of ARR. Here I answer the research question of whether ARR should be retained in the post-Brexit era, and if so how can it be reformed. On the first part of the question, having examined the evidence, it is clear that the advantages of ARR outweigh the disadvantages in importance. On the second part of the question, appropriate reforms in the

²¹⁶ CISAC runs a campaign to secure ‘a universal treaty’ for ARR with a focus on WIPO and on countries with no ARR provisions. Available online: <https://www.cisac.org/services/policy/visual-artists-resale-right> (accessed 03/04/24).

legislation and administration of ARR could influence its effect on the art market and on buyers' willingness to pay. This is a summative analysis of the key findings in Chapter 6 and the suggestions for the reform of ARR in the UK.

Looking at Section 6.2 and the advantages of ARR, I find that ARR builds on what copyright offers to artists and extends artists' rights further than the Berne Convention, which protects them for the copying, reproduction and exhibition of their work. This is in contrast to the existing literature on ARR, where scholars such as Ginsburgh (1996) believe that "an artist sells his work once and for all, and that remuneration comes from that sale, while a writer's income consists of author's rights, which entitle him to percentage on each copy sold."²¹⁷ Building on to the connection with copyright and intellectual property, ARR could have a significance for artists' social welfare, as most participants argue that the greatest advantage of ARR is that it acts as a pension for artists. Furthermore, the evidence shows that ARR is an advantage mostly to artists that are not considered high earners. This is in contrast to the existing literature where scholars suggest that only successful artists benefit from ARR, such as Ginsburgh (1996) and Hansmann & Santilli (2001). Considering the financial insecurity of the artistic profession, any policy that increases the remuneration and financial position of artists is a positive effect on artists and the art market.

In Section 6.3 of this chapter, which explores the possible disadvantages of ARR, all policy experts argue that ARR does not increase creativity and innovation, and it might in fact do the opposite. The reason for this is that the average earnings of artists are so low that it is easy to assume that artists are not financially driven. In the existing literature there are different opinions on the relation between creativity and innovation and copyright, where Towse (2006) argues that copyright could lead to bad quality work, whereas Solow (1998) and Hansmann & Santilli (2001) argue the opposite. In addition, Karp & Perloff (1993) suggest that artists could even be deterred from the profession due to the drop in prices caused by ARR. However, the recent review by McAndrew (2002) shows that it is "creative and aesthetic goals that motivate

²¹⁷ See Ginsburgh (1996), p. 2. Similar to Ginsburgh are the studies by Price (1968) and Tepper (2007).

them [artists]” rather than monetary incentives.²¹⁸ It seems that artists are intrinsically motivated to create, even when in the absence of reward, monetary or non-pecuniary.

Furthermore, in Section 6.3 I test two common predictions in the ARR literature, one is whether ARR has a negative impact on art prices in the UK and the other is whether it causes a relocation of sales to countries with no ARR provisions. According to most of the experts interviewed, there is so far no evidence to suggest a negative influence of ARR on art work prices. This is in contrast to the evidence presented in Chapter 5, where I find that there is a drop in prices for works eligible for ARR in contrast to those not eligible, albeit for a small group of artists. It is therefore clear that the evidence shows the negative effect of ARR on art prices. It is also in contrast with the evidence presented in Chapter 4, where I find that ARR influences buyers’ willingness to pay. However, policy experts also highlight that there is a constant need for evidence-based research, to measure the effect of ARR to the art market, artists and prices. In the existing literature, which is mainly theoretical, scholars argue the same with Tepper (2007) stating that the decision to adopt ARR in the UK was not based on evidence but on sentiment. In addition, Turner (2012) argues that stakeholders need to base any decisions around ARR on evidence and highlights the lack of information on the subject. This is why the quantitative findings in Chapter 5 are of paramount importance. Another prominent prediction on the negative effect of ARR has been the possible relocation of sales away from the UK to countries with no ARR in place. The policy experts group argue that they have not observed such a move. This is complementary to what art experts argue in Chapter 4, Section 4.4.4 which is that a relocation of sales to avoid ARR is too costly to be financially profitable. As mentioned before in Chapter 4, this is in accordance to the findings by Banternghansa and Graddy (2011), who also find no relocation of sales as a result of ARR.

In Section 6.4 there is a discussion about the future of ARR, where all the interviewees report that there is a need for more information and transparency around ARR. Policy experts argue that when art professionals and private buyers are better informed about the role and

²¹⁸ See McAndrew (2002), p. 16.

significance of ARR to artists or their heirs, their willingness to pay increases. This is in accordance with the evidence in Chapter 4, Section 4.3.3 where art professionals highlight the importance of informing the public about ARR and that trade clients being much better informed about ARR than private clients. In terms of the effective administration of ARR in the UK, participants help to identify some key areas of interest. Firstly, from the evidence provided it is apparent that there is a need for clear guidelines on the procedure followed for ARR payments due to artists who are not registered with a collecting agency. Firstly, policy experts argue that a pro-active search for ARR beneficiaries is necessary, so that all royalty payments are delivered to the rightful recipients. However, it is not clear what happens to royalties collected for artists who are not registered with a collecting agency. Several queries arise as to whether the payments remain with the collecting societies or with the art market establishments, how long they are kept for and whether they are refunded to buyers/sellers after a set period of time. These measures are necessary to ensure the transparency of the administration of ARR and to ensure that there is no insecurity from art professionals and collectors as to what happens to uncollected royalties.

Secondly, policy experts propose that the minimum threshold of £1,000 and the cap of £12,500 both need to be reconsidered, as they believe that this would benefit artists without affecting the art market. The findings of Chapter 4, Section 4.4.2 on the subject of price levels suggest that the influence of ARR at the bottom price level is low so it becomes apparent that artists at the bottom pricing levels are benefiting from ARR with minimum effect. Therefore, it would make sense for the minimum threshold of £1,000 to be removed, and as it becomes obvious that the ARR charge is not impactful at the highest price levels, it would make sense to remove the cap of £12,500 too. However, further research is needed on this aspect of ARR, which is beyond the scope of this thesis. Finally, when participants are asked about their vision for ARR, almost all maintained the view that there must be a multilateral treaty for ARR. Their arguments to support this are that should ARR become international all artists around the world would be able to benefit from it, creating a more just and harmonised system. It would also mean that there would be no imbalances between art markets and the possible issue of relocation of sales would cease to exist. Efforts have been made by WIPO and by DACS and ACS with the support of the UK IPO, however, the key countries of the US, China and Switzerland still oppose it. As explained in Section 6.4.3, a multilateral treaty would be difficult

to achieve and could take a significant period of time. However, the subject of a treaty for ARR certainly requires further research as it is pivotal for the future of ARR.

Chapter 7 – Conclusion

7.1 Introduction

Artists do not live on thin air. And because they enrich the world with their art they should be protected. So it is fair that those who trade in their works pay them a share of what they earn. That is the purpose of the resale right: to share all forms of enrichment.²¹⁹

(Ousmane Sow, Senegalese sculptor, ADAGB)

Artist's Resale Right (or Droit de Suite) was first introduced in 19th century France, as a way of compensating struggling artists and their families for the late appreciation of their work. It has always been a subject for policy debate on issues related to social justice, bringing parity between visual artists and authors. In the 21st century the concept of the struggling artist is very much a reality as the average salary for an artist is still extremely low. Inequality between artists of different countries is also a pressing issue related to Artist's Resale Right, with artists from African countries with no ARR provisions missing out on the success of their work when it increases in value. This was also one of the main reasons that propelled Australia to adopt a form of ARR in 2010, so that indigenous artists can be fairly compensated for work they might have sold for lower prices early in their careers.

On the other hand, art market representatives and academics have expressed concerns about the efficiency of ARR since its early adoption in the beginning of the 20th century. This was due to the possible negative influence ARR could have on the art market, either due to reduced prices or relocation of sales, and the scepticism over which artists benefit from it the most. Art market representatives have long argued that ARR could be damaging to their business and that evidence-based research is necessary to establish this. Artists and ARR collecting societies have also been advocating about the benefits of ARR by claiming high levels of royalties paid to artists and their heirs. Empirical studies on the influence of ARR to

²¹⁹ Quoted by ADAGP, Farchy & Graddy (2017), p. 30.

the art market are a priority, to provide an answer to the debate of the benefits of ARR to artists and the art market, especially as Brexit provides the opportunity for the UK to customise ARR to the needs of its domestic art market.

Before the implementation of ARR in the UK, the Arts Council of England commissioned McAndrew & Dallas-Conte (2002) to write a report on the implementation of ARR. This report explored the ways in which ARR was implemented and administered in other countries, and the way that copyright and patents were administered in the UK. The UK IPO also commissioned a study by Graddy, Horowitz & Szymanski (2008) to measure the effect of ARR on the art market in the UK. Similar to the present thesis, they used a combination of quantitative and qualitative evidence and found no negative influence of ARR on art prices, and no move of sales in countries with no ARR. However, their study covers only works by living artists and uses art prices for a short period after the implementation of ARR in the UK. The most recent report commissioned by WIPO is by Farchy & Graddy (2017) and it measures the effect of ARR on art work prices in the UK art market with data from art market reports and find no negative influence. However, they only compare the performance of the UK art market in contrast to that of countries with no ARR, without controlling for other influences. Considering the period of time that has passed since the implementation of ARR in the UK, first in 2006 and extended in 2012, there is a need for more empirical research on the effect of ARR to cover this extended period of time.

7.1.1 Summary of existing literature

The use of primary empirical data which shows the influence of ARR on artists and the art market has been the motivation behind this thesis. Furthermore, the combination of quantitative and qualitative evidence, to draw conclusions on the subject of ARR fills the gap within the existing literature. Previously scholars explored the subject of ARR from different perspectives as early as the 1960s, with a majority of theoretical studies and select empirical work. Some of the most important theoretical studies on the subject of ARR are by Price (1968), Filer (1986) and Ginsburgh (1996, 2005a,b) which predict that ARR would have a negative impact on the art market, mainly due to reduced prices achieved and relocation of sales. In addition, there is a group of studies which focus on ARR with relation to the US, such as Merryman (1993),

Tepper (2007) and Bays (2008) and they explain how ARR could be applied in the US and the problems that are specific to the area. In terms of the empirical studies, the ones that are more closely linked to the present thesis are by Banderghnasa & Graddy (2011) and McAndrew (2011), who find contradictory results on the influence of ARR on the art market. Banderghnasa & Graddy (2011) use data on art prices and find no negative influence of ARR on the prices of eligible works and no relocation of sales to avoid paying for ARR. On the contrary, McAndrew (2011) also uses data on art prices and finds a decrease of prices for works eligible for ARR and relocation of sales as a result of the extra charge. Following a careful evaluation of the extensive and varied literature on the subject of ARR, it becomes clear that although the use of empirical evidence is important to determine the level of ARR's influence on the art market, theory is just as essential for drawing conclusions about its benefits to artists, their heirs and the art market.

The incentive behind this study has also been to find the most effective research method which can provide an answer to whether Artist's Resale Right is beneficial to artists and the British art market. A natural experiment using prices realised from a coherent group of artists, from which only one is eligible for ARR, is used to show the effect of ARR on art prices. Furthermore, the opinions of art and policy experts from the art market are also integral to the evaluation of its influence and provide the best source of information to use for the interpretation and analysis of the natural experiment. Thus, to explore the thesis subject on ARR and the art market, theory and a mix of qualitative and quantitative data is combined for a holistic result. To create a framework for this study three research questions were set as a point of reference: i) how ARR influences buyers' willingness to pay, ii) how ARR influences the art market and iii) whether ARR should be retained in the post-Brexit era, and if so how it can be reformed.

The answers to these questions are complex and require the consideration and weighing of many different factors. The most important findings of this thesis are that firstly, ARR does influence buyers' willingness to pay, albeit not to a great degree and mostly for private buyers. Secondly, prices for art works eligible for ARR in the heir section drop, in contrast to works not eligible. However, and despite the first two findings, ARR acts as a pension for artists and benefits mostly artists who achieve low prices. Furthermore, considering all the evidence

gathered during the course of this research it becomes apparent that ARR should be retained in the post-Brexit era and that it should be reformed. The UK government has made provisions for the retention of ARR in the UK which is a decision that the thesis findings support. The evidence shows that there is a negative influence of ARR on buyers' willingness to pay and a drop in prices for eligible works, however, it also shows that the benefits of ARR to the artistic community are so important and necessary that they overcompensate for that influence. Furthermore, practical changes in the way that ARR is governed in the UK and internationally could also increase its benefit to all.

7.1.2 Chapter overview

What follows is a summary and analysis of the key findings across the different chapters, to form a coherent understanding of the answers to the research questions. The limitations of the methodology used is explained together with recommendations for future research on the subject of ARR. Finally, there is a summary of the contribution of this thesis to the study of intellectual property and to Artist's Resale Right, in relation to the existing literature.

7.2 Discussion

7.2.1 Summary of key findings

There are three groups of findings presented in this thesis, the first group is produced through interviews with art experts, the second group is produced through an analysis of artwork prices for the Scottish Colourists and the third group is produced through interviews with policy experts. In the first group 85% of art professionals argue that they consider quality and rarity as the key determinants of value, while 66% argues that ARR does not influence them when they assign value. They also claim that the option for some art establishments to transfer the ARR charge to buyers creates an imbalance within the art market. Most participants also argue that there is a need for more information on ARR made available to prospective buyers, especially private ones. The majority of participants, 71.5%, report that ARR does influence

buyers' willingness to pay, however the level of influence is not high and it is more impactful to the trade. Furthermore, they attest that the effect of ARR also depends on the price level of the artworks, with the middle range of £10,000 being the point of most influence and that it is hard to isolate the effect of ARR from other charges, such as buyers' premium. Finally, participants of the first group argue that there has been no relocation of sales as a result of ARR.

In the second group of findings, the results from the difference-in-difference analysis, between the treatment and control groups, show that the difference in prices for works by Fergusson (the treatment group) increased by €32,893.27 on average after 2012, the year that ARR applied to heirs in the UK. Therefore, controlling for other influences, I find that after 2012 prices for the control group, which is not eligible for ARR, increased by 30%, whereas prices for the treatment group, which is eligible for ARR, decreased by 9.24%. The price data analysis also shows that the diff-in-diff variable retained its impact after controlling for size at €32,243. Finally, our falsification exercise shows that when changing the time periods to two random sets of dates using placebo years of ARR implementation, the diff-in-diff variable becomes insignificant. The last two findings reinforce the validity of the result from the comparison between the treatment and control groups.

In the third group of findings participants argue that ARR builds on top of what copyright offers to visual artists, and it is therefore necessary. They also argue that ARR is often used as a pension for artists and that struggling artists benefit the most from ARR payments, rather than successful artists. At the same time, they explain that ARR does not influence creativity and innovation as artists are not driven by monetary incentives. Most participants also claim that ARR does not influence art prices, however, they add that more evidence-based research on the subject is required. Furthermore, they claim that other charges could have more effect on prices than ARR, such as buyers' premium which keeps increasing in contrast to ARR. In terms of relocation for sale, policy experts report that they have not observed such a change. All participants believe that there is a need for more information on the importance and use of ARR. On the subject of transparency, some participants highlight the need to locate beneficiaries, and I find that there is a need for clear guidelines with regards to ARR payments for unregistered artists. In addition, some participants suggest that the

minimum threshold of £1,000 and the top cap of £12,500 should be removed as more artists would benefit from ARR. Finally, almost all participants argue that the future for ARR is a multilateral treaty to create parity and fairness for artists internationally.

7.2.2 Analysis of findings

Artist's Resale Right influences buyer's willingness to pay by causing prices to drop for artists eligible for it. This is according to most art experts interviewed in Chapter 4 and shown by the analysis of artwork prices for the Scottish Colourists in Chapter 5. These results complement the theoretical predictions on the subject of ARR which anticipated that buyers would be negatively influenced by ARR. However, those predictions by Tepper (2007) and Ginsburgh (2007a,b) among others, refer to buyers of primary sales (whose WTP would be affected as they anticipate to be charged for ARR as sellers, should they re-sell the works in the secondary market). Policy experts interviewed in Chapter 6 disagree and argue that ARR does not influence the art market, however, they also indicate that more evidence-based research is needed. The influence of ARR on buyers' WTP is minimal according to art experts, however, the evidence in Chapter 5 shows a drop in prices for works eligible for ARR; albeit to a small group of artists. This could be due to the difficulty for art experts to calculate the level of influence without data on prices. ARR influences trade buyers more than private and ARR mostly influences works in the middle price level range, which is around £10,000; this has not been explored by any other study on ARR. On the contrary, ARR does not influence the art market by lowering estimates and prices by art experts, as the majority do not take it under consideration when they assign value, which was another theoretical prediction in the ARR literature, such as by Filer (1984) and Karp & Perloff (1993). Finally, the influence of ARR is hard to isolate from other charges, such as buyers' premium and import tax, which are often at higher rates. This is reported by both art and policy experts.

ARR further influences the art market by creating an imbalance between auction houses and galleries/art dealers. This is due to the fact that auction houses in the UK charge ARR to buyers rather than sellers, whereas galleries and art dealers often have to absorb the cost of ARR themselves in order to arrange a deal with prospective buyers. It also does not cause artwork sales to relocate away from the UK, as both art and policy experts argue. This is in

contrast to previous studies on ARR, most notably McAndrew (2011) who shows that there has been a relocation of sales as a result of ARR. However, Banderghnasa & Graddy (2011) find no evidence of such a change in sales location, using empirical evidence. In addition, policy experts argue that despite expectations ARR does not increase creativity and innovation as artists do not seem to treat it as an incentive, it is however, a ‘very happy by-product’ of their creativity.

Considering all the evidence presented in this thesis, ARR should be retained in the UK. The advantages it brings to artists, their heirs and the art market are so many and significant that surpass any negative effect on buyers’ WTP and art prices. Though the quantitative evidence shows that ARR possibly causes prices for eligible artists to drop, in contrast to those not eligible, it also offers artists the security of a pension, which is vital, especially for struggling artists. Evidence from the interviews led to a change of the perception of ARR as something more than intellectual property and an important part of artists’ social welfare. Furthermore, according to policy experts ARR benefits low income artists which contradicts the predictions of Ginsburgh (1996) and Hansmann & Santilli (2001), who argue that ARR would only benefit the top selling artists. Some findings from the policy expert group require further research, such as the belief that ARR should not have a minimum threshold or a top cap. Most importantly, the suggestion of a multilateral treaty for ARR is of great significance for the future of ARR and needs to be investigated further. Other findings from the same group could potentially lead to a reform of ARR in the UK. Transparency is important for the smooth running of ARR and for limiting its influence on buyers’ WTP and on art prices. Two suggestions for reform that could provide more transparency are firstly, the provision of more education and information about the purpose of ARR to prospective buyers and to art professionals. And secondly, the establishment of clear guidelines on the handling of ARR payments for unregistered artists.

7.2.3 How results matched my expectations

The results that sprung from the analysis of the findings in this thesis were anticipated and surprising at the same time. The quantitative data produced the expected evidence and the qualitative data gained more prominence in the formation of a conclusion. The findings from

the auction sales database show a drop in prices for the works eligible for ARR, in contrast to those not eligible, which is not surprising. It is a logical assumption that has been made in a number of theoretical papers on the subject of ARR such as Price (1968), Filer (1984) and Ginsburgh (1996, 2005a and 2005b), who argue that art prices would decrease when an extra charge is added to them, as this affects buyers' WTP. However, it is important to observe that the data sample shows statistical importance, which remains constant when tested using different parameters. Though, some element such as change in taste for Fergusson's work or differences in provenance and quality and difficult to control.

What was unexpected is that a quantitative methodology and analysis is not enough to show the effect of ARR in isolation. The most important insight from this study is that despite potentially causing a drop in art prices, ARR could still be beneficial to the art market. Hence, it is evident that in the study of ARR, quantitative data needs to be matched with appropriate theory and with qualitative data, in order to provide a clear picture of the effect of ARR on the art market. In terms of the level of influence that ARR can have, it is evident from the findings that there is an influence on buyers' WTP and a drop in prices for eligible works. In order to assess the impact of ARR on the art market one would need to compare this influence with the benefits of ARR for artists, as they might outweigh it. Furthermore, the evidence shows that the impact level of ARR changes depending on the artwork price range. In particular, most interview participants state that ARR affects prices more on the middle price range of £10,000, rather than the low or top end. This shows that at the low end the ARR is too little to matter, and on the top it is low in comparison to the price achieved.

I use hypothetical scenarios, based on the findings, to examine the effect of ARR on artwork prices in more detail and to break down the positives and negatives of ARR. Considering that ARR is charged to buyers and not sellers in UK auctions:

Scenario 1:

1.a A work by JD Fergusson sells at auction before the implementation of ARR for £1,500.

- The buyer pays the auction house **£1,875**, which is the hammer price of £1,500 plus £375, the 25% buyers' premium

- The seller receives **£1,275** from the auction house, which is the hammer price of £1,500, minus £225, the 15% commission (to the auction house)²²⁰
- The auction house receives **£600**, which is £225, the 15% commission (from the seller) and £375, the 25% buyers' premium (from the buyer), from a hammer price of £1,500
- Artists' heirs receive **0**

1.b The same work by JD Fergusson sells at auction after ARR was implemented for £1,035, considering the -31% price drop due to ARR.

- The buyer pays the auction house **£1,345.50**, which is the hammer price of £1,035 plus £258.75, the 25% buyers' premium and plus £41.40, the 4% ARR
- The seller receives **£880** from the auction house, which is the hammer price of £1,035, minus £155.25, the 15% commission (to the auction house)
- The auction house receives **£414**, which is £155.25, the 15% commission (from the seller) and £258.75, the 25% buyers' premium (from the buyer), from a hammer price of £1,035
- The artists' heirs receive **£41.40**, which is 4% of £1,035 (from the buyer, to the auction house, to the collecting agency which then pays the artist's heirs)

Scenario 2:

2.a A work by a living artist not eligible for ARR sells at auction for £1,500

- The buyer pays the auction house **£1,875**, which is the hammer price of £1,500 plus £375, the 25% buyers' premium
- The seller receives **£1,275** from the auction house, which is the hammer price of £1,500, minus £225, the 15% commission (to the auction house)
- The auction house receives **£600**, which is £225, the 15% commission (from the seller) and £375, the 25% buyers' premium (from the buyer), from a hammer price of £1,500
- The artist receives **0**
- A result of £1,500 is added to his/hers auction record

2.b The same work by a living artist sells at auction after the implementation of ARR for £1,035 (paid by the buyer), considering the -31% price drop due to ARR.

²²⁰ Auction houses negotiate their commission charges depending on the client, so it could be lower or nil. They can also charge for other things, such as insurance and catalogue charges, however, these will not be added for the sake of simplicity.

- The buyer pays the auction house **£1,345.50**, which is the hammer price of £1,035 plus £258.75, the 25% buyers' premium and plus £41.40, the 4% ARR
- The seller receives **£880** from the auction house, which is the hammer price of £1,035, minus £155.25, the 15% commission (to the auction house)
- The auction house receives **£414**, which is £155.25, the 15% commission (from the seller) and £258.75, the 25% buyers' premium (from the buyer), from a hammer price of £1,035
- The artist receives **£41.40**, which is 4% of £1,035 (from the buyer, to the auction house, to the collecting agency which then pays the artist)
- A result of £1,035 is added to his/hers auction record

According to scenarios 1 and 2, it is clear that ARR has a positive effect on artists and their heirs and a negative effect on sellers and auction houses. However, when one compares the difference of gain for auctions and sellers, against the difference in gain for artists and heirs; when ARR applies and when it does not, the gap is significantly bigger for the second group, as their gain without ARR is 0. In particular, scenario 1 shows that after the introduction of ARR sellers lose 30% of profits (£395), auction houses lose 31% of profits (£186) and artists' heirs gain £41, which when compared to nil profits before the introduction of ARR, is a significant increase. Unfortunately it is not possible to calculate the percentage of the increase in profit for artists' heirs, as the initial value is 0, therefore the result would be an infinite increase.

7.3 Limitations

The findings presented in this thesis need to be measured against the limitations of the research approach taken. With regards to the qualitative methodology, interviews were conducted with a select group of art and policy experts. Though this sample is a careful selection of people who are most versed in the subject of ARR and the art market, the number of interviewees is not large. Therefore one could argue that it provides a limited perspective on the subject. However, despite the sample size being low the expertise of the interviewees is high. Also, one of the most common ways used to reach a large number of participants would be through questionnaires, which I believe is an ineffective method of approaching art experts, who might

favour a more personal approach. Furthermore, the group of interviewees includes only some of the stakeholders directly involved or affected by ARR, as artists, their heirs and private collectors are not included in the interviews. Furthermore, the participants are mostly based in the UK, which could be considered a limitation as they only provide the UK perspective on ARR.

The findings from the quantitative methodology are derived from art price data which is formed of prices by a select group of artists, the four Scottish Colourists. The decision to use data from a select group resulted in a limited number of observations, which could affect the robustness of the results and hence can be considered a limitation. Furthermore, the art price data set only represents the heirs group and not the living artists group, as the art works studied are of deceased artists. Nevertheless, if one extends the hypothesis from the heirs group to the living artists group the results of the analysis can be assumed to apply in the same way. Additionally, another limitation of the quantitative methodology is that there are many different factors that could influence the change in prices other than ARR, such as changes in taste, differences in provenance and quality of works or economic crises. However, these issues are constant with all data analysis in the art market field of research and are often hard to control. Finally, the above-mentioned limitations show where new researchers need to focus when studying the subject of ARR, such as extended the number of artists and art works, which will be further explained in the next section.

7.4 Recommendations

According to Directive 2001/84/EC and the UK IPO, there is a need for a continuous evaluation of ARR and its effect on the art market. For that reason, in this section specific steps are recommended for future research. In the present thesis, the interviews with a select group of art and policy experts show that these are the people who know the art market first-hand and are able to provide an insight into how ARR is applied in practice, and insider knowledge about the art market. Therefore, there is a need for an almost continuous communication between researchers and art experts, through the use of qualitative methodology, to measure the effect and impact of ARR. In contrast to questionnaires, interviews are recommended as the most

appropriate and effective method of gathering data from art experts. Looking at the existing empirical literature on ARR, which uses questionnaires, the number of responses is low. This could be due to the reluctance of art experts to complete questionnaires and a preference for a more personal approach, such as interviews.

Future researchers could interview a broader group of participants, to include private collectors, artists and art and policy experts from different countries. Private collectors are a category of participants that is the hardest for researchers to reach due to privacy constraints. However, this could be achieved through a successful cooperation with auction houses or galleries/art dealers, who can provide access to their client databases, without disclosing their private information. The opinions of private collectors are important as they can provide valuable evidence on their buying behaviour and the influence of ARR on buyers' willingness to pay. Artists and their heirs are the group that is perhaps most affected by ARR and has the most interest in it. Scholars who research the effects of ARR should consider using a carefully curated focus group of both young and established artists, who could provide valuable insights into the benefits of ARR for the artistic community. Likewise, scholars could also adopt the same method for artists' heirs, as they can also offer valuable opinions on how ARR affects them. However, contacting artist' heirs could similarly prove challenging. Future researchers could gain access to a database of artists' heirs either through artists' foundations or collecting societies, such as DACS and ACS. Although heirs who are registered with a collecting society could be biased as they are already in favour of ARR. Furthermore, for a holistic research into the future of ARR and its possible internationalization, future researchers might wish interview art and policy experts from different countries. This could be a challenging and lengthy process, however, it could generate a variety of responses and it has the potential to provide a global perspective on ARR. The decolonisation of ARR research is of paramount importance, particularly as it is so vital to non-western regions such as Australia and many African countries. Most existing studies on ARR focus on the largest art markets of the UK, US and China.

Likewise, there are many ways in which future researchers using quantitative methodology can analyse art price data, to measure the effect of ARR on the British art market and beyond. Especially as a significant period of time that has passed since the introduction of

ARR in the UK, in 2006 and 2012. Building on the findings from the present thesis, one could expand the data collection to living artists and perform a similar difference-in-difference analysis to another equivalent coherent group of artists. For the Scottish Colourists group, it would be interesting for future researchers to perform the same comparison of prices after 2031 when Fergusson will no longer be eligible for ARR (as it will be more than 70 years since he passed away in 1961). This would show whether there is an increase in his prices when he is no longer eligible for ARR, and could further solidify or not the results of the present thesis. Similar to the interviews, there is a need for an almost continuous measuring of the influence of ARR on the art market.

7.5 Contribution

The literature on the subject of ARR is rich and varied with academic papers and reports which examine the influence of ARR on the art market, from different disciplines. There are some empirical studies, mainly Graddy, Horowitz & Szymanski (2008), Banderghnasa & Graddy (2011) and McAndrew (2011). The most similar study to the present thesis, is that of Graddy, Horowitz & Szymanski (2008) which was commissioned by the UK IPO and combines a mix of qualitative and quantitative methods. However, this study was conducted much closer to the implementation of ARR (2006) and did not cover the heirs category, as ARR applied to this group much later, in 2012.

This is precisely where my contribution adds value to the research of ARR, as the present thesis is one of the few studies which use a mixed methodology. It is also the only one conducted after adequate time has passed following the implementation of ARR in the UK, for both living and deceased artists. The combination of interviews with art and policy experts, and data on art prices provides a more holistic view on the effect of ARR on the art market. The Graddy, Horowitz & Szymanski (2008) report, follows a similar research strategy to the present thesis. However, the present thesis is based on a more specialised group of interviewees and a specialised group of artwork prices. The sample of interviewees has been carefully selected to provide the most insight on the subject, and their answers were indeed most

informative. The quantitative data is unique in the literature as it focuses on a very specific and coherent group of artists, the Scottish Colourists, rather than a large pool of diverse artists. Furthermore, the method of analysis used in this study, the difference-in-difference approach, has to my knowledge been used only once before by Banderghnasa & Graddy (2011). This unique approach to the study of ARR provides new opportunities for research in the field, highlighting that different methods can be used to examine the effect of ARR. Most importantly, the existing empirical studies on the influence of ARR on the art market cover a limited period of time since the implementation of ARR in the UK, in 2006 and 2012, for living artists and their heirs respectively. The present thesis provides data on artwork prices which cover a longer period of time since the implementation of ARR than any other study on the subject, which makes its results more up to date.

Finally, this is the only interdisciplinary study on the subject of ARR bringing together art history, law and economics. Precisely, this interdisciplinarity is a key contribution of the present thesis, as knowledge from art history is essential for the focus on a homogenous group of artists, the Scottish Colourists, while the use of applied law and economics is critical for the analysis of auction data and for the identification of the causal effect of ARR on market prices. Importantly, the cross methodological approach of this study, with both qualitative interviews and quantitative empirical analysis of auction data, is another key contribution, which is essential for the derivation of convincing policy lessons. Overall, by focusing on the specific and well-defined but also pressing policy issue of Artist's Resale Rights, this thesis points to a new more general direction for a unified field of study on the intersection of art, law and economics, that employs a mix of research methods, which jointly can lead to informed interventions that can be both equitable and efficient.

The use of evidence-based research in the field of art history needs to be more commonplace across the discipline. As the art market is a significant part of the cultural economy of the art centres in the UK, the US and China. Research based on evidence can provide answers to difficult questions, such as the success of the art market but most importantly the welfare of artists. Artists are some of the lowest paid occupations in the UK, with average earnings of £6,020 from their art practice, yet they are the foundation of the

cultural food chain, of any country and art centre.²²¹ Without artists there could be no art market, it is therefore of paramount importance to protect them and to create a labour market in which they are able to thrive. Being an artist should be a career path with a respectable wage, protection from laws and policies, and a pension. ARR contributes to that goal, not only financially, but also morally, as with its existence it highlights the inequalities that exist within the artistic community. Financially, it helps support emerging artists and their heirs, when their works often is appreciated later in their life, or after they pass away. Morally, it helps them keep track of the sale history of their work, or their family members' work, and signals that an artist and their heirs are connected to their work for long after it is first sold. ARR also recognises the uniqueness of works of art as commercial products, figuratively and literally, and differentiates them from other artistic works, such as music or literature.

²²¹ A report commissioned by the Arts Council in 2016, showed that artists' total annual earnings were £16,500 in 2016, with only 36% of that coming from art practice. It also showed that 2/3 of artists earned less than £5,000 from their practice, as it is often mentioned in the interviewees on chapter 6. TBR's Creative and Cultural Team (2018), *Livelihoods of Visual Artists: 2016 Data Report*, Arts Council England, p.1.

Previously, the study by Kretschmer et al., commissioned by DACS, showed that in 2010 the average earnings for artists were £10,000 in contrast to the UK's median wage of £21,320. Kretschmer, M., Bently, L. A., Singh, S., & Cooper, E. (2011). Copyright contracts and earnings of visual creators: A survey of 5,800 British designers, fine artists, illustrators and photographers. *Fine Artists, Illustrators and Photographers (March 7, 2011)*, p.3.

Appendices

Appendix A

Provenance information for The Angelus

- En 1860, dans la collection Papeleu
- En 1860, dans la collection Alfred Stevens
- À partir de 1860, dans la collection Van Praët, Bruxelles
- À partir de 1864, dans la collection Paul Tesse (il l'échange contre "La grande bergère", RF 1879)
- À partir de 1865, dans la collection Emile Gavet, Paris
- 3 février 1872, acheté par Paul Durand-Ruel à Gavet pour 30 000 francs (stock n° 993)
- 8 juillet 1872, acheté par Gauchez à Paul Durand-Ruel pour 38 000 francs
- Collection John Waterloo Wilson
- Collection Secrétan
- Galerie Petit
- Jusqu'en 1889, dans la collection Secrétan
- 1889, vente Secrétan, Paris, galerie Sedelmeyer, 1er juillet 1889, n°63
- De 1889 à 1890, dans la collection American Art Association (acquis à la vente Secrétan à Paris du 1er juillet)
- De 1890 à 1909, dans la collection Alfred Chauchard (acquis à l'American Art Association)
- 1910, accepté par l'Etat à titre de legs d'Alfred Chauchard (comité du 04/12/1909, conseil du 06/12/1909, décret du 15/01/1910, testament de 1906, entrée matérielle en 1909)
- 1910, attribué au musée du Louvre, Paris
- De 1909 à 1986, musée du Louvre, Paris
- 1986, affecté au musée d'Orsay, Paris

Appendix B
Forain lithograph



Figure 13, Jean-Louis Forain (French, 1852-1931), Un Tableau de Papa, lithograph, 32.4 x 22.7 cm (12 3/4 x 8 15/16 in), Toledo Museum of Art. © Toledo Museum of Art.

Appendix C

ARR charges in EU countries

Table 3.1 Droit de Suite within the EU

State	Rate	Basis	Threshold value	Whether collected	Type of Transactions
Austria	None	--	--	--	--
Belgium	4%	Sales price	>50,000 BFr	Yes	Auction sales only
Denmark	5%	Sales price	>2,000 DKr	Yes	Auction and Dealer sales
Finland	5%	Sales price	>1,500 Fim	Yes	Auction and Dealer sales
France	3%	Sales price	>100 FFr	Yes	Auction sales only
Germany	5%	Sales price	>100 DM	Yes	Auction and Dealer sales
Greece	5%	Sales price	>100 DM	No	Auction and Dealer sales
Ireland	None	--	--	--	--
Italy	1-10%	Margin	Varies	No	Not collected in practice
Luxembourg	3%	Sales price	None	No	Not collected in practice
Netherlands	None	--	--	--	--
Portugal	6%	Sales price	None	No	Auction and Dealer sales
Spain	3%	Sales price	>300,000 Pta	No	Auction and Dealer sales
Sweden	5%	Sales price	>1,800 CS	Yes	Auction and Dealer sales
UK	None	--	--	--	--

Source: Christie's 1998/ MTIC 2000

Appendix D

Interview questions

D.1 Interview questions for auction specialists

1. In your opinion, what are the main attributes that influence the price of a work of art (WOA)?
2. What is your policy towards Artists' Resale Right (ARR)?
 - a. Is ARR charged to buyers or do you absorb it?
 - b. What if an artist does not have descendants?
3. What is your opinion on the administration of ARR?
 - a. Would you say it is disruptive of your work?
 - b. How is your communication with the collecting societies if any?
4. If ARR is charged to buyers, how do you inform them of its presence?
 - a. Through the catalogue, online or verbally too?
5. If ARR is charged to buyers, what do you think buyers' attitude towards ARR is?
 - a. Do you think ARR influences buyers' willingness to pay?
 - b. Do you think buyers are willing to pay less for WOA that are eligible for ARR to make up for the extra charge they will have to pay?
6. What is your attitude towards ARR when valuing an eligible WOA?
 - a. Do you take ARR into consideration when you decide on your valuation/price taking into account the extra charge the buyer or the you will have to pay?
7. What is your attitude towards ARR when consigning a WOA for sale?
 - a. Do you take ARR into consideration when you decide on your estimate taking into account the extra charge you/your buyers will have to pay?

8. Would you say that ARR is fair?
 - b. Is it beneficial for artists/artists' descendants?
 - c. Is it beneficial to the art market (i.e. by increasing creativity and innovation)?

9. In your opinion, how does ARR influence the art market?
 - a. Do you think that prices achieved for eligible WOA have declined/stayed the same as a result of ARR?

10. In your opinion, has there been a change in prices achieved for artists eligible for ARR in contrast to artist not eligible for ARR (controlling for any other influences) after 2006/2012?
 - a. For example, controlling for other influences have prices for J.D. Fergusson (eligible for ARR) decreased in comparison to the other three colourists, Cadell, Peploe and Hunter (not eligible for ARR).

11. In your opinion, has there been a move of WOA eligible for ARR for sale in the US so as to avoid ARR charges?
 - a. Do you think buyers would consider buying from the US where ARR charges do not apply?

12. Would you say that EU works might remain for sale in the US where ARR does not apply?
 - a. Would you say that US consignors are more reluctant to send European WOA for sale in the UK because of ARR?

D.2 Interview questions for art dealers/collectors

13. In your opinion, what are the main attributes that influence the price of a work of art (WOA)?
14. Which artists/art periods do you usually buy/collect?
15. Do you resell any WOA from your collection?
16. What is your attitude towards ARR when buying in the secondary market (auction/other dealer/art fair etc.)?
 - d. Do you take ARR into consideration when you decide on your offer taking into account the extra charge you will have to pay? Or that your buyers/you will have to pay when you resell the WOA?
17. What do you think other buyers' attitude towards ARR is?
 - c. Do you think ARR influences buyers' willingness to pay?
 - d. Do you think buyers are willing to pay less for WOA that are eligible for ARR to make up for the extra charge they will have to pay?
18. Would you say that you are always aware of ARR charges when buying in the secondary market?
 - a. Do you think that the presence of ARR is clearly communicated to potential buyers in the secondary market (i.e. via a special symbol in the catalogue)?
19. What is your attitude towards ARR when buying directly from an artist/artist's studio?
 - a. Would you favour buying directly from an artist as there is no ARR?
 - b. Would your offer be influenced by the extra charge buyers or you will have to pay when you resell the WOA?
20. In your opinion, how does ARR influence the art market?

- a. Do you think that prices achieved for eligible WOA have declined/stayed the same as a result of ARR?
21. In your opinion, has there been a change in prices achieved for artists eligible for ARR in contrast to artist not eligible for ARR (controlling for any other influences) after 2006/2012?
- a. For example, controlling for other influences have prices for J.D. Fergusson (eligible for ARR) decreased in comparison to the other three colourists, Cadell, Peplow and Hunter (not eligible for ARR).
22. Would you consider buying eligible WOA from the US where ARR does not apply?
- b. Would you think it is financially viable (including cost of transport etc.) to buy in the US considering there will not be any ARR charges?
23. What is your attitude towards other added charges (such as import tax, buyers' premium etc.) when buying in the secondary market (auction/other dealer/art fair etc.)?
- a. Do you take them into consideration when you decide on your offer taking into account the extra charge you will have to pay?
24. Is your attitude towards other charges (such as import tax, buyers' premium etc.) different to ARR?
- a. Considering that ARR is there for the benefit of artists would you say you are happier to pay it in comparison?

D.3 Interview questions for policy experts

25. Which would you say are the main differences between Artists' Resale Right and Copyright?
- In what way are artists different to authors/musicians etc.?
 - Is the idea of 'the struggling artist' just a romantic view?
26. In your opinion would it be beneficial for the UK art market/artists to harmonise the ARR legislation internationally (mainly in the US and China) with that of the EU?
- If not, is there a danger of UK WOA moving for sale in places where ARR does not apply?
27. In your opinion, what is the attitude towards Artists' Resale Right (ARR) in the US?
- Are there advocates of ARR within the government/senate?
 - Is the public positive towards such a policy?
28. If harmonised, how do you think ARR might influence the US art market?
- Do you think that prices achieved for eligible WOA will decline/stay the same as a result of ARR?
 - What other issues would you anticipate?
29. If harmonised, how do you think ARR might influence American artists?
- Would it be beneficial to them or not?
 - Would it increase/decrease their income?
30. If harmonised, what do you think buyers' attitude towards ARR will be?
- Do you think ARR will influence buyers' willingness to pay?
 - Do you think buyers will be willing to pay less for WOA that are eligible for ARR to make up for the extra charge they will have to pay?
31. If harmonised, do you think that ARR could influence creativity and innovation?
- Would it encourage artists to join the profession?

32. In what ways would you say that the US art market differs to that of the EU?
- a. Are there more unregistered galleries/dealers?
 - b. Are the WOA traded of higher value?
33. In your opinion, has ARR influenced the EU art market?
- a. Would you say that the US art market has a competitive advantage by not adopting ARR?
34. In your opinion, has there been a move of WOA eligible for ARR for sale in the US so as to avoid ARR charges?
- a. Do you think buyers would consider buying from the US where ARR charges do not apply?

Appendix E

Participants information pack

E.1 Participant Information Letter

About the project

My PhD thesis provides a new explanation for the influence of Artists' Resale Right (ARR) on the price of works of art in the art market. The idea of a right for the benefit of artists was born in France in the 19th century, when a painting by Millet sold for a large amount while his family lived in poverty. Nevertheless, it was not until 2001 that Directive 2001/84/EC made it compulsory for all European countries, including the UK, to implement ARR for any work of art sold in the secondary market by a living artist or an artist deceased within 70 years from the date of sale.²²² The right took effect in the UK in two phases, first in 2006 and was limited to living artists, and in 2012 when it was extended to artists deceased within the 70-year period.²²³ Collecting societies across the different EU countries are responsible for the administration and distribution of ARR, with DACS and ACS being the most prominent ones in the UK. A basic definition of ARR is that, when a work of art sells in the secondary market for the equivalent of €1,000 or more, on the day of the sale, a percentage of 4% (which increases per the hammer price and with a maximum amount of €12,500) is payable from the seller to the appropriate collecting society for the benefit of the artist or his heirs.²²⁴

Through my research I aim to show, firstly, how ARR influences art work prices achieved for art sold at auction. Theoretical papers on ARR predict that if an extra charge is added to the price of an art work prospective buyers would be inclined to offer less to make up the

²²² Directive 2001/84/EC.

²²³ On 14 February 2006, under Statutory Instrument 2006 No. 346.

²²⁴ 4% up to €50,000, 3% up to €200,000, 1% up to €350,000, 0.5% up to €500,000 and 0.25% over €500,000.

difference. To measure this influence I employ the use of quantitative methodology through the analysis of data on art work prices. I collect prices achieved for art works which sold in the UK market before and after the implementation of ARR and I divide them in two groups of eligible and not eligible for ARR. These art works form my treatment and control groups for which I perform a difference-in-difference analysis aiming to discover the effect of ARR on their prices excluding all other factors of influence.

Furthermore, I examine how ARR influences buyers' willingness to pay. Specifically, I examine the behaviour of art buyers when they decide what to buy and for what price. What I aim to find out is if buyers take ARR into account when they decide what to buy and for what price, which could lead to lower prices for art works considering that ARR is added to the final price. To measure the influence of ARR on the behaviour of art buyers I employ the use of qualitative methodology in the form of interviews to a select group of key players in the art market. Through this method I aim to discover the different opinions and perceptions towards ARR in the art market and what determines the value of art.

Finally, taking my findings into consideration I examine if ARR should be retained after Brexit when the UK reconsiders its position towards the creative industries. As ARR is an EU initiative it is possible that the UK government will decide to reconsider it or to abolish it, upon exit from the EU after March 2019. This is a question with potentially important impact on UK policy and to answer it I employ the use of qualitative methodology in the form of interviews to a select group of key players in the art market, focusing to artists.

Interview notes

Interviews will be conducted by myself and will last approximately 15-20 minutes. The list of interviewees includes auction specialists, gallerists, art dealers/consultants, artists and

government officials. All questions will be open-ended and answers will be recorded digitally and transcribed by me, the researcher. The data generated through these interviews will be part of my PhD thesis. All data will be stored initially in my laptop in an encrypted form for the duration of my PhD. After the data analysis they will be stored at the University of Glasgow repository called *Enlighten* where they can be shared with other researchers. Confidentiality will be adhered to unless there is evidence of wrongdoing or potential harm, the University may be obliged to contact relevant statutory bodies or agencies.

Supervisor's name and email contact: Dr Christa Roodt, Christa.Roodt@glasgow.ac.uk

Department address: History of Art Department, 8 University Gardens, Glasgow, G12 8QQ, Scotland.

Appendix F
List of participants

Table F.1 - List of participants – Chapter 4

Group	Interviewee	Interviewee
Auction houses	Sotheby's	Bonham's
Galleries	The Fine Art Society	White Cube
Art dealers/consultants	Interviewee A1	Interviewee A3
Art Dealers/Collectors	Interviewee A2	

Table F.2 - List of participants – Chapter 6

Group	Interviewee	Interviewee
Policy experts	UK IPO	Interviewee A4
Collecting societies	ACS	DACS

Table F.3 – Influence on valuing

Interviewee	ARR influence on valuing
Sotheby's	no
Bonham's	no
The Fine Art Society	yes
White Cube	no
Interviewees A3	yes
Interviewee A2	no

Table F.4 – Influence on buyers' willingness to pay

Interviewee	ARR influence on buyers' willingness to pay
Sotheby's	yes
Bonham's	yes
The Fine Art Society	yes
White Cube	yes
Interviewees A3	yes
Interviewee A2	no
Interviewee A1	no

Appendix G

Bonham's Terms and Conditions

7. BUYER'S PREMIUM AND OTHER CHARGES PAYABLE BY THE BUYER

Under the Buyer's Agreement, a premium (the Buyer's Premium) is payable to us by the Buyer in accordance with the terms of the Buyer's Agreement and at rates set out below, calculated by reference to the Hammer Price and payable in addition to it.

For this Sale the following rates of Buyer's Premium will be payable by Buyers on each Lot purchased:

27.5% up to £2,500 of the Hammer Price

25% of the Hammer Price above £2,500 and up to £300,000

20% of the Hammer Price above £300,000 and up to £3,000,000

13.9% of the Hammer Price above £3,000,000

Storage and handling charges may also be payable by the Buyer as detailed on the specific Sale Information page at the front of the catalogue. The Buyer's Premium and all other charges payable to us by the Buyer are subject to VAT at the prevailing rate, currently 20%. VAT may also be payable on the Hammer Price of the Lot, where indicated by a symbol beside the Lot number. See paragraph 8 below for details.

On certain Lots, which will be marked "AR" in the Catalogue and which are sold for a Hammer Price of €1,000 or greater (converted into the currency of the Sale using the European Central Bank Reference rate prevailing on the date of the Sale), the Additional Premium will be payable to us by the Buyer to cover our Expenses relating to the payment of royalties under the Artists Resale Right Regulations 2006. The Additional Premium will be a percentage of the amount of the Hammer Price calculated in accordance with the table below, and shall not exceed €12,500 (converted into the currency of the Sale using the European Central Bank Reference rate prevailing on the date of the Sale).

Hammer Price Percentage amount

From €0 to €50,000 4%
 From €50,000.01 to €200,000 3%
 From €200,000.01 to €350,000 1%
 From €350,000.01 to €500,000 0.5%
 Exceeding €500,000 0.25%

Section 8

The prevailing rate of VAT at the time of going to press is 20%, but this is subject to government change and the rate payable will be the rate in force on the date of the Sale. The following symbols, shown beside the Lot number, are used to denote that VAT is due on the Hammer Price and Buyer's Premium:

† VAT at the prevailing rate on Hammer Price and Buyer's Premium

Ω VAT on imported items at the prevailing rate on Hammer Price and Buyer's Premium

* VAT on imported items at a preferential rate of 5% on Hammer Price and the prevailing rate on Buyer's Premium
 G Gold bullion exempt from VAT on the Hammer Price and subject to VAT at the prevailing rate on the Buyer's Premium

• Zero rated for VAT, no VAT will be added to the Hammer Price or the Buyer's Premium
 Buyers from within the EU: VAT is payable at the prevailing rate on just the Buyer's Premium (NOT the Hammer Price).

Buyers from outside the EU: VAT is payable at the prevailing rate on both Hammer Price and Buyer's Premium. If a Buyer, having registered under a non-EU address, decides that the item is not to be exported from the EU, then he should advise Bonham's immediately.

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