



National Campaign for the Arts
Debate summary: artists' re-sale rights
Westminster Hall, 9 July 2008

Mark Fisher (Lab)

- In 2001 the European Commission (EC) introduced a right for artists to benefit each time a piece of their work was re-sold by a third party, in the manner of a policy long held by the French Government, 'Droite de suite'.
- The British Government initially opposed the EC directive because of the damage it was likely to cause to the UK arts market. After negotiations, a derogation from the directive was secured, whereby re-sale rights would be applied to the work of living artists from early 2006.
- 568 artists benefited from this between February 2006 and August 2007. This represents a fairly modest success, given estimates in 2005 that 85,000 to 90,000 artists would benefit.
- The UK arts market has survived and prospered because the implementation of the re-sale right was not extended to deceased artists' estates, and is currently one of the largest in the world.

David Heathcoat-Amery (Con)

- I agree with the right honourable gentleman. If the EC persists with plans to extend re-sale rights to deceased artists, it will only help American, Japanese and Swiss dealers and arts centres who will be exempt from the ruling, thus actively disadvantaging the European arts market.

Mark Fisher

- Though I agree with the statement, the idea behind re-sale rights for deceased artists was that their estates and descendants should benefit, which is appropriate.

Hugo Swire

- Arts collectors and consigners at the highest level can shift consignments of art easily across countries. The EU should therefore discuss the matter with Switzerland and the US before extending the directive.

Don Foster

- The limited application of the law has not presented a problem so why should extending re-sale rights to dead artists be a problem?

Mark Fisher

- The derogation should be extended until 2012 while the arts market adapts to worldwide changes, not least the astronomical rise of the Chinese market. The Russian and Indian markets are also likely to grow. In 2012 the present derogation

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will expire and the EC must decide the next step. The ruling could be introduced in full, but in order to protect the UK (and French) arts market, perhaps the derogation should be extended for 10 years.

- Both sides of the argument are strong: artists' rights are important but a strong UK arts market will benefit them, and the whole UK economy, in the long-run.
- The benefits of the derogated ruling to living artists have not been as great as envisaged. Only £4.4 million, on behalf of 1,400 artists, has been collected since February 2006, and 80 percent of the revenue went to fewer than 140 artists.
- The provisions have had a similar effect to Public Lending Rights: they have benefited those who needed them least. Artists are normally already pre-eminent before they begin to see large economic benefits from circulation of their material.
- The government are likely to apply for an extension of the derogation at least until 2012 and maybe for a further ten years, which is an appropriate action to take.

Frank Doran (Lab)

- We should not seek a further derogation. The argument that the arts market will suffer from the extension of remuneration rights to deceased artists mirrors the one heard when the measure was first introduced in 1997, which was proved wrong.

David Heathcoat-Amory

- Just because a market is healthy in good conditions does not mean it will remain so. In the context of a shift of economic power to the east and a recession in the UK, fiscal penalties should not be imposed on one of Britain's most lucrative industries.

Frank Doran

- The amount of money being discussed is trivial in relation to arts market turnovers. 'Buyer's premium' levels for Sotheby's in London now stand at 25 percent for works up to £25,000, 20 percent up to £500,000, and 12 percent above that. It is ludicrous to argue in this context that the far smaller proportion of revenue returned to artists or their estates would damage the market.

Hugo Swire

- When buyer's premiums – paid by the buyer of a lot to the auction house in addition to the lot price – increased, seller's premiums – the percentage of the lot price given to the auction house and not the seller – decreased accordingly. This encouraged business with sellers but auction houses did not benefit hugely.
- Moreover, these commissions apply everywhere so do not provide any special advantage for the UK or anywhere else. But re-sale rights do not apply in the US and elsewhere, so would actively disadvantage UK and EU markets.

Frank Doran

- If the reach of buyers like Sotheby's and Christie's is global, surely their premiums can be cut worldwide to generate the necessary money to remunerate artists without disadvantaging their market in any one country.
- The artist's re-sale rights scheme has not damaged the market, and the Design and Artists Copyright Society (DACS) has managed the scheme effectively.
- Writers and Musicians receive re-sale rights and artists should as well.

Hugo Swire

- Recent huge prices paid by international collectors for impressionist and post-impressionist works of art may have given the false impression that the arts market is secure despite the economic downturn.
- The arts market is driven by large international investors able to move consignments between countries. The impact of re-sale rights may seriously affect where they choose to consign works of art.
- The arts market does not simply represent the interests of auctioneers. The success of London's museums, galleries and other public art attractions depends on the health of the arts market in London.

David Heathcoat-Amory

- Furthermore, whilst it has been suggested that Sotheby's and Christie's may be behind the idea, they own auction houses in New York and so will be the last to lose. The people who will suffer from a downturn in the British Market are packers, porters, framers and insurers.

Hugo Swire

- In the first 18 months of the measure's operation only 1,104 artists benefited, of whom only 568 were British. The top 20 artists received 40 percent of the total collected, the top 10 per cent shared out 80 per cent. This money is not saving struggling artists from poverty; that a letter to the Daily Telegraph demanding immediate extension of re-sale right was headed by Damien Hirst reflects this.
- DACS will benefit from the re-sale rights ruling.

Derek Wyatt, PPS to Margaret Hodge, DCMS (Lab)

- In favour of extension. I sat on the Select Committee in 2005 which changed the view on the issue initially. The same arguments against the ruling are being repeated.
- It would represent just 2 percent of turnover in the arts market. DACS management of re-sale rights has been a success, collecting £5.2 million since February 2006, much of which benefited young artists and those on low income.
- In 2004 the UK arts market was worth £4.2 billion. It is now £8.5 billion. This is not due to one or two large buyers but because London is the centre of the Marketplace.
- The re-sale laws are capped so wealthier artists receive less proportionally than poorer ones; this is redistribution. It should be supported by a Labour government.
- A DACS survey found that 87 percent of arts market professionals thought re-sale rights had not damaged their business, and more than 60 percent said re-sale rights cost them less than five minutes and £10 a quarter in administrative costs.
- 95 percent of artists are in favour of re-sale rights and 90 percent believe it should be extended to deceased artists.
- The EC directive obliges the UK government to extend rights to estates of deceased artists and there is no evidence this would disadvantage the UK arts market.
- It is important to support young artists and this measure will do that. The derogation should be extended to 2010 to assess market changes but no longer.

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Chris Bryant, PPS to Harriet Harman, Leader of the House of Commons (Lab)

- In 2005 when the issue was being debated for the first time it was claimed that 10 art dealers would lose their jobs for every artist who benefited. It did not happen and the extension of the directive should be supported.
- Mr Swire in his assessment of what constituted the art market in London did not mention artists themselves. London's arts market is booming at present because of its dynamic arts scene. The arts market in Paris, for example, is less successful because it lacks this vibrancy. Artists should share in their own success.
- The market has become more, not less successful, after the directive – though not necessarily as a result of it.
- The argument that the system would be hard to administer was also proved wrong.
- The re-sale directive does not only benefit very wealthy artists. Only 2 percent of artists who received remuneration under the directive received more than £50,000.
- The directive is a progressive tax system with a cap of 12,000 euros. This will not dent the price of valuable works of art and will not affect where people sell them.
- Families should be the guardians of deceased artists' work. They will often channel money received back into artistic or charitable causes.

Ian McCartney (Lab)

- We must consider how to manage the global arts market in the same way we manage the financial and insurance markets and the education and health services. London is not guaranteed to always remain the centre of the arts market.
- This said globalisation should not be an excuse to undermine artists' rights. It is also true that artists' estates should be recognised for their worth. But to protect artists it is necessary to react to changes in the global market. One part of the world should not have an advantage over another in selling mechanisms.
- In the coming years emerging competitors on the global arts market will be at an advantage over Britain because they will not acknowledge re-sale rights.
- It is correct to support derogation in the current circumstances but ultimately it is necessary *both* to protect Britain's position in the international market and protect artists' rights. This can only be achieved by international agreement, for example through changes to the Berne Convention. Perhaps this project should be undertaken over the next two years.

Don Foster, Shadow Secretary of State for Culture, Media and Sport (Lib Dem)

- We must judge our decision against the EC directive's allowance, which states derogation should only be extended if it is proved necessary in "enabl(ing) the economic operators in that... State to adapt gradually to the re-sale right system". There are not strong enough arguments to justify this statement.
- The cap of 12,000 euros on re-sale rights has helped ensured that the scheme has not been a burden on the arts market. Robin Woodhead, chief executive officer of Sotheby's Europe stated that "at the top end of the market the €12,500 ceiling for *droite de suite* - ARR - on any single work is not going to be a deciding factor."
- It is likely that the extension of the rule to deceased artists would shift another £18-19 million to estates, roughly 0.4% of the value of the arts market.
- The scheme has been proven not be administratively burdensome, and artists support it.

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- There are some matters to address though. The threat of the Chinese, American and Swiss markets is significant, and ultimately the EU should work towards ensuring that the Berne convention's ruling on the matter is applied globally.
- However, to do this we must adopt the entire ruling ourselves, as otherwise we are not in a legitimate position in telling other nations to do so.

Adam Afriyie, Shadow Minister for Innovation, Universities and Skills (Con)

- We must not inhibit the free market which has allowed the British arts scene to rise to the enviable economic position it is currently in.
- Some of the trusts which will receive revenue if the directive is extended to deceased artists will be based overseas, with aims "in conflict" with UK interests.
- This said, creators deserve to benefit from the value of the work they create, and comparable rights already exist for writers and musicians and their estates.
- However, polls suggest that 80 percent of all payments were distributed among the top 100 artists, which implies that, at present, it is protecting the most popular artists rather than specifically helping and encouraging new talent.
- There remain concerns over the effect on the British arts market. In 2007 royalties accounted for 0.04 percent of the arts market. If re-sale rights are extended to deceased artists this will increase to 0.2 percent. On the one hand this is tiny slice of the market but on the other it represents a 500 percent increase in shares.
- To ensure effective implementation we call for extension of the derogation policy until 2012. At the same time the Government must pursue a commitment from the EC to introduce re-sale right into the international Berne convention, to ensure that the US and Switzerland are already subject to the directive if it comes into full force.

Ian Pearson Minister of State for Science and Innovation, DIUS (Lab)

- There is a consultation on the artists' re-sale right derogation extension for deceased artists, so a decision cannot be made immediately.
- Droite de suite has benefited artists and so far not damaged the market, which has grown more in the last two years than the market in the United States. But the true impact may be masked by the derogation.
- The consultation paper recommends that extension of derogation until 2012, but the Intellectual Property Office is seeking advice as to whether this is correct.
- We cannot currently consider whether to extend the derogation for ten years as we must primarily consider the next two years, and a longer derogation will involve re-opening the EU directive.
- The context of the US, Switzerland and China not extending re-sale rights must be considered, eg the possibility of deceased artists' estates selling outside the UK.
- The Government will indeed pursue an international, not just EU agreement on the matter, therefore. Australia and New Zealand are currently considering introducing re-sale rights but this needs to be extended to all major international arts markets.
- We need to consider the administrative burden on art dealers, even if it has been suggested this will not be very large.
- Members are encouraged to make representations during the consultation phase, which ends on 22 September.