A photograph of a woman with short grey hair, wearing a light blue sweater and dark jeans, standing in a studio. She is holding a small white object up to the light. The studio has a wooden floor, a large wooden table with a computer monitor, and shelves filled with books and papers. A rocking chair is visible on the left.

BCC & WIPO Training Course

“Artistic Works: Legal basis, case law and licensing practice including a focus on the Artist’s Resale Right”

Christian Zimmermann, COO, DACS

Catherine Yass in her studio. Photo © Brian Benson, 2018.

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Today's Session

Part One: the law

- Legal basis of copyright, including case law
- Legal basis for the Artist's Resale Right

Part Two: How DACS manages artists' rights

- DACS' Services:
- International relations

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What is DACS?



Established by artists for artists, DACCS is a not-for-profit visual artists' rights management organisation

- We represent 180,000 visual artists via international network
- Nearly £200 million paid to artists and estates since 1984, half of that from ARR
- We campaign on behalf of visual artists

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Part One: Copyright Law



Copyright in the UK



- UK law: *Copyright Designs and Patents Act 1988*
- Exclusive control of author
- Lasts life + 70 years
- No registration requirement

What can be protected?

- **Creative works:**

Musical, literary, artistic works, films, broadcasts

- **Originality :**

Work must show sufficient skill, labour and creativity and not be slavishly copied

Case: *Kenrick v Lawrence* 1890

- **Fixed form:**

Copyright does not protect an idea, only the expression of an idea in a fixed form

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What is an artistic work in the UK law?

- Graphic work, photograph, sculpture or collage
irrespective of artistic quality
- Work of architecture being a building or a model for a building
- Work of artistic craftsmanship

Legal sources:

- s. 4 CDPA 1988
- *Metix v Maughan* 1997
- *LucasFilm v Ainsworth* 2009

How are photographs protected?

- Photographs are protected in the UK irrespective of artistic quality
- A photograph of another artistic work is also protected by copyright

Legal sources:

- s. 4 CDPA 1988
- *The Bridgeman Art Library Ltd v Corel Corp* 1999 (USA)
- Article 14 EU Digital Single Market Copyright Directive

What is a 'work of artistic craftsmanship'?

- An expression of intellectual creation in an objectively identifiable work
- A sufficient degree of craftsmanship and skill
- A work created with free and creative choices

Legal sources:

- s. 4 CDPA 1988
- *Henscher v Restawile* 1975
- *Bonz Group v Cooke* 1994
- *Cofemel* CJEU case 2019
- *Response Clothing v The Edinburgh Woollen Mill* 2020

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Legal basis for the Artist's Resale Right (ARR)



What is the Artist's Resale Right (ARR)?

If a work of art is:

- protected by copyright
- sold for the second time via art dealer, auction or gallery
- sold for at least €1,000

The artist or their heir gets a royalty, which is a percentage of the sale price.

What are the features of the UK's ARR law?

- Inalienable right
- Collective management
- No enforcement mechanism
- Weak reporting obligations on AMPs
- Ambiguity on types of work
- Uses European currency

Legal sources:

- *Artist's Resale Right Regulations* 2006, amended 2012

Value of Artist's Resale Right royalties

- Minimum threshold - €1,000
- Royalty calculated as a percentage of the sale price on a sliding scale:

Sale Price	Royalties
Up 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%

- Royalty capped at €12,500 (achieved after resale for €2m)
- DACS also collects on behalf of non-members

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Part Two: How DACS manages artists' rights



Our core services

- Individual rights:
Copyright Licensing
- Collective licensing:
Payback
- Artist's Resale Right



Some of our recently licensed products

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Copyright Licensing



How does it work?

Transaction

Grant of licence for one-off or continuous use

Customer pays agreed price for use

Licensing Customer

Publishing, broadcasting, multimedia, advertising and merchandising

Licensed products

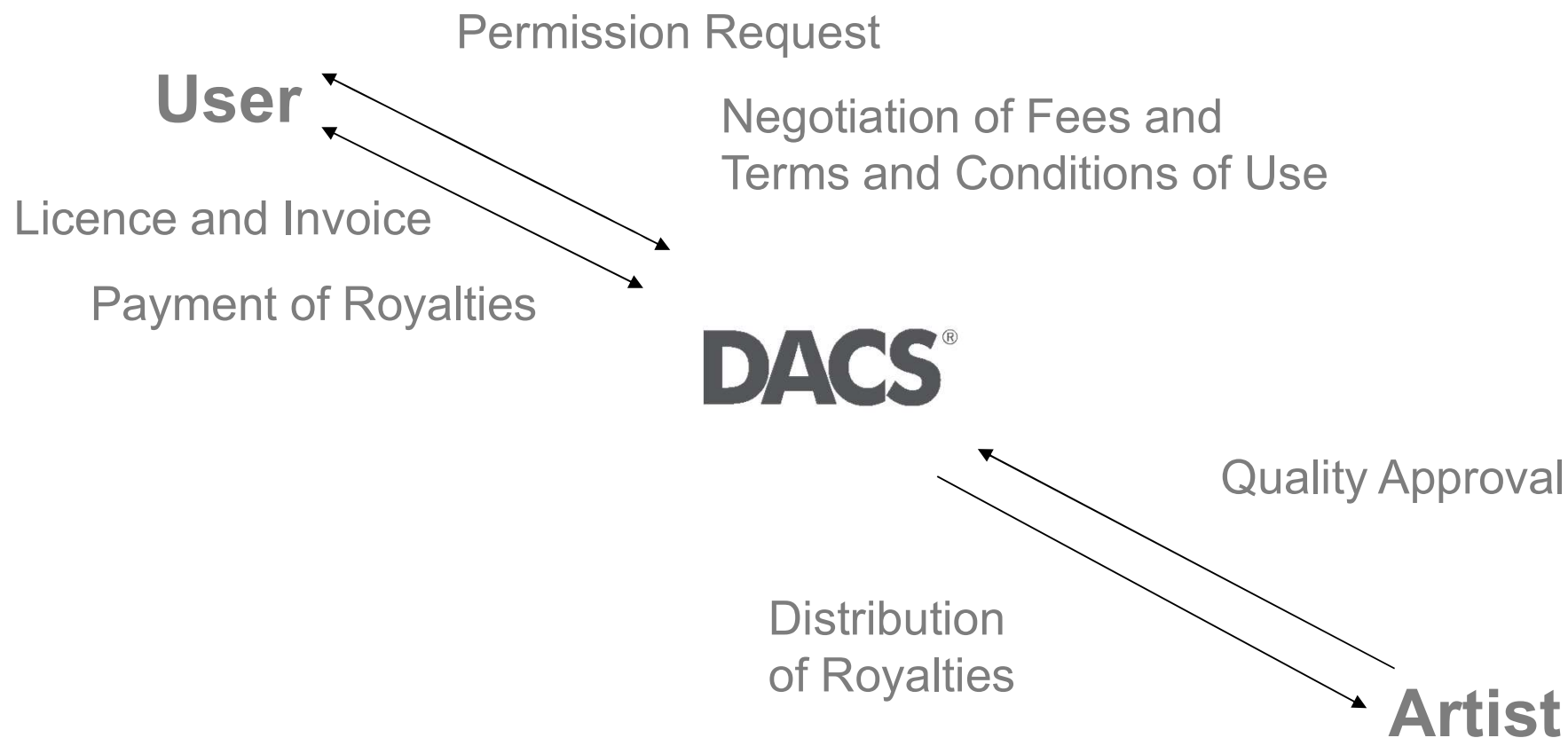
Publications, greetings cards, TV, film sets, websites, computer games, clothing

Revenue

In 2020, DACS paid over £1.5m to artists and estates (37% less than in 2019)

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Standard licensing transaction



Determining a tariff

Types of use: commercial-bias

User groups:

- e.g. publishers, broadcasters, merchandisers
- Quantity of licensed product
- Territory of exploitation

Rights granted:

Context, Duration, Territory and Discounts

Strengths

- Artists involved in negotiation
- Payment aligns with the use
- Precise distribution
- Efficient for customers

Weaknesses

- Control viewed as censorship
- Slow process
- Not always cost effective for DACS
- Enforcement can be lengthy and costly

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Artimage



Liliane Lijn in her studio. Photo © Brian Benson, 2019. Artwork © Liliane Lijn. All Rights Reserved, DACS 2019

ArtImage®

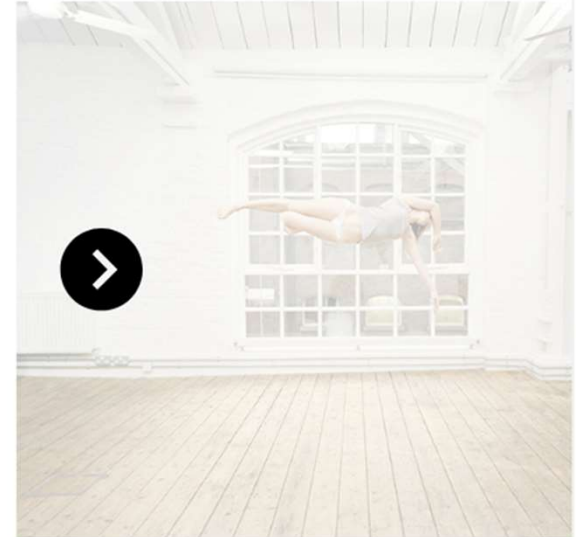
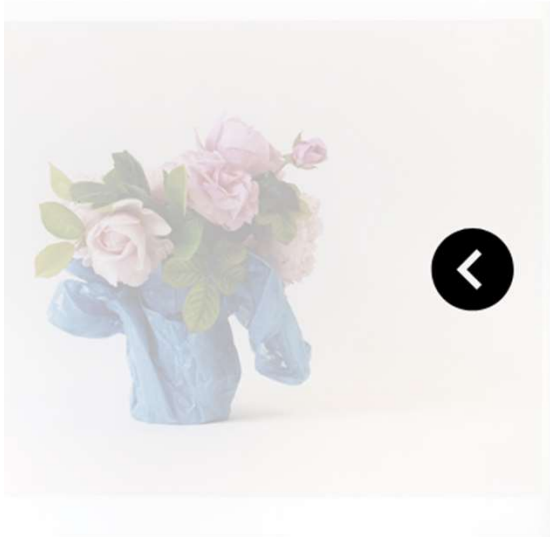
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Hope Gardens, 2005

See other [Hurvin Anderson](#) works

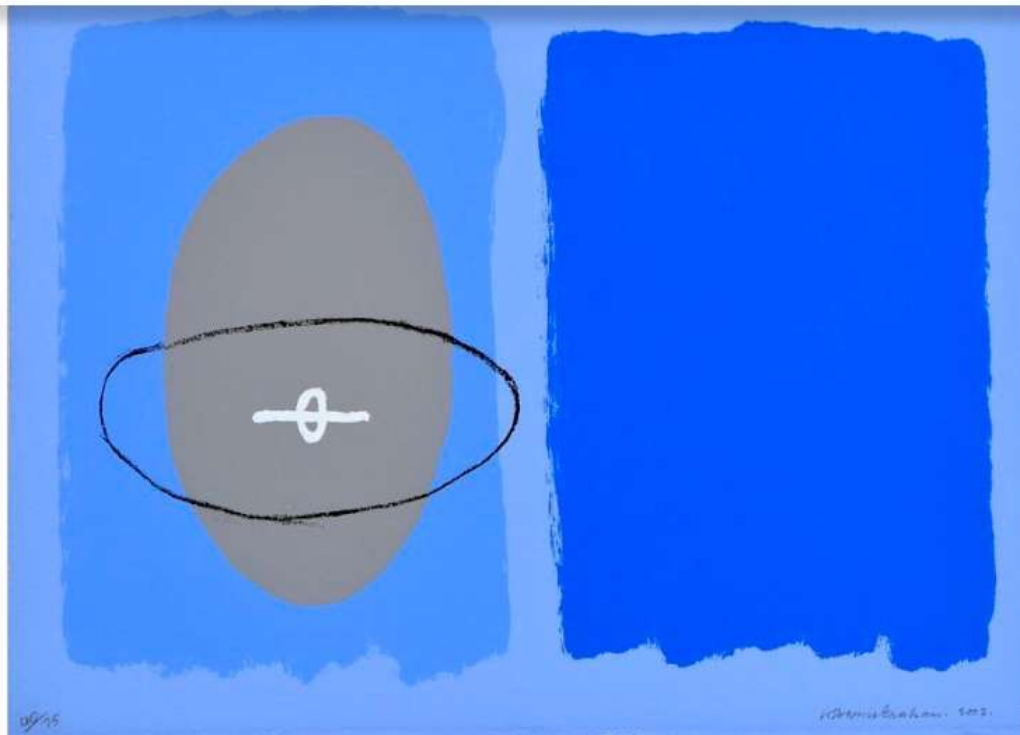
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Well peeled golden wonder against g...

Bruce McLean



Homage to Johnny, 2002

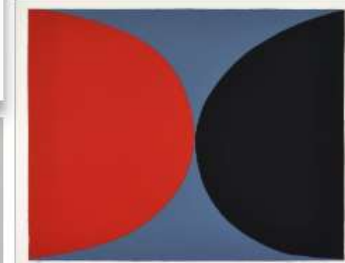
Wilhelmina Barns-Graham



Lightbox



Request



Payback



Where does this revenue come from?

- Photocopying books and magazines
- Creating slides in universities
- Recording TV in schools and colleges
- Simultaneous cable re-transmission
- UK and overseas

Strengths

- Central negotiation is cost effective
- Convenient for users
- Solution for artists
- Revenues benefits many

Weaknesses

- Complicated to communicate
- Collecting data is expensive
- Distribution of revenue is allocated on availability

Artist's Resale Right



How does DACS help administration?

- Online search tool with 100,000 artists' names
- Royalty calculator and exchange rate
- Pre-sale eligibility check
- Submit sales information online
- Quarterly mailings requesting information of sales
- Assistance with compliance and education of the law

The administrative burden on art market professionals is low: median time spend per quarter is 95 minutes costing £22.37

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ARR – success and challenges

Success:

- Since 2006 DACS has distributed over £100m in ARR royalties to over 5,700 artists and estates
- Extension of the Right to heirs and beneficiaries in 2012

Challenges:

- Finding rightsholders
- Calls to see the right dissolved post-Brexit
- AMPs do not always comply with the law

International network

- 42 sister organisations in 34 countries
- Representation of other repertoires in our country and vice versa
- CISAC membership
- International treaty on ARR is essential



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