

# Personal Data: Lifting the Veil on the Art Market

The art market has traditionally been shrouded in secrecy, with anonymity often favoured by art market participants. But global moves to regulate the art market may require dealers and auctioneers to lift the veil on the identity of buyers and sellers, which some say is bad for business and at odds with ever stringent rules on data privacy.

Recently, a judge in New York made a ruling directing Sotheby's to reveal the identities of the consigner and buyer of an allegedly stolen Italian old master painting, which was sold at auction in 2019 for US\$100,000. The case was brought by the heirs of a Jewish art dealer who say the artwork was lost during the Holocaust. It was their case that they needed the names of the sellers and buyers so that they could pursue a claim in restitution for the return of the artwork.

Sotheby's rescinded the sale and the parties are now reportedly engaged in settlement discussions, meaning that Sotheby's may not need to disclose the names if the artwork is returned. Even so, this case sheds light on the notoriously opaque nature of the art industry, as well as the seeming incongruity of an individual's right to privacy in an ever-increasing era of transparency.

Sotheby's put forward in its defence that the safeguarding of its client's confidential information is not only a matter of industry practice, it is precluded from disclosing client information due to confidentiality provisions in its commercial contracts. However, in its judgment the Court held that there is "no reason to permit a vague allusion to confidentiality to shield (and effectively prevent) petitioners from pursuing their claims".

The courts will often direct auction houses to reveal the name of one party to a transaction, but the direction by the Court, in what is being described as a landmark ruling, to reveal the names of **both** parties is unusual.

This ruling which sets a precedent for Courts to compel wider disclosure in restitution claims, coincides with what we're seeing as a general push towards greater transparency in the art world. Breaking with tradition, developments aimed at regulating the art market, including recent amendments to data protection legislation and anti-money laundering regulations, have compelled auction houses to adopt and abide by a more rigorous set of administrative and reporting standards as regards confidentiality and personal data.

We set out some of the key legislative developments impacting the art world below.

## Data protection legislation

### *Europe and UK*

One of the most drastic changes to data protection law in recent years has been the introduction of the European Union General Data Protection Regulation ("**GDPR**") which came into force on 25 May 2018. It affects all organisations that hold personal data on living individuals in the EU, and establishes guidelines for handling such data. The GDPR also aims to empower individuals by giving them a number of rights in terms of how they can access and influence the use of their personal data.

The UK GDPR aligns closely with the (EU) GDPR and was introduced after Brexit with some minor modifications to adapt to the domestic context. The UK GDPR retains the same core data protection principles as the GDPR including, for example, a requirement for data to be processed fairly, lawfully and in a transparent manner. Data should only be obtained for specified, explicit and legitimate purposes and data should be kept for no longer than is necessary for the said legitimate purpose.

The cost of non-compliance is very high with penalties for infringement now reaching up to £17.5 million under the UK GDPR, and up to €20 million or 4% of annual global turnover (whichever is greater) under the GDPR.

## **Hong Kong**

Hong Kong's local laws on data protection are contained in the Personal Data Privacy Ordinance (Cap.486) ("PDPO"). It shares some conceptual similarities with the GDPR, however the GDPR has a much wider geographical reach and places more onerous requirements on organisations particularly in respect of accountability and governance. For example, under the GDPR, data controllers are required to implement technical and organisational measures to ensure compliance, whereas the PDPO merely makes good practice recommendations for achieving accountability.

Of particular concern to art galleries and auction houses is the requirement under the GDPR for data users to have a policy which sets out the maximum periods for which different categories of data should be stored. Data retention is a key element of the GDPR's storage limitation principle, which provides that personal data must not be kept for longer than necessary. This is particularly relevant when considering issues of provenance in the art market, which often requires data to be stored for long periods of time.

The Data Protection Principles as set out in the PDPO requires data users to take all practicable steps to ensure that personal data is accurate and is not kept longer than necessary for the fulfilment of the purpose for which the data is used. Hong Kong currently does not require data users to devise a data retention period policy, but the Office of the Privacy Commissioner for Personal Data has recently made recommendations to amend the Ordinance accordingly.

## **Regulating the Art Market**

Collectors and dealers have traditionally favoured anonymity to avoid prejudice in the bidding process, as well as to protect an individual's privacy and security. This aspect of the market has however lent itself to being a known 'playground' for money laundering and other financial crimes.

Consequently, the art market has faced increased scrutiny and regulatory oversight in the US, UK, and the European Union.

In January 2020, the Money Laundering and Terrorist Financing (Amendment) Regulations 2019 came into force and was enacted to ensure the UK's compliance with the EU's Fifth Anti-Money Laundering Directive which aims to boost transactional transparency. The regulations were amended to include 'art market participants' (AMPs) which is defined as a firm or sole practitioner who trades in, or acts as an intermediary in the sale or purchase of art valued at €10,000 or more; or is the operator of a freeport for the storage of art valued at €10,000 or more. The definition of AMPs does not extend to individual artists.

Under the rules, AMPs are required to register with the relevant home authorities, and establish the identity of the 'ultimate beneficial owner' (i.e. both seller and buyer) before entering into a transaction for the sale of an artwork.

For now, the US has decided against expanding its anti-money laundering ("AML") rules to the art market focusing instead on the antiquities trade. Hong Kong's AML regime also does not currently extend to the art market. However, since 1 April 2023, dealers of precious metals and stones who engage in cash transactions above HK\$120,000 are required to perform AML preventative measures. This extends to artworks and antiques that contain precious metals or stones.

## **Commentary – Balancing privacy and transparency**

The GDPR has expanded the territorial scope of data protection laws, increased the penalties for transgressions, and radically changed the processing, recording and other compliance obligations of businesses. Simultaneously, global AML regulations have imposed greater obligations on the previously underregulated art market.

Against this backdrop it is easy to understand how AMPs can be challenged to find a delicate balance between its legitimate commercial and legal obligations, such as between the need for client privacy against the need for AML checks.

Whether your organisation is captured by the GDPR or not, there are several steps you can take to ensure compliance with the relevant data privacy and anti-money laundering regulations to ensure business continuity and to minimise disruption to your art business:

1. Determine what client data you process and why, where you send it and who you share it with;
2. Establish a cross-border inventory of data flows and check that transfers are covered by appropriate arrangements;
3. Obtain legal advice and / or appoint data protection and AML / Know Your Client ("KYC") officers;
4. Adapt your privacy notices and policies;

5. Adapt your KYC / due diligence policies and procedures;
6. Review reporting obligations and procedures for data breaches and under the relevant AML regulations; and
7. Provide workforce training in data and KYC / AML awareness.

Although we are not aware of any fines being issued to AMPs to date, the GDPR has certainly flexed its enforcement muscle since its inception with fines hitting a record high of €2.1 billion in 2023 alone. This new record is attributed to its largest ever fine issued to Meta in relation to the unlawful transfer of data to the US. This should serve as a stark warning to any organisation with global or multijurisdictional touchpoints, including international auction houses, for the need to have strong data security measures in place to ensure compliance with the relevant legal requirements at home and abroad.

Recently, a well known auction house with operations in Hong Kong was hit by a major [cyberattack](#). RansomHub claimed to be behind the cyberattack and threatened to release sensitive personal information of at least 500,000 clients worldwide unless a ransom was paid. RansomHub wrote on the dark web "...if this information is posted they will incur heavy fines from GDPR as well as ruining their reputation with their clients..."

This incident underscores the increasing threat of cyberattacks and other external forces, alongside the need to have stronger data protection measures to prevent unauthorised access and use of personal data.

#### Author



**Jezamine Fewins**  
**Partner and Head of Litigation**

---

+852 2972 7114  
[jezamine.fewins@lewissilkin.com](mailto:jezamine.fewins@lewissilkin.com)

Find out more

