

State of the Art Market

Spring 2019

Record prices and exceptional artwork in an increasingly global arena have propelled the art market to new heights in 2018, but will it last through 2019 and beyond?

2018 was an extremely active year not only for the auction houses, but also for the private sector of the art market, which continues to expand across the globe. Many Western galleries have established brick and mortar outposts in Asia, including Hong Kong, mainland China and Korea. Art fairs in Europe, the Middle East, Asia and the Americas remain a major draw for collectors worldwide.

Contemporary art continues to dominate with robust sales and growth across the board.

Many museums and dealers have turned their focus more than ever on diversity and inclusion, giving the spotlight to artists of color and women, with increased exposure in museum and gallery exhibitions, which has led to an uptick in market demand and new interest in a diverse and multicultural artist base.

Technology has facilitated the flow of information around the world, and buyers are able to see images instantly from practically any location on the globe. Information is disseminated at exponential speeds and has greatly affected the way in which buyers make decisions about which artists and artworks to follow. Online auction sales, Instagram, Blockchain and Artificial Intelligence (AI) are part of the changing landscape. In some cases, technological innovations have also influenced art-making itself.



Wassily Kandinsky
Improvisation auf Mahagoni (Improvisation on Mahogany), 1910

Signed Kandinsky (lower left)
Oil on mahogany panel
25 x 39 1/2 in. (63.5 x 100.2 cm)

Sold at Sotheby's New York, Impressionist & Modern Art Evening Sale, November 12, 2018: *The Triumph of Color: Important Works from a Private European Collection*
Estimate \$15 - 20 million, sold for \$24,233,800 including buyer's premium

Image courtesy Sotheby's

40 YEARS

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Global Trends

This globalization of the art world has led to prosperity for the auction houses and large galleries, but it is a more complicated state of affairs for smaller and mid-sized galleries. The consolidation of artists and clients by larger galleries is unparalleled; these 'one-stop-shops' have taken on representation of large numbers of artists and artists' estates, and they have the marketing and business savvy to compete on a truly global level, unlike their smaller competitors. However, because art is such a specialized field, and because the 'cool factor' weighs so heavily in what is trending in Contemporary art, smaller galleries can still have other advantages which cannot necessarily be monetized. The underground and unstructured business model still thrives; yet in market terms, the disparity between large and small seems to be ever increasing.

It is difficult to capture accurate statistics relating to the art market, as a significant portion of transactions happen privately, with no public record of price paid or to whom a work of art was sold. According to Art Basel, roughly 53% of transactions by volume occur privately.¹ For this reason, the statistics of this unregulated market are just one tool we use to interpret information and trends.

Instead of quantifying the limited available data to analyze results, many have focused on analyzing the behaviors of potential buyers in order to predict trends. This is an idea that took root in 2011 with the founding of Artsy, a unique platform that maps users' interests in art by drawing visual connections among works. This novel approach attracted startup investment from many major players in the industry, evidence that a forward-looking approach may provide clues that traditional analysis could not. As we know, analyzing partial data from an opaque market only provides part of the picture. Sotheby's acquired The Mei Moses Art Indices, now known as Sotheby's Mei Moses, in 2016, and also acquired Thread Genius in 2018, covering both approaches to these types of analyses: Mei Moses captures repeat auction sales in various categories, and Thread Genius is an AI platform which attempts to predict taste based on user's preferences for certain artworks.²

Technology came into play in other areas of the market as well: Christie's partnered with Artory, an independent digital registry, to encrypt registration of works sold in its Barney A. Ebsworth Collection sale using Blockchain technology. Christie's maintains that a secure, encrypted certificate will become a digital record of relevant information about the artwork. Blockchain can be used to track ownership of individual pieces of art from the point of encryption forward. Each work's history could be stored digitally, including data about changes of ownership; new information could be added from others who subsequently encountered the work. This could include invoices and records from dealers, galleries, appraisers, customs officers, shippers and insurers. The potential benefits of having such a comprehensive paper trail are clear. Records maintained via Blockchain could make it much faster and less expensive for art experts to confirm

a particular work's provenance, authenticity and current whereabouts. Buyers could thus have greater confidence in their acquisitions, while sellers would have confidence in marketing their works to potential buyers.³

Statistics and year end results

2018 was a record year in terms of sales volume; Postwar and Contemporary art remained the leader, followed by Impressionist and Modern. Christie's reported its highest grossing year ever, with \$7 billion in total art sales for 2018, as compared to \$6.6 billion in 2017.⁴ Private sales at Christie's totaled \$653.3 million, up 7%, while 88 online-only sales totaled \$86.6 million, up 20%. Online sales brought new buyers (41% of new buyers joined Christie's through online sales).⁵ The auction results were due in no small part to the success of the David and Peggy Rockefeller estate sales. Elsewhere, Sotheby's total consolidated sales including aggregate auction sales, private sales and sales from inventory in 2018 increased 16% from the prior year to \$6.4 billion. Private sales were up 37% to a total of \$1.02 billion, a five-year high. Sales to online buyers including wine and real estate, totaled \$220.4 million, a 24% increase over 2017.⁶ Sotheby's chief executive officer, Tad Smith, said in a previous earnings call that the company tends to focus on the first nine months of the year in terms of understanding the overall numbers, since there are usually so few sales in the last quarter. And last but not least, Phillips also reported its best year on record in 2018, with \$916 million in art sales worldwide.⁷ This was due to a focus on selling more Modern art and the company's expansion in Asia. Phillips has also attracted some top talent from other auction houses in the past couple of years.



Eugène Delacroix
Tigre Jouant Avec Une Tortue, 1862

Oil on canvas
17 ¾ x 24 ½ in. (45.1 x 62.2 cm.)
signed and dated 'Eug Delacroix 1862.' (lower left)

Sold at Christie's The Collection of Peggy and David Rockefeller: 19th and 20th Century Art, Evening Sale, May 8, 2018 for \$9,875,000 including buyer's premium

Image courtesy Christie's Images Ltd.



David Hockney, *Portrait of an Artist (Pool with Two Figures)*, 1972

Acrylic on canvas, 84 x 120 in. (213.5 x 305 cm.)

Sold at Christie's New York, Post-War and Contemporary Art Evening Sale, November 15, 2018. Offered without a reserve and without a guarantee. Sold for \$90,312,500 including buyer's premium

© David Hockney, Photo Credit: Art Gallery of New South Wales/Jenni Carter

Auction sales - breaking records

Several auction records were set in 2018, and we have already witnessed some this year as well. Sotheby's sold its most expensive work of art in the auction house's history in 2018: Amedeo Modigliani's largest painting, a nude for \$157.2 million, sold in New York in May.⁸

The Collection of Peggy and David Rockefeller, sold at Christie's in 2018 to benefit charities, was epic - several sales offered a breadth of Impressionist and Post-Impressionist works of art, American paintings, English and European furniture, Asian works of art, European ceramics, Chinese export porcelain, silver, and American decorative arts and furniture. This reflected the family's lifetime of collecting, including works handed down from previous generations. The collection was highly personal and provided excellent provenance for the works of art sold. The total amount sold was \$835.1 million.⁹

In addition to the multiple sales from the Rockefeller estate, the Barney A. Ebsworth estate sale drew attention at Christie's in the following auction cycle. A rare Edward Hopper painting, *Chop Suey*, of 1929, sold for \$91.9 million in November. The work depicts a classic colorful interior scene of two women in a café, lost in thought. A 1954-55 gestural de Kooning, *Woman as Landscape*, which had previously been owned by actor Steve Martin, was also sold in the same auction, achieving a record price for the artist at \$68.9 million.¹⁰ Monumental de Kooning works from this period with both figure and landscape elements rarely become available for sale.

The other big news of 2018 was the record price achieved at auction for a living artist, David Hockney. The pool scene with two male figures sold for \$90.3 million dollars at Christie's New York in November 2018. The work was sold without a reserve or guarantee, ostensibly a risky approach for such a major painting.¹¹ Hockney painted this canvas in

an intensely productive time. The idea began as he noticed two photographs on the floor of his studio, one of a person swimming underwater, and another of a standing figure, looking down. Unsatisfied with the result, he reworked the piece before it was complete, practically repainting the entire composition.¹² The standing figure, in Hockney's final version, is Peter Schlesinger, Hockney's muse and romantic partner.

Just as a painting by a male artist of his partner shook the market, so did a nude self-portrait of a fleshy and corpulent female form, created by an artist who has made her mark by painting plastic surgery and liposuction patients, trauma and deformity victims, diseased bodies, hermaphrodites and transgender patients. Jenny Saville's work stands in contrast to traditional idealized female nudes, making her a favorite in the feminist and avant-garde art community. Her painting, *Propped*, sold for £9.5 million in October 2018 at Sotheby's London, a record for a living female artist.¹³ This work had been included in the famous 1997 exhibition, *Sensation: Young British Artists from the Saatchi Gallery*, setting off a new movement of the 'YBA' artists, as they came to be called.

The market embraced diversity and new records were plentiful

New price benchmarks for African American artists were set in the same period, at Sotheby's New York in November 2018. Jack Whitten's *Ancient Mentor I* sold for \$2.2 million, solidifying his presence in a strong market for artists of the African diaspora. (Whitten's own record was later surpassed in 2019 when a work by the artist sold for \$2.6 million at Sotheby's New York, illustrated). Works by Jacob Lawrence and Henry Taylor also reached new auction highs, demonstrating interest for black artists working in both the 20th and 21st centuries.¹⁴ The record for a Latin American artist was also broken, with Diego Rivera's *Los Rivaless*, selling at Christie's on May 5, 2018 for \$9.76 million.¹⁵ In Asia, Zao Wou-Ki's massive painting, *Juin–Octobre 1985* sold for \$65 million at Sotheby's Hong Kong in October of 2018, a new auction record for the Chinese-French artist. The painting well surpassed its presale estimate, which was in the range of \$45 million. The painting sold in Sotheby's Modern and Contemporary sale, totaling \$200 million, a record for an evening sale in Hong Kong.¹⁶

Buyers were also accepting of new forms of artwork, as evidenced by the surprise result for a work of art created with AI, sold at Christie's in October 2018. Taking on the appearance of an unfinished portrait painting, the piece was created by French art collective Obvious. These artists used an algorithm based upon a data set of 15,000 portraits, painted between the 14th to the 20th centuries, to generate the work of art. The first part of the algorithm, dubbed the 'Generator', creates an image based on the data. The second part of the algorithm, the 'Discriminator', attempts to differentiate the difference between a human-made image and an AI one. The work, *Portrait of Edmond Belamy*, by this relatively unknown artist collective, sold for \$432,500, the first AI-generated piece to sell at auction.¹⁷



Georgia O'Keeffe (1887-1986)
The Red Maple at Lake George

Oil on canvas
© 2019 Georgia O'Keeffe Museum / Artists Rights Society
(ARS), New York

Price realized: \$ 8,187,500
Estimate: \$ 7,000,000 - \$ 10,000,000

Image courtesy Christie's Images Ltd.

Not all records were in the top-grossing categories; however, Sotheby's achieved the highest price paid for a pre-Modern era female artist in January 2019 with Elisabeth-Louise Vigée Le Brun's 1788 *Portrait of Muhammad Dervish Khan, Full-Length, Holding His Sword in a Landscape*.¹⁸ This painting sold for \$7.2 million.

Although the Old Master market is not as robust as the Contemporary or Impressionist markets (partly because there is limited inventory of works of this age, with many important works already in museum collections), the Old Masters sales at Sotheby's in December 2018 were extremely strong, with bidders from twenty-two countries, from both new and expected markets, particularly from the UK.

The auction house achieved an 85.7% sell-through rate in the evening sale - the highest achieved in the category in London, with 45% of lots selling above top estimates. In this sale, four auction records were achieved: The Master of the Aachen Altar, The Master of Saint Veronica, Jacob Isaacksz van Ruisdael, and Erasmus Quellinus the Younger. Private collectors dominated bidding with 75% percent of the lots going to private individuals and two purchases going to institutions (Evening sale: Lot 6, Day sale: Lot 188).¹⁹ A Peter Paul Rubens sketch also achieved a record price for a drawing by the artist in 2019, selling for \$8.2 million at Sotheby's New York. The piece also surpassed its presale estimate of \$2.5 - 3.5 million.²⁰



Elisabeth-Louise Vigée Le Brun
Portrait of Muhammad Dervish Khan, Full-Length, Holding his Sword in a Landscape, 1788

Oil on canvas
88 3/4 by 55 1/2 in.; 225.5 by 136 cm.
Signed and dated lower right: L. Vigée Le Brun / 1788

Estimate \$4-6 million; sold at Sotheby's New York, Master Paintings Evening Sale, January 30, 2019 for \$7,185,900 including buyer's premium
RECORD FOR THE ARTIST AT AUCTION
RECORD FOR A FEMALE ARTIST OF THE PRE-MODERN ERA

Image courtesy Sotheby's



Paul Signac (1863-1935), *Le Port au soleil couchant*, Opus 236 (Saint-Tropez), 1892

Sale #16930 Impressionist and Modern Art Evening Sale. Signed and dated 'P. Signac 92' (lower left); inscribed 'Op. 236' (lower right)
Oil on canvas

Price realized: £19,501,250, 25 5/8 x 32 in. (65 x 81.3 cm.)

Image courtesy Christie's Images Ltd.

February of 2019 in London also started with a flurry of activity around the Impressionist sales. Christie's London sold a rare Signac painting of a sailboat for £17 million, setting a record price for the artist at auction.²¹ The painting had once sold at auction in 1994 for \$1.8 million. This piece exhibited strong, vibrant color, characteristic of the artist's later period, while maintaining the signature Pointillist technique, making it a highly coveted work of art, similar examples of which rarely come up for sale.

Sotheby's had relatively few lots in its February Impressionist and Modern sale, 91% of which sold, for a total of £63 million. Sotheby's same total in 2018 was £136 million, and the 2017 total was £194.7 million, a record for the house.²² The total pre-sale estimate this year was the lowest in ten years and perhaps an indicator of concerns over whether the works would continue to achieve record prices with a backdrop of uncertainty around Brexit and shaky global financial markets.

Legal and Tax issues

While the art market is greatly expanding, it still lacks transparency and oversight. Because there are relatively few major players, it is often still considered a handshake business and it is a 'buyer beware' environment.

There have been some regulatory changes in the past couple of years, along with some significant legal actions.

As the market climbs higher, regulators and governments are looking more closely at art as an asset, subject to taxes when the asset transfers. The US Tax Cut and Jobs Act (TCJA) of 2017 eliminated the use of Internal Revenue Code Section 1031 Exchange as it relates to art, whereby art collectors could defer the capital gains on the sale of an artwork by reinvesting the proceeds in a 'like kind' artwork within a specific period of time. While the effects of this recent change have yet to be determined on the market as a whole, it is possible that the elimination of this section of the Internal Revenue Code could lead to a lower supply of major works on the market, as collectors facing this tax bill could be reluctant to part with their artwork. We have not yet seen sufficient evidence that this is the case.

An initial trade deal between the US and China in 2018 indicated a possible 25% tariff on "all artworks that originated in China, regardless of how they entered the United States." The proposed deal included original paintings, drawings, sculptures, and antiques over 100 years old.²³ If the proposed tariff goes into effect, it could greatly impact sales of Chinese art.

In major US markets such as New York and California, enforcement of tax collection on art is of particular focus. Each state may have different laws pertaining to sales and uses tax, and buyers must keep careful records of how much they paid, where and by whom the work was shipped, and other key factors, in addition to engaging a qualified tax expert on the matter.²⁴ Collectors, along with gallerists, are required to comply with new laws. Galleries in the EU are now facing the challenge of complying with the Fifth Anti-Money Laundering Directive, brought about by the discoveries in the 'Panama Papers.' This includes, but is not limited to, extending certain anti-money laundering and counter-terrorism financing rules to art dealers. Without the resources to perform proper research into who is purchasing art, galleries may have to

outsource this undertaking, which could prove costly and difficult for small businesses which rely on selling artwork to new clients at art fairs in cities around the world. At the time of this publication, similar legislation was expected to be introduced by the United States Congress.²⁵

One particularly high-profile example that put the art world on alert was the case of Jho Low and the 1MDB fund, exposed by the 'Panama Papers.' Mr. Low was allegedly involved in laundering money in a complex network of accounts and shell companies, and which involved several valuable works of art, estimated to be worth about \$200 million.²⁶

Intellectual property and copyright issues were at issue in the US courts as well. The California Resale Royalties Act (CRRRA) of 1977 was restricted in 2018; the court ruled that it could only apply to sales which took place in California in 1977, citing that a federal copyright law from 1978 superseded this law. The 1977 law designates that a royalty be paid to artists or their estates when an artwork is sold at auction. The appeals court ruled that copyright owners lose control over future sales of their works after the first sale of the respective artwork. Similar resale royalty laws are in place in much of Europe, but for now, they will not apply in the United States.²⁷

Another highly controversial case around art involves American Pop icon artist Robert Indiana, who died at age 89 in 2018, leaving behind a complicated estate and a lawsuit. Indiana escaped the New York art world for Vinalhaven, Maine, in 1970 and had lived there since. The day before he died, the Morgan Foundation, which owns the rights to his LOVE sculptures, filed a lawsuit against Jamie L. Thomas, his longtime caretaker. The foundation claims that Mr. Thomas isolated the artist and had taken advantage of him by creating and selling fraudulent works of art for millions of dollars. It also claims that Mr. Thomas coerced the artist into signing a new will, which allegedly stipulated that he would inherit the artist's entire estate, which includes approximately \$50 million in art. Mr. Indiana had established a new foundation in 2016, the same year in which he revised his will, and at that time appointed Mr. Thomas and his lawyer, James W. Brannan, as board members. An inventory conducted by Mr. Brannan upon the artist's death purportedly showed that several works of art had allegedly gone missing.²⁸

The issues surrounding the purchase and sale of art around the world can be complex; keeping up with changing regulations can be challenging, especially as the focus on art as a highly valuable asset continues to sharpen.



KAWS
Untitled (Fatal Group), 2004

Acrylic on canvas
68 1/8 x 68 1/8 inches (173 x 173 cm.)
© KAWS. Courtesy of the artist and Skarstedt, New York.

Estimate \$700,000 - 900,000
sold for \$2,716,500 including buyer's premium
Phillips 20th Century & Contemporary Art evening sale, New York,
November 15, 2018
Property from the Over Holland collection

Image courtesy Phillips.

Expectations for the coming year

As the art market continues to expand and evolve across the globe, issues of ownership, intellectual property, regulation and taxation become increasingly complex. New explorations of technological advances are shaping the market and even the art itself. 2019 has begun with strong economic indicators, record prices and sales volume, despite global economic uncertainty and volatile equities markets. The continuation of growth in the global art market remains to be seen in a changing economy and in the new territory of interconnectedness and fast-paced technological developments.

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