



Art & Finance Report 2019
6th edition



Expert voices

PROMOTING RESPONSIBLE PRACTICES: LESSONS LEARNT FROM THE RESPONSIBLE ART MARKET INITIATIVE



Justine Ferland

Researcher at the University of Geneva's Art-Law Centre, attorney-at-law (Quebec, Canada), and member of RAM's Task Force



Sandrine Giroud

Partner at LALIVE, Switzerland, board member of the Art Law Foundation, and member of RAM's Task Force

Should the art industry be subject to stricter regulations?

The question remains a key concern for many of those working in the art trade: some argue in favor of greater transparency and accountability, whereas others warn of the added costs and barriers that would be created by further regulation. People with a wide range of viewpoints are slowly but surely coming to accept the importance of an industry worth over US\$60 billion, its financialization and associated risks, and the need for more sustainable practices. Maintaining trust and credibility in a market that has discretion at its core without undermining the commercial interests of the industry while also promoting fair and efficient competition for future growth: this is the challenge

still facing the art market today. The Responsible Art Market Initiative (RAM) is a direct response to this challenge.

An initiative by the market for the market

RAM is the first of its kind: a non-profit, cross-market initiative launched in Geneva (Switzerland) in 2015, under the auspices of the Geneva-based Art Law Foundation (ALF) and the University of Geneva's Art-Law Centre (ALC). Its mission is to raise awareness among art businesses of the risks facing the art industry and to provide practical guidance and a platform for sharing best practice to address those risks. RAM's founding

members span the entire spectrum of the art market and include art businesses, academic institutions, and attorneys.

To date, RAM has published two sets of practical guidelines and checklists that are increasingly used and referred to: the *Guidelines on Combatting Money Laundering and Terrorist Financing*¹³⁰ and the *Art Transaction Due Diligence Toolkit*¹³¹. RAM holds an annual conference in Geneva during the Art Genève art fair. This provides an opportunity for art market professionals to meet and exchange ideas on market practices, challenges, and new initiatives.

From the outset, RAM has endeavored to go beyond the question of whether the art market should self-regulate. Instead, its work involves: (1) gathering industry knowledge and practices through dedicated working groups composed of a diverse array of professionals, (2) synthesizing and structuring the information into practical take-aways and best practice, (3) testing findings through surveys and bilateral discussions with industry stakeholders, and (4) holding public discussions and debates at RAM's numerous events to discuss the latest ideas. As such, these responsible practices are not exhaustive and are bound to evolve and need to be adapted to the specific context of particular art businesses or industry sectors. They do not purport to set a standard to be applied in all situations; rather, RAM advocates for a risk-based approach to determine the degree of due diligence required in relation to a specific issue.

Lessons learned

Almost five years into the project, RAM is going from strength to strength and its message is resonating more widely. Here are some of the lessons learned so far:

There is a real and sustained appetite for practical guidance on risks in the art market and responsible practices to address them. One of the measures of RAM's success is the growing number of people attending its annual event and the fact that the audience includes very diverse and international art market professionals such as art dealers, gallery representatives, academics, service

¹³⁰ *Guidelines on combatting Money Laundering and Terrorist Financing* available at <http://responsibleartmarket.org/guidelines/guidelines-on-combatting-money-laundering-and-terrorist-financing/>

¹³¹ *Art Transaction Due Diligence Toolkit* available at <http://responsibleartmarket.org/guidelines/art-transaction-due-diligence-toolkit/>

providers, and government agencies. This indicates a real interest in the initiative's mission described above and consolidates RAM's position as an initiative by the art market, for the art market. RAM is clearly viewed as able to address the risks faced by the industry from a practical, holistic standpoint and suggest the best practice that should be adopted in response. In addition, RAM has been able to further its mission by submitting its draft guidelines and checklists for public consultations. It has reached out to key stakeholders for suggestions on how to improve, simplify, and enhance them prior to their public launch, and thereby ensured that the published documents are applicable in practice. The growing number of art dealers, individuals, and collectors who use or have adapted the RAM guidelines and checklists in their businesses indicates that the initiative has become a key point of reference for responsible conduct in the art market. It has succeeded in remaining accessible and useful for all art trade players, including smaller organizations without large compliance or legal departments.

The art market needs a platform for dialogue and exchange on best practice. RAM's goal of fostering a culture of dialogue has proven effective in creating a space where practices can be discussed freely and in a constructive manner. Through numerous international events, the initiative has brought together unlikely groups of panelists that have or represent diverse—and sometimes opposed—interests. These panelists, whose varied backgrounds included the art business, finance, legal compliance, art history, and scientific expertise, participated heartily in frank exchanges on topics such as the need (or not) for further regulation in the art market, the usefulness of new technologies, and the practicalities and limits of risk management procedures. Some panelists also agreed to touch upon sensitive topics about which they usually prefer not to speak in public, strengthening RAM's position as an independent and open discussion forum that welcomes all art businesses and their employees to discuss art market practices.

Independence is crucial to RAM's success—but other certification initiatives may be helpful in the long term. Throughout its expansion, RAM has endeavored to remain fully independent and to avoid all actual or perceived conflicts of interests. It has done so by aiming for equal representation of all art market stakeholders in its working group—now renamed the Advisory Board. This includes large and small galleries, auction houses, dealers, freeports, lawyers, law enforcement officers, art experts, appraisers, insurance companies, insurance brokers, compliance experts, and academics. From the outset, RAM has also clearly held that it is not, and will not become, a certification body for “diligent” or “responsible” art businesses. However, the fact that this question recurs again and again at RAM events and bilateral discussions with art market stakeholders raises the question of whether some form of certification by an independent body may indeed be helpful in the future to further increase transparency and trust in the market.

The future Although RAM's activities have generated positive responses and global interest, more work has yet to be done to ensure that the initiative remains a useful point of reference in the ever-evolving art market. With stricter anti-money laundering and terrorist financing regulations having recently come into force (or coming into force in the near future), RAM will be reviewing its Guidelines on Combatting Money Laundering and Terrorist Financing and especially the various country guides summarizing the anti-money laundering regimes that apply in different jurisdictions¹³² to ensure that all its materials remain up to date.

Moreover, having organized events in Geneva, London, and New York so far, and with Advisory Board members coming from all across Europe and the United States, RAM has long since transcended the Swiss borders of its two founding institutions to become an international point of reference in responsible art market practices. This is excellent news but also sometimes complicates discussions and working sessions between the stakeholders involved.

To facilitate smaller group conversations and ensure that national issues and particularities are adequately addressed, RAM is currently working on the creation of regional committees. For the moment, these efforts are focused on the United States and the United Kingdom (in addition to Switzerland). These regional committees will allow smaller groups of interested professionals to organize local awareness-raising events and discuss topics that are especially relevant to their jurisdictions and areas of practice.

In addition, the growing interest expressed by various art market players in getting involved in the initiative has prompted RAM to reflect on ways to further develop and encourage dialogue on a daily basis, outside of its various events and public consultations. In that regard, RAM is currently working on an updated, more interactive website, which it hopes will become a truly interactive platform where all interested stakeholders can engage in further discussion of risk and best practice in the market. Although the exact form is still to be determined, RAM hopes to share as many relevant resources as possible, link to other initiatives and organizations who are playing a role in creating a more responsible art market, invite further comments on the existing guidelines and checklists, and, in the long term, foster online dialogue between all members of the “RAM Community”.

Last but not least, RAM is also working on a new set of guidelines aimed at summarizing best practice for authentications of fine art, in the specific and practical spirit of the two previous publications. These guidelines will be launched at RAM's next annual conference, which will be held in Geneva, Switzerland, at the beginning of 2020.

The RAM experience shows that the art market needs and wants more dialogue on best practice. Whatever the direction taken as regards (self-) regulation of the art market, dialogue must be the first step to ensure that the relevant information is shared and considered to lay the foundation for a sustainable art market.

For more information:
<http://responsibleartmarket.org>

¹³² These country guides were drafted by legal professionals from various jurisdictions on a voluntary basis and are available at <http://responsibleartmarket.org/guidelines/guidelines-on-combatting-money-laundering-and-terrorist-financing/>