Japanese potential to introduce Artists’ Resale Right
- Waseda draft for Resale Right-

Akiko Ogawa, Doctor of Law
Adjunct Researcher
Research Center for the Legal system of Intellectual Property - RCLIP,
Waseda University, Tokyo
### The situation in Japan

1. Artists
2. Copyright Law
3. Art Market
4. Artists’ Resale Right

### The potential to introduce ARR in Japan

5. ARR history in Japan
6. Needed Factor (1)
7. Needed Factor (2)
8. Japanese potential
1. Do artists exist in Japan?

Of course YES!!

Approx. 500,000 artists in Japan

- Dancer, actor, performer: 75,000
- Musician: 101,000
- Author: 26,600
- Visual artists: 280,000

As for visual artists, Approx. 280,000

- Designer: 188,000
- Photographer, cameraman: 68,000
- Sculptor, painter, craft artists: 28,000

according to a national census held in 2010.
2. Does Copyright law exist in Japan?

Yes, since 1899

And Japan has been a member of Berne Convention since 1899
3. Does Japan have an art market?

YES!!

Japanese art market total sales:
243,100,000,000 yen
(243.1 billion yen)

Data from “Japanese Art Industry Market Research Report 2016” made by Art Tokyo
## The situation in Japan

### Market Breakdown

<table>
<thead>
<tr>
<th>Source</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dealer/gallery</td>
<td>79.20 bil. yen</td>
</tr>
<tr>
<td>Department store</td>
<td>62.70 bil. yen</td>
</tr>
<tr>
<td>Art fair</td>
<td>17.60 bil. yen</td>
</tr>
<tr>
<td>Auction</td>
<td>1.48 bil. yen</td>
</tr>
<tr>
<td>Purchases from domestic</td>
<td></td>
</tr>
<tr>
<td>Purchases from foreign</td>
<td>1.42 bil. yen</td>
</tr>
<tr>
<td>Purchases not from entities</td>
<td>2.52 bil. yen</td>
</tr>
<tr>
<td>And Others</td>
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<td>Total</td>
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Data from “Japanese Art Industry Market Research Report 2016” made by Art Tokyo

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2.19 billion euros
The situation in Japan

Auction
1.48 bil. yen

2 main auction companies:
Mainiti Auction approx. 50% share
Shinwa Art Auction approx. 25% share

Net Auction is not included ... total 2.58 bil. yen
only in YAHOO AUCTION

12 mil euros
23 mil euros

4. Does Artists’ Resale Right exist in Japan?

**NOT YET**

Japan has been a member of the Berne Convention since 1899, but article 14ter is an optional clause.

Is there specific difficulties in Japan?
The situation in Japan

Art market specificities

Players

- Art dealer
- Art gallery
- Department store
- Art fare
- Auction

1. **Department store** works differently from other countries. (Shower effect) exhibitions ⇒ sales ↑ (providing venue or selling as dealer?)

2. **Art exchange meetings** are held by dealers.
   (how can we decide the price?)

3. **Auction** is not the core way to sell art. Individual art market professionals are.
### The situation in Japan

**Market Breakdown**

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**Purchases from **foreign** selling entities**

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*Data from “Japanese Art Industry Market Research Report 2016” made by Art Tokyo*

*No. 2*

*No. 4 even including Yahoo sales*
5. ARR history in Japan

In 1947, by the request of Education Bureau of Ministry of Education, Prof. Katsumoto made a research about the reform of Copyright act.

In 1948, Professor published "the problems of copyright act reform," with an appendix of the draft reform law, which contains the artists resale right from Art. 65 to 68.

But the resale right has been left behind in all the revisions of the Copyright Law since.
The potential to introduce ARR in Japan

6. The needed factor (1) for introducing ARR

(1) Voices/Interest from Japanese artists
Requesting the ARR

But there is not a big movement yet. WHY?

The concept of ARR is not widely known.

RCLIP seminars/symposiums
the potential to introduce ARR in Japan

RCLIP seminars/symposiums

Since 2010
3 seminars + 3 symposiums
Invited scholars from all over the world

Professor Frederic Pollaud-Dulian, University of Paris I
Professor Hiroshi Saito, Niigata University
Mr. Simon Stokes, Blake Morgan
Mr. Gadi Oron and Mr. Benjamin Ng, CISAC
Dr. Akiko Ogawa, RCLIP

Panelists:
Artists/photographers/art collector/art dealer/lawyer
7. The needed factor (2) for introducing ARR

If so, we need to study the most adequate system to be prepared.

Waseda RCLIP draft law for ARR
the potential to introduce ARR in Japan

Waseda RCLIP draft law for ARR

• **Subject Matter**

  "original work of art"

  (i) paintings, drawings, illustration, **Manga**
  (ii) carving, engraving, sculptures
  (iii) Photographs
  (iv) Print, lithograph, tapestry
  (v) figurine, pottery, glassware, stationary article

  "considered to be original works of art".
the potential to introduce ARR in Japan

Waseda RCLIP draft law for ARR

• **Framework**
  
  the resale right shall be **5% of the sale price**.
  
  The *minimum* sale price for ARR to be applied is **300,000 J-yen**.

• In case that there exist **any equivalent trade exceeding 300,000 yen by exchanging goods or services** etc., it should be calculated based on the actual value evaluated in this trade.

• **ARR is exclusively personal** to the Artist and **inalienable**.
  
  After the death of the artist, resale right is succeeded with or without his testament.

• In case of a **derivative work** the artist of the original work and the derivative work decide the portion of the royalty of the resale right when the authorization is given.
• Exceptions

(a) transfer of original work of art for non-profit-making purpose and without charging any fees or remuneration

(b) a work made work for hire and copyright belong to a legal person or other corporate body
8. Japanese potential to introduce ARR

Japanese issue would not be the matter only about whether to introduce it but how to introduce it effectively.

If a proper way is clarified, the day might come when Japanese artists are duly protected all over the world.

Looking forward to having the day when ARR flourishes in Japan.

Akiko Ogawa