

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



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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**

according to a
national census
held in 2010

Designer
188,000

Photographer,
cameraman
68,000

Sculptor, painter,
craft artists
28,000

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:
243,100,000,000yen
(243.1billion yen)**

**2.19
billion
euros**

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

Purchases from **domestic** selling entities

Dealer/gallery 79.20 bil.yen

Department store 62.70 bil.yen

Art fair 17.60 bil.yen

Auction 1.48 bil.yen

Total
243.1bil. yen

2.19
billion
euros

Data from "Japanese Art Industry Market Research Report 2016" made by Art Tokyo

Purchases from **foreign** selling entities

1.42bil.yen

Purchases **not from entities**

2.52bil.yen

And Others

2.95bil.yen

Auction

1.48 bil.yen

**12 mil
euros**

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**

**23 mil
euros**

Both data are 2016 data from “ART COLLECTORS” magazine, April 2016 edition, published by Seikatsu-no-tomo-sha.

4. Does Artists' Resale Right exist in Japan?

NOT YET

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

Is there specific **difficulties** in Japan?

Art market specificities

Players

Art
dealer

Art
gallery

Depart
ment
store

Art fare

auktion

- Department store works differently from other countries. (Shower effect) exhibitions ⇒ sales↑ (providing venue or selling as dealer?)
- Art exchange meetings are held by dealers. (how can we decide the price?)
- Auction is not the core way to sell art. Individual art market professionals are.

Purchases from **domestic** selling entities

Dealer/gallery	79.20 bil.yen
Department store	62.70 bil.yen
Art fair	17.60 bil.yen
Auction	1.48 bil.yen

No. 2

No. 4 even including Yahoo sales

Data from "Japanese Art Industry Market Research Report 2016" made by Art Tokyo

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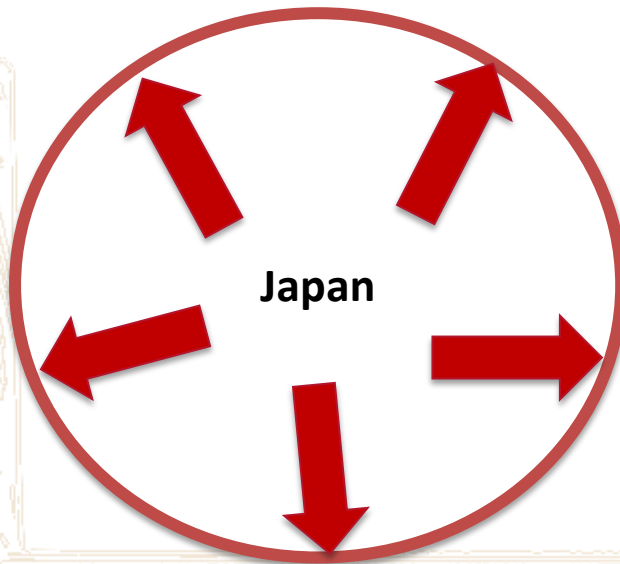
5. ARR history in Japan

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.

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

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

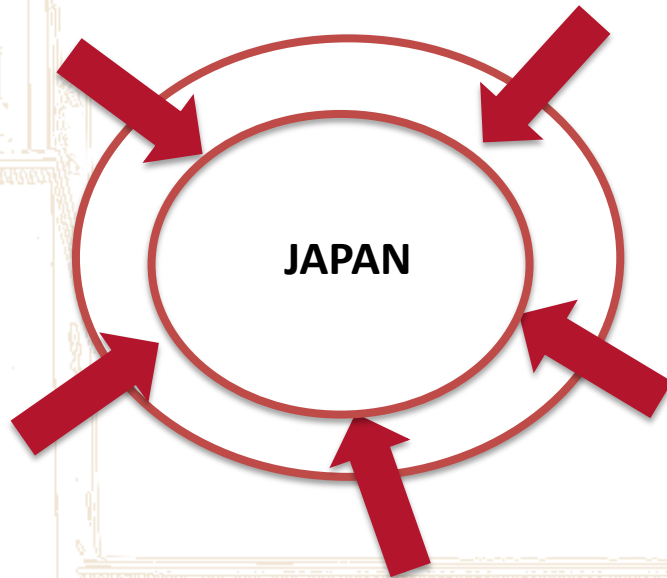
Mr. Gadi Oron and Mr. Benjamin Ng, CISAC

Dr. Akiko Ogawa, RCLIP

Panelists:

Artists/ photographers / art collector / art dealer / lawyer

7. The needed factor (2) for introducing ARR



**(2) Requirement
of International
Harmonization**

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

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- **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”.

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• 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 300,000yen 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.

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- **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 Yes

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