

著作權法追及權之研究^{*}

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摘 要

追及權首度於 1920 年為法國所法制化，斯時起，法國之視覺藝術家有權由其作品再銷售之過程要求獲得增值分享權利金，追及權雖時常被描繪為財產權利，然精確言之，應界定其為人格權與著作人權利之混合，因為其同時源自於不可移轉之源權及參與未來經濟性利用著作之權利，在將近一世紀後，追及權已在全球 81 個國家實施，並為伯恩公約第 14 條明文化，而融合至歐盟之層級。功能健全之著作權法必須提供著作人豐沛之支持，畢竟著作人應該是著作權體系首要之受益者，促進所有人珍視文化、強化對於創作者本身之尊重、藉由藝術之過程及實現來擴展參與，殆屬國際著作權規範之任務，從理論面觀之，追及權確然成為爭議性之議題，然在國際現實下，未來追及權之國際條約將成為下一階段之挑戰。

關鍵詞：追及權、著作權、視覺藝術、人格權、第一次銷售原則

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The Study on Resale Royalty Right

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Abstract

The Droit de Suite, or an artist's resale royalty right, was first enacted into law by France in 1920. Since then, French fine artists have had the right to be paid a royalty from the proceeds of any resale of their work. Often characterized as a pecuniary right, the Droit de Suite is more accurately defined as a hybrid of the moral right and the author's right, because it is an offshoot of both of the inalienable right of paternity and the right to participate in the future economic exploitation of a work. Almost a century later, the resale royalty right is implemented in 81 countries and is now recognized in Berne Convention in Article 14 and harmonized at European Union level. A well-functioning copyright law must provide robust support for authors, who are, after all, the first beneficiaries of the copyright system. To further the appreciation of culture among all the people, to increase respect for the creative individual, to widen participation by all the processes and fulfillments of art, is the duty of international copyright system. An international treaty for artist's resale royalty right would be a challenge of next stage.

Keywords: Droit de Suite, Resale Royalty Right, Visual Arts, Moral Right, the First Sale Doctrine

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