



March 2019

Owning Art

Art, the unique

Art comes from the mind of its creator. That makes it unique and original and worthy of a separate basket of rights for its creator. The creator's rights lie alongside that of an owner's.

Copyright, Moral Rights and Resale Rights

When acquiring art, a future owner cannot assume that along with the art, he is paying for the bagful of rights which would ordinarily follow the ownership of chattels. By default, he would not have:-

- ▶ the right to reproduction
- ▶ the right to modify or destroy
- ▶ the right to keep the full proceeds of a subsequent sale; resale rights

These rights belong to the creator-artist.

*You were a beautiful time in my life
And if that is all you'll ever be
Then that's okay.
Not all art is destined to hang on
the same walls forever."*

K.Towne Jr

Art leaps out and grabs you. It is hard to ignore.
There are two people art draws together; its creator and owner.
Both love it.



Copyright

When an owner does not own the copyright in the art, he cannot copy the image. He cannot simply copy it onto his favourite mug or T-shirt.

Art is created when an artist expresses himself on a medium (a canvas, paper, granite or plaster, etc). Because the art is original, the right to protect against its reproduction immediately comes into being. This right is “copyright”.

Only the artist can copy and reproduce the art. [This is by and large the case, although sometimes in specific situations, it may not.]

Copyright is a negative sort of right. It gives the copyright holder the **right to prevent** a third party from copying the piece.

In Singapore, copyright is governed by the Copyright Act.

If an art collector wants the copyright, he needs the artist to agree to sell or give it to him. If the collector wants to be able to deal with the copyright freely, he must make sure that there are no conditions attached to it.



Moral Rights

There are a host of rights that protect the honour and reputation of an artist.

When an artist expresses himself, he makes himself vulnerable. The art is an extension of his personality and thoughts.

What is subsequently done to it can affect his reputation and standing.

The law recognises this and protects him by letting him have a right to paternity or attribution in the work and the right of integrity:-

- ▶ ***The right of paternity or attribution***
Only the creator of the art can claim to be its parent. For anyone to attribute the piece to someone else is an infringement of that right and actionable by the artist.
- ▶ ***The right of integrity***
Additions and modifications to the art by third parties are not allowed. Neither can the spirit of a piece be impaired in such a way that it becomes disconnected to the originality of the work.

Only an artist can allow this.



Singapore and Moral Rights

Singapore does not protect the moral rights of artists.

The terms of the contract are therefore critical. If the contract does not create moral rights, none exists.

Alternatively, though less clear cut, the injured artist may attempt to fall back on the Copyright Act. But to do so will require action to be initiated by him to first prove that he is the creator and the work is original.

Resale Rights

An owner who subsequently sells art must share the sale proceeds with the artist or his beneficiaries. This right continues into future sales of the art.

This unique right recognises that the subsequent increase in the value of an artist's work comes from his continuous efforts to build his reputation and toil in his trade. It strives to reward him by allowing him to share in the subsequent increase in value of a previous work.

The right is specific to the artist and cannot be sold or assigned unless it is to his estate.

The resale right is contained in the Berne Convention Article 14ter.

Singapore and Resale Rights

Singapore though a signatory to the Berne Convention has not taken the next important step to enact its own legislation to create this right for its artists.

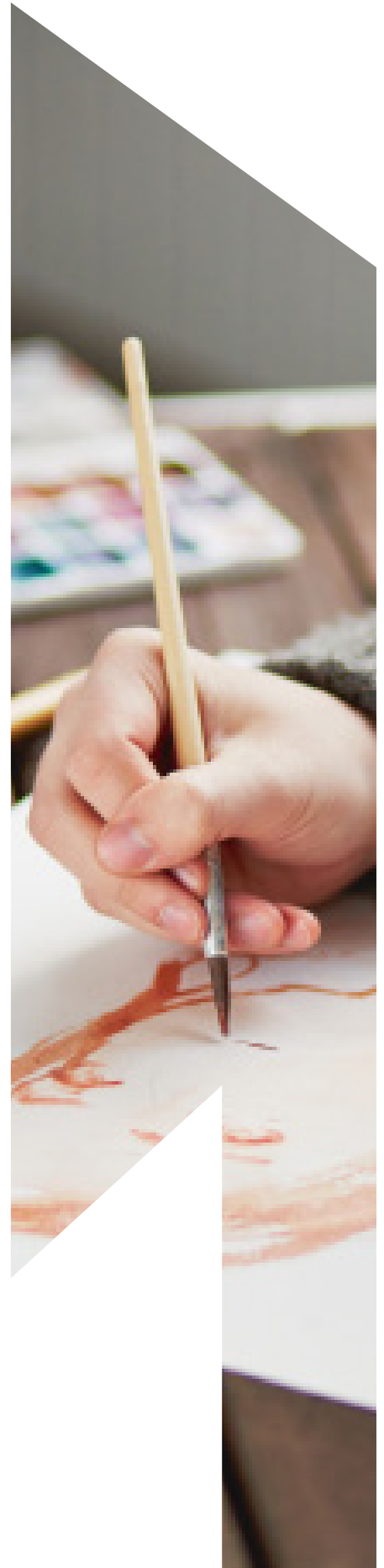
This means that art bought from Singapore artists can be bought and sold freely without its owners having to share the sale proceeds.

However, Singapore will uphold the resale right of an artist from a signatory country if that country has enacted its own protective legislation and has addressed the collection procedure and entitlement amount of the sale proceeds.

The identity and nationality of an artist is important.

"It is wiser to find out than to suppose."

Mark Twain



About Amita

Founding member of and Consultant at RHTLaw Taylor Wessing LLP, Amita has more than 24½ decades of experience as a practicing lawyer. She started off in the areas of Property, Banking and Finance and continues to provide valuable counsel in these areas. To support the push by the Singapore government towards building a Private Wealth industry, Amita subsequently carved out and developed the Private Client practice. Her journey to build an ecosystem connecting her professional life of law, her passion for art and returning back to society is a continuous one.

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