

***Droit de Suite*, Treaty Obligations and *Realpolitik* in the Asian Pacific Region**

Abstract

Droit de suite, otherwise known as the artist resale right (ARR), was once a civilian law peculiarity. Today, however, almost half of Berne Union members, including common law jurisdictions and several countries in the Asian Pacific region, operate such royalty schemes. Concerns for equitable treatment of domestic artists generally inform ARR laws but, since state-to-state reciprocity is enshrined in the Berne Convention, *droit de suite* necessarily includes an international dimension. This paper considers the potential effect of treaty obligations on the adoption of *droit de suite*, in the Asian Pacific region. The particular contextual focus is the relationship between Australia, which operates an ARR scheme, and New Zealand, which does not. In addition to their legal and regulatory cooperation commitments under the Australia New Zealand Closer Economic Relationship Trade Agreement (CERTA), both countries are Berne Union and World Trade Organization members, have severally entered into bilateral trade and investment treaties with individual Asian Pacific countries, and are parties to a comprehensive multilateral free trade agreement with the Association of Southeast Asian Nations (ASEAN) members. Along with Japan, Malaysia and Vietnam, they are also negotiating parties for the proposed Trans Pacific Partnership Agreement.

The structure of this paper, which should be considered work in progress, is as follows: following a brief overview of *droit de suite*, consideration is given to treaty obligations, in particular to those under the Berne Convention, TRIPS, CERTA and the Australia-New Zealand-ASEAN agreement. The interaction of the principles of reciprocity and national treatment is then examined. Finally, the impact of *Realpolitik* is considered, and conclusions are drawn.