

IV. IP Issues in Information Building and Sharing

1. IP Issues in Activities

ICH information building as practiced in the Philippines at present is done in two generic stages: 1) A preliminary enumeration; and 2) Summary inventory

The preliminary enumeration is comprised of two approaches: a) Primary Research and b) Secondary research.

- a) The Primary Research is activated by any number of things: information acquired through secondary research; from informants/practitioners; actual encounters, etc. A Field Research Documentation Team composed of Researcher, writer, a videographer and photographer is sent to document the ICH event. Primary Research at present is done very rarely because the ICH Office staff has not yet been organized, and the present team is formed by an emergency staff on a temporary basis;
- b) Secondary Research is carried out by carefully scanning and searching through all available ethnographic literature and similar sources for ICH bits of information.

The results of both the Primary and Secondary Researches are then compiled in a Preliminary Enumeration of Philippine ICH Inventory.

The bits of information accumulated in the Preliminary Enumeration are then evaluated, prioritized and the data is entered into a Summary Inventory Form which are compiled in a database that constitute the Inventory of Philippine Intangible Cultural Heritage. Additional information is incorporated, especially when more data becomes available thru verification and evaluation work is intensified when the prioritization is established. The database is managed under the Cultural Data Bank of the NCCA (CDB) within the NCCA Portal (defined in RA 10066).

There are several layers of security for the entire CDB since the NCCA Portal can only be accessed internally. The ICH databank has a separate security from the rest of the data. Access to the information is two layered: initial approval by the head of the agency, and succeeding, approval by the owner of the information before it is released by the secured databank administrator upon instruction by the head of MIS (Management Information System).

It is only the ICH/NCCA Committee that has full access to the databank without going through all the security processes since it is internal and is the source of the information, and is secured internally. It is from this ICH database that specific prioritized items are taken for information dissemination. When an item, e.g. the bogwa of the Ifugao, is selected for information dissemination that a more intensified primary field research is undertaken; including additional literature search for other bits of correlated information. The documentation includes still photography, and other forms of audio-visual formats. When all the materials are collated, a writer, editor, book designer, etc. are engaged for the final publication either in print or audio-visual formats. Copyright issues are taken into consideration in all these. The materials are distributed to universities and schools, the Department of Foreign affairs for distribution to Philippine embassies and consulate, the National Library for distribution to the national library network; relevant NGOs, the diplomatic corps, key individuals and the public multi-media. Ordinarily the materials are not sold commercially since there are an insufficient number of publications. In the case of the bogwa mentioned above, the materials disseminated was in the form of a DVD with two versions, one for local distribution and another for international release edited for some visuals that might create a reaction.

Issues on copyrights are continually addressed, and the NCCA is conversant of the provisions of copyright laws in the country: RA 8293 (Annex 1-4 and 1-5), RA 8792 (Annex 1-6), and RA 9239 (Annex 1-7) and is in continual touch with the Intellectual Property Office of the Philippines (www.ipophil.gov.ph). Contemporary issues on copyrights, etc., fall under the abovementioned laws. The NCCA is not burdened with problems of these concern since its publication are usually from original sources, when called for citations and acknowledgments are made, and distribution is usually academic in nature and not commercialized in public consumption.

Free, Prior and Informed Consent

This has never been an issue with the NCCA. The idea of a free, prior and informed consent of course, is an issuance of UNESCO and WIPO, which is not compatible with Southeast Asian sensibilities. When we work with our own indigenous people, consent is a given as a voluntary gesture as when one is with one's own family. One does not ask a kin to write down a formal approval/consent, which will be taken suspiciously as something quite unusual. It is for indigenous peoples a strange request since they will not cooperate in the first place if do not consent to the act. Consent is implied with the cooperation/participation in the internal case of the Philippines. There are cases where even local researchers asked for this, but had problems about from whom to get the consent because there is no defined authority to give the consent.

In cases where foreigners are involved, this type of consent is being promulgated under present laws. Although, again, there is no defined authority to give the consent. The NCCA is further invoking another provision that will require a memorandum of agreement be made where the rights of the indigenous peoples are stipulated, together with the consent. Further, in the proposed Senate Bill 2831 I proposed that the municipal/provincial authorities who are elected officials be the designated authority to give the consent as representatives of the concerned ethnic group.

Maintenance of Collected Information

The area of protection of IP in related laws does not fall directly and legally within the prerogatives of the NCCA but under that of the Intellectual Property Office of the Philippines (IPO). The role of the NCCA is more supportive than legal, and more in the area of the establishment and promulgation of government policy.

The determination of the database is subsumed within the Cultural Data bank (CDB) (Annex 3) of the NCCA of which ICH is a part. However, the CDB portion concerned with IP will be modified upon approval of the Implementing Rules and Regulations, which modification will be transmitted to ICHCAP in due time.

Adaptation

The issues of unauthorized adaptations, legal rights during secondary litigation as in broadcasting, advertising, publicity; and intellectual property of the secondarily used information are within the prerogatives of the Intellectual Property Office of the Philippines (IPO). Some corollary issues may fall under Republic Act 8371 (Annex 1-8) – “An Act to recognized, protect and promote the rights of indigenous cultural communities/Indigenous People, creating a National Commission of Indigenous People, Establishing Implementing Mechanisms, Appropriating funds therefore, and for other purposes”.

Secret, Sacred, or Confidential ICH

These issues if kept secret do not become problematic, but often when the information is given this is done voluntarily, with stipulation from the owners or culture bearers. These are treated under prevailing copyright laws and the abovementioned RA 8371 (Annex 1-8) and collaterally, RA. 8492 (Annex 1-9), “An Act establishing the National Museum System, Providing for its Permanent Home and for other Purposes”.

Access, Control, and Use

Communities Involvement

- In the implementation of the inventory/registration as provided for the RA1006 – the PRECUP, there are two levels: a) the national level where all the inventories maintained by national cultural agencies are made compatible and integrated into a centralized database to be maintained by the NCCA as stated above. The b) local level is where the communities’ participation comes in, but this is to be prefaced by orientation training of local level cultural officials on the objectives and technology of inventory/registration. The local officials will lead the communities in recognizing, identifying and the making of preliminary listings of ICH properties. This listing is to be reviewed by cultural experts, anthropologists, ethnographers, etc. to filter out items extraneous to the culture which may be shared with other communities. Only those ICH items unique to the culture of the community will be ascribed to them, while those shared will be in a separate category. This preliminary listing by the communities will be formatted to conform to the national database format.

- The issues of safeguarding, promotion and income-generating issues will be a concern for all, with the government providing the legal frameworks as discussed above, and the provision of technical assistance and funding in the national and local levels.
- The involvement of communities in the decision-making processes related to the management of ICH elements held by institutes is in an informal level, since legally the private sector cannot impinge on the prerogatives of institutions since these are defined by charters. However, they are consulted in every opportunity because officials of institutions are not necessarily culture bearers, and their decisions always need perspectives from within the culture.
- The authority of ICH subjects and their capacity to manage information once produced are covered by the existing copyright laws implemented by the IPO Office.
- The bearer's agreement on modification or transformation of ICH materials is covered by the legislation stipulated above.
- The determination of communities' legitimate rights holder is at present problematic. As discussed above, because of existing copyright laws, all cultural heritage is now in public domain and therefore are open to exploitation. The original owner/creator cannot be identified thus copyright laws do not apply. Whether communities are legal owners of their own ICH is debatable and cannot be established legally but only through policy. This is the reason the NCCA made the move towards a law to correct this (SB 2831 Annex 1-3),
- The management of access and use of ICH information by communities is conditioned by the protocols of managing the Cultural Data bank of the NCCA, stated in the foregoing.
- The general public's interests to benefit from and enjoy the information building and sharing activities of ICH are ultimately the objective of government, since it is there for the public good. All the work on ICH is for the interest and benefit of the general public.

Relationship

- The issue of database users' interaction with bearers for use of ICH depends on the type of utilization – they may or may not interact depending on the details and requirement of the use. Then, whatever it is, the appropriate legislation will apply. Generally the user will confer with culture bearers for insight into the social processes involved.

- The issue of relationships between an institution that holds the materials, and a bearer, be it the owner, custodian, or manager, there is no generic protocol, rather this is defined by the particular charters of the different institutions and their established policies. Generally, since the owners, custodians, or manager are clients of the institution there is an interactive relationships for their mutual benefit but in different levels of formality.

Terms of Use of ICH Material

- Protocols on management, access and use of ICH information in the NCCA Cultural Data Bank (CDB) and in particular the PRECUP has been discussed above.
- Compliance with restricted ICH use under customary laws and practices are covered by the above-mentioned protocols for the NCCA Cultural Data Bank and the PRECUP, especially with reference to the levels of security instituted.
- IP related protocols, policies and practices have been defined in accordance with the present situation. But all these might change depending on the outcome of the establishment finally of the NCCA ICH office after the Implementing Rules and Regulations of RA 10066 has been approved.

Infringement of Rights and Responsibilities

- Infringement of intellectual property rights existing in the ICH information are covered by relevant provisions of copyright laws in the country: RA 8293 (Annex 1-4), RA 8792 (Annex 1-6), and RA 9239 (Annex 1-7) and are within the prerogatives of the Intellectual Property Office of the Philippines (www.ipophil.gov.ph). Contemporary issues on copyrights, etc., fall under the abovementioned laws.
- Legal responsibilities of institutes leading the activities again are defined by their respective charters, and the nature of their particular relationship with communities, often established by interpersonal relationships.

Licensing

(cf.. Infringement of Rights and Responsibilities) Licensing is done under the relevant copyright legislations mentioned above by the IPO of the Philippines

Bearer's Moral Rights

These issues are covered by the security protocols on the use of ICH or any cultural information in the NCCA Cultural Databank (CDB) and in particular the still to be established PRECUP, as discussed in the foregoing.

Sharing of Benefits

- Issue of respect of bearers' economic rights (cf. Licensing)
- Problems regarding the distribution of profit from utilizing and dissemination of information: There are no defined generic rules but distribution of profits is done in a case to case basis depending on the parameters of the situation.

Unfair Use or Misuse of ICH

These are covered by relevant provisions of copyright laws in the country: RA 8293 (Annex 1-4), RA 8792 (Annex 1-6), and RA 9239 (Annex 1-7) and are within the prerogatives of the Intellectual Property Office of the Philippines (www.ipophil.gov.ph); and RA 8371 (Annex 1-8)

Portraits, Filming, or Reproduction of ICH Material

These are covered by relevant provisions of copyright laws in the country: RA 8293 (Annex 1-4), RA 8792 (Annex 1-6), and RA 9239 (Annex 1-7) and are within the prerogatives of the Intellectual Property Office of the Philippines (www.ipophil.gov.ph); and RA 8371 (Annex 1-8).

Use of ICH as Trademark, Geographical Indication, or Domain Name

These are covered by relevant provisions of copyright laws in the country: RA 8293 (Annex 1-4), RA 8792 (Annex 1-6), and RA 9239 (Annex 1-7) and are within the prerogatives of the Intellectual Property Office of the Philippines (www.ipophil.gov.ph); and RA 8371 (Annex 1-8).

The above issues have arisen peripherally since these appear in continual intercommunity relationships with the NCCA. However, since the structure and organizational set up of the NCCA does not allow it to deal with these issues directly, and since these are within the prerogatives of the IPO and NCIP,

the NCCA cannot act on the legalities of these matters, but does so only in terms of policy.

In any case, hypothetically, since contemporary issues are within the functional capabilities of the IPO, what remains to be dealt with are the issues with respect to the protection of IPR concerning traditional cultural heritage which are presently technically in public domain and resolved only thru policy and not thru legal means. Eventually, all these issues should be brought under legal parameters, articulated and precisely defined. AS mentioned in the foregoing, the NCCA is going about it with Senate Bill 2831 to remove traditional cultural heritage from public domain as the initial step; then secondly, the registration of cultural properties, tangible and intangible in a national inventory, with assignments of ownership to particular indigenous populations.

The NCCA's relationships with ICH subjects are always reciprocal, multi-lineal and never unilineal, as all relationships should be, otherwise there will be no relationships at all. Relationships are always two ways, otherwise it does not exist.

The NCCA includes intellectual property issues in its vision, purpose, function, policies, etc., as these are embedded in the NCCA charter (RA 7356, Annex 1-1), RA 7355 (Annex 1-2) and the recently enacted RA 10066 (Annex 1-9) , and detailed in these pieces of legislation.

The NCCA has not had a representative legal dispute in its information building and sharing activities. The only problem that has arisen is not a legal one but one of lack of coordination. The National Commission for Indigenous People (NCIP) with good intentions, is attempting to organize registration of cultural property in the local level without coordinating with the NCCA which might disrupt the NCCA plans in implementing RA 10066.

Guaranteeing the rights and the participation of ICH subjects in the information building and sharing activities is never an issue with the NCCA since our relationships with the ICH subjects has always been mutual/reciprocal more so since they are represented within the structure of the NCCA specifically in the Sub-Commission on Cultural Communities and Traditional Arts, covered by three Committees: Central, Southern and Northern Cultural Communities. The act of the NCCA on these issues are

actually the acts of the representatives of the ICH subjects themselves within the Sub-Commission with the NCCA Secretariat serving in the administrative level.

As stated in the foregoing, protection of intellectual property is within the prerogatives of the Intellectual Property Office, and not within the NCCA the role of which is supportive.