2011-2012 IP Survey Report

Field Survey on Intellectual Property Issues in the Process of ICH Information Building and Sharing

International Information and Networking Centre for
Intangible Cultural Heritage in the Asia-Pacific Region
under the auspices of UNESCO

In collaboration with the National Library and Documentation Services Board, Sri Lanka

Preface

ICHCAP, a UNESCO Category 2 Centre, has carried out activities for safeguarding intangible cultural heritage (ICH) in the Asia-Pacific region with a centralised function in ICH information and networking. In this role, the Centre has worked towards protecting intellectual property rights related to ICH information. The Centre held expert meetings on ICH safeguarding and intellectual property rights in 2009 and 2010, and in 2011, the Centre proposed a project for protecting ICH intellectual property (IP) rights in the process of ICH information building and sharing.

In 2011 and 2012, as part of the new project, field surveys were conducted with the cooperation of ICH information–related institutes in the Asia-Pacific region to examine IP issues that could arise in the process of ICH information building and sharing. The survey was conducted in eleven countries—Cook Islands, Fiji, India, Kazakhstan, Korea, Kyrgyzstan, Mongolia, Pakistan, Philippines, Sri Lanka, and Viet Nam. The purpose of the surveys was to highlight the IP-related problems that ICH-related organisations may encounter while conducting ICH information–related activities, such as identification, documentation, digitisation, etc., and promoting the groundwork for a guide to protect IP-related aspects of ICH in the process of information building and sharing.

For the field surveys, a questionnaire developed by ICHCAP was provided to key organisations, and surveys were carried out by each organisation according to the questionnaire. A research team based in each organisation lead the surveys. Upon completing the surveys, the organisations involved compiled a report. ICHCAP collected the submitted reports and is now making them available in this publication, *Field Survey on IP Issues in the Process of ICH Information Building and Sharing*.

The survey reports from each country are being provided as a resource to exchange experiences related to the IP aspects of ICH information. Also, it is expected that publishing reports can foster an environment to understand and resolve problems related to IP aspects of ICH information in the Asia-Pacific region.

Contents

IP Issues in the Process of ICH Information Building and Sharing

| Preface 001
| Sri Lanka Survey Report
Ⅰ. Introduction 006
Ⅱ. Institute Overview 012
Ⅲ. Expert Views on IP Issues 021
Ⅳ. Information Building & Sharing 040
Ⅴ. IP Issues in Information Building & Sharing 044
Ⅵ. Legislation in Sri Lanka 046
Ⅶ. Observations 049

| Summary 054
| List of co-researchers 061

Annex 1 | Questionnaire 065
Annex 2 | Cultural Property Act 085
Annex 3 | Photographs 097

IP Survey Report

1. Introduction

On the invitation of the Sri Lanka National Committee on Intangible Cultural Heritage (SLNCICH), a survey was undertaken to prepare a country report on the subject of Intellectual Property Issues in the Process of ICH Information Building and Sharing, in response to the communication from the International Information and Networking Centre for Intangible Cultural Heritage in the Asia-Pacific Region under the auspices of UNESCO (ICHCAP). The National Library and Documentation Service Board of Sri Lanka (NLDSB), as the facilitating institution within the country, provided the necessary facilities to successfully fulfil the entrusted responsibility.

Sri Lanka, owing to its long, unbroken, resourceful, and proud history, is very rich in the area of ICH. And the nation can be considered a rare example of a country preserving its ICH in a traditional way, though subjected to many vicissitudes of so-called modernisation. It can be seen that the ICH in Sri Lanka is found all over and associated with the different aspects of daily life of the people. By far, the most widespread is in the field of aesthetics, such as in music, dance, drama, folklore, while other areas carry much traditional knowledge that is second to none.

It is also remarkable that Sri Lankans feel very proud of being able to carry on this traditional heritage in such a manner despite the 450 years of destructive colonialism and the subsequent influence of modernisation that was often a mere camouflage to hide its true appearance of colonialism coupled with various other forces. Yet the foreign origin of the associated institutions and dealing with them and the alien nature of the working system hardly leave any room for their use. This is mainly due to ignorance and the non-recognition of the value of these by the alien systems.

1. Objectives of the Project

In planning the implementation of the survey, the first task was to get a clear idea of the expected objective of the initiators of the Project. For this purpose,

the long and very descriptive questionnaire was studied very meticulously to map out the most suitable strategy for the purpose.

In almost all the fields very near and dear to the daily life of the people in this country, whether in respect of means of livelihood, domestic rituals, medical practises, aesthetics, folk games, pastimes, culinary practices, or in many other areas, most of the practices, knowledge, and mechanisms have continued up to now as relics of the proud ancient past, basically in an intangible form. Therefore, the whole gamut of ICH in Sri Lanka can be considered a part of the living heritage of the local people. This made it easy to engage in cordial and fruitful discussions with the interviewees.

However, the situation with regard to the Intellectual Property Rights (IPR) proved to be completely different since the attitude of the vast number of local traditional bearers, custodians, practitioners, and stakeholders, as well as the members of the community in which these intangible cultural aspects persist, appeared to be one of disinterest, and hence they were unresponsive to the relevant issues. Except for the few who were western oriented and knowledgeable about the modern western concepts most of the other local practitioners and artists appeared to be unconcerned of the concepts that they considered alien to their traditions. Still it was not hard to find even among the well-educated intellectuals who expressed the opinion that "the entirety of the questionnaire totally reflects a western way of thinking with no due regard to the local thinking patterns thus thrusting the colonialism on us even during the period of so-called independence". This was only a disapproval of the non-recognition of the local context.

The traditional, local practitioners are unanimous on the view that their forefathers had left behind all their creations for the general wellbeing of the whole community and not for any single person or a group and hence IPR issues do not arise in respect to traditional society. Therefore, it was not an easy task to find a suitable method of eliciting their responses to the issues related to IPR as given in the questionnaire. However, it must be emphasised that they were not totally unresponsive to the relevant issues. Instead, they had their own interpretations to the issues and suitable solutions to the problems that could arise out of these issues in the process of making use of them. But they were far aloof from the concepts evolved in the West and imported here.

Identification of samples for survey

The next stage in preparing for the field survey implementation was identifying the most suitable survey samples or categories of respondents who would be valuable resources in respect of the many areas to be covered within the time limits. It was almost December 2011 when the responsibility was entrusted, even though the expected time to start the job was stipulated as November. On the other hand the Report had to be ready by the middle of February 2012, and hence it appeared that the one who implemented this task would be bound to be conscious of the handicaps and limitations against which he or she would have to struggle in the process of preparing a satisfactory if not an excellent report to convince the sponsors of the validity of the views and opinions this country has on offer to the rest of the region. Being very mindful of the time constraints, the team was compelled to prepare the strategies to suit the situation.

The intentions of the initiators of the project to elicit as much as possible the experiences and opinions of the various institutions dealing with the related subjects are very clear as can very well be seen from the thorough questionnaire prepared for the implementation. This is justifiable since they are anxious to formulate a common policy applicable to all the members. What appears as foremost in the minds of the initiators of this project can be construed as the identification of variety of issues that may emanate from the use or misuse of ICH in those countries and the problems caused by such situations along with the solutions given to such problems to suit their own conditions and context. Very justifiably ICHCAP seems keen to promote a uniform system of resolving such problems and conflicts and hence seeks the assistance of the member countries to arrive at that common programme acceptable to one and all.

Hence we are bound, however much we may differ from each other in respect of our own approaches to such problems to share our experiences and opinions with others to help minimise the conflicts and problems that could arise in the future. That will also help to nip in the bud those problems that may blow up to uncontrollable proportions if no measures are stipulated to resolve them at the first sight of their appearance. Therefore, major attention is devoted to collecting relevant information from the institutions identified as most relevant in respect of the subject under consideration.

Accordingly an attempt was made to identify the institutions that have much relevance to the subject area. The first and foremost institution for

consideration was the Office of the Intellectual Property Rights Authority of Sri Lanka (IPRA). It is the state authority in the area of IPR and possesses the powers and responsibilities in relation to determining rights and their breaches and assisting in litigations or settlements. Hence the Director-General of IPRA was the automatic choice for obtaining official information.

Ministry of Cultural Affairs and Arts is the state institution mandated to look after, sustain, and develop the cultural aspects in the country as a whole. It has within its mandate the function of safeguarding the most valuable and irreplaceable resources of the country. With the establishment of the new government of the Executive President in 2010, the Ministry of National Heritage was created to look after the tangible cultural heritage of the country. It has under its mandate most of the departments in charge of tangible culture, such as the National Archives, National Museums, Archaeological Survey, and Arts and Crafts Council. Since all these departments look after tangible cultural heritage that is in fact the tangible expressions of intangible culture and hence have much in common with ICH, action has been taken to seek the opinion of the heads of all ministries and departments mentioned above.

The Department of Agriculture, the Department of Irrigation, the Department of Ayurveda (Indigenous Medicine), the Department of Wildlife and Forestry, and the Department of Education are some other outstanding areas where traditional knowledge (TK), which includes many ICH elements, forms the backbone of their subject areas. Owing to the great emphasis laid recently by the world at large on TK in general, Sri Lanka had always been the sine qua non of all those in eager pursuit of and quest for formidable knowledge leading towards solutions to numerous problems currently rampant because of the mismanagement of the world resources. The intrinsic value of this body of very traditional unrefined and raw knowledge is ever increasing in the light of exhaustion of the available resources owing to the callous and brutal mismanagement of the limited resources of the world. TK is indeed one of the most outstanding segments of ICH in any country that can boast of an era of traditional history.

However, it is well known that each of these departments or institutions, owing to their colonial origins, devotes very little attention to this traditional knowledge since colonialism, in the guise of modernism, has engulfed the entire fields covered by them from the time of their very inception with the sole intention of preventing them from nurturing the indigenous knowledge system. Therefore, the relevant information is hardly available with them, and hence they are to be obtained from scholars engaged in research in the

respective areas in addition to whatever scanty information is obtainable from them.

The field of traditional medicine is one of the most fertile grounds for ICH, as has been proven by the Sri Lankan scene. Traditional native medical practice engulfs all the known areas of treatment that the modern western medical system is known for, and hence, it can be said that Sri Lankan native medical practitioners, inheriting the knowledge from generation to generation, stand more or less as the repositories of native medical knowledge and are not second to any in the world. Each head of a practising family in the line of a particular tradition is a very valuable source of information.

Internationally too, the native medical practices have now gained recognition and acceptance, and hence, the need has arisen to elevate the practice to higher levels of education in recognition of the widespread nature of its application and acceptance as a field deserving higher training and research among the national and international bodies relevant to the area. Hence a few universities have been established to disseminate the knowledge among the locals and to foreign students who clamour for it. A versatile indigenous medical practitioner with modern education and experience in dissemination knowledge very well confirmed this point of view.

Traditional healing rituals and ceremonies, which have ancient origins and survive up to now as an alternative medical practice, are yet other areas where IPR issues can be found. Since it was an area in which people had faith and upon which they relied heavily, the traditional practitioners need to be represented among the resource persons in a study of this nature. Still, the time constraints and non-availability of knowledgeable practitioners to be reached with short notice prevented us from approaching them. However, the void was filled by the versatile dance practitioners who hail from traditional families.

Another well-known area full of ICH in Sri Lanka is the vast arena of different vocations with a long history engaged in by the people for their livelihood as well as for pastime pleasures and leisure. The latter category is often known as the folk arts and crafts since they are engaged in more as a way of exhibiting their skills while deriving much pleasure out of its finished products in addition to augmenting household income. Among the vocations under consideration foremost place is occupied by traditional agriculture since it is the pivot around which the entire life pattern of the people and the economy of the whole country revolve.

The heavy array of functions and all aspects of the different activities involved in obtaining a successful harvest had their own mechanisms. Different means and methods resorted to achieve the desired results at each stage of the process; different treatments adopted to rid the fields of the pests and diseases; the multiplicity of implements, containers, and receptacles, and many more associated with agriculture are all reflectors of the wisdom of the people of the past in addition to the belief system emanating out of the relationship they had with the environment. Therefore, traditional agricultural practices have come to be accepted as rich storehouses of ICH with a lot of potential for finding solutions for many problems faced by the whole world in a particular field.

In countries with a long and glorious past, every vocation is equally important as carriers of ICH. Sri Lanka is a classic example since its long and unbroken history with creations and achievements unparallel to any other proves beyond doubt that it in fact had been a rich ground to many vocations that cherished a vivid and rich ICH. Handicrafts is one with a wide variety of branches, such as carpentry and woodworking, black smithy and ironwork, brass work, pottery, mat weaving, rattan work, and weaving and spinning of cotton. Irrigation, gem mining, graphite mining, hunting, collecting bee honey, and many more technological vocations were very familiar.

Abundant information in respect of these vocations that had been prevalent in the past are, most unfortunately, hard to find today owing to the wanton negligence inflicted during colonial rule to tarnish the pride that such storehouses of ICH instilled in the people. Their fear was the motivation that could have generated aspirations of freedom from the yoke of colonialism. The destruction was prompted by their desire to ensure market opportunities for their own products as well since it was the foremost motivation in embarking on these expeditions. Although it was firmly believed and unreservedly accepted that the opinion of versatile masters from such vocations and crafts would add much glamour to a study like this, there was no way that such skilled persons knowledgeable about the issues in question could be easily reached. Hence justice has been done to such vocations by giving due recognition and gathering information from records and books to illustrate the depth of the knowledgebase associated with such vocations and crafts.

II. Institute Overview

Almost all the institutions included in the survey happen to be state agencies, whether, departments, boards, or public enterprises, since Sri Lanka's statecraft management is totally government owned. Institutions considered being in the private sector have not been chosen since ICH had not been attractive to the private sector despite the fact that it is found within and owned by the general public of the society.

This can be a result of two main reasons. First, the traditional society that had been in existence for 3000 years had responsibility to the people at large while the State merely encouraged and helped to foster this responsibility. However, this arrangement suffered enormously at the hands of the aliens who despised local heritage, and the wanton neglect drove fear into the people engaged in protecting and nursing them. Hence, by the time of the unwilling departure of the colonial rule in 1948, the people had become more or less devoid of any interest or skill in ICH, which had become a redundant entity in the society.

Secondly as a result of that situation the state was compelled, after independence, to take over the responsibility of resurrecting ICH for the wellbeing and pleasurable life of the people. Therefore, it continues to be more or less a monopolistic burden carried on by the state until a new generation of people who will feel proud of their precious heritage can take over the responsibility of caring and nourishing the ICH by themselves. The very nature and the basis of private-sector concerns do not encourage organisations to take over the burdens and risks of looking after issues that bring no material profits to them. Hence the state is compelled to carry the burdens by itself.
But it must be emphasised that, at the time the country gained political freedom, however incomplete it may have been, the world did not known about IPR issues in the same depth as it is now. There was never the need or the awareness to give weight to IPR issues in respect of various functions allocated to different ministries, departments, boards, and other institutions created to run the affairs of statecraft. Therefore, no institution, other than recently established ones, has by necessity provisions included for dealing with matters related to IPR issues. Owing to the fact that confidence on the indigenous things had been eroded from

the minds of the people, the reliance on the rules and regulations in respect of IPR issues seem to be more or less non-existent.

It has to be mentioned that certain provisions included then provide some strength to those institutions in achieving the aims of dealing with IPR issues as prescribed by international charters. But they are not sufficient and strong enough to find solutions to IPR issues that they are confronted with. Yet it must be said that all new legislation deals mostly with the present creations and hence IPR issues cropping up in relation to ICH have not been properly taken care of.

Taking into consideration the busy schedules of the officials who are preoccupied with urgent official commitments, prior arrangements had to be made to meet the relevant heads of the various public institutions. Despite the busy and tied schedules of the officials, many were duty conscious to grant an opportunity to meet them. But not all were able to spare time for the purpose. However, the few who were able to spare time were not very receptive to the long questionnaire and, therefore, reluctantly spared their time to provide whatever information was possible. Even the few who cared to return the questionnaires were not able to fill in them. This is not strange since as stated above these issues have no relevance to their day-to-day activities.

1. Department of National Archives of Sri Lanka (DNASL)

The Department of National Archives of Sri Lanka (DNASL), one of the oldest related institutions established by the colonial masters, has much to offer in respect of ICH. However, what is most striking is that Sri Lanka is believed to have known the concept of archives from about the fifth century when historical records were being handled by an officer in charge of the Royal (King's) archives. However, the modern sense of archives was introduced by the Dutch in 1640 while a separate Department of Government Archivist was established in 1947. Subsequently the National Archives Law No 48 of 1973 created the current Department of National Archives.

Among the DNASL's objectives and functions are the following.

- Ensure official custody and the physical safety for the archives of all public offices and to make them available for reference and study.
- Serve as the legal depository material of the island.
- Administration of Presidential archives and reference service
- Record surveys in Public Institutions
- Administer Printing Presses, Printers and Publishers and Newspaper

Ordinances.

At present this department has among its wide variety of collections the following audio-visual materials that form a genuine ICH collection.

- Colour slides of temple paintings
- Cassettes and tapes of folk music, some Sinhala music tapes
- Some videos containing speeches of Executive Presidents, Culture of Sri Lanka
- Microfilms of published newspapers in Sri Lanka.

All the deposits in the National Archives, other than those that had been deposited by individuals or institutions with specific restrictions, are in the public domain, and the pubic has the legal right to gain access to them. But in the case of individual and institutional deposits access is determined by the conditions laid out. Hence, instances leading to IPR issues are more or less non-existent.

Pains taken by the Director, Dr. Mrs. SarojaWetthasinghe, to extend the fullest support are gratefully acknowledged.

2. Department of National Museums (DNM)

This Department that came into being in 1942 had its origin from the National Museum of Colombo, which was opened on 1 January 1877. Besides the Colombo National Museum, which at present is the oldest and the largest museum in Sri Lanka, the country has eight more museums scattered in the interior towns. These museums serve as repositories for the tangible aspects of Sri Lankan ICH.

However, it must be emphasised that the concept of museums as a place for public displays of objects of sacred value, curiosity, and antiquarian significance and importance for imparting knowledge is not new to Sri Lanka. Mahawansa, the great chronicle, written some 2000 years ago, reveals how the main items of a ship from India to Sri Lanka included a sacred Bo sapling. The Great TheriSanghamitta brought the sapling and displayed it in buildings designed for the public's veneration. Thus, it would seem that Sri Lankans have the honour of building the world's first known museum.

Through its huge collection of tangible objects, the National Museum of Colombo displays the rich visual traditions and extraordinarily diverse cultures of Sri Lanka as a testimonial to the glory and the grandeur of the

ancient civilisation of the country. Through its collections, exhibitions, research, and public programs, the museum fosters an appreciation of Sri Lankan art traditions and cultural heritage.

The Folk Museum of Anuradhapura, maintained by this Department, is a classic example of the efforts taken to foster ICH through tangible items. The collection of the ivory carvings preserved in the Colombo National Museum is perhaps the best in any museum in the world. A large number of valuable paintings, representative of Sri Lankan traditional painting and belonging to the indigenous styles of Hindagala, Sigiriya, Polonnaruwa, and Kandy that prevailed from the pre-Buddhist era to the Kandyan period, are also on display.

A wonderful collection of folk arts and crafts on display depict the different aspects of the daily life of the Sri Lankans through the ages. Among the displays are the pottery, rattan work, reed work, and Kolam and masks connected with traditional dancing and rituals as well as a large number of musical instruments. The array of implements related to traditional agriculture displaying the many facets of its traditional wisdom is yet another area where Colombo National Museum is outstanding.

As a research institute, the museum is engaged in diverse tasks contributing to the explorations on subjects such as pre-history, anthropology, ethnology, culture, and ancient crafts. The library, which is part of the museum, has among its very old and valuable collections of publications an invaluable stock of Ola-leaf manuscripts that contain unexplored traditional knowledge waiting to be used for the common good of human beings and the animal world.

As far as the Department of National Museums is concerned, IPR issues do not arise since the artefacts and the ICH recordings are well covered by the laws of the land and by the rules and regulations under which they have been acquired as property of the state or the general public. There is no occasion to infringe on the rights of the creators or the bearers since permission has to be obtained to make any copies or creations out of them. However, it must be known that all the tangible objects on display are copies of those in common use among the people in the society.

3. The National Library and Documentation Services Board (NLDSB)

The Sri Lanka National Library Services Board (SLNLSB) was established in 1970 with the prime objective of setting up the National Library of Sri Lanka. The National Library of Sri Lanka was inaugurated in 1990. Under Act No 51 of 1998, the NLSB was renamed as the National Library and Documentation Services Board (NLDSB), and its responsibilities and role have been highlighted. The National Library and Documentation Centre (NLDC) or the National Library of Sri Lanka (as it is most commonly known) is functioning under the NLDSB.

According to the brochure the mission of the NLDSB is as follows.

- To plan and coordinate library services at national level.
- To develop a Sri Lankan Information Resource Excellence Centre at the National Library and coordinate and assist other major Sri Lankan collections in the country.
- To assist and encourage the establishment of Information Resource Excellence Centres in specific fields and link them through a national information network.
- To facilitate access to national and international databases.
- To provide learning opportunities to every Sri Lankan and thereby assist the advancement of Sri Lanka.
- To assist Sri Lanka to become a culturally enriched and intellectually advanced nation.

It is very important to note that under the aims and objectives of the NLDSB, one major concern is "To preserve the national and cultural heritage of Sri Lanka". Therefore, it would be seen that this public institution by necessity is bound to do everything possible to achieve this objective. The great services rendered in getting this survey implemented by this institution can be considered an instance of their commitment towards achieving the mandated objectives.

Among the many collections the NLDSB has so far accumulated, special mention must be made to the Martin Wickramasinghe Collection, Peter Wijesinghe Folklore Collection, and Ola Leaf Collection. The first two are major collections from well-known folklorists and writers of great reputation. The collections are considered major achievements in the great efforts taken to save and conserve ICH internationally. Same thing can be said of the Ola Leaf Collection since it is in these manuscripts that one can find still-unexplored knowledge and wisdom of the traditional Sri Lankans.

The NLDSB has taken the initiative towards the end of 2011 to establish a separate collection on ICH, possibly the first of its kind. This clearly proves their commitment towards achieving their aims and objectives. It is also necessary to mention the electronic collection, where "audio-video cassettes, CDs, DVDs, and gramophone discs of Sri Lankan songs, documentaries, plays and tele-dramas" form the bulk of what is on offer to the public. It is undoubtedly another significant service to ICH.

The NLDSB, by its very nature, is a repository of the country's cultural heritage, where people have access to benefit from the source materials within it. Hence the opportunity for people to benefit in whatever manner possible cannot be controlled and neither has it the mandate to do so. However, common law of the country is applicable to them as well, and precautions are being taken to ensure that what is deposited is legally admissible.

The keen interest shown by the NLDSB in respect of ICH-related activities fully justifies the choice of the NLDSB as the focal point of the Sri Lanka National Committee on ICH.

4. Folk Arts and Crafts Centre (FACC)

Established in 1988 with the aim of protecting the Sri Lankan traditional arts and crafts within a healthy environment to be handed over to the future generation, the FACC's main objectives are given as follows.

- With the aim of providing the people with a wider knowledge about the arts and crafts, to make the younger generation more knowledgeable and appreciative of arts
- Provide assistance to reach better living standards by introducing traditional arts and crafts.
-

Its main function at present is to conduct training classes for the younger generation in the fields of dance (Kandyan, Low-Country and Sabaragamuwa traditions), music, painting, and sculpture, in addition to many other vocational training courses for various traditional crafts. Therefore, this Folk Arts and Craft Centre is solely engaged in disseminating knowledge and providing the vocational training required to promote the survival of traditional crafts, which undoubtedly form a major segment of Sri Lankan ICH.

The very nature of the institution opens doors for apprentices to engage in new creations, and it often happens that the new creations are all based on old

and existing ones. However, since the old and existing creations have no individual owners, they are commonly owned by society, so anyone has the right to create anything and name it as a new creation. Since this institution is mandated for the development of local arts and crafts, new creations can be expected in large numbers. But as the number of new creations in the field increases, so too does the chance for IPR issues arising increases. In such situations, issues will be determined according to the laws of the land.

5. Sri Lanka Broadcasting Corporation (SLBC)

The official state radio broadcasting station in the country originated in 1925 under British colonial rule, and since then it has developed into the leading broadcasting institution on the island. As an institution primarily depending on the audio broadcasting of songs and music, it has direct relevance to ICH. SLBC claims to have taken all the necessary precautions to avoid situations that can lead to IPR issues. As long as it remained the only broadcasting station in the island, it was considered a training ground for budding artists and the watchdog of the nation's culture.

However, with the opening the broadcasting industry to private individuals and institutions, the number of broadcasting stations have multiplied, and occasions for IPR issues have also equally multiplied, but the SLBC claims that it stands above all those hazardous situations. At one time, it had a separate Folk Music Research Unit, which successfully conducted field research to collect folk songs and adaptations made out of them. Therefore, SLBC can be called a leading institution as far as ICH is concerned. It has also taken maximum precautions to avoid controversies over the rights of the creations, and since it plays all musical works available in the open market, there are no threats of litigation on infringement charges. Measures have been taken to compensate the artists whose creations are being broadcasted. This is one of the demands made and won by the artists under IPR issues.

6. University of Performing and Visual Arts (UPVA)

Sri Lanka has a great tradition of arts and crafts coming down from antiquity that few other nations can match. Performing and visual arts form a major part of ICH in any country, and in Sri Lanka it is no different. After the nation gained political independence, ICH started to receive more attention, and its popularity increased the state-sponsored, village-level training centres that were established to supplement the numerous family centres maintained by the leading families famous for the various arts. Subsequently, ICH had the fortune of entering into the school curriculum as well.

The popularity thus gained by the performing and visual arts necessitated higher level educational centres, a necessity that was met with the establishment of the Institute of Aesthetic Studies, which replaced the School of Fine Arts that was established in 1893 under the Ceylon Technical College. Finally, elevating it to the university level was fulfilled in 2005 when the UPVA was established as an independent and fully pledged higher education institute to cater to the increasing demand for higher education in these ICH fields. Since it is an education centre where dissemination of knowledge is the mandated function, the entirety of IPR issues too has been a part of the curriculum. But the chances of IPR issues emerging within the institution in the course of its activities are remote. Since commercialisation is not an intended activity when using the creations of others. Usage is for educational purpose and value only.

7. Central Cultural Fund (CCF)

Established in 1980 under the UNESCO-Sri Lanka Cultural Programme, the CCF is primarily entrusted with the responsibility of conservation and development of the ancient heritage of Sri Lanka within the triangle of Anuradhapura, Polonnaruwa, and Kandy and subsequently extended to cover several other areas as well. In the process of the CCF fulfilling its functions, the traditional knowledge and heritage of ancient Sri Lanka is brought to light, and knowledge dissemination becomes a necessary requirement.

Therefore, the CCF for this survey served as an example of an institution disseminating ICH knowledge and hence has no IPR-related issues or other any other issues that are likely to crop up in the course of conservation and maintenance of ancient heritage.

8. Department of Cultural Affairs (DCA)

Department of Cultural Affairs has historical significance. It is a symbolic memorial for the people's upsurge that took place in 1956. It was a peaceful revolt waged with the ballot in lieu of the bullet to dethrone the western allies and to enthrone the people's government. The people's clamour was to bring about the revival of native culture and the social system to rid the country of colonial vestiges. The most important and symbolic creation by that government to answer the demands of the people and to bring the country and the proud cultural heritage of the nation back to the ancient glory was the DCA.

It has been growing in strength over the last fifty-six years, rendering a yeoman service towards conserving and developing the cultural heritage of the country. It had been responsible for guaranteeing IPR of artists and literary men. Since the establishment of the National Intellectual Property Authority, the DCA has been working in close collaboration to achieve the objectives of ensuring the implementation of IPR. This department, coming under the supervision of the Ministry of Culture and Arts, has numerous annual and regular programmes intended at developing and popularising arts and culture of the country. Providing support for village-level centres of arts to transmit knowledge and skills to the younger generations can be considered the most important contribution made by the department towards ICH promotion.

9. National Intellectual Property Rights Authority of Sri Lanka (NIPRA)

National Intellectual Property Office of Sri Lanka, established under the Intellectual Property Act No.36 of 2003, as the successor to the institution first established on 1 January 1982 with the same mandate under the provision of Code of Intellectual Property No 52 of 1989. is mandated with administrating intellectual property rights programmes in Sri Lanka.
Its mission is to actively contribute to the development of the country by ensuring that the IP system fosters an environment conducive to innovative and creative activity, investment, and entrepreneurship.

Its vision is to become a leading development-oriented government agency offering quality based services with enhanced productivity. The office is under the leadership of the Director-General.

Ⅲ. Expert Views on IP Issues

The survey of the opinions held by eminent personnel as well as ICH bearers started with an interview with three representatives of the younger generation of artists. They were

- Mr Kushantha Ratnayake (Painting Instructor)
- Mr. A.G.R.J.K. Attapattu (Dancing Instructor)
- Ms C.Nadeesha Nilmini Fernando (Dancing Instructor)

They graduated from the University of Performing and Visual Arts in Sri Lanka and are now engaged in disseminating the knowledge they had acquired to their next generation under the auspicious of the Folk Arts and Craft Centre (FACC), a state-sponsored institution under the purview of the Ministry of National Heritage. They each belong to different disciplines of aesthetics—namely, low-country dancing (dance traditions of the maritime areas of south and western Sri Lanka), Sabaragamuwa dancing (dance traditions of the interior to the south of central highlands), and painting.

They are of the opinion that ICH does not belong to any one individual or family but instead belongs to society as a whole and hence is the property of the people. As such, everyone has the right to make use of ICH but without harming its fame and value. Anything new that is based on the old model can be called a new creation and carried on until the people who are the genuine owners of the patent rights deprive the creation with the right to survive by rejecting it.

This view is made clearer when one tries to ascertain the original form of a creation that is declared to be the ideal form or the model to be followed. No traditional creation has ever been ascribed to one single person, and no one single person has ever claimed authorship to such creations other than some of the literary works. Therefore, there is no rational basis for anyone to demand others to conform to any set pattern or design when issuing their own creations, especially when there is no one who can decide the authenticity of the original. None of the folksongs or poetry has the prescribed melody and meters to follow

or musical notes to adhere in singing. The only relevant factor to be considered would be the purpose for and context in which it had been created and hence the sensitivity intended to be communicated. A song sung to convey sorrow and grief may not be suitable to be copied in a song conveying love and lust. On the other hand a song intended to instil a sense of religious sanctity and honour may be very inappropriate if used to express love and lust or violence and hatred. Such a situation may amount to the vulgarisation or the corrupt and crude misuse of the creation.

Most senior and recognised artists, some of whom hail from well-known families of reputed artists, agreed fully with the views expressed by these juniors with regard to the concept of ownership in traditional society that continues up to now. They claim that it is further proved by the fact that the creators in our traditional society never created anything for their own glory. They wanted them to be for the benefit of the society at large, becoming a prized possession of the community. The concept of private ownership of these creations is certainly an alien introduction that can be identified as another harmful introduction of the west where social values such as cordial personal relationships and common ownership never had relevance in their society. Even up to now in our society, the skills and creativity of our people have never been claimed as personal property, and hence tradition-bent artists never bothered much about them, and they do not try to litigate against using their creations by others so long as they do not vulgarise or corrupt the original intentions and purposes of the creations. This is one of the main reasons for the lethargic attitude adopted by the local people on issues like IPR. The examples adduced by them happen to be even more interesting.

In the instance of native healing ceremonies, there are numerous decorative creations that undoubtedly would have qualified for patent rights had such a concept been known at the time. The arena prepared for the occasion is gaily decorated with four decorated compartments constructed at an elevation at the four corners of the arena to accommodate the lamps to be lighted in honour of the deities in control of the four directions of the world as they believe. These like any other decorations happen to be unique creations depicting the skills of the creators. However nobody has the patent rights for these, instead everyone who has ever been assisting in the creations takes with them the knowhow to create these decorations anywhere else when the need arise. But no one has ever quarrelled over rights.

Same thing can be said of the very attractive and architecturally skilful construction made to accommodate the Buddhist monks for the chanting of

Parittha, a common religious ritual performed in Buddhist homes for invoking the blessings on various occasions. No one claims for the ownership of these creations and no one objects to anyone making use of the creations since they are considered belongings of the community who would takes full care for the elements' safety and survival. This is true with all the other creations of any field in traditional society.

However, they were of the opinion that, since we are now living in a world different from the traditional world of the past, care has to be taken so that no one infringes on the rights of the others as protected and guaranteed by universal laws that take precedence over local legal systems. They argue that, according to the accepted system prevalent in the present day society, mechanisms have been introduced to determine the ownership of the creations, prevent any misuse of them, impose punishments for the wrongdoers, and even educate the communities on the accepted rules and regulations they are bound with. Still they are doubtful about the success of these measures and argue that the degree to which these rights could be safeguarded is questionable. They argue that there is no one single authority within the country to regulate the rules and regulations where as there is a multiplicity of institutions engaged in the maximum use of the ICH. Among them are the electronic media, entertainment industry, writers—including music and lyric writers—and even antique dealers. This is a clear indication that everyone is keen to see the rights guaranteed for which a single lawful authority mandated to regulate them is anxiously awaited.

Also doubtful is the efficiency of the mechanisms introduced to thwart these infringements mainly because the infringements are too common and unnoticeable and because a heavy staff of detectors is be required, it is surely a dream, according to the views of the most eminent personnel interviewed. A literary creation has an author who would take the trouble to give his or her work out in print with his name and details to prove his authorship and the ownership. Therefore, the chances of infringing on the rights of the author appear to be slim, but it still occurs but most cases go un-litigated. If so how can other creations, such as songs, be saved from being misused, they ask. This may appear to be true with regard to ICH, but there again the social sanctions against the vulgarisation of the community-owned heritage will help to save them from infringements.

To be fair by them and to prove the sanity of their thoughts and arguments, it must be said that they are of the opinion that, since the modern creations have their owners who can protect them from being misused, the traditional heritage, which has no owner other than the general public and society, has to be

protected and safeguarded against any misuse and corrupt use at whatever cost by society and the state who is the official representative of the people. It can be achieved only with the intervention of the different authorities who feel truly for the value and worth of this heritage. Yet, that can be achieved only by educating the public and making them aware of the supreme value of the irreplaceable heritage that is on the verge of destruction and disappearance, owing to the neglect by the people who are the actual owners of the heritage. Moreover, educating the general public on these issues should be taken as an investment for the future.

The eminent scholars, therefore, emphasise that since the mechanisms are easily available at present to identify the ownership, economic value, and the sentimental attachment of the creator to their creations of the past, all precautionary measures must be taken and adhered to for safeguarding the rights and benefits of the true owners of the creations that serve the people of the country.

1. Professor Ranjith Fernando, Head of Department of Applied Music, University of Performing and Visual Arts, Sri Lanka

Professor Ranjith Fernando, Head of Department of Applied Music, University of Performing and Visual Arts, Sri Lanka, is a musicologist who is engaged in field research and laboratory research on traditional folk songs. He expressed his views succinctly and made the following points.

The University of Performing and Visual Arts has Research into Traditional Folk Songs and Music as a principal subject of its syllabus, and a lot of work has been done by the unit in charge of this research work every year ever since it was established in 1992 in the Institute of Aesthetics Studies (IAS) (then affiliated with the University of Kelaniya). The activities were then funded by the Norwegian University Association. Prof. Kjell Kjelstad from Oslo University and the Research Officer at the time Mr. C.de S. Kulatilaka were instrumental in establishing the unit.

Among the activities the unit was involved in were the following.

1) Collecting of folk musical and dancing materials, associated activities taking place in the modern society and case histories of prominent artists in the field of music and dance.
2) Documenting and archiving such materials.
3) Using modern methods to evaluate and analysis of traditional music and publishing bulletins in which findings are given publicity.

4) During the first two years, an exchange programme was conducted between students and teachers who belonged to the Oslo University and the IAS.

The academic work of the department and the unit were functioning well with the assistance received from various sources. In 2011, an ethnomusicologist of great fame, Mrs Ami Katharine Jairasabuoy from America, visited the university and donated the famous Bake Collection, which included valuable information regarding folk arts that prevailed in Sri Lanka around the 1930s.
This unit has the fortune of possessing much of the ICH-related data and archives obtained mainly through fieldwork and donations. These materials form the backbone of the teaching aides used in the university for students of the Music Department. Realising the great value of the collection for the students and scholars access to the materials had been made easy for both students and scholars to derive maximum benefits in the hope that field of traditional music will be richer and make our ICH even more popular. No charges are levied, but permission is not given for taking away or getting recorded materials that bear cultural significance. The university holds the sole rights for everything preserved in the research unit. Since gaining university status in 2005, another research and information centre has been established by the faculty of dance and drama.

The university has not yet met with any serious problems related to ICH, and there may not be the opportunity for significant problems in the future since the institution is the only one dealing with the dissemination of knowledge, which includes knowledge about ICH and IPR issues. It is better to have some sort of legal framework in place because the university is directly connected with performing arts, which form the bulk of the ICH.

ICH needs protection but how it is to be achieved is not easy to resolve. There is no owner or author to take care of it or there is no one from whom permissions or rights to use the creation can be obtained. Yet, it needs to be protected since it is the peoples' property. The state is bound to protect what the people own since the people have reposed the responsibility to do so on the state as the representative of the people. Modern creations will have no threats of misuse, corruption, or piracy since the entire world is aware of the new legal provisions, and most countries are signatories to the relevant charters, so they are bound to adhere to these laws. But the problem lies with traditional ICH whose protection and sustenance has to be undertaken at any cost by all since it is an irreplaceable resource that the world cannot afford to lose. Since it is the common property of the community, the entire community

has a great responsibility of safeguarding it. No one can evade from this responsibility.

2. Dr. Mrs. Sriyani Rajapaksha, Head of the Department of Dance (Sabaragamuwa Tradition) of the University of Performing and Visual Arts

Dr. Mrs. Sriyani Rajapaksha, Head of the Department of Dance (Sabaragamuwa Tradition), of the University of Performing and Visual Arts was of the opinion that ICH is the life blood of our nation, and hence, it has to be safeguarded against all possible threats from internationalisation and westernisation that appear in the guise of modernisation. In traditional society, concepts such as patent rights, intellectual rights, and ownership of artistic creations were almost unheard of and many of the surviving great old masters may not even understand the meaning of these words let alone the contents.

In our traditional society, no artist of any sort ever commercialised the knowledge or the craft he was skilled in. Nothing was practiced for monetary gains or anything ever done or created for personal glory. Everything was intended for common well-being and hence for the community at large. Without any doubt these are all imported concepts introduced to seduce our own prestigious arts and crafts. Any aspect of ICH of the traditional society could be taken over by anybody so long as it was for the common good, and no one protested against such act because the cultural creation so used was intended to be used by whomever needed it. If any creation based on a borrowed one was brought to light, it was appreciated and welcomed as a new creation and the new creator was rewarded.

Most unfortunately, we have been blindly accepting and following the western models without any concern for our own achievements. No attempts have ever been made to defend our heritage against any encroachment or even destruction carefully executed by the same old masters who once held sway on us and determined everything for us. We do not have to allow such thuggery to happen in the present context when we are enjoying equal rights with any powerful country in the world. The concept of IPR is yet another strong example to show how we have been trapped once again.

3. Professor Nimal de Silva, the Director-General of the CCF & Professor of Architecture in the University of Moratuwa

Professor Nimal de Silva is the Director-General of the CCF (see above) is also a Professor of Architecture in the University of Moratuwa. He is a reputed art historian and a collector of old manuscripts to save them from been destroyed or smuggled away into foreign countries. Expressing his opinion on the subject of IPR issues in relation to ICH, he was in total disagreement with any attempt to view the indigenous culture through the foreign concepts and methodology.

According to him, in traditional Sri Lankan society, there had been nothing that was not intended for the benefit of the entire society or in other words there was nothing meant for personal benefit or glory. In such a situation, one cannot make rules and regulations barring others from using the cultural aspects created by the forefathers. All that can be done and needs to be done is to prevent the misuse and corrupt use of these aspects of the valuable heritage so that they will be cherished for future generations, the true inheritors of these creations of immeasurable value. Taking examples from the field of architecture, he emphasised that the architectural designs of the forefathers are being copied at present even by foreigners since the designs are internationally admired, but we cannot do anything other than accept the kind acknowledgements made by them and be satisfied. The house type with the open courtyard in the middle of the house (Meda midula Ge) is a classic example.

The same thing even happens in the field of aesthetics. Ancient musical tunes and rhythms are been adapted by the modern musicians but no one sees anything wrong in it as long as the new creations do not deform or defile the aesthetic value of these ancient musical creations. In the field of traditional dance, one may be bold enough to create new items, but they have to conform to the sacred aims and objectives for which our forefathers created them. A musical note intended to enhance the mental closeness to the doctrine or even the Great Teacher will be considered corrupted if used for an occasion like a feast or fiesta. The use of a solemn drum rhythm intended for conducting Buddhist priests for a religious occasion at a drink and dance party will be an unpardonable offence in the eyes of the Sri Lankans, who care for the ICH.

4. Mr Lionel Gunatilaka, Reputed Musician and Music Director

Mr. Lionel Gunatilaka is a descendant from a family of traditional artists and has a true love for preserving ICH that has benefitted from the contributions

that he and his ancestors had been making towards its nourishment. Presently he is engaged in activities like dissemination of knowledge leading to the preservation of the traditional arts in association with the Tower Hall Trust Foundation, another leading institution devoted to preserving ICH of Sri Lanka. Therefore, Mr Gunatilaka was invited to express his views on the subject since it was felt that such views would be very relevant in this exercise.

To begin with, he disagreed with the very concept of IPR as defined in the Western world and thrust on us during colonial rule. He was of the view that our cultural background is totally different to the situation in the west and hence non-recognition of this difference makes it one sided. The common ownership that is promoted in our culture had compelled our ancestors to harness their skills to bring out creations for the well-being of the community as a whole. In the case of folklore and folk songs, there is no accepted supermodel for others to follow. Hence no one can say any adaptation or even the repetition of the creation in a manner he or she is capable of is right or wrong or a misuse if not a corruption. However, in the case of modern society, artists are aware of their rights and the responsibility in safeguarding those rights since the western concepts have taken root here. Therefore, the problem faced by the ICH will never be experienced by the present-day owners and authors.

However, one cannot overlook the urgent need to take maximum precautions to guarantee that the ICH will remain unpolluted and survive eternally for the benefit of generations to come, for them to draw inspiration to deliver new and meaningful creations in the future. This can be achieved through several means. First, the people have to be made conscious about the value of what they had inherited from their forefathers. The enormous damage inflicted by the colonial regimes in our part of the world is the hatred infused in them towards everything of their own, and in its place, love instilled for everything foreign. The people have to be cleansed of these cancerous defilements to make them qualified to receive these insights. Second, the people have to be convinced of the utility value of all these ICH aspects that they now misunderstand, owing to their ignorance caused by the alien education and social systems. People will be attracted only by the things that have a role to play. Third, the government has to give a lead in resurrecting these by way of including them into the school curriculum, establishing institutions to foster them, and incorporating them wherever possible in the official activities such as official ceremonies and award ceremonies. Once the people absorb the spirit of the ICH, they are sure to be the flag bearers.

The protection ICH will require from the authorities is the recognition that it is the lifeblood of the nation and hence needs by compulsion to be conserved and developed as a symbol of national identity. This requirement is all the more highlighted because modern creations do not demand such attention since they are clearly protected by the law, and regulations in the modern world are well supported by international charters and agreements. Any creation from any field has an author or an owner, and his rights and dues are all guaranteed. Any breach will end up in litigation by the individuals without the involvement of the state. Hence the state is free from the burden of looking after a heavy load of responsibilities, which as a result gives the state more time to devote to ICH. In the case modern creations for example, a song has a lyric writer, music editor, and a singer, all of whom are not secret. Hence any misuse of creations can be rectified without delay. But in the case of an old musical creation, there is no one who can vouch for the correct usage if litigation occurs.

Therefore, criteria have to evolve with the help of experts to determine the best actions that can be taken. In traditional society, it is very clear that all the different artistic creations have emerged to suit the occasion and purpose for which such creations were intended. What had been created to be used in the paddy field or the place of religious activities may have a lyrics, melody, and even the expressions to suit the place, and hence, they are certainly incongruent or out of place if used in a different situation. Therefore, even if the ideal model to be followed is not available, the ideal model can be construed when those requirements are taken into consideration. This can be finally decided and accepted if some team of versatile and well-recognised eminent persons from each field can be appointed as a regulatory body.

5. Prof Mudiyanse Dissanayake, Head of the Post-Graduate Unit of the University of Performing and Visual Arts.

The survey of opinions gained much from the opportunity offered by Prof. Mudiyanse Dissanayake despite his very busy and tied schedule. Prof. Dissanayake, one of the earliest performing and visual arts scholars to qualify as a professor with a doctorate and one of the most popular and recognised as an eminent artist of excellence both here and abroad, is the Director of the Post-Graduate Unit of the University of Performing and Visual Arts of Sri Lanka.

He expressed in no uncertain terms that ICH is the soul and heart of the Sinhala Buddhist nation of which we are proud to be members. Any attempt

openly or secretly attempts to displace the ICH from the high pedestal of acceptance it is held in today must be thwarted at any cost because if it is allowed to go unchallenged, it will be the end of the unique nation that the world is fortunate to lay claims on.

According to him, there are instances brought to their notice regularly of attempts to misuse and even denigrate Sri Lankan heritage basically to destroy the very foundation of the nation. Hence there is the need to take prompt and appropriate action to stop this crime committed against an innocent and peace loving nation engaged in the honourable task of disseminating the message of Lord Buddha, which is in great demand as the world is increasingly facing insurmountable problems. Therefore any measures to protect and uphold the great wealth of ICH in Sri Lanka deserves all the support from the true lovers of both the country and its valuable resources.

The ICH in Sri Lanka displays some extraordinary characteristics worth recounting over and over again. It is not a mere series of creations or incidents in society. It is a way of life and a discipline to mould the characters in the society. Everything has a deep meaning and it is intended for some specific purpose. Ringing bells in the temples, though appears to be a normal thing, has a role to play and a message to convey. It is a handbook of communication. The members of the community understand the message conveyed by the sounds of the ringing tones and the times of ringing. They can distinguish the sounds conveying the message of time for the rituals, time for meals in the temple and even the emergency situation in the temple requiring the assistance of the people. In the same manner, the villagers understand the different meanings of the sound of the hooting and the message conveyed in the village. They distinguish between the hooting sound calling for help in domestic affairs and calling for urgent help when in distress as well as conveying of any other message. The entirety of ICH fulfils this great service everywhere and every day. Hence it is by necessity demanding the society to protect and safeguard it.

There is a problem regarding the protection and conservation of the ICH in our country as well. When we say it has to be protected or conserved, from whom have we got to protect them? It is from pirates, bogus artists, destructionists, or the enemies of the nation. It has to be accepted that our ICH has no owners or authors to make use of the terminologies of men involved in IPR issues. One may argue that the whole concept is new and alien to us, and therefore, the question has never cropped up. But it cannot be the whole truth

since there are attempted instances of trying to protect the rights of the owners. Sigiri graffiti is a classic example since authorship can be clearly seen on most of the poetry. But in fairness to our forefathers, it must be said that there had been nothing achieved for personal glory. Everything was accomplished for the benefit of the entire society or the community. Even when writing books, unknown authors had taken the trouble to say "scribed for the good of the ordinary people," an indication that authorship has never been valued above community service. Common ownership had been the order of the day among the native community. Hence no one can prevent others from making use of these resources so long as they do not misuse or destroy them. But whether it can hold up today is the question to answer.

The claim that, in the case of traditional society, ICH lacks ideal models to follow, and hence, it is not feasible to regulate the adaptations, uses, misuses etc. is an unfounded fallacy. It is the culture and the tradition that springs out of the culture that has had established the ideal model to follow. If there had been no ideal model to follow, how could the eminent masters pass down the knowledge from generation to generation? When we were the apprentices, our mentors passed down the details of the each item from memory, and there was no one to remind the order or to prompt the words or stanzas. They had all that in memory and the students inherited the knowledge. What the masters had passed down and what their pupils passed down in turn happen to be the ideal model. The performing artists in the case of a very sophisticated ritual like Kohomba kankariya (a local ritual coming down from ancient times is world famous and is considered the foundation of the tradition of dance called up-country dance tradition.) which is full of activities and sequences receives no help or prompting from anybody since they are masters of the ritual and have the best knowledge of the complete order of the ritual to follow. That is because there is an ideal model to be followed by everybody. The same thing is true of the religious ceremony of chanting Parittha. There again, the ideal model is conveyed from generation to generation.

Therefore, he argues that in the case of safeguarding the aspects of ICH one cannot escape from the responsibility by hiding behind the easy excuse of non-availability of an ideal model to follow. How can one determine the ideal nature of the model? These creations have been produced within a cultural setup. The culture of a society is the determinant of the nature of the model. Besides that, there is an aim to fulfil in doing so. Basically, the aim determines the model since it must fulfil the aim. Thirdly, there is the place for the creation or the appropriateness of the creation for the place. A song sung by

the paddy weeding ladies in the field basically agrees with the task they are engaged in. It answers well to the aim of expressing their feelings for the task they are in. The place and the type of work involved in the place will contribute to determine the model. You cannot engage in dancing poses while weeding and hence the particular model is found suitable for the place and the occasion. Therefore these determinants must be as a necessity taken as the criteria for regulating the use of the ICH.Prof. Dissanayake was jubilant that they in the UPVA have been able to contribute much towards the protection of ICH in two major ways. First, they claim that the students are being taught the ideal models as obtained from the mater artists who passed down this knowledge from generation to generation without any problem or hindrance because they had studied them perfectly. University students are also being taught to follow them and uphold the age-old traditions hitherto brought uninterrupted in society. Now these things are not only taught to them but the knowledge that had remained up to now in oral traditions or in manuscripts in the possession of individual are being collated and published so that there may not be problems in the future about the ideal models. Secondly, the university has established research units in each faculty, and the teachers are engaged in high-quality research to prove various theories carried on up to now as mere oral traditions. At the same time, research is being conducted to prove scientifically how authentic is the wisdom, of the ancient masters when they chose a particular specie of plant or a hide or such material rather than not the other varieties. These researches have proved to be most helpful in establishing the fact that our forefathers had been very scientific in their approach to select various things in the past.

Finally, Prof. Dissanayake was kind enough to make suggestions to plan for mechanisms to regulate the proper use of ICH in Sri Lanka. He agreed that a high-powered team of experts as a task force may be under the direct supervision of the Executive President to regulate the affairs of overlooking the proper use of ICH will be ideal under the present circumstances. The team must be very powerful, and it must consist of true eminent persons of high achievements in the respective fields of ICH, and they should have no other obligations to anybody anywhere. They can regulate and establish research units and libraries of video and other materials containing highly authentic performances. The Centre should have facilities for researchers to use audio as well as visual material within the premises. There can be an eminent artist as the administrative head to coordinate the affairs.

6. Mr Ravibandu Vidyapathy, Advisor to the Hon Minister of Cultural Affairs and Arts.

Mr Ravibandu Vidyapathy is a well-known exponent of local dance traditions and above all an internationally famed drum player whose contribution to the Drum Orchestra with all the possible different drums collected from East and West is much acclaimed among the great exponents of culture and arts throughout the world. Hailing from a traditional family of reputed artists, Mr Ravibandu not only carries the flag of the family very high but contributes his competence and skills for the wider society by serving as an Advisor to the Ministry of Culture and Arts. Hence he was considered an indispensable resource person for this survey. With his busy schedule, it was no easy task to get a convenient time, but his commitment to the cause was so strong that he was very kind enough to allocate a time late in the evening when a suitable time was not possibly available to share his experience towards a mission he considered as a national service.

He was very angry that no one had taken sufficient notice of the challenges that the common culture in this country is faced with. Every aspect of culture from the form of salutation through dress, courtesy, rituals, ceremonies, dance, music, and crafts all are subjected to modifications, corruptions, and other harassments to devoid it of its unique character and outstanding quality. Recently, there was a newspaper advertisement with a carrot set vertically and the headgear worn by the up-country dancers placed above the carrot. What an insult to the very symbol of the sacred art of up-country dancing. I made inquiries and found the author of this advertisement and explained to him the nature of the crime he had committed. For us the dancer's headgear is so sacred that we worship and venerate it. The day we have the ceremony of placing the headgear on our heads is the most important day in our life. But some ignorant person had adorned it on a carrot—it was meanest method of insulting that which we consider to be sacred and second in sacredness only to the sacred body parts of the Lord Buddha, such as the sacred tooth relic, collar bone relic, and jaw relic. This no doubt is a purposely designed attempt to denigrate our sacred cultural elements.

Along with the cultural skills that we receive during the training, we are introduced to all the good manners, customs, and ethics that are indispensable for leading a virtuous and exemplary life in the society. Culture is the totality of all these, and hence any harm inflicted on it is a crime committed against a society and a nation. Therefore, any attempt at all levels and especially at UNESCO level to safeguard culture from such anti-social elements is very

encouraging news for us. However it must be emphasised that our ICH or any part of the culture could be protected only by us and nobody else. Any foreigner may love it and come forward to save it from the threats of alien forces but he may not have the true feeling that we the owners of that culture have. Therefore it is our duty to safeguard what is ours with the full blessings of those foreign lovers of our culture.

If we are to succeed in protecting our cultural heritage, the first thing to do is to understand it and admire it with full awareness of its value and meaning. We have to love our own language and use it everywhere it can be used. It must not be unnecessarily intermixed with any other language to make it a prickle. Language is considered the lifeblood of a nation. So if we are responsible for defiling our language and thereby help it to decay, then we are committing a crime against ourselves and our nation. Same is true with the virtuous life that we have to spend. If we deviate from those values the culture we are striving to save will not remain since culture survives only on the good manners that we have inculcated and made a part of our life pattern. Wherever one may live, the sound of a drum or the noise of the chanting of Pirith will naturally kindle us and make us feel for our heritage. If any one does not get that kindling, it is a proof that he or she has deviated from the feeling of oneness. These are all symbols of our own culture that make us a part of the culture.

ICH of the traditional society appears to be the most vulnerable to these winds of change for the worse. One main reason for this situation is that it has no real owner in the modern sense. If there had been an owner, he or she will look after its safety at any cost. However, it does not mean that our ICH has had no owner in whatever sense. In traditional society, our forefathers created things not for their own glory or benefit but it was meant to be collectively owned and collectively made use of. Therefore, the actual owners of our ICH are the people at large and the entire society or the nation. This brings us to the question of who owns the great responsibility of looking after the safety of our ICH. It will be seen that it lies entirely and squarely with the government of the people who on behalf of the people holds the responsibility for good governance. If the life blood of the people and the nation face the danger of extinction, how can one argue that the government had been delivering good governance to the people?

Still for all one cannot wash off his hands by entrusting to the government the gigantic task of safeguarding something that the entire nation is benefitting from. If the government belongs to the people, then it is the people who have

to be active in the act of safeguarding the culture. Therefore, ultimate responsibility will lie on the people, and it cannot be passed over to others. Again, it is going to be the efforts of the beneficiaries that matter in upholding cultural heritage. It is the people who have to push state agencies into action in areas where involvement is necessary. We the exponents, and practising artists can lead the way so long as the members of society are keenly grafted into the movement to save our heritage that the entire world considers to be irreplaceable.

One of the ways that we engage in to help the community to safeguard its heritage is by disseminating knowledge on performing and visual arts that we are capable of. Along with the arts, we inculcate good manners that make the society calm and peaceful. It is up to the people to make maximum use of this service and to contribute their might to propagate our heritage. Yet people unfortunately seem to be busy guiding their young ones on streams that lead them find jobs rather than making them good humans. Therefore, the people will have to think anew and decide where they are going to lead their future generations. If ever they wish to eradicate unfortunate occurrences like the one mentioned above about the sacred headgear of the up-country dancer, the people have no alternative but to make the younger generations conscious of their proud heritage. If people overlook this reality, one may not be able to prevent the destruction of the Sri Maha Bodhi, Fortress of Sigiri, or the Temple of Sacred Tooth as irrelevant and painful remnants of the age of demons.

7. Dr Danister L Perera, Native Medical Practitioner and a Disseminator of Knowledge

From the aesthetic field, attention was diverted to one of the most fertile areas of ICH in the country that has had a direct and very close affinity to people's daily life—namely the indigenous medical system. Dr Danister L Perera is an eminent scholar in the discipline and a practising medical man besides being a popular disseminator of knowledge in the country.

Indigenous medical knowledge is the collective wisdom of ancient society. It is considered a community's knowledge or ethno-science. For this kind of traditional knowledge, no individual ownership is entertained or attributed. It is basically a cultural repertory that is indeed in the public domain in legal terms. No commercial interest or trade affairs or unethical exploitation took place in ancient society related to this knowledge. This knowledge system was sustained on interconnected synergism of knowledge, knowledge holders, and biophysical resources of knowledge for long time. Therefore, IPR-related

issues should be discussed in the specific bio-cultural paradigm of the relevant community or country.

The existing western IPR regime does not deeply look into the cultural roots of knowledge systems and the community's rights. Most of the countries of the south demand for an alternative IPR regime to safeguard their traditional knowledge with cultural and humanistic values instead of exclusive monetary value. Knowledge cannot be abstracted as a separate element. It is interwoven with knowledge, skill, practices, attitudes, norms, language, and environment. Traditional medical knowledge or therapies or medicines cannot be validated in reductionist theories or out of a holistic approach to prove its scientific basis. In the same way, it is not tailored to the current knowledge market's needs that commoditise the knowledge.

Encoded knowledge or culturally codified systems are not receptive to outside communication or unprotected disclosures. It has its own defensive IPR system for sustainable transmission and selective modifications within positively qualified contexts. Therefore, the original knowledge source is always reputed as venerated or sacred. Even though knowledge is generated by the community through trial and error, it is considered as a social capital or a public-owned treasure that should not be exploited or adulterated. In ancient culture, the genealogy and pedagogue were very important in traditional knowledge systems to ensure and endorse the IPR. The original holiness attributed to knowledge, knowledge sources, and knowledge management process was prevailed without external manipulation.
Related to traditional medical knowledge, some currently accepted IPR practices may not be completely protective due to their cultural irrelevancy. The TKDL program in India looks like a kind of affirmative and culturally sensitised project in terms of defensive disclosure. It is successfully applicable to a well-documented and decoded system like Ayurveda but not for traditional medical knowledge, which is mostly embedded in verbal sources and practices. Establishing a digital database or virtual library can be a final step after gathering all available keystone information to an inventory. Then most difficult task will be the filtering, scrutinising and authenticating data that are really originated in indigenous culture. Collective ownership can be granted and declared as public domain only after thorough and extensive study.

Not only tangible resources or recordable practices but designs, symbols, verbal pronunciations, gestures, customs, norms, and procedures must also have a place in an alternative IPR model. For an example, in traditional

medicine pulse reading techniques are completely different from pulse checking. It is a kind of multitask competency and cognitive skill gained through a generation. This kind of knowledge cannot be simplified into a one single linear action or standard protocol. Something like virtual blessings extended by a physician by means of merciful touch or reciting a mantra will not be in the scope of existing IPR regime. But these kinds of controversies or exclusions or ambiguities will allow unfair, inequitable, and unethical exploitations to take place. One viable model for safeguarding IPR is to encourage traditional knowledge transmission systems (for example, the gurukula system, a teacher-based line of practitioners) and reinforce value-oriented knowledge sharing processes in specific fields.

8. Director-General of Intellectual Property Rights Authority of Sri Lanka (IPRASL)

Establishment of IPRASL can be considered a bold step taken by the government of Sri Lanka as a signatory to the International Charter on the Patent Rights with an avowed commitment to legal implementation of the provisions of the Charter. This is only a regulatory body helping the parties concerned to ensure the uninterrupted enjoyment of their rights and dues. The provisions that had been made available have the force of an international rule since the entire world is bound by the same rule and same regulation.

Yes, it is agreed that there should have been some tendency to allow local flavour to be sensed from these rules and regulations, but if that is accommodated then the common characteristic will disappear from the entire exercise.

Undoubtedly the cultural context cannot be ignored, and the fact that the concept of IPR or patent rights appear to be foreign to us in the present context cannot be denied. But in the good old days, the concept appears to have been in vogue though it was not as rigid as it is now. Moreover, social backgrounds have taken a complete change, and hence we are compelled to adjust ourselves to the changing needs.

IPR issues arise from the acceptance of the concept of ownership or the authorship of the creations. The noncompliance with the inherent rights of the owners or the authors consolidated by legal recognition leads to breaches of the law. There are accepted mechanisms to determine the ownership or the authorship under the current regulations. Whoever proves with admissible proof to the ownership of and derive benefits from the creation and any legal

inheritor to whom the rights had been legally handed over by the lawful owner will have the ownership legally handed over and will be declared the owner or the author for which others have obligation to obey and honour. Refusal leads to problems. This is the current situation based on the modern concept of IPRs.

However it cannot be said that traditional ICH can claim for the same privilege. Traditional ICH is carried over from generation to generation with no exact known or identified owner or an author attached to them. These creations are all cultural expressions of the society at the time with no identifiable author, and hence considered as common property of the community or the people. Not only they belong to the people but also they are intended for the good or the benefit of the people at large individually or collectively. Since all the people have a share of the ownership but cannot manage the elements individually, the function of protection, nourishment, and taking care against any misuse or damage has been automatically handed over to the agent of the people namely the government or the state. Therefore, everyone in the society stands to benefit from but no one has the right to do any harm intentionally or otherwise.

The view that the concept of IPR is alien to us since it had originated in the West and imported here with no due consideration for the value system or the cultural pattern of the country has some validity, but it does not convey the whole truth. The Sri Lankan social system no doubt with its nourishment received from Buddhist teachings moulded the people to serve society in whatever way they could, without greed for personal gains and hence their creations were never meant for personal glory. Therefore, one may argue that none of the creations of the forefathers had ever been identified with an individual since they are the results of the collective efforts of a group.

Yet one may argue that there is evidence to prove that authorship rights have been respected in the past though it is accepted that the whole concept of IPR has come to light even in the West as late as the sixteenth century with rules and regulations seeing the light of the day only as late as eighteenth century. Also one is not certain whether there were or were not mechanisms used by the royal and provincial hierarchies in the distant past to bestow the ownership or the authorship to the creators but the validity of different ways adopted by them to honour certain achievers in the past cannot be underestimated in arriving at final judgements.
In the absence of an identified owner or author of the creations in traditional society, the most important factor to be taken into consideration in

determining the pros and cons of the issue of IPR in respect of the traditional cultural heritage is the purpose and the intention of the creations as we would come to agree on the basis of our common understanding of the concept of Culture. Everything in the traditional society is a solemn and sacred part of the culture in which they survived and towards which they contributed according to their might. Hence nothing can be out of context in that culture. Therefore when one needs to understand the intention or the purpose for which a particular creation had been put in place we can understand how we can reproduce it without harming its originality. Hence the issue of reproducing, exemplifying, or even recreating may not be a problem to bother about so long as the intentions are clear and straight forward and are not sinister.

It must be mentioned with much respect to Dr Karunaratna that he had been of tremendous service to his motherland in the relevant field and his wise counselling has been well recognised even by the international organisations as is proved by the honours bestowed upon him. The survey team was fortunate to get a copy of a draft legislation he had authored that was intended to be an amendment to existing provisions to deal more efficiency with the relevant rules and regulations in respect of Indigenous Knowledge (IK). The title of the document is "A Legal Framework for the Protection of Traditional Knowledge in Sri Lanka" (Working Document-Version 01-December 2006). It is undoubtedly a master piece designed to prevent any misuse or corruption of IPR in respect of IK, which forms a heavy load of ICH in countries such as Sri Lanka, where almost everything called ICH is complementary to what we call IK. This draft has received much appreciation and acceptance from world bodies and from the international experts, but unfortunately it has yet to receive local acceptance. The fears and the doubts expressed by certain quarters in the course of interviews held with this survey team in respect of the motivation for and the efficiency of the mechanisms of implementation of the provisions can be easily understood if experiences of this sort happen to be regular occurrences.

IV. Information Building and Sharing

All the institutions that shared their experiences and knowledge with this survey are positively engaged in information building in the relevant fields, and in all cases, they resort to such hard tasks solely for the benefit of the general public who may come as researchers, disseminators of knowledge, arts creators, or even as mere knowledge and information seekers. Therefore, they are invariably engaged in sharing the fruits of their labour with the unlimited cliental they are bound to gather during the course of time. This then will require and compel them to be on the alert to the possible problems that can arise.

Undoubtedly the enhancement of the awareness of the different classes of people of their rights and duties will be a major function of the relevant officials in the various Institutions. This is one of the major roles played by the Institutions like the Office of the Intellectual Property Rights Authority (IPRA) when they plan regular awareness programmes for the benefit of different categories of people in the society who may in some way or the other be either a victim or a culprit in the instances of infringements that may occur. Yet they cannot escape by merely making people aware of the dangers of infringements. Instead, they will have to be ready with mechanisms, rules, and regulations to prevent infringements from happening and taking actions if or when such cases occur. These institutions have been increasingly engaged in these activities as international laws had entrusted the said responsibility to them by way of making them partners to the international treaties and charters on the relevant subjects. In addition, the IPRA is functioning in the advisory capacity to the other state institutions on IPR matters.

The Department of National Archives of Sri Lanka (DNASL) is one of the most important institutions engaged in information building and sharing them with others as has been elaborated above. However it has to be noted that it is the custodian for all judicial purposes of the legal copies of all the publications in the country. . Hence one will see that while allowing the general public to gain access to these documents. all the necessary precautions have been taken to ensure the safety of these documents, Yet, unlike other institutions that undertake field surveys to gather ICH information and creations from a grass-roots level, it does

not embark on such collection exercises since the materials it has total mandate on are brought to them by printers, creators, authors, or government institutions in keeping to the legal requirements or occasionally by donors who opt to deposit their valuable historical or cultural materials with the state's repository of national archives.

The department itself has pre-determined rules and regulations governing the use of these valuables, and in the case of private donations, there are the stipulations governing the use of such materials through agreements between the two parties. Therefore, it could be presumed that there is no room whatsoever for infringements to occur. What is most important here is the fact that the materials collected at the DNASL are meant for public use and hence for sharing the knowledge. The main functions expected of this institution clearly highlight its obligations to the general public who would expect them to facilitate getting essential information or even to lay claims on their due rights. The variety of functions assigned to them clearly show how they are tied to the services to the public.

At the same time, it will be seen that this institution is assured to improve its collections every day with the compulsory addition of new materials. Therefore, the information building of the DNASL is guaranteed, and any problems will be related to the necessary resources, manpower, trained skills, physical space, and facilities required to look after the collection and conserve the same for future generations. The trust and confidence the general public has on this institution is owed mainly to its legal obligations, and the public tends to prefer it for safekeeping valuable documents. Even electronically recorded materials like CDs, tapes, and DVDs can now be found deposited with them. At present, this institution has among its wide variety of collections the following audio-visual materials that form a genuine ICH collection

- Colour slides of temple paintings
- Cassettes and tapes of folk music, some Sinhala music tapes
- Some videos containing speeches of Executive Presidents, culture of Sri Lanka
- Microfilm of published newspapers in Sri Lanka.

This institution, well aware of its public duty and obligations, undertakes more and more public awareness programmes to educate the people on their rights and duties. This is proved by the increasing regular awareness programmes undertaken by the DNASL.

The Department of National Museums (DNM), as the main repository of the

tangible cultural heritage of the nation, collects its pieces through various means, such as field collections, donations, purchases, and occasionally deposits made via court orders. Therefore, the material under its custody and protection are all public wealth and accessible to the public for viewing, educating, and even using them as models, but with permission. This institution also collects intangible cultural heritage, such as folklore and traditional knowledge for research and educational purposes, and this heritage is also open for public use. These are all mechanisms of information building and sharing activities adapted by the institution within their means.

The capacity of the DNM in the information building and sharing activities is enhanced by the very fact that it has a network of provincial museums to cater to the needs of the local communities and to display the cultural properties of significance to those localities. This indeed is a great step in making the community conscious of its heritage and of the need to preserve and conserve the heritage for future generations. The DNM has also widened the scope of its mandate by establishing subject-based museums and periodical museums to provide wider and fuller awareness to the visitors on the various themes on which the museums are arranged. These measures are very useful in making the public conscious of the validity of their cultural heritage and the need to take maximum care to protect and preserve them as a symbol of pride and value of their history and culture.

The media institutions under the care of the state are the Sri Lanka Broadcasting Corporation, Sri Lanka Rupavahini Corporation, and Independent Television Network. They are the main centres responsible for propagating and building awareness of the heritage that society is blessed with, and hence, they are responsible for information building in the most lawful manner and setting examples and standards for others to follow. The activities and programmes designed by them not only fulfil that objective but also help promote new talents and research for new materials. Therefore, engaging in electronic media can be considered very powerful for the agencies in information building and sharing.

Another important set of institutions related to information building and sharing are the national, provincial, rural, and schools libraries as well as the specialised libraries attached to departments, universities, hospitals, and others since they perform a role no other can. Since libraries principally perform the same function of providing facilities to improve knowledge, a lot can be achieved through them if they are properly managed. More importantly, national libraries do perform a greater service through the bigger and better resources available to them. This is especially true when more knowledgeable manpower is available at their disposal.
The National Library and Documentation Services Board (NLDSB) is outstanding,

owing primarily to the mandate given by the very Act that created it. According to the brochure, the mission of the NLDSB is attractive. The NLDSB is a repository of cultural heritage. People have access to benefit from the source materials within it, and it cannot be denied since there is no mandate to do so. However, common law is applicable to them as well and precautions are being taken to ensure that what is deposited is legally admissible.

Taking into consideration the many activities embarked on by now by this institution, and more precisely after taking over the responsibility of hosting the activities of the National Committee of ICH Council of Sri Lanka, the NLDSB can be credited with the honour of living up to its ideals and objectives of assisting Sri Lanka to become a culturally enriched and intellectually advanced nation

An area where information building and sharing activities have an important role to play is in the native medical system where much of the knowledge still remains with traditional practitioners and passed down orally from generation to generation, mostly from father to son or son-in-law. This body of knowledge needs to be collected and tested to provide it modern recognition, but at the same time, it has to be protected from being pilfered.

The suspicion the bearers of this body of knowledge has about the possible and imminent danger of multinationals grabbing the patent rights to this valuable wealth of knowledge they had been preserving for such a long period of time cannot be ignored at any cost when considering past experiences of the world where certain wealthy countries that had never seen even the colour of a margosa tree (neem) had robbed the patent rights for neem products from their true owners.

Action has been taken by the government of Sri Lanka since about 1956 to popularise native medicines and the government had initiated steps to establish hospitals, dispensaries, and even research centres meant for native medical practices though one cannot claim that everything is smooth and is on the right tracks to guarantee that no more dangers will ever recur in the future. However, it has to be accepted that information building sharing activities are not running as smoothly as we would like. Therefore, there is an urgent need for the responsible agencies to get into action and to make the world a better place for the very valuable and productive traditional knowledge to come into the open to benefit all humanity and not a few developed countries.

Ⅴ.IP Issues in Information Building & Sharing

The DNASL claims that there have been no IPR issues that have ever emerged in the past, and they envisage no such problems in the future since they are bound to be extra careful as they are also the custodian of the legally accepted copies of the publications. Even in cases of microfilming, no IPR issues had occurred since the microfilming has been undertaken with the consent of the owners of the ola manuscripts for the owners to benefit from the new technology.

The DNM as well has the distinction of being free from the impacts of IPR issues. IPR issues do not arise since the artefacts and ICH recordings are well covered by law and by the rules and regulations under which the elements had been acquired as property of the state or the general public. There is no occasion to infringe on the rights of the creators or the bearers since the permission has to be obtained to make any copies or duplicates or creations out of them. However, it must be known that all the tangible objects on display are copies of those in common use among the people in society.

Accessibility to this public property is available to all, and any benefit derived out of its use for publications, new creations, or in any other manner needs only to be acknowledged. The institution has taken the initiative, with full state patronage, to establish a centre to create replicas of tangible objects to cater to the demands of people who search for as souvenir materials. This indicates that this institution has not been a target of criticism in respect of IPR infringements.

The Central Cultural Fund, the University of Performing and Visual Arts, the Folk Arts and Crafts Centre, and the Department of Cultural Affairs are all engaged in research, education, popularisation, and promotional functions with regard to the cultural heritage, and they have never faced IPR-related since there is hardly any environment within any of these institutions compelling and inducing such infringements or misuses. The Sri Lanka Broadcasting Corporation and the Sri Lanka Rupavahini (Television) Corporation claim that they, as state media agencies, take full precaution to protect the rights of artists and always promote the artists through the media since the media institutions' existence depends solely on the artists' contributions. Hence, they claim that chances for infringements rights are minimal.

It has to be emphasised that all these institutions are state enterprises, and therefore, maximum care has intentionally been taken to free them from being targets of criticism. Hence, it would be proved that Sri Lanka had never nourished its heritage for individual gain or glory. Instead, it had always been fostered for the good of the community and the benefit of society. Therefore, it is proved that, despite modernisation and the introduction of new concepts, Sri Lankans have not totally turned away from the exemplary qualities of their forefathers whose memory they prefer to continue with them.

The situation with regard to the private sector institutions is quite different as can be seen from the very nature of their association with culture or ICH since there is hardly a role played by the private sector in the process of upholding the cultural heritage. The contribution made by the private sector until very recent times had been more or less at zero level, and often the belief was that looking after the heritage is a duty of the state and the private sector has nothing to do with it. Their behaviour in keeping with this attitude has had disastrous results as can be seen from the multiplicity of litigations that have taken place in respect of the alleged IPR infringements. They are almost totally related to infringements of the rights of the authors or the piracy of rights related to music world.
Litigations in respect to using passages, pages, and chapters from books without the prior permission from the author (books); distributing copies of cassettes, CDs, and DVDs (music and drama) unlawfully reproduced; and using the cultural properties of others for commercial purposes without approval have been frequent occurrences, and not surprisingly, the complaints have been justifiably compensated. This situation has brought about new thinking into the whole issue of IPR issues and new laws are being considered.

Finally, it must be heavily emphasised that almost all the complaints of infringements relate to the modern creations or piracy and pilferage of the creations. Never has infringements of traditional cultural aspects been reported, providing us an indication that there is no recognised owner to those aspects of traditional cultural heritage to initiate such actions. If there had been one, he would have been able to appear in defence of the traditional aspects when infringed on. It does not mean that people do not complain of breaching the traditional cultural aspects. Severe criticisms can be heard from all corners of defiling sacred items of traditional culture by various people who have no respect for country's proud heritage. Most recent protest came against the vulgarisation of the Buddhist stanzas by certain extremist religious sects who use them for their ulterior purposes by replacing original words and terms with terms unique to them but insulting to the natives who are the real owners of these aspects of cultural heritage.

VI.Legislation in Sri Lanka

The legislation to safeguard IPR and solve issues that can emanate in Sri Lanka can be seen added to the basic laws of the land and the ordinances that bring into existence those institutions. Since all the deposits in the National Archives, other than those that had been deposited by individuals or institutions with specific restrictions, are public domain and the public has the legal right to gain access to them. But in the case of individual and institutional deposits, access is determined by the conditions laid out in the agreements signed with the donor. Hence, instances leading to the emergence of IPR issues cannot occur.

The Department of National Museums was also established by a mandate given by an act of parliament and necessary legal precautions were included to guard against misusing, pilfering, and even replacing with fakes. However, not everything can be considered fool proof, and therefore breaches can occur. Yet it can be conjectured from the provisions laid out that no IPR issue can occur in respect of artefacts in the custody of the DNM. This is primarily due to the fact that they are meant to be on display for the public, whose rights to copy an element or create a new one cannot be denied since the artefacts themselves are either copies or replicas of the things in use in society.

Though many appear to be of the view that the concept of IPR is not familiar to Sri Lankan society, the gamut of legal protections provided to safeguard the rights of the creators and the authors of ICH-based work is considerable. The rarity of testing the strength of the law in the local context may possibly convey a misunderstanding that Sri Lanka does not have a strong legal framework to deal with such issues. A very clear account of the extensive legal precautions that form the legal enactments associated with establishment of various institutions had been submitted to the ICHCAP along with the Sri Lankan Report on the Field Survey of ICH Safeguarding Efforts in the Asia-Pacific Region submitted by this same institution (NLDSB) in December 2011.

Since the copy of the final report of the project referred to above is already within the reach of the coordinator of this project may be it is sufficient, to avoid all duplication, to quote the exact references to the relevant material for the convenience of those who matter.

1. Safeguard System and Policy

National laws and several acts are:

1) Intellectual Property Act No 36 of 2003
2) Antiquarian Ordinance No 9 of 1940
3) Cultural Property Act No 73 of 1988
4) National Archives Law No 48 of 1973
5) National Museums Ordinance No 31 of 1942
6) National Library and Documentation Services Board No 51 of 1998
7) Town and Country Planning (Amendment) Act No 49 of 2000
8) Tower Hall Theatre Foundation Act No 1 of 1978
9) Arts Council of Ceylon Act of 1952

In addition to the institutions covered in the survey report, this report covers several more institutions. The legal ordinances that provide the basis for their existence have very remote bearing on IPR issues and hence are not attached. Among these institutions are the following:

- Folk Arts and Crafts Centre.
- Sri Lanka Broadcasting Corporation.
- University of Performing and Visual Arts.
- Central Cultural Fund.
- Department of Cultural Affairs.

Except for the Department of Cultural affairs, all the other institutions in this last list have no connections with IPR issues since their duties do not cover any aspect related to areas liable for such issues. On the other hand, the Department of Cultural Affairs has a role as a mediator in respect of the protection of the rights of the artists since they consider the department as the one institution responsible for looking after them.

2. Legal implications

An attempt was made to obtain the views of eminent legal personalities in the field of IPR to ascertain the validity of the arguments put forward by the scholars who were interviewed. Not all were prepared to express views in a haphazard manner as they saw it, but a few others volunteered to provide their personal opinions. With much thanks to them we were happy to benefit from their generosity of sharing some of their views with us. What transpired at these discussions was the fact that Sri Lanka has a very strong legal framework to cope with the modern issues of IPR, and many matters

have been resolved with ease since the legal system provides the necessary background. Several well-known cases were mentioned to prove the point that any infringement will go punished if the aggrieved party is prepared to go before the courts.

However, the same thing cannot be said of the protection given to the ICH of the traditional society. On the one hand, we cannot avoid agreeing with the views believed to have been expressed by the exponents of the local arts and crafts that the traditional arts creations have no individual or even family or group owners since by necessity it was intended for the benefit of the whole society or the community and was never intended for personal glory. Therefore, there is no one to be considered as aggrieved, and hence no one to make a complaint. In fact, the aggrieved party is the community as a whole whose only representative is the state, and hence the right to rectify any injustice lies with the state. On the other hand, there is no solid example to be shown as the ideal model to follow as has been mentioned by several artists themselves in case we are to go to courts to fight a legal battle. Yet, there is much validity in the argument that the real value and cultural significance of a creation belonging to traditional society lies certainly on the relevance for the occasion and the purpose and the intended message to be communicated. Hence, any infringement can be interpreted as an attempt to defile and vulgarise the artistic creation of that traditional society. But the difficulty will be the possibility to convince the legal profiles of the validity of the argument.

However, what we can consider the most powerful weapon to be used in protecting the sacredness and serenity of the creations of the traditional society is the voice of the people who are the real owners as well as the custodians of the ICH. If any creation made out of or in association with any creation of traditional society is to survive in the society, it will have to get approval of the people who are the givers of the patent rights to the creations of the society. If they reject it, then it does not have the people's approval, and if survives, then it does have approval and will remain as new creation. One may see that this public approval will be even more powerful than the legal opinion though we have to accept that we are bound to respect the law. What solution we can find is to motivate the lawmakers to amend the legal frame to suit the wishes of the people. Here we cannot be acting in isolation since we are living in an international era and are bound to respect the international law as well. Therefore, anyone will realise the need for an international legal forum to thrash out some of the problems that have cropped up only in the recent past, owing to the new situations arising in the world at large.

VII. Observations

Culturally, Sri Lankans have been moulded to work for the good of the whole rather than be selfish and self-centred. Hence, everything done and accomplished had been intended for common use. They had been offered for the common benefit, and no one cared to lay claims for the honour of creating them. Therefore, ICH in traditional society has no identified author or an owner, implying that the entire society is the real owner of all of them. In other words, the concept of private ownership is alien to Sri Lankans.

Considering the local cultural context, it has to be emphasised that no institution in the heavy array of institutions created to conduct the affairs of the state has been vested with any role in regard to IPR. The need has not arisen since the concept had been alien to them and rights associated with were more or less unknown. It is with the establishment of the IPRA in 1983 as a result of being a signatory to the Charter on the subject that Sri Lanka started to give a wide range of functions towards safeguarding IPR. However with the wider awareness created since the establishment of the IPRA most people having their interest at stake have displayed much interest in the mechanisms to safeguard their interests. This has prompted most respondents to canvass for some strong legal system and a powerful authority to regulate these affairs.

It is also important that most of the respondents show a preference for a single powerful authority rather than scattering powers and functions among many institutions, which they fear would lead to a situation where each would try to pass on responsibility to others and end up with nothing achieved. This one powerful authority many prefer it to be established as a powerful task force directly under the purview of the president since the president appears to be the only single state craftsman, however much unhealthy it may be, who has the full confidence of the people who matter here.

Most importantly all are agreed that this powerful authority must be manned by representatives from each field of ICH and traditional knowledge with no consideration to political or other affiliations. Not only must the authority be able to administer good governance but it also must be empowered to take any suitable action towards safeguarding cultural heritage.

1. Recommendations

Taking into consideration the different opinions expressed by the artists and scholars it is certain that all of them are anxious to see some meaningful actions taken to safeguard the great cultural heritage of the people. The coverage should not be limited to cultural and mundane things only. It has to be expanded to include other areas like religion as well since instances of encroaching on the religious arena and breaching levels of attacks or criticisms are ever increasing and becoming rampant. The target always happens to be the religion of the people—namely Buddhism—that the world is greedily looking for in their search for peace and calm. Therefore any mechanism introduced to regulate in the field of culture must necessarily include the religion as well. A third aspect that is in urgent need of protection is the IK that Sri Lanka is very famous for. The knowledge, which can be made great use of in the field of agriculture, indigenous medicine, irrigation, forestry and wildlife, health, and above all education, deserves to receive better and closer attention and protection.

Hence the authority to be vested with the powers and functions of regulating in the field has to be manned by the most suitable men with no other affiliations and in the role of the selection criteria. It has to be a fully pledged and all powerful body answerable only to the president of the country. It has to be a high-powered institution. It has to cover all the different areas that provide nourishment to the various aspects of Sri Lankan culture.

It must also be equipped with facilities and the financial strength to maintain a library of films, DVDs, videos, and cassettes and areas for interested students, scholars, and artists to watch, listen, and learn about culture. This is in addition to a library of publications for the benefit of research. A centralised authority with fully pledged facilities in a single place will fare better and with more results than having the functions scattered among several institutions. Authority must be administered by a powerful head who is knowledgeable and full of enthusiasm and dedication to see the revival of the cultural heritage of the country.

Also it is recommended that the authority should immediately embark on a mission to redefine the IPR issues and look for an alternative IPR charter that provides value and substance to the cultural heritage that we are blessed with for over more than 3000 years.

2. Acknowledgements

This report may look like a tiny achievement, but the efforts put into accomplishing it were much more than the finished report seems to convey. The failure of individuals to keep the dates with us was a great set back since we relied on them to get information helpful in achieving a meaningful report. However, we feel that justice has been done to the mission we were entrusted with, owing to the help given by the true lovers of Sri Lankan heritage. Therefore, many thanks are due to those very busy and eminent persons for being kind enough to spare a long periods on this very useful exercise. Many thanks are also due to the officials of the National Library and Documentation Service Board for the helpful manner in which we were assisted in the survey. Special thanks go to Mr R. P. Wedage who never lost patience and to young AnjanaSasanka who was an advisor and achiever in the computer work. Everyone's efforts will receive a new value if and when the report helps bring a new stage of life to Sri Lankan cultural heritage. A special word of thanks is due to MrUdaya Prasad Cabral, the project coordinator, who was a tower of strength to us until the completion of the work entrusted to us.

Summary

In Sri Lanka, the National Committee on Intangible Cultural Heritage (SLNCICH) is the leading institution of ICHCAP ICH IP 2011 Field Survey. The National Library and Documentation Service Board of Sri Lanka (NLDSB), is assisting as facilitating institution, providing the necessary facilities within the country.

1. ICH in Sri Lanka

Sri Lanka ICH is rich and diverse. The report mentions several areas:

- Traditional medicine, one of the most fertile grounds for ICH
- Traditional healing rituals and ceremonies
- Traditional agricultural practices
- Handicrafts such as carpentry and woodworking, black smithy and ironwork, brass work, pottery, mat weaving, rattan work, and weaving and spinning of cotton
- Technological vocations: Irrigation, gem mining, graphite mining, hunting, collecting bee honey, and many more.

2. Institutes Profiles and IBSA Activities

The report describes information building and sharing activities led by the institute, and also others ICH related institutes profiles existing in Sri Lanka.

1) Sri Lanka National Library Services Board Activities (SLNLSB)

The institute aims among others to assist Sri Lanka to become a culturally enriched and intellectually advanced nation. SLNLSB is also involved with thepreservation of the national and cultural heritage of Sri Lanka.

This objective is fullfilled through many activities such as:

- Collection and conservation of ICH collections
  (Martin Wickramasinghe, Wijesinghe, and Ola Leaf).
- Collection of unexplored knowledge and wisdom of the traditional Sri Lankans
- Electronic collection, audio-video cassettes, CDs, DDs, and gramophones of Sri Lankan songs.
- Documentaries, plays and tele-dramas

2) Profiles of Others ICH related Institutes in Sri Lanka

The survey leading institute has examined ICH related activities in State agencies, whether departments, boards, or public enterprises in the field of ICH.

Office of the Intellectual Property Rights Authority of Sri Lanka (IPRA)

It is the state authority in the area of IPR and possesses the powers and responsibilities in relation to determining rights and their breaches, also in assisting in litigations or settlements.

Ministry of Cultural Affairs and Arts

State institution mandated to look after, sustain, and develop the cultural aspects in the country as a whole.

Department of National Archives of Sri Lanka (DNASL)

DNASL serves as the legal depository material of the island. SLNLSB is the custodian for all judicial purposes of legal copies publications in the country. The institute is equipped with a wide variety of collections among which audio-visual materials that form a genuine ICH collection.

Department of National Museums (DNM)

DNM serves as repository for the tangible aspects of Sri Lankan ICH. The institute displays the rich visual traditions and extraordinarily diverse cultures. DNM is equipped with collections, exhibitions, research, public programs, and the museum fosters. The institute is engaged in diverse tasks contributing to the explorations on subjects such as pre-history, anthropology, ethnology, culture, and ancient crafts.

Folk Arts and Crafts Centre (FACC)

FACC was established in 1988 with the aim of protecting the Sri Lankan traditional arts and crafts. The institute is solely engaged in disseminating knowledge and providing the vocational training required to promote the survival of traditional crafts

Sri Lanka Broadcasting Corporation (SLBC)

SLBC is an institution primarily depending on the audio broadcasting of songs and music, with direct relevance to ICH. It was considered a training ground for budding artists and the watchdog of the nation's culture. The

institute is equipped with a Folk Music Research Unit, which successfully conducted field research to collect folk songs and adaptations made out of them.

University of Performing and Visual Arts (UPVA)

UPVA has been established as an independent higher education institute in field of ICH. UPVA is an education centre aiming dissemination of knowledge. ICH usage in UPVA is for educational purpose and value only.

Central Cultural Fund (CCF)

CCF is a cultural programme of UNESCO-Sri Lanka. It is entrusted with the responsibility of conservation and development of the ancient heritage of Sri Lanka. CCF brings to light the traditional knowledge and heritage of ancient Sri Lanka, and fulfil its dissemination.

Department of Cultural Affairs (DCA)

DCA mission is focused on the conservation and development of the country cultural heritage. DCA is responsible for guaranteeing IPR of artists and literary men. The institute promotes ICH through support for village-level centres of arts, and transmission of transmit knowledge and skills to the younger generation.

Some views of local artists and scholars on the relevant subject of IPR issues related to ICH also appear in the report.

3. IP Issues at the National Level and in Institutes

1) IP issues at the national level

According to the report, all new legislation in Sri Lanka deals mostly with the present creation. Hence, IPR issues cropping up in relation to ICH have not been properly taken care of.

IPR issues could arise from:

- The acceptance of the concept of ownership or the authorship of the creations based on the modern concept of IPRs.
- The noncompliance with the inherent rights of the owners or the authors, consolidated by legal recognition, leads to breaches of the law.
- The multinationals grabbing the patent rights of Sri Lanka preserved knowledge.

- From dissemination/openness of Sri Lanka valuable and productive traditional knowledge for the benefit of all humanity.
- From complaints of infringements related to the modern creations or piracy and pilferage of the creations.
- Against vulgarisation of the Buddhist stanzas by certain extremist religious sects who use them for their ulterior purposes by replacing original words and terms with terms unique to them. It has been considered as insult to the natives, real owners of these aspects of cultural heritage.

The State is equipped with mechanisms to determine the ownership or the authorship under the current regulations. The legal ownership/authorship is established upon submission of admissible proof to the ownership of and derive benefits from the creation and any legal inheritor of the lawful owner..

These conflicts with the situation of traditional ICH carried over from generation to generation with no exact known or identified owner or an author attached to them.

2) IP Guidelines in Institutes

The Department of National Archives of Sri Lanka (DNASL) has pre-determined rules and regulations governing the use of these valuables. In the case of private donations, there are the stipulations governing the use of such materials through agreements between the two parties.

DNSAL has total mandate on materials brought to them by printers, creators, authors, or government institutions in keeping to the legal requirements. Also occasionally, materials are brought by donors who opt to deposit their valuable historical or cultural materials with the State's repository of national archives.

The report mentions that NLDSB as repository of cultural heritage grants people access to benefit from the source materials within it, unfortunately, without any mandate to do so. However, common law is applicable to them as well as precautions are being taken to ensure that what is deposited is legally admissible.

All the deposits in the National Archives, other than those that had been deposited by individuals or institutions with specific restrictions, are in the public domain, and the public has the legal right to gain access to them. But in the case of individual and institutional deposits access, they are

determined by the conditions laid out. Hence, instances leading to IPR issues are more or less non-existent.

Concerning the Department of National Museums, IPR issues do not arise since the artefacts and the ICH recordings are well covered by the laws of the land and by the rules and regulations under which they have been acquired as property of the state or the general public. Permission has to be obtained to make copies or creations out of them.

DNM as the main repository of the tangible cultural heritage of the nation collects its pieces through field collections, donations, purchases, and occasionally deposits made via court orders. Therefore, materials under its custody and protection are all public wealth and accessible to the public for viewing, educating, and even using them as models, but with permission. Also, there are collected ICH material for research and educational purposes. Those last mentioned ICH material are open for public use.

In the case of individual and institutional deposits, access is determined by the conditions laid out in the agreements signed with the donor.

The Sri Lanka Broadcasting Corporation has also taken maximum precautions to avoid controversies over the rights of the creations. Since the institute plays all musical works available in the open market, there are no threats of litigation on infringement charges. Measures have been taken to compensate the artists whose creations are being broadcasted. This is one of the demands made and won by the artists under IPR issues.

DNM grants accessibility to all in relation to public properties. Any benefit derived out of it is used for publications, new creations. However, there is a need of acknowledgement. The institution has taken the initiative, with full State patronage, to establish a centre to create replicas of tangible objects to cater to the demands of people who search for as souvenir materials. This indicates that this institution has not been a target of criticism in respect of IPR infringements.

The Central Cultural Fund, the University of Performing and Visual Arts, the Folk Arts and Crafts Centre, and the Department of Cultural Affairs are all engaged in research, education, popularisation, and promotional functions with regard to the cultural heritage. The report mentions that this institute takes full precaution to protect the rights of artists.

In Sri Lanka, ICH IP issues arising in above described government institutes are few with regard to the private sector institutions upholding the cultural

heritage. Multiplicities of litigations have taken place in respect of the alleged IPR infringements. They are almost totally related to infringements of the authors' rights, or the piracy of rights related to the music world.

Litigations in respect to using passages, pages, and chapters from books without author prior permission;distributing copies of cassettes, CDs, and DVDs unlawfully reproduced; also using the cultural properties of others for commercial purposes without approval have been frequent occurrences, and not surprisingly. The complaints have however been justifiably compensated. This situation has brought about new thinking into the whole area of IPR issues related to cultural heritager, and new laws are being considered.

List of co-researchers

- **PandulaEndagama**

  Former anthropologist of Department of National Museums

- **Udaya Cabral**

  Secretary of ICH Committee

  Head of Conservation and Preservation Division,

  National Library and Documentation Services Board, Sri Lanka

Annex 1|***Questionnaire***

1. Introduction

Intangible cultural heritage (ICH), which is the source of human creativity and cultural diversity, has been diminishing since the onset of globalisation and urbanisation. In this regard, international society, working in tandem with UNESCO, has garnered public attention on ICH safeguarding, and the Convention for the Safeguarding of the Intangible Cultural Heritage was adopted in 2003.

According to Article 13, d.iii of the 2003 Convention, States Parties should establish documentation institutions for ICH and facilitate access to them to ensure the safeguarding, development, and promotion of ICH present in each State Party's territory. This is to say, the Convention encourages managing an institute related to information building and sharing—one that collects, produces, and disseminates ICH information.

The process of ICH information buildingand sharing could be the cornerstone to safeguarding ICH. However, as with most kinds of information activities in other fields, the process of ICH information buildingand sharing includes many intellectual property (IP) issues.

Many problems could arise while collecting and creating ICH information, while processing and producing ICH information, and while disseminating and utilising ICH information. Additional, diverse problems could also develop from the communities, institutes, or individuals involved in the process.

In particular, with the development of technology and the appearance of new media, ICH intellectual property issues can manifest themselves in many ways, and these problems have expanded into much more complicated arenas.

The International Information and Networking Centre for Intangible Cultural Heritage in the Asia-Pacific Region under the auspices of UNESCO (ICHCAP)has been concerned with IP issues related to ICH information building and sharing. To cope with these concerns, ICHCAP has endeavoured to develop a guideline for protecting IP in the process of ICH information building and sharing.

ICHCAP has proposed a project for a field survey to examine IP issues, focusing on activities of ICH information–related institutes in the Asia-Pacific region and on cases about how to deal with problems that arise in the process of ICH information building and sharing.

The survey is expected to contribute by allowing an exchange of experiences and know-how in the Asia-Pacific region to foster an environment to understand and resolve problems related to IP aspects of ICH. Furthermore, the survey results could be the foundation for developing a guideline for protecting IP rights during ICH information building and sharing.

2. Glossary

For the current survey, the terms below will have the given meanings.

1) Bearer
   A member of a community who recognises, reproduces, transmits, transforms, creates, and forms a certain culture in and for a community. A bearer can, in addition, play one or more of the following roles: practitioner, creator, and custodian.[1]
2) Community
   People who share a self-ascribed sense of connectedness. This may be manifested, for example, in a feeling of identity or in common behaviour, as well as in activities and territories. Individuals can belong to more than one community.[2]
3) Custodian
   A practitioner who has been entrusted by the community with the responsibility of safeguarding their intangible cultural heritage.[3]
4) Documentation
   The recording of ICH in tangible forms.[4]
5) Identification
   Technical description of a specific element constitutive of the ICH, often done in the context of a systematic inventory.[5]
6) Information Building and Sharing
   A series of activities that build and utilise ICH information, such as identification, inventory making, documentation, and digitisation. The process of ICH information building and sharing consists of several stages: a stage for preparation, a stage for collecting and creating information, a stage for maintaining information, a stage for processing and producing information, and a stage for utilising and disseminating information.
7) Informants
   Local experts from whom information about particular cultural practices is obtained, in the context of cultural field research.[6]

---

[1] UNESCO Glossary Intangible Cultural Heritage. Prepared by International Meeting of Experts on Intangible Cultural Heritage. The Hague, August 2002, p.4

[2] *Ibid.*

[3] *Ibid.*

[4] *Ibid*. p.5

[5] *Ibid*. p.5

[6] Peter Seitel, *Proposed Terminology for Intangible Cultural Heritage: Towards Anthropological and Folkloristic Common Sense in a Global Era*. UNESCO International Round Table 'Intangible Cultural Heritage', 2001 p.9

8) Intangible Cultural Heritage (ICH)
   Practices, representations, expressions, knowledge, and skills—as well as the instruments, objects, artefacts, and cultural spaces associated therewith—that communities, groups, and in some cases, individuals recognise as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature, and their history, and it provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity.[7]
9) Intellectual Property (IP)
   Legal rights that result from intellectual activity in the industrial, scientific, literary, or artistic fields.[8] Common types of intellectual property rights include copyrights, trademarks, patents, industrial design rights, and trade secrets.
10) Inventory Making
   Drawing up one or more inventories of the intangible cultural heritage present in territories to ensure identification with a view to safeguarding.[9]
11) Moral Rights
   Owner's right to claim authorship of the work and to object to any distortion, mutilation, or other modification or derogatory action in relation to the said work that would be prejudicial to the owner's honour or reputation.[10]
12) Practitioner
   A member of a community who actively reproduces, transmits, transforms, creates, and forms culture in and for the community by performing and otherwise maintaining social practices based on specialised knowledge and skills.[11]
13) Stakeholder
   Various levels of agency in ICH information building and sharing activities, including public and private institutions, and more specifically artists and creators of the cultural communities concerned.[12]
14) Subjects of ICH
   Bearers, practitioners, and communities.

---

[7] Art.2 UNESCO Convention for the Safeguarding of Intangible Cultural Heritage, 2003

[8] World Intellectual Property Organization, *WIPO Intellectual Property Handbook: Law, Policy and Use*, WIPO Publication No. 489(E). p.3

[9] Art.12.1. UNESCO Convention for the Safeguarding. *opcit*

[10] Art.6*Bis* Berne Convention for the Protection of literary and Artistic Works, Paris Text 1971

[11] UNESCO Glossary Intangible Cultural Heritage. *opcit* p.5

[12] Noriko Aikawa, *State of Intangible Heritage Development in the Lead Up to the 2003 Convention.* UNESCO Shanghai meeting in the lead up to the adoption of ICH Convention. Training of the trainers. Asia and Pacific. Module 1. p.21

3. Specific Questionnaire

A. Institute Overview

1) Profile of the institute
   a) What is the name of institute?
   b) Where is the institute located? (City/Country)
   c) Please introduce the history of institute.
   d) What are objectives and functions of the institute?
   e) Inwhat country/region have your institute's activities been carried out?
   f) What kind of ICH is your institute specialised in?
      Ex) performing arts, dance, music, rituals, ceremonies, etc.

2) Characteristics of the institute
   a) Your institute can be classified as
      □ Government department
      □ Public institution
      □ Public enterprise
      □ Private enterprise
      □ NGO
      □ Other (Please explain the classification)
   b) Is your institute affiliated with other organisations? If yes, please describe the parent or affiliated organisations—name, classification, objectives and functions, specialisation, etc. (over 200 words in English)
   c) What are the institution's sources of budget?
      Ex) a national budget, fund-raising activities, etc.

B. Information Building and Sharing Activities of Institute

3) Information building and sharing activities of the institute
   a) Please indicate the kinds of activities your institute has done or is doing.
      □ Identification
      □ Documentation
      □ Inventory making
      □ Database/Archive building
      □ Publication and distribution
      □ Utilising digital contents
      □ Other (Please explain other activities your institute has done)

b) Among your answers in [B-3-a], which activity does your institute mainly focus on? (multiple answers allowed)
   (1) Please explain the activity (over 250 words in English)
   (2) If any, please also provide guidelines, internal regulations, or other principles regarding the activity.

c) Regarding your answers in [B-3-b], please describe specific projects related to the activity by giving a set of answers below. If you have more than one project, please provide a set of answers for each one (One to three examples are recommended, but you can also give more than three examples)
   (1) Name of project
   (2) Duty department
   (3) Background of project (over 150 words in English)
   (4) Context of project (over 250 words in English)
   (5) Procedures of project
   (6) Outcomes/Effects

d) If you indicated in [B-3-a] that your institute did activitiesrelated to database/archive building, please provide an additional explanation about the activities.
   (1) How did/does your institute obtain ICH-related data or archives?
      □ Field work and documentation
      □ Purchase
      □ Donation
      □ Other (Please explain how your institute obtains(ed) ICH-related data or archives)

      If you checked more than one answer, what is the primary way your institute obtains(ed) ICH-related data or archives? Please arrange your answer according to the order of priority.
   (2) Please provide an index of data or archives of your institute by giving a set of answers below.
      (a) Name of data
      (b) Online/Offline data
      (c) Type of data
         Ex) text, photograph, recording, video, etc.
      (d) Source of data
         (Where did the data originate?)
      (e) Context of data
      (f) Person/Organisation who has rights on the data
      (g) Principle/Guideline of data management, if any.

C. Intellectual Property Issues in Institute

4) Does your institute have experience with a project regarding IP aspects of ICH?
   - □ Yes
   - □ No

   If yes, please describe the project by answering the questions below. If you have more than one project, please provide a set of answers for each one.
   a) Name of project
   b) Duty department
   c) Background of project (over 150 words in English)
   d) Context of project (over 250 words in English)
   e) Procedures of project
   f) Outcomes/Effects

5) Is there a department, a unit, or an individual undertaking tasks related to intellectual property?
   - □ Yes
   - □ No

   If yes, please provide information below.
   a) Name of department (which covers the unit or the individual)
   b) Name of duty person (in the department, the unit)
   c) Tasks of department
      (a) Main task
      (What is the main task of the department? [over 100 words in English])
      (b) Tasks relating to intellectual property
      (Please describe the tasks that are related to intellectual property [over 100 words in English])
   d) Contact information
      (a) Contact number and e-mail of department
      (b) Contact number and e-mail of duty person

6) Does your institute have a principle for protecting IP aspects of ICH?
   - □ Yes
   - □ No

   If yes,
   a) Please describe the principle (over 150 words in English)
   b) If any, please attach documents related to answers in [C-6-a].

D. Intellectual Property Issues in the Process of Information Building and Sharing

ICH information building and sharing constitutes a series of activities that build and utilise ICH information, such as identification, inventory making, documentation, and digitisation. The process of ICH information building and sharing consists of several stages: a stage for preparation, a stage for collecting and creating information, a stage for maintaining information, a stage for processing and producing information, and a stage for utilising and disseminating information. Each stage is detailed below.

- The stage for preparation: conducting preliminary investigations, planning activities, selecting ICH objects to be investigated, undergoing prior consultation on an activity, etc.
- The stage for collecting and creating information: conducting field surveys (interviews, recording, filming, etc.), purchasing data, receiving donations, etc.
- The stage for maintaining information: building a database, keeping the data in its original form, classifying the data, constructing a security system for the data, etc.
- The stage for processing and producing information: editing, modifying, and upgrading information collected and maintained in the previous stages towards forms of documents, videos, web pages, etc.
- The stage for utilising and disseminating information: disclosing and disseminating information produced, distributing commercially, and utilising existing information for broadcasting, advertising, publicity, etc.

The management of ICH information raises equally different intellectual property issues from one category to another, be it in the phase of preparation, collection, production, or dissemination.

In **the stage for preparation**, intellectual property issues that could arise are below.

- Problems regarding identifying the nature of rights existing in ICH that will be targeted in information building and sharing activities
  - Identifying copyrighted works
  - Identifying unpublished or unknown authors' works
- Problems regarding compliance with a country's laws and regulations or customs concerning ICH information building and sharing activities

    - Identifying a country's laws and regulations or customs that could affect information building and sharing activities
    - Examining the range of protection under national statutes of IP rights of ICH practitioners and creators
- Others
    - Other intellectual property issues that could arise during the preparation stage

In **the stage for collecting and creating information, the stage for maintaining information, the stage for processing and producing information,** and **the stage for utilising and disseminating information**, intellectual property issues that could arise are below, grouped into categories of IP rights.

Ownership

- Identification of the owner of the copyright and related rights in the recordings, films, or manuscripts embodying ICH
- Determination of ownership of both the database itself and its contents
- Issue of bearers' ownership rights in adaptations such as lawful inspiration or the borrowing of work based on one or several pre-existing ICH work(s)
- Custodians', owners', and/or managers' rights of ownership of secondary materials embodying ICH (secondary materials include items such as films, sound recordings, photographs, and written documents.)
- Bearers' ownership of ICH-derived materials that are legally owned by the creator of the document, recording, and/or database embodying ICH
- Issue of joint ownership in work involving ICH material

Prior Informed Consent or Approval

- Issue of an approval or an agreement related to collecting ICH information
    - Identifying the authority who has been granted power to approve (permission or agreement from bearers, practitioners, communities, or other stakeholders)
    - Determining the terms and scope of the approval or agreement from bearers, practitioners, communities, or other stakeholders

- Prior informed consent to the reproduction, use, and display of ICH material
- Bearer's, practitioner's, or community's objections to utilising and disseminating information
- Determination of the format of agreements: consent forms to access and use ICH materials, licenses, undertakings, etc.

Maintenance of Collected Information

- Determination of data classification in an area of protection under IP related law
- Determination of the database to be built according to its uniqueness in IP related law

Adaptations

- The issue of unauthorised adaptations
- Issue of legal rights that could arise during secondary utilisation of information
  - Permission from stakeholders about secondary utilisation, such as broadcasting, advertising, publicity, etc.
  - Intellectual property of the secondarily used information

Secret, Sacred, or Confidential ICH

- Issue of secrecy, sacredness, or confidentiality under customary laws and practices of ICH material collected
- Problems regarding disclosure of secret information

Access, Control, and Use

Communities' Involvement

- Determination of communities' participation in the recording, digitisation, and dissemination of ICH for safeguarding, promotional, and income-generating purposes
- Communities' involvement in the decision-making processes related to the management of ICH elements held by institutes
- Authority of ICH subjects and their capacity to manage information once produced
- Bearers' agreement on modification or transformation of ICH materials

- Determination of communities' legitimate rights holders
- Management of access and use of ICH information by communities
- General public's interests to benefit from and enjoy the information building and sharing activities of ICH

Relationships

- Issue of database users' interaction with bearers for use of ICH
- Issue of relationships between an institution that holds the material, and a bearer, be it the owner, custodian, or manager.

Terms of Use of ICH Material

- Code on management, access, and use of ICH information
- Compliance with restricted ICH use under customary laws and practices
- Establishment of IP-related protocols, policies, and practices

Infringement of Rights and Responsibilities

- Infringement of intellectual property rights existing in the ICH information
  - Copyrights in literary, musical, and artistic expressions
  - Related rights (performers', phonograms', producers', and broadcasting organisations' rights) in performances, rituals, recordings, etc.
  - Trademark in cultural names, signs, indications, marks, symbols, etc.
  - Indigenous know-how and knowledge protected under trade secrets, patent law, etc.
  - Design rights in cultural textiles, poetry, etc.
- Legal responsibilities of institutes leading the activities
  - Vis-à-viscommunities from which the ICH was collected
  - Vis-à-visusers to whom ICH is delivered
  - Vis-à-viswebsite viewers of digitised ICH collections

Licensing

- Licensing by institutions of ICH material in a recording, database, or collection
- Terms of licensing
- Content of ICH material to be licensed
- Identification of the exact licensee and licensor

Bearers' Moral Rights

- Disclosure of ICH ownership information on any related use
- Problems regarding the determination of the range of disclosure
- Case of derogatory work related to ICH
- Respect of bearers' right to integrity

Sharing of Benefits

- Issue of respect of bearers' economic rights
  - Right to translation
  - Right to reproduction
  - Right to communication to the public
  - Others
- Problems regarding the distribution of profit that comes from utilising and disseminating information
  - Economic compensation for bearers, practitioners, or communities
  - Economic compensation for other affiliated organisations or individuals, such as collectors, researchers, agencies, or collective management organisations

Unfair Use or Misuse of ICH

- Misappropriation of ICH material by an institute
- Misappropriation of ICH material by a third party

Portraits, Filming, or Reproduction of ICH Material

- Right to use for commercial purposes
- Respect of motion pictures right in ICHdigitisation
- Moral rights of bearers in portraits or films
- Respect of the sacredness, secret, or sanctity of portraits or films
- Right to reproduction in digitising a photograph
- Exception to copyright in cases of promotional or educational purposes

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

- Bearers' approval in using ICH material as logos or product identifiers
- Misuse of cultural words as trade name, domain name, or geographical indication

7) Have any of the above issues arisen in any of the stages at your institute?
   □ Yes
   □ No

   If yes, please describe the issue by answering the questions below. If you have more than one issue, please provide a set of answers for each one.

   a) Please explain the activity your institute did.
      (a) Name of project
      (b) Sort of activity
          (What kind of information building and sharing activities did your institute do in the project?)
          Ex) identification, documentation, inventory making, database building, etc.
      (c) Objective of project

   b) What kinds of issues have arisen?
      □ Problems regarding compliance with a country's laws and regulations or customs concerning ICH information building and sharing activities
      □ Problems regarding identifying the nature of rights existing on ICH that will be used in information building and sharing activities
      □ Problems regarding identifying the nature of rights existing in ICH
      □ Problems regarding ownership of ICH
      □ Problems regarding prior informed consent or approval
      □ Problems regarding maintenance of collected Information
      □ Problems regarding adaptations
      □ Problems regarding secret, sacred, or confidential ICH
      □ Problems regarding bearers' moral rights
      □ Problems regarding sharing of benefits
      □ Problems regarding unfair use or misuse of ICH material
      □ Problems regarding portraits, filming, and reproduction
      □ Problems regarding the use of ICH as a trademark, geographical indication, or domain
      □ Other (Please indicate the issue)

   c) Please indicate all stages in which the issue has arisen.
      □ The stage for preparation
      □ The stage for collecting and creating information
      □ The stage for maintaining information
      □ The stage for processing and producing information
      □ The stage utilising and disseminating information

d) What was the cause and content of the issue? (over 500 words in English)
e) Who were the stakeholders involved with the issue?
f) What did the institute do to resolve the issue? Please describe the process and the results of the resolution. (over 500 words in English)
g) What was the institute's principle in the process of dealing with the issue?
h) Does your institute have a guideline, policy, or protocol regarding legal issues that could arise during the stage?
□ Yes
□ No
If yes, please attach the copy of the guidelines, policies, or protocols.
i) Please attach any other forms (ex. form of agreement) that were used during the stage.

8) Through your institute's experience, what kind of legal issues regarding IP aspects of ICH do you think could arise in each stage? (over 400 words in English)
9) In relation to [D-7] and [D-8], what kind of alternatives, guidelines, policies, or protocols do you think should be prepared? (over 400 words in English)

E. Institute's Activities

Here are questions on issues that could arise in the entire process of the institute's activities.

10) What kind of relationship does your institute have with ICH subjects, such as informants, collectors, researchers?
Ex) one-way asymmetrical relationship, one-way symmetrical relationship, two-way asymmetrical relationship, two-way symmetrical relationship, owner vs. custodian, etc.
11) Does your institute include intellectual property issues in the institute's vision, purpose, function, polices, etc.? If yes, please indicate your institute's vision, purpose, function, polices, etc. that addresses intellectual property issues.
12) Does your institute have a representative legal dispute regarding the institute's information building and sharing activities?
□ Yes
□ No

If yes, please describe the case. If you have had more than one case, please provide a set of answers for each one.

a) Name of project
b) Sort of activity
c) Purpose of project
d) Procedures and context (over 200 words in English)
e) Issue activated (over 200 words in English)
f) Response to the issue
(Who or what department was in charge of the issue? How did the department cope with the issue? Were the principles or guidelines adjusted to the case? [over 300 words in English])

13) Does your institute have a case of guaranteeing the rights and the participation of ICH subjects (bearers, practitioners, or communities) in the institute's information building and sharing activities?

□ Yes
□ No

If yes, please describe the case below. If you have more than one case, please provide a set of answers for each one.

a) Name of project
b) Sort of activity
c) Purpose of project
d) Participation of subject in the procedure (over 300 words in English)
e) Rights of subject guaranteed
f) Please attach related documents.

14) Have policies or guidelines for protecting intellectual property rights of ICH in the process of information building and sharing been well organised in your institute?

□ Yes
□ No

If yes, please provide information on the policy or the guideline, including

a) Context of the policy or the guideline
b) Please attach related forms. (ex. form of agreement)

F. Related Legislation

15) In your institute's country, is legislation or the legal system for the protection of cultural heritage organised?

□ Yes
□ No

If yes, please describe the legislation or the legal system below.

a) Full title
b) The relevant sections or paragraphs
c) Date of coming into force
d) Details of the office responsible for administering the laws
e) Copies of laws and regulations
f) What are issues or problems regarding IP aspects of ICH that cannot be covered by the legislation or the legal system described above?
g) What kind of legal systems or devices need to be added for the protection of IP aspects of ICH?

If no, please provide additional information below.

h) Legal systems or regulations expected to be issued
i) Status of processing

G. Future Plans

In case your institute has not been equipped with policies or guidelines for protecting intellectual property related aspects of ICH, please answer the following questions.

16) Does your institute have plans for organising guidelines or regulations for protecting ICH intellectual property related rights in the process of information building and sharing?
    - □ Yes
    - □ No
    a) If yes, please describe your institute's future plans (manner and context) for organising guidelines or regulations. (over 250 words in English)
    b) If a future plan is in the process of being organised, please provide additional information below.
        (1) Guidelines or regulations expected to be organised
        (2) Status of processing
17) Does your institute have plans for projects regarding the protection of intellectual property related rights in the process of information building and sharing?
    - □ Yes
    - □ No

    If yes, please describe the project below.

    a) Purpose of project
    b) Term and duration
    c) Context
    d) Anticipated procedures

H. Other Opinions

18) Please provide any kind of information related to the purpose of this survey.

4. Contacts

Please provide contact information of the person who is in charge of this survey report.

Name	
Position	
Department	
Address	
E-mail	
Telephone	
Mobile	
Fax	

5. Reference materials

Please provide all attached materials with information below.

Distinction (relevant question)	
Form of material	
Name	
Source	
Context	

6. Results

Replies to this questionnaire should kindly be sent no later than the prearranged date to the following address.

Ms Saymin Lee (Information & Research Section)
Intangible Cultural Heritage Centre for Asia and the Pacific (ICHCAP)
National Research Institute of Cultural Heritage Bldg (4F)
132 Munji-ro, Yuseong-gu, Deajeon 305-380
Republic of Korea
Tel. +82 42 820 3513 / Fax. +82 42 820 3500

The survey may also be e-mailed to the address below, but in addition to the e-mailed materials, please kindly send the requested references materials to the above address.

E-mail: ichcap@gmail.com
smlee@ichcap.org

Reference materials can be submitted using Webhard.

Address: www.webhard.net
Id: ICHCAP
Password: ichcap

Thank you for your valuable contribution to the survey.

Annex 2|***Cultural Property Act***

Cultural Property Act in Sri Lanka (No. 73 of 1988)

Sect 1.Short title

1. This Act may be cited as the Cultural Property Act, No. 73 of 1988.

Sect 2. Prohibition of export of cultural property except upon license

2. (1) No person shall, except upon a license in the prescribed form issued by the Controller of Exports (hereinafter referred to as the "Controller ") and upon the payment of a prescribed fee export or attempt to export any cultural property from Sri Lanka-

(2) This section shall have effect as if it formed part of the Customs Ordinance and the provisions of that Ordinance shall apply accordingly.

Sect 3. Application for license to export cultural property

3. (1) Every application for a license under section 2 shall be made to the Controller in the prescribed form and shall be accompanied by a statement from the Archeological Commissioner stating that he has no objection to the issue of such license to the applicant.

(2) The Controller may refuse to issue a license where-

(a) the Archaeological Commissioner in the statement issued by him objects to the issue of such license ; or

(b) he is of opinion that any cultural property sought to be exported is a property which is required for museum in Sri Lanka.

Sect 4. Appeal against refusal of license

4. Any person aggrieved by the refusal of the Controller to issue any license under section 3 may appeal against such refusal to the Secretary to the Ministry in charge of the subject of Cultural Affairs (hereinafter referred to as the " Secretary ") against such refusal. (2) The Secretary may in dealing with any appeal preferred to him under subsection (1), affirm or set aside the decision of the Controller against which the appeal has been preferred.

Sect 5. Penalty for export of cultural property without permission

5. If any person, himself or by another person on his behalf exports or attempts to export any cultural property in contravention of section 2, he shall, without prejudice to any forfeiture or penalty to which he may be

liable under the provisions of the Customs Ordinance, be guilty of an offence and shall, upon conviction after summary trial before a Magistrate, be liable to a fine not exceeding five thousand rupees or to imprisonment of either description for a period not exceeding three years or to both such fine and imprisonment.

Sect 6. Delegation of powers and duties of the Controller

6. (1) The Controller may delegate to an officer of the Department of Archaeology the power to issue license.

(2) Every officer appointed under subsection (1) shall exercise thepowerdelegated to him subject to the general or special directions of the Controller.

Sect 7. Establishment of the Cultural Property Board

7. There shall be established a Board called the Cultural Property Board (hereinafter referred to as " the Board ").

Sect 8. Constitution of the Board

8. (1) The Board shall consist of-

(a) the Secretary to the Ministry of the Minister in charge of 'the subject of Cultural Affairs, who shall be the Chairman;

(b) the Director of Museums ;

(c) the Director of National Archives :

(d) Chairman, Central Environmental Authority;

(e) two members who shall have specialized knowledge and experience in matters relating to cultural property appointed by the Minister.

(2) A person shall be disqualified for appointment or continuing as a member of the Board under paragraph (e) of subsection (1) -

(a) if he is or becomes a member of Parliament; or

(b) if he is not or ceases to be a citizen of Sri Lanka.

(3) The members appointed by the Minister under paragraph (e) of subsection (1) subject to the provisions of subsections (4) and (5) shall hold office for a term of three years but shall be eligible for reappointment

(4) The Minister may remove from office any member of the Board appointed under paragraph (e) of subsection (1) without assigning any reason therefor and such removal shall not be called in question in any court.

(5) In the event of the vacation of office of any member appointed under paragraph (e), or his removal from office under the provision of the

preceding subsection, the Minister may appoint another person to hold such office during the unexpired part of the term of office of the member whom he succeeds.

(6) If any member of the Board appointed under paragraph (e) is temporarily unable to discharge the duties of his office due to ill-health or absence from Sri Lanka or for any other cause, the Minister may appoint some other person to act in his place as member,

(7) The members of the Board shall be remunerated at such rates as may be determined by the Minister in consultation with the Minister in charge of the subject of Finance.

Sect 9. Meetings and quorum of the Board

9. (1) The Board may regulate its procedure in regard to the meetings of the Board and the transaction of business at such meetings.

(2) The quorum for a meeting of the Board shall unless the Board otherwise determines be four members.

Sect 10. Power of the Board

10.(1) The Board shall be an Advisory Board and shall advise the Archaeological Commissioner in the exercise of his powers or on any other matters referred to the Board for their opinion.

(2) The Board may in the exercise of their power retain the services of any person having a specialised knowledge and experience in matters relating to cultural property.

Sect 11. Minister to specify the categories of cultural property to be registered

11. The Minister in consultation with the Board and with the approval of the Cabinet may from time to time by Notification published in the Gazette specify the categories of cultural property that shall be registered under this Act, having due regard to the following considerations : (a) the necessity for conserving such category of cultural property ; (b) the need to preserve such objects within Sri Lanka for the better appreciation of her cultural heritage ; (c) such other factors as will or are likely to contribute to the safeguarding of the cultural heritage of Sri Lanka.

Sect 12. Registration of cultural property in private possession

12. No person shall own or have in his custody or possession any cultural property specified in the Notification referred to in section 11 unless such cultural property is registered by the registering officer and such officer has issued a certificate of registration in respect of such property.

Sect 13. Government Agent to be the registering officer

13. The Minister may, by Notification published in the Gazette appoint for the purpose of section 12 the Government Agent to be the registering officer for the administrative district for which he has been appointed Government Agent.

Sect 14. Applications for certificate of registration-

14. The Minister may, by Order published in the Gazette, prescribe the period within which an application for a certificate of registration may be made under section 15.

Sect 15. Grant of certificate of registration

15. (1) Every person required to obtain a certificate of registration under, section 12 shall make an application for such certificate, to the registering officer of the administrative district within which he resides on an application form prescribed for the purpose.

(2) On receipt of an application under subsection (1) the registering officer may, after holding such inquiry as he deems fit, grant a certificate of registration containing such particular's as may be prescribed.

(3) Where an application received under subsection (1) has been rejected, the registering officer shall inform the applicant in writing stating his reasons for such rejection.

(4) Where an application for a certificate of registration has been rejected, the applicant may, within fourteen days from the date of such rejection, appeal to the Archaeological Commissioner against such rejection.

(5) Any applicant who is aggrieved by a decision of the Archaeological Commissioner rejecting an application for registration may appeal against such decision to the Court of Appeal.

Sect 16. Transfer of ownership of any registered cultural property to be intimated to the registering

16. Where any person transfers the ownership or custody or possession of any cultural property registered under section 12 such person shall intimate within fourteen days from the date of such transfer, the fact of such transfer to the registering officer of the administrative district within which such person resides.

Sect 17. Penalty

17. Any person who- (a) owns or has the custody or possession of any cultural property, fails to make an application under section 15, or (b) transfers the ownership or custody or possession of any cultural property and fails to notify such transfer to the registering officer, under section 16. shall be guilty of an offence and shall, upon conviction after summary trial before a Magistrate, be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a period not exceeding one year or to both such fine and imprisonment.

Sect 18.Licence to deal in cultural property

18. No person shall, by himself or by any other person on his behalf, carry on the business of selling or offering to sell any cultural property, except under the authority of a licence issued under section 19.

Sec 19

19. (1) The Archaeological Commissioner may issue a licence to any person to carry on the business of selling or offering to sell any cultural property after taking into consideration-

(a) the experience of the applicant with respect to trade in cultural property ;

(b) the town, village or area where the business is to be carried on ; and

(c) such other matters as may be prescribed.

(2)

(a) Every application for a license to carry on any business as specified in subsection (1) shall be in the prescribed form and shall be accompanied by the prescribed fee ,

(b) The Archaeological Commissioner may, after holding such inquiry as he deems fit, issue or refuse to issue a license to an applicant therefor.

(c) Where the Archaeological Commissioner refuses to Issue a license to an applicant, he shall inform the applicant of the refusal to issue a license,

(d) Every license authorising the carrying on of any such business as specified in subsection (1) shall be in the prescribed form, for a prescribed period and shall be subject to such terms and conditions, as may be necessary to ensure that the business authorized by such license is carried on in compliance with the provisions of the Act.

(e) The Archaeological Commissioner may cancel a license issued under subsection (1), if the licensee contravenes or fails to comply with any condition attached to the license

(f) Where the Archaeological Commissioner cancels the license under paragraph (e), he shall cause notice of such cancellation to be given to the licensee-

(g) An applicant for a license who is aggrieved by the decision of the Archaeological Commissioner refusing to issue a license, or the licensee who is aggrieved by the decision of the Archaeological Commissioner cancelling his license may, within thirty days from the date of such decision, appeal in writing to the Secretary from such decision.

Sect 20. Person whose licenses have been cancelled may sell cultural property to other licenses

20. Notwithstanding anything contained in section 18, any person whose licence has been cancelled under paragraph (e) of subsection (2) of section 19, may, after making a declaration in writing to the Archaeological Commissioner within such period and in such form and manner as may be prescribed, of all the cultural property in his ownership, custody and possession immediately before the date of such cancellation, sell such cultural property to any other person holding a valid licence issued under section 19 : Provided that no such cultural property shall be sold after a period of six months from the date of cancellation of the licence.

Sect 21. Liability of person contravening Sections 18, 19 and 20 of this Act

21. Any person who- (a) by himself or by other person on his behalf, sells or attempts to sell any cultural property to a person outside Sri Lanka in contravention of section 18, or (b) contravenes the provisions of section 19 or section 20, shall be liable on conviction after summary trial before a Magistrate, to a fine not exceeding five thousand rupees or to imprisonment of either description for a period not less than three years or to both such fine and imprisonment.

Sect 22. Powers of Archaeological Commissioner

22. The Archaeological Commissioner is hereby empowered-

(a) to prepare a list of the categories of cultural property required to be registered under section 12;

(b) to conserve, maintain, repair and restore cultural property that requires registration ;

(c) to control and administer the registration, sale and protection of cultural property that require registration ;

(d) to purchase valuable cultural property with such funds as may be granted for the purpose by Parliament,

Sect 23. Duties of the Archaeology Commissioner

23. The Archaeological Commissioner shall perform and discharge all such duties and functions as are assigned to him by this Act him by this Act or by any regulation made thereunder, or by any regulation made thereunder.

Sect 24. Power of inspection of cultural property

24. (1) The Archaeological Commissioner or any officer authorized by him in writing for the purpose may, at all reasonable times, inspect any cultural property in the possession of any person and it shall be the duty of every such person to permit such inspection and to give to the Archaeological Commissioner or such officer all reasonable facilities to study such cultural property and to make drawings, photographs or reproductions thereof by the making of casts or by any other means:

(2) Any person who fails to comply with the provisions of subsection (1) shall be guilty of an offence and shall on conviction after summary trial before a Magistrate be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a term not exceeding three months or to both such fine and imprisonment.

Sect 25. Direction by the Archaeological Commissioner

25. (1) Where the Archaeological Commissioner is of the opinion that any cultural property of national importance owned by or in the custody or possession of any person, is in danger of being destroyed, defaced, misused, allowed to fall into decay or where the character of such property is about to be, or is being, or has been, changed, he shall with the concurrence of the Board give directions to the owner or the persons who have custody or possession of such cultural property to safeguard such property.

(2) Where the Archaeological Commissioner is of opinion that the owner or person in possession is unable to comply with his directions within a reasonable time or where he is of opinion that such directions will not be complied with or that such cultural property will be removed from Sri Lanka without a licence he shall with the concurrence of the Board take such property into his custody.

(3) Any person who wilfully obstructs the Archaeological Commissioner in performing the duties made under subsection (2) shall be guilty of an offence and shall on conviction after summary trial before a Magistrate be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a term not exceeding three months or to both such fine and imprisonment.

(4) Where the Archaeological Commissioner subsequent to the taking of into his custody any cultural property under subsection (2) is satisfied that the owner or the person who had custody or possession of such property is now in a position to comply with his directions or has complied with such directions and that such property will not be in any danger of being destroyed, defaced, misused or allowed to fall into decay he may with the concurrence of the Board return such property to such owner or person,

(5) Any property taken into custody under subsection (2) may be handed over to the Director of Museums by the Archaeological Commissioner for exhibition at a Museum for public display.

Sect 26. Authorization of Government Agents and other officers to exercise powers of Archaeological Commissioner

26. The Archaeological Commissioner may generally or specially authorise the exercise, performance or discharge of any of his powers, duties or functions under this Act- (a) by the Government Agent of any district, within that district ; or (b) by any officer of the Department of Archaeology in any part of Sri Lanka.

Sec 27.

27. No suit or proceeding shall be instituted against any officer appointed under this Act, for any act which is done in good faith or is purported to be done by him in the performance of his duties or the discharge of his functions under this Act.

Sect 28. Regulation

28. (1) The Minister may make regulations in respect of any matter required by this Act to be prescribed or in respect of which regulations are authorized by this Act to be made.

(2) Every regulation made by the Minister shall be published in the Gazette date as may be specified in the regulation.

(3) Every regulation made by the Minister shall, as soon as convenient after its publication in the Gazette, be brought before Parliament for approval. Any regulation which is not so approved shall be deemed

to be rescinded from the date of its disapproval but without prejudice to anything previously done thereunder. Notification of the date on which any regulation is deemed to be rescinded shall be published in the Gazette.

Sect 29. Interpretation

29. In this Act, unless the context otherwise requires- "antiquity" includes any of the following objects lying or being found in Sri Lanka, and has been in existence for more than one hundred years- Statues sculptured or dressed stone and marbles of all descriptions, engravings, carvings, inscriptions.. paintings, writings, and the material where on the fame appear all specimen of ceramic, glyptic metallurgic and textile art, coins, gems, seals, jewels, jewelry, arms, tools, ornaments, furniture, household utensils, and all other objects of art which are movable property; " Archaeological Commissioner" means the person appointed to be or to act as Archaeological Commissioner and includes any person authorized in respect of any power, duty or function of the Archaeological Commissioner under this Act ; "cultural property" includes cultural property which on religious or secular grounds is specifically designated by the Minister with the approval of the Cabinet, as being of importance for archaeology, prehistory. history, literature, art or science, and which belongs to one of the following categories :

(i) rare collections and specimens of fauna, flora, minerals and anatomy ;

(ii) property relating-

(a) to history, including the history of science and technology, military and social history : or

(b) to the life of national leaders, thinkers, scientists and artists ; or

(c) to events of national importance;

(iii) products of archaeological excavations or of archaeological discoveries;

(iv) elements of artistic or historic monuments or archaeological sites which have been dismembered ;

(v) antiquities more than one hundred years old, such as inscription, coins, currency notes and engraved seals ;

(vi) objects of ethnological interest;

(vii) pictures, paintings and drawings produced entirely by hand ;

(viii) original marks of statutory art and sculpture ;

(ix) original engravings, prints and lithographs ;

(x) rare manuscripts, old books, documents, drawings, maps, plans and publications of special interest;

(xi) postage revenue and similar stamps;

(xii) archives;
(xiii) articles of furniture more than one hundred years old; and
(xiv) old musical instruments.

Annex 3|***Photographs***

Interview with Prof Mudiyanse Dissanayake
(Photo by Pandula Endagama)

Meeting a young artist at the Folk Arts and Crafts Centre.
MrG.S.K. Kanangara,Director of the Centre, MrA.G.R.J.K. Athapaththu and MsC.Nadeesha Nilmini Fernanda, instructorsat the Centre
(Photo by Pandula Endagama)

Interview with Mr Lionel Gunatilaka
(Photo by Pandula Endagama)

Interview with Mr Ravibandu Vidyapathy
(Photo by Pandula Endagama)

Interview with DrDanister L Perera
(Photo by PandulaEndagama)

Publisher

International Information and Networking Centre for Intangible Cultural Heritage in the Asia-Pacific Region under the auspices of UNESCO

Director of the Publication
Samuel Lee

Editor-in-chief
Seong-Yong Park

Editorial Staff
Weonmo Park
Saymin Lee

Tel.+82-42-820-3513
Fax.+82-42-820-3500
Email. ichcap@ichcap.org
Add. 132 Munji-ro,Yuseong-gu,Daejeon 305-380