

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 old 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.