

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 the preservation of the national and cultural heritage of Sri Lanka.

This objective is fulfilled 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 heritage, and new laws are being considered.