



Parliament on Thursday

Prasad Gunawardane, Walter Nanayakkara and Frances Bulathsinghala

Code of Intellectual Property Amendment Bill

# Intellectual Property plays a vital role in the economic development of a country — Minister Wickremaratne

When Parliament met yesterday Deputy Speaker Anil Moonesinghe presided. After oral questions were replied to, Minister of Commerce and Food Kingsley T. Wickremaratne moved the Second Reading of the Code of Intellectual Property (Amendment) Bill.

**Minister Wickremaratne said:** "I am presenting a Bill to amend the Code of Intellectual Property Act No. 52 of 1979, which is very simple and straightforward but will have far reaching and very positive effects on the creativity and development of our nation. Intellectual Property plays a vital and significant role in the overall economic development of any given country, specially in today's context where the knowledge is prominently active and absolutely important. Sri Lanka is strongly feeling, more than ever before, the need of investment, inventive and creative activity, transfer of technology and flow of knowledge in all areas of human endeavour. A strong intellectual property system is a pre-requisite for all of these. Intellectual property concerns the creations of human mind or human intellect. This concept is divided into two major areas — industrial property and copyright. Industrial property encompasses areas such as patents for inventions, industrial designs, trade marks and service marks, trade names, trade secrets, appellation of origin and rules against unfair competition whereas copyright concerns the rights of the authors of original literary, artistic and scientific works. The government, as a matter of policy, is very keen to promote the creativity of our nation in all possible areas of human activity. Our future will most probably depend on the creativity of our people and therefore the promotion and encouragement of national creativity is of paramount importance.

The effective protection of such creations is also equally important. We expect to make use of the intellectual property and the national intellectual property system to the maximum possible level to achieve these objectives. More we have trade and commerce, more we have research in science and technology, more we have creative work in literary and artistic works, more we need an effective intellectual property system. Where we properly make use of the national intellectual property system, we may attract more investment, new technology and of course the most precious knowledge in all required areas. We must have a user-friendly intellectual property system which can meet the demands of the users such as trade and industrial communities, researchers, technologists, artists.

The code of Intellectual Property Act No. 52 of 1979 was introduced in 1979 of course with the wisdom of late Hon. Lalith Athulathmudali and our present Foreign Minister Hon. Lakshman Kadirgamar. The history of the intellectual property system of Sri Lanka starts in the middle of the last century with the grant of the first patent in 1861. This system did not produce much results mainly due to the lack of creative activity and some other political and economic reasons. While many developed and developing countries were making use of the intellectual property system for their maximum benefit, we Sri Lankans were not so creative, productive and efficient to follow the same or similar path. Consequently, we are still lagging behind many of these countries. An effective system of administration of intellectual property became a pressing need by 1979 specially in the context of the liberalized economic policies of the country. The result was the Code of Intellectual Property Act.

The declared policy and rationale underlying the introduction of the new law and the administrative system was to give effective statutory expression to the moral and economic rights of the creators of their intellectual creations and to promote the creativeness of the people and dissemination and application of such creations for the benefit of both the creator and the nation while stimulating and promoting investment, transfer of technology and fair and competitive trade. The Code revised, consolidated, amended and embodied in the form of a Code the law relating to copyright, industrial designs, patents, marks and unfair competition and was meant to provide for better registration, control and administration thereof and for matters connected therewith or incidental thereto. It not only attempted to cater to the needs of the emerging economy of the country but also to honour the Sri Lanka's international obligations as far as intellectual property is concerned.

The Intellectual Property office established under the provisions of the Code is named and known as the "Registry of Patents and Trade Marks". The post of Registrar of Patents and Trade Marks and his deputies and assistants are also statutory creations. They are mainly responsible for the administration of the intellectual property system of the country. The Registry is judicially autonomous.

The Code contained comparatively modern provisions relating to intellectual property at that time. However, the administrative system and the structure of the Registry was not modern and effective. The modern law and the archaic administrative system were conflicting and that conflict was counter productive. The Registry could not efficiently meet the demands of the users of the national intellectual property system. It has seen regular increase of applications and demands in all fields of intellectual property as provided in the Code. For example, in 1982, the year in which the Registry was established, it received about 2000 applications for registration of trade marks and service marks and other related matters. This number increased gradually and the respective statistics were as follows:

- 1982-2000
- 1989-2885
- 1990-3449
- 1991-3742
- 1992-4101
- 1993-4624
- 1994-5081
- 1995-5597
- 1996-5681

The Registry has experienced similar increase of the volume of work in the areas of patents and industrial designs. The demand of the users of intellectual property system for technological and other information also remarkably increased. The users such as enterprises, industries, researchers and artists expect much more efficient and productive service from the Registry.

However, the Registry does not have structure or organization of facilities to meet these challenges. It does not even have its own staff to run the administrative system. The system is run by, except for 3 lawyers, the general clerks belonging to Combine Service. This situation is not only unproductive but also counter productive. The office does not get any automated support. Every item of work is done manually. Since 1982 there is no increase of the staff despite the tremendous increase of the volume of work. I need not state that this situation is burden on the whole economic activities of the country. This situation has also forced the Registry to neglect some of the functions entrusted to it such as administration of copyright and collection and dissemination of patent information.

Despite all these problems and constraints, the Registry has not totally failed to achieve its objectives. It has made constant efforts of course with a lot of success to discharge its duties to the maximum possible level. However, with the existing infrastructural and organizational problems and shortcomings the Registry cannot cope with current volumes of work, demands of the users and future developments.

The gravity of the situation is obvious. Corrective measures are essential. No sooner we came to power, I, as the subject Minister realized the danger

of this situation and made efforts to correct it. A re-organization and modernization programme of the Registry is in progress. We are also planning to give the Registry automated support, specially in the area of examination of trade marks and service marks, inventions for patents and industrial designs. Under the auspices of the World Intellectual Property Organization recently we had an Expert Mission to study the system and make recommendations for the automation of the Registry. We are also planning to establish at least a small Patent Information Division. The need of such service is felt more and more as there is a tremendous demand from business, industrial and scientific communities for the information in latest technological developments. We are also going to start a separate division within the Registry for the administration of Copyright in order to promote the creativity of our artists and writers and safeguard their legitimate economic and moral rights. It is our intention to recruit a professional staff to the Registry and train them in the relevant areas of intellectual property. The human resource development in the field of intellectual property is unprecedentedly important today. Unless these objectives are achieved we will not be able to face the challenges posed by the recent and future developments — national and international — in intellectual property and in creative activity as well as by global trade and technology environment.

As I mentioned earlier, the present intellectual property administrative system and the structure of the Registry are archaic, outdated and unproductive and cannot cope with the ever increasing volume of intellectual property activities and have failed to achieve desired objectives. It has become essential to modernize the intellectual property administrative system and restructure the Registry enabling it to acquire necessary efficiency and expertise and to face successfully the challenges posed by the modern trade, technological and economic environment. A modern intellectual property administrative system would also generate more income. The proposed amendments are intended to achieve these objectives. They would be foundation for a modern intellectual property office and for the implementation of the pending modernization and re-organization programme of the Registry. They will also facilitate the human resources development in the field of intellectual property which is a pressing need in Sri Lanka. They are designed to harness the performances of the staff in order to place them on par at least with the intellectual property offices of other developing countries.

### Proposed Amendments

#### Clause 2

Clause 2 (a) and (b) propose to change the name of the Registry and the designations of the key-officials of the Registry.

(a) Although it is named as the Registry of Patents and Trade Marks, the Registry also registers Industrial Designs and Service Marks and administers other matters relating to those subjects. It is the Copyright Office of Sri Lanka too. The present name of the Registry is therefore not indicative of its actual functions and therefore is defective. The corrective measures are needed to inform the users of the National Intellectual Property System and to the public the actual nature of the functions of the Registry.

(b) The present designation of the Registrar, his deputies and assistants are not indicative of the actual nature of the functions entrusted to them by the law. The functions are not limited to the registration of patents and Trade Marks. They spread to cover the registration of Industrial Designs and administration of Patents, Trade Marks and Service Marks, Industrial Designs and Copyright. They also include such activities as collection and dissemination of Intellectual Property Information and administration of International Conventions on Intellectual Property. The proposed amendment which is a corrective measure would be indicative of the nature of the actual functions — Administration of Intellectual Property.

#### Clause 3

The existing law provides that the Registrar be vested with the general control and superintendence of registration of industrial designs, patents and marks. However, the functions of the Registrar are not limited to the registration of Designs, Patents and Trade Marks. They cover many other areas of and relating to Administration of Intellectual Property. The existing provisions are therefore defective and not in conformity with the other provisions of the Code. The corrective measures are necessary to cover all his lawful functions already set out in the Code. This Clause will correct the existing defects and enhance his duties by enabling him the registration and administration of any matter provided by the Code.

#### Clause 4

This is one of the most important amendment we are proposing. As I mentioned earlier, the Registry does not have, except for 3 lawyers, a professional staff that can be trained and employed to achieve the desired objectives. This situation has a serious negative impact both on the functions of the office and on the national economy. It has also closed several avenues of generation of more revenue. This Clause provides for the appointment of officers and servants required for the administration of the intellectual property administration system as provided by the Code of Intellectual Property Act.

#### Clause 5

This amendment is consequential to the amendments made by Clause 3. The existing provisions of law do not conform to the spirit of the Code and to the basic norms of intellectual property law and administration. This Office should be the only office of Sri Lanka for registration and administration of any object of intellectual property as provided by the Code. Its functions are not restricted merely to the registration marks, patents and designs.

As I mentioned earlier, these amendments will be the basis for the modern Intellectual Property Office and administrative system which can serve our intellectual creators and promote the national creativity of Sri Lanka. It will have an efficient staff which is capable of facing the challenges posed by new developments in this subject specially in the post-TRIPS Agreement era.

I am also proposing to effect two changes in the Bill. First to change the proposed name of the Registry given in the Clause 2 (a) of the Bill and secondly to change the designations of the officials given in the Column II of the Schedule. It is proposed to rename the Registry as "The National Intellectual Property Office of Sri Lanka" and to rename the officers as "Directors of Intellectual Property, Deputy Director of Intellectual Property and Asst. Director of Intellectual Property."

#### (1) Clause (2) (a)

The proposal to change the name of the Registry as the "Department of Intellectual Property" was made more than two years ago. Since then, some striking changes have occurred in the area of intellectual property throughout the world. The name "National Intellectual Property Office of Sri Lanka" would be more relevant and appropriate in the post-TRIPS Agreement era. This is the office which administers the national intellectual property system and international conventions to which Sri Lanka is a party. Like in almost all countries of the world, this is the National Intellectual Property Office of Sri Lanka. Moreover, the name "Department of Intellectual Property" may not be the most appropriate name as the functions of the Registry defer, to a reasonable extent, from a traditional government department mainly because the Registry is judicially

autonomous. All the same, many countries of the world have today named their Intellectual Property offices in identical or similar manner.

#### (2) Column II of the Schedule

The changes are made in line with the recent developments in the proposed re-organization programme of the Registry. The Salaries and Cadres Committee is of the view that the proposed designations in the amendments would amount to upgrading the Registry to a higher level. The Committee does not recommend such upgrading.

It is observed that the recommendations of the Salaries and Cadres Committee could not obtain prior to the proposals to amend the law were made due to the fact that the proposed amendments and re-organization programme of the Registry were processed simultaneously in order to expedite the both.

**A. C. S. Hameed (UNP-Kandy District)** said: The intellectual property legislation was first introduced in 1979 and was amended in 1983. On that occasion the present Minister who was in Opposition then took us to task for introducing the law. He said we were dancing to the tune of multi-nationals. Today he is eating all what he said.

Today's Opposition is tomorrow's government. Therefore those who speak from the Opposition must be constructive.

The Minister appears to think that the change of designations would have a dramatic effect on the issue.

The proceedings were suspended at this stage for half an hour after Susil Moonesinghe MP Kalutara District raised a point of order over the non-gazetting of the names of the new cabinet and the subjects assigned to them. He said the debate cannot continue without the House officially knowing who the ministers are and what their subjects are.

Continuing Mr. Hameed said: The Minister should be here to answer queries. This Bill does not have any transitional provisions. The Bill covers patents, copyrights and trade marks. Sri Lanka does not have rich artists. Lacunas in the Bill has to be corrected for the welfare of the writers, sculptors, singers, musicians, etc. There is a lot of television piracy. Satellites are being tapped. The Sinhala film industry is in doldrums because anybody can buy a film from India and display it with local titles. **Lakshman Jayakody (Minister of Buddha Sasana and Cultural and Religious Affairs)** said: One must not forget that this intellectual Property Bill is 18 years old. Since then there have been so many international conventions, treaties and agreements and I see this as a very timely Bill that should be supported as it is a very valuable contribution for a developing country like ours.

Each of these ministries should have 'cells' so that subjects coming under each of these ministries will be made aware of. I urge all ministries on this matter as it is important to study the subjects of these various ministries and keep a record of important knowledge pertaining to these ministries, and all these documents should be available in an archive. We should also know the rights of artists, dramatists and even the rights of those who do drama on the streets.

This is a vast area where positive steps should be taken all round.

**Dr. Neelam Thiruchelvam (TULF-National list)** said: "There are two competing considerations that must be balanced in any reform of intellectual Property Law. On the one hand, the objective of such laws is to protect the intrinsic and commercial value of the product of inventors or that of his or her mind. On the other hand, as Justice Brandice in the United States Supreme Court decision in Interna-

tional News Services vs Associated Press pointed out "The general rule of law is that the noblest of human productions — knowledge, truth ascertained, conceptions and ideas — become, after voluntary communication to others, free as the air to common use."

The new legislative reforms should have focused on developing a coherent policy on intellectual property matters. Does our Intellectual Property Law strike the right balance between the interest of right holders, consumers and competitors?

The policy issues which needed urgent consideration are:

- copyrights or analogous protection for new computer technology;
- patentability of forms of life and of medical treatment;
- issues relating to the exclusivity granted by a patent relating to the inventions in the pharmaceutical fields;
- unregistered trade names and geographical spillover of reputations;
- trade related intellectual property issues in the context of international agreements;
- provisions relating to neighbouring rights.

There is a need for an open and informed discussions of these issues so that any new legislation will not only reflect the interests of those who are politically active but those of society as a whole.

There are also important deficiencies of administration which need to be addressed. These have been identified by the present Registrar.

1. the absence of technical and professional staff;
2. the need to computerise the intellectual property administration system which is outdated;
3. to provide for a public search system;
4. to enhance the professionalism, training, remuneration and morale of the existing personnel;

## More technological skills needed — Kodituwakku

**Dr. Karunasena Kodituwakku [UNP-Colombo District]** said: Intellectual Property Act was first introduced in 1979 by the late Lalith Athulathmudali. Mr. Athulathmudali did so to keep pace with the open economic policies introduced in 1977. We have a limited market in Sri Lanka. We must try to develop more technological skills here. New hi-tech methods are needed to develop a country. The UNP launched the Seethawaka Industrial Park to promote intellectual property. The PA has failed to award the tender for this project though three years have lapsed.

**Foreign Affairs Minister Lakshman Kadirgamar** said: When the code of Intellectual Property was passed in 1979 it was early in the tenure of the previous government. The then Minister of Trade Lalith Athulathmudali took the view that Sri Lanka should be transformed into a commercialised nation.

The laws dealing with the subject at that time came from the British legislature and when we gained our independence in 1948 we preserved this piece of legislation but later on these laws were swept aside and a brand new law was enforced. This was the Intellectual Property Law which was hitherto unheard of.

A committee was set up with a number of important lawyers and it was seen as best to let the administration stay as it is for a while until the people within the law circles and otherwise got used to this new law. But it seems that we have been silent for too long and it seems that the present ministry is doing something that should have been done in the 1980s. But it is better late than never and my answer to the questions passed as to whether this change is necessary is that we are doing something that should have been attended to a long time back.

**MP Neelam Thiruchelvam** spoke of computerization and I think that this is a vital need in today's fast moving world and we should see about making this department more modern.

New Departments of Intellectual Property must have a new staff and this staff shouldn't be limited to lawyers only as it is also a field belonging to commercial activity.

Many valid points were brought forward such as economic rights of authors and it is timely with two decades having passed to look into all these matters.

**Prof. A. V. Suraweera Deputy Minister of Cultural and Religious Affairs:** There was no law to prevent the violation of intellectual property rights

at present. It is an important feature in the new legislation to enable writers and artists to protect their rights with regard to their own creations.

Under the existing law protection was afforded to industrial designs, patents and trade marks.

However there were no protection of copyrights.

**Tyronne Fernando [UNP-Colombo District]** said: It became very necessary to introduce legislation to protect patent and trade mark right after 1979. We have no quarrel over the amendment to the Act.

The 1979 Act prohibits the re-production of a work of one author by another in any form.

We are signatories to the Berne Convention on copyright. But we are not signatories to the Rome Convention. It is very necessary that we take an interest in the Rome Convention too.

Under the Rome Convention those who act in a film, sing a song in a film or drama are the owners of the work not the producer of the film or the person who pays them for the work.

**Prof. Vishwa Warnapala [Deputy Minister of Education and Higher Education]** said: Property is owned by individuals who have performed in creativity. The recognition of intellectual property is a recent origin. Persons who come under the intellectual property should be given legal protection. The UNP did not introduce laws to give legal protection to intellectual property. The author of the intellectual property was Lalith Athulathmudali. We do not dispute that right. Copyright protection is an absolute necessity. Special protection must be given to literary subjects.

**Henry Jayamaha [UNP-National List]** said: It will be a failure if the international law is ignored. When we regained independence in 1948 our intellectual property laws were outdated and nothing was done to bring them in line with the modern trends. The patent office must have a competent staff and expertise if we are to face the international challenges.

There is a large volume of work in the domestic sector. Applications of registration has increased heavily between 1989 and 1995.

We have a substantive law and we can improve on it. What we need is a qualified staff.

We need an intellectual property system to meet the present days challenges.

**Vasudeva Nanayakkara [PA Ratnapura District]** said: Even though we think we are heading towards knowledge it is clear that we are heading

in the opposite direction when we see the way the intellectual property act has been handled so far.

There are many agreements made with other countries on development but do we know the laws and regulations under which these are signed.

After third world countries like ours are deceived and lured by these developed countries to join various agreements, for example the Trade Related Intellectual Property Systems [TRIPS] agreement.

While signing the TRIPS agreement we were told that it was for the betterment of our country and its future but do we know the dangers we court by blindly signing these agreements.

Have we ever questioned what the advantages we gain as a result? It is our duty to let this House and the people of the country know the benefits we accrue from these agreements with the West.

I ask the minister to kindly look into this. **S. Sathasivam [CWC-Nuwara Eliya District]** said: The amendments to the Code of Intellectual Property will help identify and develop skills.

**Nihal Galapaththi [SLPF-Hambantota District]** said: Stealing of intellectual property should be stopped by any civilised government.

**Mahinda Samarasinghe [UNP-Kalutara District]** said: Although the Act was in existence since 1979 no action has been taken to bring it in line with the latest developments in the international arena.

International organisations give aid to developing countries and impose conditions for the purpose of achieving their own parochial aims.

The SAPTA and SAFTA also need deep study before we embrace them. We have not brought about the necessary structural changes to gear us for the task.

**Minister of Internal, External Commerce and Food Kingsley Wickremaratne** said: We think always third world. We must get over this psyche. Today capitalism gives way to knowledge economy. If knowledge is to improve, this Bill is essential. Every creator has to be protected, we should modernise our intellectual property. Globalisation is coming closer with the world merging every day. We must be in the driving seat of the world economy. We must move fast. The South Asian region must speak in one voice. We must as a region prepare for one market place. The structures in the region must be modernised. [The Bill was passed with amendments]

Parliament will meet at 9.30 a.m. on July 8.

## Servants of the Buddha anniversary agenda

The 75th anniversary commemoration meeting of The Servants of the Buddha will be held on Saturday 21st June 1997 at 5 p.m.

The agenda of the meeting will be as follows:

- 4.55 p.m. Arrival of the Chief Guest, Hon. G. P. S. de Silva, the Chief Justice, 5.00 p.m. Lighting of the lamp and offering of flowers, 5.05 p.m. Observance of Pansil, 5.10 p.m. Welcome address by Mr. Raja Kuruppu,

- 5.20 p.m. Address by Ven. Piyadassi Maha Thera, 5.35 p.m. Keynote address by Mr. Alec Robertson, Honorary President of the Servants of the Buddha, 6.05 p.m. Presentation of the 75th anniversary souvenir, by the Honorary President to the Chief Guest, 6.10 p.m. Address by the Chief Guest, Hon. G. P. S. de Silva, 6.25 p.m. Vote of thanks by Mrs. Anoja Wijeyesekera, Honorary Secretary of the Servants of the Buddha, 6.30 p.m. Chanting of Pirith, 7.00 p.m. Conclusion.

## D.S. Senanayake College anniversary

D. S. Senanayake College Colombo, will hold the "Blue and Gold" carnival to commemorate the thirtieth anniversary of the school on June 27, 28 and 29 at the college grounds.

There will be a wide variety of entertainment with musical shows, trade stalls, fire works, etc. The carnival will start on each day at 5.30 p.m. and go on till 3.30 a.m. Treasurer of the Old Boys Association and Project Chairman M a d h u r a Wickremaratne said.

The 15 year Old Boys' Association of the College which has a membership of around 1500 whose average age is around 36 years, he said. The school which was launched at Gregory's Road with 167 students and seven teachers in 1967 grew to be a junior school, a junior secondary school and is now a national school. Initially, this institution had only one school building on marshy land with an adjoining forest. Today, the college has 5000 students and 200 teachers, he said. The school has produced eminent Old Boys who have performed with distinction as doctors, engineers, accountants, architects and lawyers. There have been large numbers of Old Boys who have performed at sports at National Sports with distinction such as cricket, rugby, football, soccer, hockey, basket ball, athletics, etc, he added.

The agreement granting the USD 300,000 was signed at the US Embassy in Colombo on June 13 by Ambassador A. Peter Burleigh and Dr. Hak Su Kim, Secretary General of the Colombo Plan Secretariat. Since its inception in 1972, the Drug Advisory Program has been working with government and non-governmental organizations of member countries in the Asia Pacific region to promote coordinated, region-wide efforts to reduce both demand for, and supply of, narcotic drugs and psychotropic substances. DAP uses the voluntary contributions provided by member governments to organise conferences, forums, workshops, (USIS Press Release)

## US drug aid programme

This year, the United States is providing USD 300,000 to the Colombo Plan's Drug Advisory Program (DAP) to help fund projects aimed at preventing substance abuse, supporting those suffering from drug addiction, and combating the production and supply of narcotics.

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Officials of the Association of Filipinos in Sri Lanka and their Consul A. H. Colombo, William John Terrence Perera seen with the guest of honour, Minister of Labour and Mrs. Seneviratne at the 99th Philippine Independence Day celebrations held at Trans Asia Hotel, Colombo.

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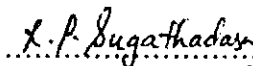
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