**Performers’ Rights Regime in the Sri Lankan music industry: Ten years on**

1. **Introduction**

Performers’ Rights Regime (PRR), since its introduction in Sri Lanka,[[1]](#footnote-1) just over ten years ago,[[2]](#footnote-2) *inter alia* recognized the vocalists’ rights to their performances for the first time under the national law. The Copyright law and PRR, a subsidiary right to copyright, are essentially Western proprietary regimes that have struggled to settle in comfortably in the Sri Lankan locale. Although from a top-down view, it seems that the national PRR conforms to the international norms of the regime, from a bottom-up view, there appears to be various contestations and effects, as a result of the introduction of PRR.

A rather narrow observation of the situation in the Sri Lankan music industry is to state that PRR is an ineffective law from the views of the exporters of this law. However, doing so would be making a constricted interpretation of the situation and therefore would be making a confined understanding of the law and its effects. As this paper discovers, the paradox between the received law under PRR and the existing cultural industrial practices in the local music industry, has given rise to various outcomes in the local context. I will attempt to interpret these various effects and contestations through the lens of diffusion of law in order to better explain the effects of the PRR in the Sri Lankan vocalists’ situation.

In examining these various consequences through diffusion of law, a ‘surface law’ approach is used, borrowing from Twining[[3]](#footnote-3) for the purpose of providing a closer examination of PRR’s effects in the Sri Lankan music industry. To avoid the risk of misinterpretation, Twining’s wording is reproduced as follows; “The idea of ‘surface law’ suggests that beneath formal accounts of a given legal order in terms of rules or doctrine there may lurk other normative or legal orders that are arcane, ignored, or even invisible.”[[4]](#footnote-4) Accordingly, obtaining a wider understanding of law requires knowledge of the “normative and non-state legal orders[[5]](#footnote-5) in action and their inter-relations ….[which] inevitably involves penetration beneath the ‘surface’ of formal statements of legal rules.”[[6]](#footnote-6)

Using Diffusion of Law this paper will attempt to explain the divergent outcomes the PRR has given rise to in Sri Lanka. Findings of empirical research work carried out in Sri Lanka, during 2012-2013, is also used to provide some of the important information relating to the local industry and its participants.

In exploring the effects of PRR in Sri Lanka, this paper will, under Section 2, commence this discussion with a brief outline of PRR and what it encapsulates within the wider law of copyright. Section 3 thereafter will create the theoretical foundation for this discussion by exploring Diffusion of Law. For the purposes of applying the theory of diffusion of law to the local setting in Sri Lanka, Section 4 will examine the local music industry with regard to a couple of issues coined by the vocalists; economic hierarchy and making cover versions in the music industry. In light of the local situation explained in Section 4, Section 5 will discuss the various implications of PRR in Sri Lanka from social and legal perspectives. Thereafter, under Section 6, the diffusion of law will be applied to the socio-legal setting resulted by the PRR in order to understand the broader implications of PRR in the Sri Lankan music industry.

**Copyright law and PRR**

Copyright is that branch of intellectual property law, which “regulates the creation and use that is made of a range of cultural goods such as books, songs, films and computer programmes”.[[7]](#footnote-7) Copyright law grants exclusive rights, generally to authors of such works, to determine the limitations of the way in which their works ought to be used by others. These rights can be mainly divided into two categories; economic rights and moral rights. While economic rights are expected to enable the author to gain revenue from economic utilisation of their work, moral rights are expected to ensure that author and their work are acknowledged, respected and protected from any distortion.

The PRR is categorized as a neighbouring right, a right deriving from and secondary to the authors’ copyright. As the lyricist and the music composer are recognized as the authors of a song under copyright law, the vocalist, as a performer will only have limited rights to their performances. The performer, as someone carrying the authors’ work to the public, is considered as performing a lesser creative role than the authors under this regime. Thus a subcategory under copyright was created by the term ‘neighbouring right’, for the performers among other types of beneficiaries such as broadcasting organisations and phonogram producers, while maintaining the authors’ supremacy within the copyright regime. Accordingly, as PRR stands at present, a performer of a copyright work obtains the opportunity only to control, and as a result, gain remuneration through, mainly their live renditions. Subject to certain restrictions, audio recordings of such renditions could provide some remuneration for performers, thus leaving the opportunity to the owner of the copyright (lyricist and composer) to control the copyright work (lyrics and music compositions) such rendition is based on.

**3.0 Diffusion of Law**

Diffusion of law has been widely used as an approach to explain effects of legal transplants; introducing a law from one or several legal settings to another and as a result giving rise to varying results. Diffusion of law, Twining argues, “are more complex, - often involving two or more reciprocally interacting change agents, crossing of levels, and repression, resistance, or avoidance”.[[8]](#footnote-8)

Varying arguments supporting and challenging the possibility of legal transplant have been expressed by many academics. Those can be connected at various places in a continuum, which has complete resistance and absolute acceptance of legal transplantation on either extreme. Accordingly, while arguments put forth on one end may contend that legal transplantation promotes legal development in the receiving country, arguments on the other extreme may argue that it is a futile exercise as one cannot move a particular law from its culturally embedded setting to a new setting. I will examine some of these varying views below.

Watson, who is a proponent of legal development through transplantation states “the moving rule or a system of law from one country to another has been shown to be most fertile source of legal development since most changes in most systems are the result of borrowing”.[[9]](#footnote-9) This position is further emphasised by Sacco, who claims that borrowing and imitation is the main source for legal change as new rules or institutions are created rarely.[[10]](#footnote-10)

Opponents of that view,[[11]](#footnote-11) following Montesquieu’s skepticism, argue that transferring laws between different geographic, customary and political contexts is impossible as they are deeply embedded in the donor country context. Supporting such position further, Legrand argues, “a crucial element of the ruleness of the rule – it’s meaning – does not survive the journey from one legal system to another”.[[12]](#footnote-12)

In between these two extremes one would find views of Kahn-Freund,[[13]](#footnote-13) Taubener[[14]](#footnote-14) and Twining,[[15]](#footnote-15) who attempt to provide a far broader picture of legal transplantation by not limiting their focus on success or failure of a law but rather examining wider effects of transplantation. Hence in this discussion I use the term diffusion of law to refer to this middle approach, which is expected to provide a wider understanding of the laws’ effects beyond the mere success or the failure of the transplantation of PRR in Sri Lanka.

Kahn-Freund provides that there are “degrees of transferability” and therefore, he argues, that certain laws are more likely to fail when transplanted than others.[[16]](#footnote-16) According to him those laws that are designed to allocate power, rule-making, decision making, and above all, policy making power are more difficult to transplant. Teubner offers a new dimension to this debate. Although he agrees with Kahn-Freund’s middle path, he argues that legal transplant does not have to be about “repulsion or interaction dichotomy”.[[17]](#footnote-17) He argues “when a foreign rule is imposed on a domestic culture….it works as a fundamental irritation which triggers a whole series of new and unexpected events”.[[18]](#footnote-18) He argues, examining the transplantation of the continental principle of bona fides directly into the British contract law, that transplantation[[19]](#footnote-19) will have a double effect in the new context, irritating the domestic legal discourse and the social discourse.[[20]](#footnote-20)

Twining too maintains similar views to Teubner, where he challenges traditional naiveties[[21]](#footnote-21) surrounding legal transplantation. Twining maintains that reception of law involves more complex interaction between the imported law and existing law, where existing law includes non-state laws, normative or legal orders.[[22]](#footnote-22) This allows for his assumption that “diffusion may take place between many kinds of legal orders at and across different geographical levels, not just horizontally between municipal legal systems.”[[23]](#footnote-23) Twining and Teubner both appreciate the limited use of the terms transplantation in explaining such various interaction and their outcomes when a new law interacts with a new geographical and/or cultural setting. Following their views and in order to provide similarly broad views of the interaction between the Sri Lankan music industry and the PRR, I use the diffusion of law as the theme of the theoretical concept to explain the various consequences resulted through the interaction within a new law in a new socio-cultural setting.

**4.0 Vocalists’ situation in the Sri Lankan Music Industry**

**4.1 Economic Hierarchy**

The vocalists in the Sri Lankan music industry seem to enjoy various modes of income. Nevertheless they anticipated that more security with regard to ensuring their income would be achieved through the introduction of PRR. When examining their current economic position, it was revealed that performing at live music shows seemed to be the most lucrative, more often the only revenue generating music practice, for them. The relatively simple payment methods and minimal or no administration cost meant that the direct payment at the end of each performance provided the most secured and profitable pay scheme for vocalists. Other modes of income are limited to a very few vocalists who have been efficient with negotiating varying payment agreements with media companies and digital content companies.

Interestingly, such simple payment schemes available for vocalists in Sri Lanka meant that the authors, lyricists and music composers, in this music industry have been left out from enjoying similar recurring remunerations from their creations. What authors often receive is a one-off payment or sometimes a non-payment. [[24]](#footnote-24) Although vocalists get the opportunity to perform the songs created by authors at various shows and generate revenue from it, authors generally do not get a payment or shared-pay from such performances.[[25]](#footnote-25) Accordingly it appeared that the vocalists are significantly better remunerated and financially securely positioned than the authors in this music industry.

It seems that the customary industrial practices from the inception of the commercial music industry during the gramophone era and later on with the advent of the Radio Ceylon, may have had a substantial impact on the creation and maintenance of this reversed hierarchy within the music industry today.

The gramophone industry,[[26]](#footnote-26) the initiation of Sinhala commercial music industry, was exclusively dependent upon Indian melodies. Thus it can be argued that authors may have been mainly utilised to write Sinhala wordings for Indian melodies but not necessarily for writing new melodies. Therefore although there may have been the need for lyric writers this may not necessarily have been the case for music composers. Even the lyrics that were written for Indian melodies were severely criticised for lack of literary quality caused by a desperate attempts to sync the Sinhala lyrics with the Indian melody.[[27]](#footnote-27) Therefore it can be argued that such circumstances in the industry may have had a negative impact on the value of the lyric writers at the time. Music composers too may not have been given much of a prominent place until the late 1950s when Sri Lankan music compositions that was independent from Indian song melodies, started to be created.

Vocalists, on the other hand, did initially mimicked Indian melodies for gramophone records although later on sang songs of Sri Lankan music style. It seems that the minimum creative contribution by the authors as conditioned by the gramophone industry, provided the singers the opportunity to claim ownership to the songs they performed without much objection from the authors. Unlike the authors, the vocalists managed to enjoy a prominent position in the music industry in terms of income generation coupled with fame[[28]](#footnote-28) throughout. Thus it can be argued that such musical beginnings of the industry that provided a pivotal position to vocalists may have had an impact on the lack of or delay in providing a prominent position to the authors in the music industry.

This situation seems to have been further maintained by the activities of the Radio Ceylon.[[29]](#footnote-29) When the Radio Ceylon started to record songs as opposed to broadcasting gramophone records, a new revenue-generating path was opened up for the vocalists. A good example for this position is the payments made by the Radio Ceylon to the vocalists in the 1970s for their recordings of new songs made for the radio, as stated by one participant.[[30]](#footnote-30) It was upon the invited singer to find authors and get the songs created.[[31]](#footnote-31) According to one interview participant, such invited singers had been only paid a nominal one-off fee[[32]](#footnote-32) for the performances while the authors were paid nothing.[[33]](#footnote-33) Although it is not very clear whether this may have been the reason behind the subsequent continuous practice of authors being less remunerated than vocalists, it can certainly be argued that the procedure at the Radio Ceylon, considering singers as worthy of payment, certainly may have had a strong impact on it.

Thus it is clear that there has been a reverse economic hierarchy among authors and vocalists in the local music industry, paradoxical to the hierarchy promoted by the Copyright Law and PRR. Although the newly introduced PRR provides the author a higher position in the creative and economic chain, the historical and cultural practices in Sri Lanka has provided the vocalists such prominence than the authors in music. This, so far, made it difficult for the PRR to change the entrenched vocalists’ economic supremacy in the Sri Lankan music industry.

**4.2 Cover Versions**

Cover versions is not a practice that is completely alien to Sri Lanka. The very commercial music industry in Sri Lanka, as mentioned earlier, was founded on mimicked Indian melodies, which were reproduced by Sri Lankan vocalists. Thus it is correct to say that foundation of the local commercial music industry was exclusively based on cover versions of Indian songs. Although the nationalistic music genre emerged in the 1950s, condemning the existing practices of dependence on Indian and Western songs, making cover versions of foreign songs are not entirely absent in the contemporary music industry. Nevertheless, covering Sinhalese songs, compared to foreign songs, cannot be as widely seen within the local music industry.

Out of the few Sinhala cover renditions, it is correct to say that majority of them have been primarily used for the purpose of embarking on a performers’ journey into the music industry while some of them may have been made with intentions to introduce versatile versions or re-interpretation of the same song. It is mostly budding artists, who use covering to attract popularity and lay the foundations of becoming an established vocalist. One would rarely hear an established vocalist making cover versions of another artist in Sri Lanka.[[34]](#footnote-34) Accordingly, many artists[[35]](#footnote-35) who were once budding performers making cover versions would seldom continue on with such practice.[[36]](#footnote-36) The norm seems to be that once they build up their repertoire, they would limit to performing their own songs rather than cover songs.[[37]](#footnote-37) Therefore, it can be argued that there is a certain level of stigma attached to performing cover versions in Sri Lanka as it would indicate that a particular artist is either an amateur in the industry or not having any of their own songs to sing.[[38]](#footnote-38)

Although it is not very clear as to why a cover version market for Sinhalese songs did not become prominent, it can be argued that the strong resistance made by the vocalists and the nationalistic approach to music making may have had an impact on it, at least to some extent. It seems that there is a silent agreement among majority of artists in Sri Lanka in terms of not covering songs. This may be out of respect for the initial singer or unwillingness to be subject to criticism by other artists and the wider society.

The existing national PRR nor the international PRR provides for strong authorial-like rights to performers which would allow them to prevent others from covering their songs. Accordingly, the existing abstention from and/or disapproval of, covering songs by majority of artists either due to their need to avoid criticism or due to lack of awareness of Intellectual Property law,[[39]](#footnote-39) is an interesting phenomenon in light of narrow and weak PRR implemented under national PRR which does not make the practice of cover versions illegal *per se*. Thus it can be argued that the vocalists may have had a strong impact on how the music industry functions in terms of limiting cover versions, predominantly, to cross-language parodies and maintaining a strong resistance to covers of Sinhalese songs. Accordingly this is another aspect of the local music industry that highlights the supremacy of their vocalists. Although the Copyright Law and subsequently the PRR recognize that such authoritative rights are vested in the authors, the local music industry is a paradox to this where the performers seem to be enjoying such authoritative rights.

As discussed in this part of the paper, the cultural practice of the local music industry seems to be inconsistent with the PRR where performers are given a secondary status compared to the authors. Accordingly, the following section will examine the implications of this mismatch between the law and the socio-cultural setting that it was introduced to.

**PRR and its Irritations**

The introduction and the implementation of PRR in Sri Lanka led to various complications in Sri Lanka. While it was a struggle for the importers of this law, to understand and implement the law accordingly, the artists in the industry too grappled with adjusting to the changes introduced by the new PRR. Accordingly, to understand the effects of PRR, this part of the paper will examine the implications of introducing PRR in Sri Lanka from two angles; Social and Legal.

**5.1 Social irritation**

Royalty payment, which has until the 1970s, been an alien term for the Sri Lankan music was first used when the Performing Rights Society was created in Sri Lanka in 1981 with the auspices of the British Performing Rights society.[[40]](#footnote-40) According to the information gathered, the PRS was merely an enforcer of royalty collection scheme for the benefit of the international artists, and hardly a royalty payment scheme, as far as the local artists are concerned. Although the SLPRS is still in existence, it is barely operative in terms of the music royalty collection. A couple of more organisations have been created recently with the intention of making collective organisations.[[41]](#footnote-41) Nevertheless none of them have been able to execute the royalty payment mechanism so far.

Although the English authorial right regime was transferred to Sri Lanka over a century ago,[[42]](#footnote-42) it was not effectively followed and enforced in terms of the musical industry but remained being limited to “law in the books”. PRR was later introduced in 2003 as a subsidiary right regime to authors’ rights. With regard to improving economic position of performers, one significant introduction made by the PRR is the establishment of a royalty collection scheme in the music industry. It was expected that such a legal provision under PRR would act as an impetus to commence a consistent royalty scheme, which was absent within the commercial music industry. Nevertheless, attempts made to create such a mechanism has engendered significant disharmony among the artists in the industry.

Referring to such a situation, an author stated “in one of our meetings [held to discuss the implementation of a royalty scheme] one singer said that ‘if the authors want a share of our fee, then they should be asked to come with us and be sleep deprived in the night[[43]](#footnote-43) at these musical shows’.[[44]](#footnote-44) The author further added “he (the singer) should know that we provided him with the songs for him to be sleep deprived and earn money by performing at these shows.”[[45]](#footnote-45)

Another author explained, ““Intellectual property is not currently used in Sri Lanka as a law that facilitates the unity among artists. It rather transforms the disagreements between them into aggressions. Generally laws should be used to resolve issues. But in Sri Lanka, this law is used as a weapon to intensify aggressions.”[[46]](#footnote-46)Accordingly, the introduction of the PRR and the attempts to enforce same has created significant animosity among artists in the industry.

As a result of such issues involving the creation of a royalty collection scheme under copyright and PRR, ad hoc royalty payments have become visible in the industry. Some participants said that certain radio stations have started making royalty payments to artists in a way each such station seemed fit. According to them, some artists have started getting cheques in the post, once in a while, from a certain radio company while another radio company started holding public presentation gatherings in this regard.[[47]](#footnote-47) Some of the cheques, they said, have come along with a covering letter explaining briefly that it is for the services obtained from the relevant artist while some artists only received a cheque without any explanation as to why the cheque was sent to them.[[48]](#footnote-48)

This kind of selective, non-transparent royalty pay is also visible in the emerging digital content market in Sri Lanka. According to some, those few artists[[49]](#footnote-49) who have managed to come to an agreement with the relevant media companies regarding their share, in terms of ring tone downloads, manage to get the payment sent straight to the artist.[[50]](#footnote-50) In addition to these ad hoc royalty schemes there is no proper and consistent royalty collection and distribution with regard to music in Sri Lanka.

**5.2 Legal irritation**

When examining the parliamentary debates relating to the introduction of PRR, combating cover song recording, interestingly, drew a significant attention of the legislature. One could see varying reasons for this situation. As mentioned earlier in this chapter, one such reason could be the strong resentment towards this practice in Sri Lanka, which is generally considered as an amateur’s attempt to embark on the entertainment field. Additional views against this practice also can be discovered when perusing the parliamentary debates on this issue.

Significant attention was given to difficulties encountered by a couple of prominent and highly regarded classical vocalists, Pandit Amaradeva and Nanda Malini, during this discussion on cover versions. In Amaradeva’s situation, another vocalist made a recording of songs once performed and popularized by him.[[51]](#footnote-51) As the relevant singer had obtained licenses from the copyright owners, this situation did not come under copyright infringement, which is the only mode of challenging cover song recordings. In Malini’s case, a boy band covered some of her popular songs.[[52]](#footnote-52) The issue in this situation was slightly different to Amaradeva’s case as here the male vocalists mimicked the female artists’ voice rather than singing in their own voices. Another difference in this case was that the boy band did not obtain relevant licenses from the copyright owners. As a result, Malini through the assistance of the copyright owners of the songs, managed to successfully challenge this version recording in court.[[53]](#footnote-53)

The focus on the above two situations during the parliamentary debates suggests that there seem to be more reasons for lobbying against cover songs by the members of the Parliament. Taking into consideration of the artists that were looked at to support such anti-campaign seems that the legislature felt the need to protect and preserve the songs performed by the nation’s most prominent artists. When looking at the history of the commercial music industry, the generation of artists that were emerging at the beginning of the Sinhala commercial music industry in the 1950s is now becoming incapacitated due to old age or health issues. Thus it seems that the legislature, along with vocalists, is lobbying for preserving these historic songs and their renditions by restricting access to them.

Another reason for this criticism in the parliament towards cover songs could be the mirroring of the accepted norm of vocalists’ supremacy. What the legislature was essentially arguing for is that once a vocalist perform/record a song for the first time, no other vocalist should be allowed to generate revenue by performing/recording the same song. This is a clear contradiction of the copyright norms, which provide the author the opportunity to decide the modes of use of their work. Thus it can be maintained that the legislature is arguing for vocalists’ supremacy in the commercial music industry. What is unclear however is, when they state “protection to artists who dedicate their lives to creative work which is being exploited by outside parties”,[[54]](#footnote-54) whether the legislature is only attempting to provide the so-called protection only to the prominent artists and not for non-prominent artists.

Protecting the national culture has also been coined as a connected reason for acting against mimicking. The practice of cover songs is seen as murdering the national music and along with it the national culture and therefore it has been argued that meaningful songs should not be subjected to being changed and sung by anyone else.[[55]](#footnote-55) Further criticism has been expressed against cover songs on the ground that it significantly hampers the honour and respect of the artists and the music industry.

Although such passionate resentment expressed by the legislature (against the practice of cover songs) who argued that performers ought to get an opportunity to prevent covering songs once they performed, the legislature has not been able to circumvent the authorial regime of copyright which conceptually provide for such strong rights to authors and not to vocalists. The IP Act 2003 although seem to have set out to provide strong national PRR for the benefit of the vocalists, a close perusal of the Act does not support such view. Under clause 9 of the Bill, a right to authorize cover songs is still vested in authors and not performers. Thus there seems to be some legal irritations in the legal discourse surrounding the introduction of the PRR to national laws and the expected legal outcomes of such introduction.

**6.0 Diffusion of PRR in Sri Lanka**

This paper uncovered that PRR that was introduced in Sri Lanka to address issues faced by its vocalists, represented the western proprietary regimes and hence promoted an economic hierarchy where authors are given a significantly prominent position than the vocalists. However the prevailing cultural industrial practice in the local context reflected a reverse hierarchy than the one reinforced by the PRR where vocalists are given a more prominent economic position than the authors. Accordingly, the introduction of PRR created varying outcomes in the national music industry context, which I will now attempt to discuss through diffusion of law.

This local music industry situation, which provided for vocalists’ supremacy, can be analogized to a non-state legal order[[56]](#footnote-56) that was immuned from the extant copyright law and PRR or similar to an internally oriented secondary rule, as categorized by Griffiths, in the context of Dutch Euthanasia Law.[[57]](#footnote-57) Griffiths refers to the development of Dutch law, which legitimized the act of euthanasia through the lobbying of the doctors who maintained that they were morally obliged to perform such act in appropriate cases.[[58]](#footnote-58) Accordingly it has been argued that prior to the law that legalized euthanasia, although the practice itself was illegal, the hospitals exercised their internally oriented secondary rules relating to *inter alia* making a decision about “abstention from further life-prolonging treatment”.[[59]](#footnote-59) In such cases, in addition to the primary law, which did not approve euthanasia, he also finds secondary rules relating to the professional practice of doctors by which they govern themselves albeit not in conformity with the prevailing primary law.[[60]](#footnote-60) The significant difference between the two contexts, the Dutch Euthanasia Law and Sri Lankan PRR, is that while the practice of the Dutch doctors paved way for the legalization of the act of euthanasia, the Sri Lankan music industry has to encounter further complexities due to the introduction of PRR, which resulted with significant irritations between vocalists, new and established, and authors.

As this paper examined, within the reversed economic hierarchy between authors and vocalists, a further non-state legal order is visible; the practice of cover versions. Although making cover versions is not legally prohibited, subject to certain formalities, the attitude towards such practice among the Sri Lankan vocalists seems to be quite different to what the law stipulates. Referring to one particular vocalist who did a cover version of one of his songs, an interview participant referred to the act as “stealing [his] song”[[61]](#footnote-61) although the relevant cover artist has followed the prescribed formalities under the copyright law. Accordingly, making cover versions, as discussed earlier in this chapter, are seen as acts of an amateur who attempts to embark on his/her journey to establish in the music industry and therefore not generally considered as a practice of established vocalists. Thus the practice is not only generally frowned upon by the vocalists but also it seems that there is an internal ethical code of conduct, albeit loosely defined, between vocalists that one should not make cover versions of other vocalists. Although this does not mean that the practice of cover versions is completely absent in the industry, the occasional coverings get subjected to severe criticisms by other vocalists as stated in the example above.

The self-imposed code of conduct among vocalists regarding abstinence from making cover versions can be seen as another internally-oriented secondary rule in the customary music practice in the industry. Accordingly majority of vocalists as a group of artists enjoying a prominent position in the industry did not consider it appropriate to make cover versions or let cover versions of their songs be made, although the current copyright law allows for such practices.

Nevertheless, some emerging vocalists, mostly arriving through various singing competitions, widely relying on the practice of cover versions has started to disturb this internally-oriented secondary rule following among the vocalists. The introduction of PRR, which reinforces the subsidiary position of the vocalists where they do not get the opportunity to prevent others from covering their songs, can be seen to have facilitated the emergence of making cover versions widely, by new vocalists. Accordingly PRR has resulted with an unintended consequence of creating irritation and disharmony among new and established vocalists in the Sri Lankan music industry.

Within the internally oriented secondary rule of vocalist supremacy in the Sri Lankan music industry, the vocalists practice a further non-state legal order of not allowing a share of their remuneration to be given to the authors. Attempts to create royalty collection scheme has revealed such unwillingness of the vocalists as explained earlier. Again in another level, the PRR and the internally-oriented non-state legal order maintained by the vocalists challenge and irritate each other which has thus far contributed to the non-implementation of a proper and consistent royalty scheme, one of the key outcomes anticipated under the PRR. Although it is correct to say that no proper and consistent royalty payment scheme is in place for the Sri Lankan music, there are improper, unofficial royalty-like payment scheme in place in the contemporary industry. The ad hoc royalty payment made by a couple of media companies can be an example in this regard.

Although the implementation of royalty collection scheme seemed to have one of the causes behind the emerged irritation among artists, it cannot be ignored that they all expect to gain remuneration from such a scheme and therefore in support for that scheme to be implemented. Although there seem to be a disparity between the customary industrial practice in the Sri Lankan music industry and the system the PRR is attempting to implement, as one vocalist mentioned, “although the [ad hoc royalty] payment we receive is not a clear reflection of the various uses made of our performances, I am thankful for them for at least making such a gesture.”[[62]](#footnote-62) Accordingly, one could argue that the royalty scheme could complement[[63]](#footnote-63) the existing industrial practice. The artists’ significant regard and appreciation given to the inconsistent, minimal and ad-hoc royalty payments made by certain radio stations evidence this position.

Accordingly, the PRR that was introduced to Sri Lanka is now in a transformed status, in its application, due to the manner it was adapted into the national context. This supports not only Griffiths’ argument relating to Dutch euthanasia law where he states that “continuities between ‘legal’ and ‘non-legal’ rules are thus manifold and more profound than one had realized”[[64]](#footnote-64) but also Twining’s view about how “[d]iffusion can occur horizontally” [[65]](#footnote-65) between many types of legal orders, state and non-state, as opposed to transfers between municipal legal systems. The current royalty scheme therefore can be seen as the product of cross level interaction between, but not limited to, law, policy makers and their enforcement agents, media companies, vocalists and authors, that resulted with creating a transformed royalty pay scheme than the one envisioned under PRR.

While in one aspect, the case in Sri Lankan music industry demonstrates how law could create significant disharmony among members in a society, in another wider aspect, one could argue that the transfer of PRR has created “double irritation” in the Sri Lankan music context. The introduction of PRR has not only irritated the domestic legal discourse on the rights of vocalists and authors but also in relation to the social discourse of how the rights of a song should be exercised by the authors and vocalists. While the legislature implements a PRR that provides subsidiary status to vocalists, the same institution anticipated stronger controlling rights for vocalists (by arguing against cover versions) that clearly contradicts with the law that was implemented. The introduction of PRR has irritated the social discourse among vocalists, authors and media companies relating to the way in which the remuneration generated from a song ought to be distributed. As Teubner argues these legal and social irritants will have their own trajectories. The result however is “rarely a convergence of the participating legal orders, but rather the creation of new cleavages in the interrelation of operationally closed social discourses.”[[66]](#footnote-66) Similarly the situation in the Sri Lankan commercial music industry is evolved as a result of the triggered legal and social discourse relating to vocalists’ and authors’ rights in their work and has created a transformed legal order relating to the cultural practice and the enforcement of PRR that is diverse from what was initially desired.

**7.0 Conclusion**

This paper was an attempt to understand and explain the varying implications of introducing a law to a new and different socio-cultural setting. Although it has been ten years since the introduction of PRR in Sri Lanka, the vocalists in the music industry maintain that this law has so far not been able to resolve the issues they have been encountering. While focusing on a couple of these issues, economic hierarchy and covering, this paper, using diffusion of law, explored the effects of PRR in the Sri Lankan music industry. Although the PRR did not manage to satisfy all the demands of the vocalists and was not enforced to its full extent in Sri Lanka, it is now in a transformed state as a result of the paradoxical socio-cultural setting in Sri Lanka. While the introduction of this law created significant irritations in the legal and social discourse relating to vocalists’ rights under PRR, the ad-hoc royalty payment that was resulted by this regime was a complimentary outcome that is welcomed by authors and performers equally. Thus, this paper supports and provides a contemporary case study confirming the vibrant picture the diffusion of law facilitates when attempting to understand the implications of legal transplantations.

1. As per the country’s obligations under the Trade Related Aspects of Intellectual Property Rights (TRIPS), one of the Treaties under the World Trade Organisation (WTO). [↑](#footnote-ref-1)
2. Intellectual Property Act of Sri Lanka 2003. [↑](#footnote-ref-2)
3. W. Twining, *General Jurisprudence – Understanding Law from a Global Perspective* (Cambridge University Press 2009) [↑](#footnote-ref-3)
4. Ibid. 313 [↑](#footnote-ref-4)
5. “ A non-state normative or legal order may not be officially recognized, but may nevertheless be in public view” Ibid. 315 [↑](#footnote-ref-5)
6. Ibid. 316 [↑](#footnote-ref-6)
7. L. Bentley and Brad Sherman, *Intellectual Property Law* (OUP 2001). Also see P. Goldstein, ‘Copyright’ (1990-1) 38 Journal of the Copyright Society of the USA 109. [↑](#footnote-ref-7)
8. W. Twining, ‘Diffusion and Globalisation Discourse’ (2006) 47 Harvard International Law Journal 507, 511. [↑](#footnote-ref-8)
9. Alan Watson, ‘Legal Transplants and Law Reform’ (1976) 92 Law Quarterly Review 94. [↑](#footnote-ref-9)
10. R. Sacco, ‘Legal Formants: A Dynamic Approach to Comparative Law (Installment II of II)’ (1991) 39, American Journal of Comparative Law 391 [↑](#footnote-ref-10)
11. P. Legrand, ‘The Impossibility of ‘Legal Transplants’ (1997) 4 Maastricht Journal of European and Comparative Law 111; J. Gillespie, ‘Globalisation and Legal Transplantation: Lessons from the Past’ (2001) 6 Deakin Law Review 286. [↑](#footnote-ref-11)
12. P. Legrand, ‘The Impossibility of “Legal Transplants”’ (1997) 4 Maastricht Journal of European and Comparative Law 111, 117 [↑](#footnote-ref-12)
13. O. Khan-Fruend, ‘Uses and Misuses of Comparative Law’ (1974) 37 Modern Law Review 1, 6. [↑](#footnote-ref-13)
14. G. Teubner, “Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Divergences” (1998) 61 The Modern Law Review 11 [↑](#footnote-ref-14)
15. W. Twining, ‘Diffusion of Law: A Global Perspective’ (2004) 49 Journal of Legal Pluralism and & Unofficial Law 1; W. Twining, ‘Social Science and Diffusion of Law’ (2005) 32 Journal of Law and Society, 203; W. Twining, ‘Diffusion and Globalisation Discourse’ (2006) 47 Harvard International Law Journal 507. [↑](#footnote-ref-15)
16. n. 13, 6. Ones that are unlikely to easily transplant, according to him, are laws designed to allocate power, rule-making, decision making, above all, policy making power. [↑](#footnote-ref-16)
17. n. 14, 12 [↑](#footnote-ref-17)
18. Ibid., 12 [↑](#footnote-ref-18)
19. He argues, as a misleading metaphor. [↑](#footnote-ref-19)
20. n. 14, 31-32. [↑](#footnote-ref-20)
21. “A bipolar relationship between two countries involving a direct one way transfer of legal rules or institutions through the agency of governments involving formal enactment or adoption at a particular moment of time (a reception date) without major change…It is commonly assumed that the standard case involves transfer from an advanced (parent) civil or common law system to a less developed one, on order to bring about technological change (“to modernize”) by filling in gaps or replacing prior local law.” W. Twining, ‘Diffusion and Globalisation Discourse’ (2006) 47 Harvard International Law Journal 507, 511 [↑](#footnote-ref-21)
22. n. 3, 313 [↑](#footnote-ref-22)
23. *Ibid*., 281 [↑](#footnote-ref-23)
24. Singer 1, Singer 2, Singer 3 [↑](#footnote-ref-24)
25. Lyricist 1, Singer 1 [↑](#footnote-ref-25)
26. In the 1930s. [↑](#footnote-ref-26)
27. Ariyarathne, Sunil, *Gramophone Gee Yugaya*, (S.Godage & Brothers; Colombo 1986) [↑](#footnote-ref-27)
28. Fonseka, Deepthi, *Lata, Hela Gee Rejina, Charithapadanaya*, [Biography of Lata Walpola] (Sarasavi; Colombo 2008) [↑](#footnote-ref-28)
29. The first radio station in the country. [↑](#footnote-ref-29)
30. Not every singer would get this ‘golden opportunity’ to sing for the Radio Ceylon. Firstly, one ought to be selected through a stringent auditioning process to be a member of the ‘A grade’ vocalists of the Radio Ceylon to be eligible for such an opportunity. Secondly, such member, only when invited by the Radio Ceylon would make a recording for it. [↑](#footnote-ref-30)
31. Singer 1 [↑](#footnote-ref-31)
32. Which would barely cover the cost of having a cup of tea with the band after a recording. – Singer 1 [↑](#footnote-ref-32)
33. It is not very clear whether this was due to the fact that Radio Ceylon expected the singer to commission the authors to create new songs, as it was the singer’s responsibility to find the new songs for the recording. Nevertheless when considering the actual amount the singers were paid for the whole task, which even included the payment to the members of the orchestra, it is believed that, it is hardly a reflection of the actual cost involved in the process. [↑](#footnote-ref-33)
34. Exception to this is Bhathiya & Santhush, a modern established duo who perform cover songs along with their own creations. [↑](#footnote-ref-34)
35. Nirosha Virajini, Nanda Malini, Champa Kalhari [↑](#footnote-ref-35)
36. This could also be due to their desire to promote their songs rather than continue to promote cover songs that were sung by another artist, initially. [↑](#footnote-ref-36)
37. Singer 1, Singer 3 [↑](#footnote-ref-37)
38. Diddeniya, N, *Arumasi Gee Sara*, (S.Godage and Brothers; Colombo, 2002); Singer-songwriter 1 [↑](#footnote-ref-38)
39. Excluding, however, occasions of inhibiting costs involving covering songs. [↑](#footnote-ref-39)
40. Document prepared by the consultant to the WIPO advisory mission February, 2009. [↑](#footnote-ref-40)
41. Outstanding Song Creators’ Organisation (OSCA) and Creative Value Protection Society of Sri Lanka [↑](#footnote-ref-41)
42. By the British colonisers. [↑](#footnote-ref-42)
43. Live musical shows in Sri Lanka mostly start late in the evening and goes on till way past mid-night. [↑](#footnote-ref-43)
44. Lyricist 1 [↑](#footnote-ref-44)
45. Lyricist 1 [↑](#footnote-ref-45)
46. Lyricist 2 [↑](#footnote-ref-46)
47. Singer 1 [↑](#footnote-ref-47)
48. Lyricist 1 [↑](#footnote-ref-48)
49. According to Recording Company Representative 1, they even send digital royalties to India for Hindi and Tamil song downloads. [↑](#footnote-ref-49)
50. Music Composer 2 [↑](#footnote-ref-50)
51. Ravindra Randeniya, Hansard, Parliament of Sri Lanka, 23rd July 2003, 1076 [↑](#footnote-ref-51)
52. Along with few other female artists’ songs. [↑](#footnote-ref-52)
53. Entertainment Lawyer 1 [↑](#footnote-ref-53)
54. Ravindra Randeniya, Hansard, Parliament of Sri Lanka, 23rd July 2003, 1076 [↑](#footnote-ref-54)
55. Alhaj A.H.M.Azwer, Hansard, Parliament of Sri Lanka, 23rd July 2003, 1089 [↑](#footnote-ref-55)
56. Borrowing from Twining [↑](#footnote-ref-56)
57. J. Griffiths, ‘The Social Working of Legal Rules’ (2003) 48 Journal of Legal Pluralism and Unofficial Law 1, 31-32 [↑](#footnote-ref-57)
58. *Ibid*., 31 [↑](#footnote-ref-58)
59. *Ibid*., 32 [↑](#footnote-ref-59)
60. *Ibid*., 31-32 [↑](#footnote-ref-60)
61. Singer-songwriter 1 [↑](#footnote-ref-61)
62. Singer 1 [↑](#footnote-ref-62)
63. “[T]he possible kinds of relation between co-existing legal orders can be extraordinarily diverse: they may complement each other; the relationship may be one of co-operation, co-optation, competition, subordination, or stable symbiosis; the orders may converge, assimilate, merge, repress, imitate, echo, or avoid each other.” Accoridnlgy, complimenting each other is one possible outcome in diffusion of law. - W. Twining, ‘Diffusion of Law: A Global Perspective’ (2004) 49 Journal of Legal Pluralism and & Unofficial Law 1, 15. [↑](#footnote-ref-63)
64. n. 59, 1 [↑](#footnote-ref-64)
65. n. 3, 280-281 [↑](#footnote-ref-65)
66. n. 14, 32 [↑](#footnote-ref-66)